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Complete Collection  
OF  
STATE-TRIALS,  
AND  
PROCEEDINGS  
FOR  
HIGH-TREASON,  
AND OTHER  
CRIMES and MISDEMEANOURS;  
THE FOURTH EDITION;  
COMMENCING WITH  
The Eleventh Year of the Reign of KING RICHARD II.  
AND ENDING WITH  
The Sixteenth Year of the Reign of KING GEORGE III.  
WITH  
TWO ALPHABETICAL TABLES TO THE WHOLE.  
TO WHICH IS PREFIXED,  
A NEW PREFACE,  
By FRANCIS HARGRAVE, ESQUIRE.  
VOLUME THE THIRD.

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STANDARD

PROCESSED

FOR

AND OTHER

CRIMES and MISDEMEANORS

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TWO ALPHABETICAL TABLES TO THE WHOLE

TO WHICH

A NEW AND IMPROVED

BY FRANCIS BARGHAY

TO THE

OF

Printed by T. W. Atkinson, Stationer, Strand.

For C. Smith, Stationer, Strand, and W. G. Smith, Stationer, Strand.

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# The several TRIALS, &c. contained in the THIRD VOLUME.

1679.	XCV.	<b>T</b> HE Trial of Sir Thomas Gascoigne for High-Treason.	Page 1
1680.	XCVI.	The Trial of Elizabeth Cellier for High-Treason.	32
	XCVII.	The Trial of Roger Palmer, Earl of Castlemain, for High-Treason.	36
	XCVIII.	The Trial of Hen. Carr for a Libel.	57
	XCIX.	The Trial of John Giles for attempting to murder John Arnold, Esq.	65
	C.	The Trial of Tho. Thwing and Mary Preficks for High-Treason.	79
	CI.	The Trial of Elizabeth Cellier for a Libel.	89
	CII.	The Trial of William Viscount Stafford for High-Treason.	101
		The Report of the Committee of the House of Commons appointed to examine the Proceedings of the Judges.	218
1681.	CIII.	Proceedings in Parliament against Edward Fitz-Harris upon an Impeachment for High-Treason.	224
		Proceedings against him in the King's-Bench upon his Arraignment, &c.	226
		His Trial at the King's-Bench for High-Treason.	263
	CIV.	The Trial of Dr. Oliver Plunket, Titular Primate of Ireland, for High-Treason.	291
	CV.	The Trial of Sir Miles Stapleton, Bart. for High-Treason.	317
	CVI.	The Trial of George Busby, a Romish Priest, for High-Treason.	328
	CVII.	The Trial of Stephen Colledge for High-Treason.	341
	CVIII.	The Trial of Slingsby Bethel, Esq; for an Assault and Battery.	413
	CIX.	Proceedings on the Bill of Indictment for High-Treason against Anthony Earl of Shaftesbury.	418
	CX.	The Trial of the Earl of Argyle for Treason.	441
	CXI.	The Trial of George Borosky, Christopher Vratz, John Stern, and Count Coningsmark, for the Murder of Thomas Thynn, Esq;	466
1682.	CXII.	The Trial of Nat. Thompson, William Pain, and John Farewell, for Libels.	505
	CXIII.	The Trial of Ford Lord Grey, Robert Charnock, and others, for a Misdemeanour, in debauching the Lady Henrietta Berkeley.	519
	CXIV.	Proceedings between the King and the City of London, on an Information in nature of a Quo Warranto.	545

1683.	CXV.	The Trial of Thomas Pilkington, Esq; Samuel Shute, Esq; Sheriffs, Henry Cornish, Alderman, Slingsby Bethel, Esq; and others, for a Riot.	630
	CXVI.	The Trial of Sir Patience Ward, Kt. for Perjury.	661
	CXVII.	The Trial of Captain Thomas Walcot for High-Treason.	684
	CXVIII.	The Trial of William Hone, for High-Treason.	702
	CXIX.	The Trial of William Lord Russel, for High-Treason.	706
	CXX.	The Trial of John Rouse for High-Treason.	731
	CXXI.	The Trial of William Blague for High-Treason.	739
		A Defence of the Lord Russel's Innocency, by Sir Robert Atkins.	755
		The Magistracy and Government of England vindicated, in three Parts, by Sir Bartholomew Shower.	765
		The Lord Russel's Innocency further defended, in Answer to the foregoing Pamphlet; by Sir Robert Atkins.	784
		The Case of William Lord Russel.	788
	CXXII.	The Trial of Col. Algernon Sidney for High-Treason.	794
	CXXIII.	The Trial of John Hampden, Esq; for a High-Misdemeanour.	824
	CXXIV.	The Trial of Laurence Braddon and Hugh Speke for a Misdemeanour, in relation to the Earl of Essex's Death.	855
		The Earl of Essex's Innocency and Honour vindicated, in a Letter to a Friend, by Laurence Braddon.	900
	CXXV.	The Trial of Sir Samuel Barnardiston, Bart. for a Misdemeanour.	933
1684.	CXXVI.	Proceedings against James Holloway, on an Outlawry for High-Treason.	943
	CXXVII.	The Trial of William Sacheverell and others for a Riot committed at Nottingham.	949
	CXXVIII.	Proceedings against Sir Thomas Armstrong, on an Outlawry for High-Treason.	983
	CXXIX.	Proceedings on a Writ of Enquiry of Damages, between the Duke of York and Titus Oates, in an Action upon the Statute de Scandalis Magnatum.	987
	CXXX.	The Trial of Thomas Rosewell for High-Treason.	997
	CXXXI.	The Trial of Joseph Hayes for High-Treason.	1067
	CXXXII.	The Trial between Sir William Pritchard and Thomas Papillon, Esq; for a false Arrest.	1072
	CXXXIII.	The Trial of Robert Baillie for High-Treason.	1095



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A COMPLETE  
COLLECTION  
OF  
TRIALS, &c.

XCV.

*The Trial of Sir THOMAS GASCOIGNE, Bart. at the King's-Bench for High-Treason, the 11th of February 1679. Hil. 32 Car. II.*

January the 24th, Sir THOMAS GASCOIGNE was brought to the Bar to be arraign'd.

Cl. of Cr. **S**IR Tho. Gascoigne, hold up thy Hand.  
Sir Tho. Gascoigne. I cannot hear.  
Clerk. He says he cannot hear.  
L. C. J. \* Then somebody must repeat it that stands by him.  
\* Sir William Scroggs.  
† Sir George Jeffries. Mr. Recorder. † Do you hear what I say to you?  
Sir Tho. Gascoigne. No, I cannot hear, I am very deaf.

Then the Clerk of the Crown went down close to the Bar, and went on thus:

Cl. of Cr. Sir Thomas Gascoigne, hold up thy Hand. [Which he did.]

Thou stand'st indicted by the Name of Sir Thomas Gascoigne, late of the Parish of Elmet, in the West-Riding in the County of York, Bart. for that thou, as a false Traitor against our most Illustrious and Excellent Prince King Charles the Second, thy natural Lord, not having the Fear of God in thy Heart, nor weighing the Duty of thy Allegiance, but by the Instigation of the Devil moved and seduced, the cordial Love, and true, due, and natural Obedience which true and faithful Subjects of our said Lord the King should bear to him, and of Right are bound to bear, wholly withdrawing, devising, and with all thy Power intending to disturb the Peace and common Tranquillity of this Realm, and to bring and put our said Lord the King to Death and final Destruction; and the true Worship of God in this Kingdom, by Law established and used, to alter unto the Superstition of the Church of Rome, and to move and stir up War against our said Lord the King in this Realm, and to subvert the Government of this Kingdom; the Thirtieth Day of May, in the One and Thirtieth Year of our said Lord the King's Reign, at the Parish of Barwick in Elmet in the said County of York, in the West-Riding of the same County, with divers other false Traitors unknown, didst traiterously compass, imagine, and intend the Death and final Destruction of our said Lord the King; and to change and alter, and wholly to subvert the ancient Government of this Realm; and to depose, and wholly to deprive the King of the Crown and Government of this Kingdom, and to root out the true Protestant Religion. And to fulfil and accomplish the same most wicked Treasons, and traiterous Imaginations and Purposes, the said Gascoigne, and other false Traitors unknown, on the said Thirtieth Day of May, in the One and Thirtieth Year aforesaid, with Force and Arms, &c. at the Parish of Barwick aforesaid, advisedly, devilishly, maliciously and traiterously did assemble, unite, and gather together themselves, and then and there did devilishly, advisedly, maliciously, craftily, and traiterously consult and agree to bring our said Lord the King to Death and final Destruction, and to depose and deprive him of his own Crown and Government, and to introduce and establish the Religion of the Romish Church in this Realm. And the sooner to fulfil and accomplish the same most wicked Treasons and traiterous Imaginations and Purposes, thou the said Gascoigne, and other unknown Traitors, then and there advisedly, maliciously, and traiterously did further consult and agree to contribute, pay, and expend divers large Sums of Money to divers of the King's Subjects and other Persons unknown, to procure those Persons unknown traiterously to kill our said Lord the King, and to introduce the Romish Religion into this Realm. And that thou the said Gascoigne afterwards (to wit), on the said Thirtieth Day of May, in the One and Thirtieth Year aforesaid, at the Parish aforesaid, didst falsely, advisedly, craftily, maliciously, and traiterously solicit one Robert Bolron to kill our said Lord the King; and then and there, with an Intent sooner traiterously to encourage the said Bolron to undertake the killing and murdering of our said Lord the King, offeredst therefore to give and pay the said Bolron 1000*l.* of lawful Money of England; against the Duty of thy Allegiance, against the Peace of our said Lord the King, his Crown and Dignity, and against the Form of the Statute in such Case made and provided. How say'st thou, Sir Thomas Gascoigne, art thou guilty of this High-Treason whereof thou standest indicted, and hast been now Arraigned, or Not guilty?

Sir Tho. Gascoigne. Gloria Patri, Filio, & Spiritui Sancto, I am not guilty.

Cl. of Cr. Not Guilty, you must say.

Sir T. Gascoigne. Not Guilty; nor any of my Family were ever guilty of any such Thing: I hope I shall be tried fairly.

Cl. of Cr. How will you be tried?

Sir T. Gascoigne. By God and my Country.

Cl. of Cr. God send thee a good Deliverance.

Sir T. Gascoigne. I desire, that in order to my Trial, I may have a Jury of Gentlemen, of Persons of my own Quality, and of my own Country, that

may be able to know something how I have lived hitherto; for I am above Fourscore and five Years old.

L. C. J. Tell him he shall have a good Jury of Gentlemen of his own Country.

Sir T. Gascoigne. And besides, my Lord, I desire to know when I shall be try'd.

Mr. Att. Gen. \* Some time about the latter End of the \* Sir Creswel Term, as soon as I can get a Jury up. Levinz.

Sir T. Gascoigne. I do not know whether I can produce all my Witnesses at that time, if there be not a longer time allowed me; for I have a great many Witnesses to fetch up: These Witnesses must be all here, or I can't make my Defence; and I know not how they shall be got hither in so little time.

L. C. J. Tell him he may have what Witnesses he pleases, and the Aid of this Court to fetch them.

Mr. Just. Dolben. Name them who they are.

Mrs. Ravenscroft. My Lord, some of his Witnesses are at Paris.

Mr. Just. Dolben. Why, he will not be try'd yet this Fortnight.

Mrs. Ravenscroft. They will not have time to come over between this and that.

Mr. Just. Dolben. Mistress, he had reason to believe that he should be try'd some time this Term, for so the Council order'd it; and therefore he should have got his Witnesses ready.

Mrs. Ravenscroft. My Lord, he did not know where they were till a Week ago.

Mr. Just. Dolben. Look you, Mr. Attorney, here is a Lady that is, I suppose, some Relation to this Gentleman.

Mrs. Ravenscroft. He is my Grandfather, my Lord.

Mr. Just. Dolben. She says a Fortnight's time will be too little to get his Witnesses together for his Defence, because some of the Witnesses are beyond Sea at Paris, she says.

Mr. Att. Gen. My Lord, I am willing he should have as long time as the Term will allow of: But sure that is long enough to get any Witnesses from Paris.

L. C. J. What say you to Sir Miles Stapleton? I see he is join'd in the Indictment.

Mr. Att. Gen. My Lord, he is not come up yet.

L. C. J. Will you try the one without the other?

Mr. Att. Gen. Yes, my Lord, if we cannot have both: He is in the Hands of the Messenger at York; we have writ down to know the State of his Health to some of the Justices of the Peace, and the Messenger returns word, he is sick and can't come: I have sent down an Habeas Corpus to the Messenger to bring him up; let him return a Languidus at his Peril; that's all I can do.

L. C. J. Well, what Day do you appoint for Sir Thomas's Trial?

Mr. Att. Gen. Tuesday come Fortnight I think will be a good Day.

Mr. Just. Dolben. By that time, Mistress, you may get your Witnesses; you must send a Messenger on purpose.

Mrs. Ravenscroft. But if the Wind should be contrary, my Lord, and they cannot be brought over?

Mr. Just. Dolben. 'Tis not an usual Thing to have Winds long contrary between Dover and Calais.

Mrs. Ravenscroft. But if it do fall out that he wants a material Witness at his Trial, I hope his Life will be consider'd.

Mr. Just. Dolben. He should have had them ready, he had warning before.

Mrs. Ravenscroft. We could do it no sooner, because we knew not where they were.

Mr. Just. Dolben. He saith he hath a great many Witnesses; are they all at Paris?

Mr. Att. Gen. There are a great many in Town, we know, already.

Mrs. Ravenscroft. If we had known when exactly, we might have been more ready perhaps.

Mr. Att. Gen. But we could give no notice sooner; it is early in the Term now. But there is time enough to get any Witnesses.

L. C. J. Ay, you may send to Paris a great many times between this and that.

Mrs. Ravenscroft. What if the Letter miscarry, my Lord?

Mr. Just. Dolben. Why, you must send a special Messenger.

Mr. Att. Gen. My Lord, if you please, let it be Wednesday Fortnight, the last Day but one of the Term; because I would give him as much time to provide himself as I can.

Mr. Just. Pemberton. Well, Mistress, you must send a special Messenger; we must not consult your Convenience; do it as well as you can, you have time enough.



Mr. Just. Dolben. Your Grandfather is a Man of an Estate; he may very well, in this Case, be at the Charge of a special Messenger.

Mrs. Ravenscroft. But what if the Winds be contrary, must my Grandfather's Life be lost?

L. C. J. We must give you that Favour we can by Law, and you must be content: Tell us at the Trial what you have done.

Then the Lieutenant of the Tower was order'd to take the Prisoner back, and by Rule to bring him to the Bar on Wednesday the 11th of February. On which Day the Prisoner being brought up, the Trial proceeded thus:

Mr. Att. Gen. My Lord, here is an extraordinary Matter: Sir Thomas Gascoigne had a Rule for some Friend to assist him, by reason of the Defect of his Hearing; and now there are three of them that are got among the Jury.

L. C. J. No, no, they must come in of the inside of the Bar.

Mr. Att. Gen. Pray let him tell which he will make choice of; for he is by the Rule to have but one.

Mr. Just. Pemberton. Tell him there can but one stay.

Counsel. He says one of them came out of the Country, and knows the Persons that are the Witnesses, which he does not himself.

L. C. J. Well, let the other come in, let him have them both.

Counsel. He says, the principal Man he depended upon is clapt up.

L. C. J. Well, we can't help that.

Then way was made for the Jury to come up to the Stand, and Proclamation for Information was made in usual manner.

Cl. of Court. Sir Thomas Gascoigne, hold up thy Hand.

Sir T. Gas. I cannot hear what is said.

Cl. of Cr. Those good Men which were lately called, and have appeared, are to pass, &c.

L. C. J. Tell him the Effect of it. If he will make any Challenges to the Jury, he must speak to them before they are sworn.

Hobart. If you will challenge any of the Jury, you must speak to them before they are sworn.

Sir T. Gas. I cannot hear who is called.

L. C. J. Tell him who is called.

Cl. of Cr. Sir Thomas Hodson.

Hobart. This is Sir Thomas Hodson, Sir.

Sir T. Gas. What must I say? Ay, or No?

Hobart. Do you except against him?

Sir T. Gas. No. [Who was sworn.

Cl. of Cr. Richard Beaumont, Esq;

Hobart. Do you challenge him, Sir?

Sir T. Gas. No.

Mr. Att. Gen. Pray, my Lord, here is Sir John Cutler in the Pannel, one that lives in Town, and is the Foreman of the Jury; I desire the Court to take notice of his not appearing in particular.

Cl. of Cr. John Gibson, Esq;

The Prisoner challenged him.

Mr. Serj. Maynard. I perceive they skip a great many; pray call them as they are in the Pannel, and record their Non-appearance in Court.

Which was done accordingly; but their Names that did not appear, for brevity sake, are omitted.

Cl. of Cr. Nicholas Maleverer, Esq;

Mr. Att. Gen. We challenge him for the King. I perceive the best Gentlemen stay at home.

Mr. Serj. Maynard. Yes, 'tis so small a Business.

Cl. of Cr. Beckwith, Esq;

Challenged by the Prisoner.

Stephen Wilks, Esq;

Sworn.

Matthew Prince, Esq;

Chal. by the Prif.

Thomas Graver, Esq;

Chal. by the Prif.

Jervas Rockley, Esq;

Sworn.

William Walker, Esq;

Chal. by the Prif.

John Dimmoche, Esq;

Chal. by the Prif.

Samuel Jenkinson, Esq;

Chal. by the Prif.

Robert Leeke, Esq;

Sworn.

William Batt, Esq;

Sworn.

Richard Burton, Esq;

Chal. by the Prif.

Robert Auby, Esq;

Chal. by the Prif.

Charles Best, Esq;

Sworn.

Robert Long, Esq;

Chal. by the Prif.

John Crosse, Esq;

Sworn.

Barton Allett, Esq;

Sworn.

William Milner, Esq;

Sworn.

John Oxley, Esq;

Sworn.

Francis Oxley, Esq;

Sworn.

Cl. of Cr. Cryer, count these.

Sir Thomas Hodson,

Richard Beaumont,

Stephen Wilks,

Jervas Rockley,

Robert Leeke,

William Batt,

Jur

Charles Best,

John Crosse,

Barton Allett,

William Milner,

John Oxley,

Francis Oxley.

Cry. Twelve good men and true, stand together and hear your Evidence.

Cl. of Cr. Sir Thomas Gascoigne, hold up thy hand. Gentlemen, you of the Jury that are sworn, look upon the Prisoner and hearken to his Charge. You shall understand, That he stands Indicted by the Name of Sir Thomas Gascoigne, late of the Parish of Elmet, &c. Prout in the Indictment, *mutatis mutandis*. Upon this Indictment he hath been Arraigned, and thereunto pleaded Not Guilty; and for his Trial hath put himself upon his Country, which Country you are, &c.

Then Proclamation for Evidence was made, and Dormer, Esq; of Council for the King in this Cause, opened the Indictment thus:

Mr. Dormer. May it please your Lordship, and you Gentlemen of the Jury, Sir Thomas Gascoigne, Baronet, the Prisoner at the Bar, stands indicted for High-Treason, in conspiring the Murder of his Majesty, the subverting of the Government, and the introducing the *Romish* Religion: And for the effecting these Purposes, the Indictment sets forth, That the said Sir Thomas Gascoigne, Sir Miles Stapleton, and other false Traitors, on the 30th of May last, at the Parish of Elmet, in the West-Riding of the County of York, did assemble together, and there resolved to put their

Treasons in execution. And the better to accomplish their said Treasons and traitorous Imaginations, they did agree to contribute several large Sums of Money to several of his Majesty's Subjects unknown, to introduce Popery, to kill the King, and subvert the Government: And that Sir Thomas Gascoigne did solicit Robert Bolron to kill the King, and for that Service he was to pay him 1000*l*. To this he hath pleaded Not Guilty: If the King's Evidence prove the Charge of the Indictment, your Duty is to find him Guilty.

Mr. Serj. Maynard. May it please your Lordship, and you Gentlemen of the Jury, you have heard the Indictment, and it hath been opened to you. There can be no greater Crime charged upon any, than that this Gentleman is accused of. The Design hath been to kill and murder the King, to change the Religion and the Government; and to effect this, they make Assemblies, they offer Money: and this, my Lord, we shall prove. 'Tis no new Crime, divers have suffered for the like already; and we shall not need to make any Aggravations, for indeed it cannot be aggravated more than the plain matter itself is. We shall call our Witnesses, and prove it directly upon him, even by Two Witnesses; and we shall prove, that he held Intelligence with one *Preswicke* a Priest; Letters between him and that Person are found in his Custody, and we shall produce one of them wherein it doth appear, that there was Intelligence between them, and Consultations had about the Oath of Allegiance; and that *Pracid* did write to him, that it was a damnable Oath condemned by the *Scorbannists*: And upon that Point hangs the changing of Religion; for the Oath of Allegiance is the great Touchstone to discover Men's Sincerity by, and the great Bond to tie them to the Government, and to the Protestant Religion. And we shall likewise prove another Passage in a Letter indorsed with the Prisoner's own Hand, wherein there is an Expression to this purpose: *That if England be converted, (the Priest writes this to him) then how a Sum of Ninety Pound was to be disposed*: Which was, as you shall hear, and we shall prove, in a Nunnery. If England be converted, that clearly shews what was their Intention, not only to destroy the King, but the Religion and the Nation; and so they were conspiring not only against his Majesty, but against God. That an old Gentleman that hath lived so long under the Peace of this Nation, and been so protected by the Government, which hath been so indulgent to Men of his Persuasion, should be guilty of such a Design, is a lamentable thing to think of; that he should so offend the Law, which hath been so mild in its Execution against such Men. We shall prove the Proffer of the 1000*l*. and so leave it with you.

Mr. Att. Gen. My Lord, these two Papers we shall use in confirmation of that Evidence will be given by two Witnesses, who I think will concur in the same thing; that is, the Conspiracy for killing the King, and for the carrying on of the Plot. The Papers the Witnesses will expound to you; the one is a Letter, as Mr. Serjeant hath opened it to you, to Sir Thomas Gascoigne from a Priest, wherein he does discourse about 90*l*. a Year at *Maunston*, which Sir Thomas had purchased to settle upon a Nunnery called *Dolebank* in *Yorkshire*; and therein it is said, *You will be well advised to put in a Proviso into the former Writing (he meant for the Settlement), That if England be converted, the 90*l*. a Year shall be bestowed at Heworth, or some other Place in Yorkshire*. Your Lordship will hear by the Witnesses, that there were several Places designed for these Nuns to inhabit, as *Dolebank* and other Places; and this Letter will concur with their Evidence, and they will prove, that this very place that they speak of, was design'd for this purpose; and so it appears by the Papers taken in Sir Thomas Gascoigne's Custody. My Lord, there is another Letter which was mention'd, and which I believe may have a great Influence in this Cause, I am sure it may be likely to produce very bad Effects; which is that Letter from the Priest, wherein he decries the Oath of Allegiance as a damnable thing condemned by the Doctors at *Sorbonne*, and other Priests from *Rome*. And this had its effect a little time before; for it was about the time that a matter of Thirty or Forty were convicted of a *Præmunire* in that County, for not taking the Oath of Allegiance, which they used to do before. And there will be some other concurring Evidence in this Cause, and is by some Papers taken in Sir Thomas Gascoigne's own Hand; they are Almanacks, in which many of his own Memorials are, several Sums of Money mentioned to be paid, and returned to Priests at *London*: The Witnesses will tell you it was returned for the Design of the Plot. There happens to be 900*l*. return'd to Mr. *Corker*, who is now in *Newgate*; and some other Sums to *Harcourt*, who is executed; and some Money is paid to him, though I think not much, about 25*l*. and several Sums are mention'd, and great Sums return'd to *London* by Sir Thomas Gascoigne, in five or six Years time, 5 or 6000*l*. to what purpose I can't tell; they will give you an Account: I think he did live always in *Yorkshire* himself, never used to come to Town; and what Occasion he might have of returning Money, I don't know. We will call the two Witnesses *viva voce*, and then use the other Evidence as we shall have occasion to confirm them. Call Mr. *Bolron* and Mr. *Mowbray*. [Who were sworn.

Mr. Att. Gen. Mr. *Bolron*, tell my Lord and the Jury what you know of Sir Thomas Gascoigne.

Mr. *Bolron*. My Lord, and you Gentlemen of the Jury, I came to live with Sir Thomas Gascoigne in the Year 1674, as Steward of his Coal-works; and in the Year 1675, a little before *Easter*, being in the next Room to Sir Thomas Gascoigne, I did hear *Charles Ingleby* and Sir Thomas in Discourse together, and Sir Thomas did say he was very fearful his Estate would be liable to be forfeited to the King—

L. C. J. In 75 was this?

Mr. *Bolron*. Yes, my Lord.

L. C. J. What time in 75?

Mr. *Bolron*. A little before *Easter*.

L. C. J. Were you in the Room?

Mr. *Bolron*. I was in the next Room, and the Door was not shut; and Sir Thomas did say—

Mr. Att. Gen. Tell the Discourse what it was.

Mr. *Bolron*. He said he was resolved to make a collusive Conveyance of his Estate, for fear it should be forfeited to the King. And *Charles Ingleby* said, it was best so to do: and then he told Sir Thomas he would have the Deceazance made ready, which he would draw with his own hands; but he bid him be sure to bring none but Protestant Witnesses along with him to testify.

And in the Year 1675, I did go along with Sir Thomas Gascoigne to Sir *William Ingleby*'s of *Ripley*, and there I did see him receive colourably 1000*l*.

L. C. J. How do you know it was colourably?

Mr. *Bolron*.



Mr. Bolron. I did hear Sir Thomas tell Charles Ingleby so.  
 L. C. J. When was that?  
 Mr. Bolron. The 7th or 8th of April; the Deed bears the 8th of April 1675.  
 L. C. J. Was Charles Ingleby there at that time?  
 Mr. Bolron. Yes, when the Deed was sealed; and he read it in the Presence of the Witnesses to be dated at that time.  
 Mr. Just. Dolben. What, That thousand Pound was the Consideration of the Deed?  
 Mr. Bolron. Yes, it was. Sir Thomas Gascoigne did part thereby with all his Estate for Seven Years, he allowing him 100*l.* a Year for his Maintenance, besides the 1000*l.* at first paid. And this was done with that intent, for fear he should be discovered in the Plot for killing the King——  
 L. C. J. How do you know that?  
 Mr. Bolron. I did hear Sir Thomas Gascoigne and Sir Miles Stapleton discourse of it, and he said it was for that End.  
 L. C. J. Where was that Discourse?  
 Mr. Bolron. In Sir Thomas Gascoigne's Bed-chamber.  
 Mr. Just. Jones. When was that?  
 Mr. Bolron. It was in or about the Discovery of the Plot.  
 L. C. J. But you say you saw the Deed sealed?  
 Mr. Bolron. Yes, I was a Witness to it.  
 L. C. J. And you saw the Money paid?  
 Mr. Bolron. I and one Matthias Higgringil did help to count it.  
 Mr. Just. Jones. Were you a Protestant at that time?  
 Mr. Bolron. Yes, my Lord, I was at the time of the sealing the Deed; but I did hear the Discourse between Sir Miles Stapleton and Sir Thomas Gascoigne upon the Discovery of the Plot, when I was a Papist.  
 L. C. J. When was the Discourse you speak of with Sir Miles Stapleton, do you say?  
 Mr. Bolron. It was about the Discovery of the Plot.  
 L. C. J. After the Money paid?  
 Mr. Bolron. Yes, after the Money paid: And he said to Sir Miles Stapleton, he had done well to make over his Estate.  
 L. C. J. That is an abrupt thing for him to say; how did he begin the Discourse?  
 Mr. Bolron. They were discoursing about the Discovery of the Plot by Dr. Oates and Mr. Bedloe; and then Sir Thomas Gascoigne said to Sir Miles Stapleton, I have done well to make over my Estate to Sir William Ingleby, to prevent a Forfeiture.  
 L. C. J. What said Sir Miles Stapleton?  
 Mr. Bolron. I do not know what he said very well.  
 L. C. J. You seemed but now, as if he had said he was in the Plot.  
 Mr. Just. Jones. Did he own he was in the Plot?  
 Mr. Bolron. Yes.  
 L. C. J. When?  
 Mr. Bolron. At several times.  
 Mr. Serj. Maynard. Tell the manner how he was concerned.  
 Mr. Bolron. My Lord, in the Year 1676, I did hear Sir Thomas Gascoigne say to one Christopher Metcalfe, that he was resolved to send 3000*l.* to the Jesuits in London for the carrying on of the Design.  
 L. C. J. What time in 76?  
 Mr. Bolron. The beginning of the Year 76.  
 L. C. J. To whom did he say so?  
 Mr. Bolron. To one Christopher Metcalfe.  
 L. C. J. Were you a Papist then?  
 Mr. Bolron. Yes.  
 L. C. J. When came you first to be a Papist?  
 Mr. Bolron. About *Whitsuntide*, 75.  
 Mr. Just. Jones. You are a Protestant now?  
 Mr. Bolron. Yes, my Lord, I am so.  
 L. C. J. When did you turn Protestant again?  
 Mr. Bolron. I turned Protestant upon the Discovery of this Business.  
 L. C. J. When?  
 Mr. Bolron. Either the beginning of May, or the latter end of June.  
 L. C. J. To whom did he speak it?  
 Mr. Bolron. To Christopher Metcalfe, who then lived in his House.  
 L. C. J. What said he?  
 Mr. Bolron. He said he was to send 3000*l.* to the Jesuits in London, for the carrying on of this Design.  
 L. C. J. Who was in the Room besides?  
 Mr. Bolron. None but Sir Thomas Gascoigne and Metcalfe.  
 L. C. J. Where is that Metcalfe?  
 Mr. Bolron. He is since dead, I think.  
 L. C. J. What Discourse had they about the Design?  
 Mr. Bolron. They were discoursing about it when I came in; and I remember he mentioned 300*l.* for Corker, 300*l.* for Harcourt, and 300*l.* for Cornwallis; and the rest by 300*l.* a-piece to other Persons.  
 Mr. Att. Gen. What Name did Cornwallis go by besides?  
 Mr. Bolron. *Pracid*, my Lord.  
 Mr. Att. Gen. That's the Name that is to the Letter.  
 Mr. Just. Pemberton. Well, what do you know more?  
 Mr. Bolron. My Lord, Sir Thomas Gascoigne told this Christopher Metcalfe, that he would return it by 300*l.* at a time, to prevent Suspicion, by the Hands of Richard Phisick; and about the beginning of the Year 77, I did hear Sir Thomas Gascoigne say, that he had returned it, and that if it had been a thousand times as much, he would be glad to spend it all in so good a Cause.  
 L. C. J. Did he say he had returned all the 3000*l.*?  
 Mr. Bolron. Yes.  
 L. C. J. Did he tell you how it was to be dispos'd of?  
 Mr. Bolron. It was to be disposed among the Jesuits for the carrying on of the Design.  
 L. C. J. That was in the general; but this 900*l.* you speak of was to those three Priests?  
 Mr. Bolron. Yes.  
 Mr. Just. Jones. You say he resolved to send 3000*l.* to the Jesuits at London about this Design; pray what was the Design? What did they say about the Plot at that time?  
 Mr. Bolron. My Lord, at other times I have heard them say it was for killing the King.  
 L. C. J. What said Metcalfe to all this?  
 Mr. Bolron. He did allow of it, and thought it was the best way so to do. I have seen him return several sums by Richard Phisick.

Mr. Just. Dolben. Was Metcalfe a Papist?  
 Mr. Bolron. Yes, and he died so, as I have heard.  
 L. C. J. Was you in the Room when they first began the Discourse?  
 Mr. Bolron. No, my Lord, I came in when they were discoursing.  
 L. C. J. You came in when they were talking, you say; but they did not stop talking because you came in?  
 Mr. Bolron. No, my Lord, because I knew of it: I was brought in by one Rushton, who was acquainted with the Plot, to know of it, and therefore they did not stop me when I came in.  
 L. C. J. You say he said, I will return 3000*l.* to the Jesuits in London: Did he say in what time he would send that 3000*l.*?  
 Mr. Bolron. No, but in 76 he said he would do it.  
 L. C. J. And it should be employed for carrying on of the Design?  
 Mr. Bolron. Yes, those were the Words.  
 L. C. J. And in 77 you heard him talk with Metcalfe again? And then he said, If it had been a thousand times as much he would have sent it?  
 Mr. Bolron. Yes.  
 L. C. J. Was no body there but he, Sir Thomas Gascoigne, and you?  
 Mr. Bolron. No body else.  
 L. C. J. Then go on with your Evidence.  
 Mr. Bolron. My Lord, in the Year 77 several Gentlemen did meet and assemble together at Barnbow-hall in the County of York, Sir Thomas Gascoigne's House; and their Resolution was this, That they would build a Nunnery at Dolebank, in case that their Design and Plot of killing the King should take effect, and the Roman Catholick Religion be established in England: Upon which account, the Company there present did resolve they would lose their Lives and Estates to further it: And Sir Thomas Gascoigne did conclude he would give 900*l.* a Year for ever for the maintenance of this Nunnery: Upon which they all agreed, that after his Death he should be canoniz'd a Saint.  
 L. C. J. Who were these Gentlemen?  
 Mr. Bolron. Sir Miles Stapleton, Charles Ingleby, Esquire Gascoigne, my Lady Tempest, Thomas Thwing, Sir Walter Vavasor, Sir Francis Hungatt, and Robert Kilingbeck a Jesuit, and William Rushton a Romish Priest.  
 Mr. Just. Pemberton. Is he dead?  
 Mr. Bolron. No, he is fled beyond Sea.  
 L. C. J. Who else?  
 Mr. Bolron. These are the Persons I can remember at present.  
 L. C. J. There was a Woman there, you say?  
 Mr. Bolron. My Lady Tempest, my Lord, and one William Rushton, if you had not him before.  
 Mr. Just. Dolben. That was your Confessor?  
 Mr. Bolron. Yes, and engag'd me in the Plot.  
 Mr. Just. Pemberton. What was your Discourse? Pray tell that.  
 Mr. Bolron. The Discourse was upon establishing a Nunnery at Dolebank, in hopes that the Plot of Killing the King would take effect: The Intention was to alter the Government, and to introduce the Romish Religion.  
 L. C. J. Who was it said this?  
 Mr. Bolron. It was spoken by Sir Thomas Gascoigne, and the rest of the Gentlemen.  
 L. C. J. In their Discourse?  
 Mr. Bolron. Yes.  
 L. C. J. Did they speak of killing the King?  
 Mr. Bolron. Yes, my Lord, Sir Francis Hungatt said it several times.  
 L. C. J. How? Upon what Account?  
 Mr. Bolron. They were mutually resolved, and they would talk that they would venture their Lives and Estates in hopes the Plot would take effect; and accordingly about Michaelmas 1677, or near upon, as I remember——  
 L. C. J. How long staid they there?  
 Mr. Bolron. About six or seven Hours.  
 L. C. J. Were you with them in the Room still?  
 Mr. Bolron. My Lord, I was sometimes in the Room, and sometimes out: What Discourse I heard, I tell you; there was one Barloe——  
 L. C. J. What was that Barloe?  
 Mr. Bolron. I have had two Orders of Council for the seizing of him, and never could take him; he is a Priest.  
 L. C. J. Was he by?  
 Mr. Bolron. He went with them to take possession of the Nunnery.  
 L. C. J. Was he not in the House?  
 Mr. Bolron. No, not in the Room at that time.  
 L. C. J. Was there any Servant by in the Room when this Discourse was?  
 Mr. Bolron. No.  
 L. C. J. Well, go on.  
 Mr. Bolron. Accordingly Sir Tho. Gascoigne did erect a Nunnery about the year 77, at Dolebank.  
 L. C. J. What, built it?  
 Mr. Bolron. He establish'd it.  
 L. C. J. Who were the Nuns?  
 Mr. Bolron. Mrs. Lashals was Lady Abbess, Mrs. Beckwith and Mrs. Benningfield were her Assistants, Elling Thwing, Eliz. Butcher, and others, were Nuns, according as I heard Sir Tho. Gascoigne say: And when they went by Sir Tho. Gascoigne, when one Mary Root was taking Horse, Sir Tho. Gascoigne said of her, There goes an old Maid and a young Nun.  
 L. C. J. Whither were they going then?  
 Mr. Bolron. To take possession of the Nunnery.  
 L. C. J. Was it a new built House?  
 Mr. Bolron. They call'd it a Nunnery in hopes their Plot would take effect.  
 L. C. J. Was it an old or a new built House?  
 Mr. Bolron. Nay, I never saw it.  
 L. C. J. Whereabouts was this House?  
 Mr. Bolron. It was near Ripley.  
 L. C. J. What, was that Ripley his House?  
 Mr. Bolron. No, his House is at Barnbow.  
 L. C. J. Who did it belong to?  
 Mr. Bolron. They went thither till the Business was done, and that was only till the King was kill'd, and afterwards they resolved to reside at Heworth.  
 L. C. J. How long staid they there?  
 Mr. Bolron. They lived in this place near a year and half.  
 L. C. J. Till the Plot was discovered?  
 Mr. Bolron. Yes.  
 Mr. Just. Jones. How do you know they liv'd there?  
 Mr. Bolron. I have seen several times Letters come from their Hands.  
 Mr. Just. Jones. How do you know they came from thence?  
 Mr. Bolron.



Mr. Bolron. The Letters were dated from *Dolebank*.

L. C. J. Did he let them lie open?

Mr. Bolron. Sometimes he did.

L. C. J. What was in them?

Mr. Bolron. I don't know any of the Particulars, there was no great Matter in them.

L. C. J. Who writ them?

Mr. Bolron. The Name that I saw was *Pracid*, or from Mrs. *Lashals*.

Mr. Att. Gen. They, or some of them.

L. C. J. You do not know whose House it was?

Mr. Bolron. No, my Lord, not I.

L. C. J. Where is *Heworth-Hall*?

Mr. Bolron. *Heworth-Hall* is about half a Mile off of *York*.

Mr. Just. Dolben. Does not that belong to one Mr. *Dawson*?

Mr. Bolron. It did, but it was bought of him.

Mr. Att. Gen. What other Place did you hear him mention?

Mr. Bolron. *Broughton*, my Lord, but I never knew that any were there.

L. C. J. Nor at *Heworth-Hall*.

Mr. Bolron. Yes, my Lord, sometime one and sometimes the other; some of them came to *Heworth-Hall*, and some to *Dolebank*, but *Dolebank* was the Place they did generally reside at: And then Sir *Thomas* did establish 90 *l.* a Year, which was purchased of Mr. *Tim. Maleverer*, and *Alver Aloftus* enjoys it.

L. C. J. How much was it?

Mr. Bolron. 90 *l.* a Year.

L. C. J. Where does it lie?

Mr. Bolron. It lies at a Place call'd *Mawson*, near Sir *Thomas Gascoigne's* House.

L. C. J. Did he say he had seal'd such a Conveyance?

Mr. Just. Dolben. I suppose he bought it of *Dawson*.

Mr. Bolron. He bought it of *Maleverer*.

L. C. J. Is *Maleverer* a Protestant?

Mr. Bolron. Yes, my Lord.

L. C. J. Where is he?

Mr. Bolron. I can't tell.

Mr. Just. Jones. You did not see the Conveyance of it your self seal'd?

Mr. Bolron. No, I refer to their Words for that.

Mr. Just. Jones. To what Purpose was it bought?

Mr. Bolron. To establish a Nunnery.

Mr. Just. Pemberton. And they told him he should be canoniz'd for a Saint when he dy'd?

Mr. Bolron. Yes, my Lord.

L. C. J. Well, go on, then.

Mr. Bolron. My Lord, about *March* last, to the best of my Remembrance, Sir *Thomas Gascoigne* and Esquire *Gascoigne* being in their Chamber together, I was reading a book call'd, *The Lives of the Saints*, and Esquire *Gascoigne* told Sir *Thomas* that he had been before the Justices of the Peace, and they had given to him and Mr. *Middleton* License to go up to *London*, which mention'd, that in Consideration that there was a Suit in Law between *James Nelthorpe* Esq; and Sir *Thomas Gascoigne*, therefore it permitted the said *Thomas Gascoigne* Esq; and his Man to travel peaceably to *London*. And I did hear the other Copy read of Mr. *Middleton's* License to travel into the South, and for his Occasion into the South Parts was pretended to receive some Rents there. But I did hear Esquire *Gascoigne* say to Sir *Thomas*, that he was resolv'd as soon as he came to *London*, and had done with Mr. *Nelthorpe*, that he would fly into *France*, and so would cheat the Justices, for he was resolv'd not to come back to *Yorkshire* again, but he would commit the Design in agitation into such Hands as would do it, and would not fail, but he would not stay to see Execution.

L. C. J. You heard him say so?

Mr. Bolron. Yes, I did.

L. C. J. What said Sir *Thomas*?

Mr. Bolron. He commended his Son's and Mr. *Middleton's* Resolutions.

L. C. J. What Room was it in?

Mr. Bolron. It was in Sir *Thomas's* own Chamber.

L. C. J. Were there any Rooms near it?

Mr. Bolron. None that they could hear in, unless in the Chamber within, I don't know whether any one was there or no.

L. C. J. Could they hear in no Room that was near to them?

Mr. Bolron. Yes, in the Chamber within.

L. C. J. Was there no Servant there?

Mr. Bolron. Not as I know.

L. C. J. My Reason is, because he must speak very loud to make his Father hear him.

Mr. Bolron. Yes, he did, for I heard him in the Chamber-Window that I stood in against them, they were a little Way off me.

L. C. J. Because, if any of the Servants were near, methinks they must needs be very cautious how they spoke so loud to make Sir *Thomas Gascoigne* hear.

Mr. Bolron. My Lord, he was not so deaf then as they say he is, and he seems to be now. And Esquire *Gascoigne* also, because he would be sure there should no Damage come to him, caused all his Goods to be sold off his Ground, and Mr. *Middleton* sold his very Household-Goods.

L. C. J. He is a Papist too, is he not?

Mr. Bolron. Yes, he is so.

L. C. J. Was not he at the meeting with Sir *Miles Stapleton*?

Mr. Bolron. Yes, Mr. *Middleton* was one.

L. C. J. You did not name him before.

Mr. Just. Pemberton. But he said a great many were there besides those he nam'd.

Mr. Just. Dolben. Yes, he did so. Well, go on, Sir.

Mr. Bolron. My Lord, last Thirtieth of *May*, the Day after Holy *Thursday*, as I remember, being in Sir *Thomas Gascoigne's* own Chamber, Sir *Thomas Gascoigne* bid me go into the Gallery next to the Priest's Lodgings, and after a little time one *William Rushton*, my Confessor, came to me, and asked me, if I was at the last *Pontefract* Sessions? I told him, Yes, and that I had taken the Oath of Allegiance, as others had done: Whereupon the said *Rushton* told me, that I and all the others were damn'd for so doing, if we kept the same; therefore he bid me be sure to come next *Sunday* to have Absolution from him; for it was a damnable Sin to take that Oath, and he told me, he had Power from the Pope to absolve me; and he added, that few Priests had that Power that he had.

L. C. J. Did he make you confess that as a Sin to him?

Mr. Bolron. No, my Lord, for I did make the Discovery soon after.

L. C. J. When was it you first turned Protestant?

Mr. Bolron. In *June*, my Lord, after that.

L. C. J. Then you were not a Protestant at that time?

Mr. Bolron. No, my Lord.

L. C. J. Were you a Papist when you took the Oath of Allegiance?

Mr. Bolron. Yes, my Lord, I was.

L. C. J. Why would not you, then, go and be absolved according as your Priest bid you?

Mr. Bolron. I thought I had done nothing that was evil, because several had taken the Oath with me, as you shall hear afterward.

L. C. J. Well, go on.

Mr. Bolron. I told him that several others had done it as well as I, that were Papists, and they judg'd it lawful; whereupon he said, Away, and told me I was a Fool, and knew not how to judge of an Oath.

L. C. J. So you were satisfied the Papists might take the Oath?

Mr. Bolron. My Lord, I told him I thought it was no Sin to take that Oath, because it was an Oath only to be true to my King and to my Country; and I told him that Mr. *Ellis*, Priest to Mr. *Vavasor*, had written Commentaries upon the Oath, and justified the taking of it. Said he again, Mr. *Ellis* was a Fool, and his Superiors will call him to an Account, and check him for his Pains. But, said he, by taking the Oath you have deny'd the Power of the Pope to absolve you from it; but I tell you he hath a Power to depose the King, and had done it: And, said he, you will merit Heaven if you will kill him.

L. C. J. Who spoke to you?

Mr. Bolron. *Rushton*, my Lord, said it was a meritorious Act to kill the King.

L. C. J. But did Sir *Thomas Gascoigne*, or any of the Company, wish you to do that Thing?

Mr. Bolron. Not at that Meeting; but afterwards Sir *Thomas* did, my Lord, if you will give me Leave to go on.

L. C. J. What did he say?

Mr. Bolron. He told me he would assist me in the Act.

L. C. J. Who?

Mr. Bolron. *Rushton* did. And he told me the Pope had granted him the Power, that I should have the Benefit of Absolution if I would do it. I desired him not to persuade me to do such a Thing, for I would have no hand in it; then he quoted a certain Place of Scripture to me, which was, *Thou shalt bind their Kings in Fetters, and their Princes in Chains*. Whereupon he concluded, and made this Exposition, that the Pope had deposed the King, and absolved all his Subjects, and it was a meritorious Act to kill the King. And that unless the King would turn Roman Catholick, the Pope would give away his Kingdoms to another.

L. C. J. Well, go on.

Mr. Bolron. Then I told him I would have no hand in that Act and Deed; whereupon he answered me again, You may may hang me, if you please, for speaking these Words. No, Sir, said I, I will do you no Injury, if you do your self none. So he bid me consider what he said, and come to him again, but I did not.

L. C. J. This was the Thirtieth of *May*?

Mr. Bolron. Yes, and the same Day as soon as I came down, I was told Sir *Thomas Gascoigne* had left Order with his Servants that I should not depart the House till he came in, and I stay'd there till about six of the Clock.

L. C. J. Did not you live with him then?

Mr. Bolron. I lived a little Way off the House.

L. C. J. How far?

Mr. Bolron. About a quarter of a Mile.

L. C. J. Were you not his Servant?

Mr. Bolron. No, my Lord, not at that time.

Mr. Just. Jones. How long had you been gone out of his Service before?

Mr. Bolron. I went out of his Service about the Beginning of *July* 1678.

Mr. Just. Pemberton. Did Sir *Thomas Gascoigne* send you into this Gallery?

Mr. Bolron. Yes, my Lord.

Mr. Just. Pemberton. And there you found *Rushton*?

Mr. Bolron. My Lord, he was not there when I came, but he came as it were from Chapel.

L. C. J. You were his Servant when all the Gentlemen met at his House?

Mr. Bolron. Yes, my Lord, I was.

L. C. J. When did you leave his Service, say you?

Mr. Bolron. The first Day of *July* 1678.

L. C. J. And this was in *May* 1678, was it not?

Mr. Bolron. No, in (79) my Lord, last *May*. My Lord, I watched and stayed till he came in, and took him as he came in. I went up Stairs with him, and when he came into his Chamber he calls me to him, and asked me what Discourse had passed between me and *Rushton*? I told him our Discourse was concerning the Oath of Allegiance, and the Lawfulness or Unlawfulness of it. Then Sir *Thomas Gascoigne* took me by the Hand, and told me, Well, Man, if thou wilt undertake a Design that I and others have to kill the King, I will give thee 1000 *l.* and I will send thee to my Son *Thomas*, if he be in Town; but if he be not in Town, he said he would give me such Instructions that I should find the rest that were concerned in the Business.

L. C. J. The rest, what?

Mr. Bolron. The rest that were in the Plot.

L. C. J. That you should know where to find them in *London*, you mean so?

Mr. Bolron. Yes, my Lord, if he were gone beyond Sea.

L. C. J. What said you to him?

Mr. Bolron. My Lord, I told him I would have no hand in Blood, and would not do such a wicked Deed, and desired him to persuade me no more. Then he desired me of all Love to keep secret what he had said. But afterwards I recollected that it was a very ill Thing, and went immediately to the Justices of the Peace.

L. C. J. How soon did you go?

Mr. Bolron. Soon after.

L. C. J. To whom did you go?

Mr. Bolron. To Mr. *Tindal*, a Justice of Peace, and to Mr. *Normanton*.

L. C. J. Did you make an Oath there?

Mr. Bolron. Yes, that Sir *Thomas* promised me 1000 *l.*

L. C. J. And for what Purpose?

Mr. Bolron. For killing the King.

L. C. J. Did you put that in the Oath you made?

Mr. Bolron. Yes, my Lord.



L. C. J. What time was this after the Discourse?  
 Mr. Bolron. It was about a Week, or such a time.  
 L. C. J. Was it the next Day?  
 Mr. Bolron. No.  
 L. C. J. Was it within a Fortnight?  
 Mr. Bolron. Yes, I believe it was, my Lord.  
 L. C. J. Was it not a Month?  
 Mr. Bolron. No, it was not above a Fortnight, for Sir Thomas Gascoigne was apprehended in July or thereabouts, I believe, my Lord.  
 L. C. J. But was that the first time that Sir Thomas ever spake to you to kill the King, the 30th of May?  
 Mr. Bolron. Yes, my Lord.  
 Mr. Just. Jones. You say you left Sir Thomas's Service in July 1678?  
 Mr. Bolron. Yes, the first Day of July.  
 L. C. J. How? Did you leave him in good Friendship?  
 Mr. Bolron. Yes, my Lord, in very good Friendship.  
 Mr. Just. Jones. Were you in good Correspondence?  
 Mr. Bolron. I always went to his House to hear Mass, and oftentimes was there.  
 L. C. J. How came you to leave his Service?  
 Mr. Bolron. It was my own Fault I left it.  
 L. C. J. Why, it might be no Fault neither. But why did you leave it?  
 Mr. Bolron. My Lord, it was because there was one Henry Addison and Bennet Johnson did seek to take my Work and Service out of my Hands. Sir Thomas Gascoigne did desire me to let them come in and see what they could do, and that I should have my Salary, and that I should gather in his Debts; I was willing to be rid of it, and told him, they that look'd after the Pit should gather in the Debts, for I conceived else it would be but a double Charge to him.  
 Mr. Just. Dolben. This is only how he left Sir Thomas his Service; Sir Thomas thought the other Men could do it better than he, and so, said he, then let them do your whole Work.  
 Mr. Just. Jones. But he says he did usually resort to the House after he had left his Service, to hear Mass.  
 Mr. Just. Dolben. They will ask him some Questions, it may be.  
 L. C. J. Had you any Estate of your own when you left Sir Thomas's Service?  
 Mr. Bolron. Yes, I had a Farm I rented of Sir Thomas Gascoigne.  
 L. C. J. What Rent?  
 Mr. Bolron. Fifteen Pound and a Mark a Year, after I was married.  
 L. C. J. When were you married?  
 Mr. Bolron. In July (75.), but afterwards I was there, and did still Service.  
 Mr. Att. Gen. I think you have some Estate of your own besides that?  
 Mr. Bolron. Yes, I have 7l. a Year.  
 Mr. Att. Gen. Well, will you for Sir Thomas ask him any Questions?  
 Mr. Babbington. No.  
 L. C. J. Mr. Bolron, Pray what did the Justice say to you when you made this Oath?  
 Mr. Bolron. My Lord, thus: I was resolv'd to come to London, and make my Confession here, and desired I might so do; whereupon one of the Justices was unwilling, but at last they said I might do what I would.  
 L. C. J. You say, Justice Tindal it was sworn before, what did he say when you made the Oath?  
 Mr. Bolron. My Lord, as I remember, he said, he must give the Council an Account of it, and perhaps he should not have an Answer of it in a Month after; so I thought it was better to come to London, and make a speedy Dispatch of the Business; for I did not know but the Priests in the mean time might escape.  
 L. C. J. But did Mr. Tindal do nothing upon that Oath that was made?  
 Mr. Bolron. Yes, he did make out his Warrant for the apprehending of one.  
 L. C. J. Did he not make out a Warrant for the apprehending of Sir Thomas Gascoigne?  
 Mr. Bolron. My Lord, I think they would have done it, but I desired I might come to the Council.  
 Mr. Just. Pemberton. How long after came you there?  
 Mr. Bolron. As soon as I could get ready.  
 L. C. J. What time came you thither?  
 Mr. Bolron. My Lord, I set out upon Monday, and came hither to London upon Wednesday.  
 L. C. J. Do you know what Month it was in?  
 Mr. Bolron. In June it was, I think.  
 L. C. J. And who did you come and apply yourself to in London, when you came there?  
 Mr. Bolron. My Lord, I had a Letter directed from Mr. Justice Tindal to his Brother Tindal in London, to carry me to the Council. I chanced to lose this Letter at Ware, and losing it there, I came to the Green Dragon in Bishopsgate-Street, I was acquainted with the Man of the House, and having told him some of my Business, he carry'd me before Sir Robert Clayton, and then we went to my Lord of Shaftsbury, President of the Council, and presently got an Order of the Council about me.  
 L. C. J. How long was this after Dr. Oates's Discovery? When did Oates and Bedloe make their Discovery?  
 Mr. Just. Pemberton. This was a long time after, in May last.  
 Mr. Just. Jones. Did Mr. Tindal take your Examination in Writing?  
 Mr. Bolron. He took a short Thing in Writing.  
 Mr. Just. Jones. Did you set your Hand to it?  
 Mr. Just. Pemberton. He resolv'd to go to the Council, and tell them.  
 Mr. Bolron. I was not willing to tell the Justices all, for I had a mind to go to the Council.  
 Mr. Just. Jones. But you told them the great Matter of all, Sir Thomas's Proffer to give you 1000l. to kill the King?  
 Mr. Bolron. Yes.  
 Mr. Just. Jones. Had you a Lease of your Farm under Sir Thomas Gascoigne?  
 Mr. Bolron. It was but a Lease paroll.  
 Mr. Just. Jones. For how long?  
 Mr. Bolron. For Nine Years.  
 Mr. Babbington. May I have leave to ask him any Questions?  
 Court. Yes, yes, you may.

Mr. Babbington. You say you had a Lease of the Farm, a Lease paroll?  
 Mr. Bolron. Yes, I had so.  
 Mr. Serj. Maynard. Council must not be allowed in matter of Fact, my Lord.  
 L. C. J. But, Brother, this Man hath made a long Narrative.  
 Mr. Serj. Maynard. Ay, and a shrewd one too.  
 L. C. J. His Evidence is very great, and Sir Thomas Gascoigne does not hear any one Word.  
 Mr. Bolron. One thing more I would speak to. It was in September 1678, a little before the Discovery of the Plot, I did hear Sir Thomas Gascoigne say, and tell my Lady Tempest, that he would send 150l. to Dolebank, in hopes the Blow would be given shortly.  
 Mr. Serj. Maynard. That is the same Word used by all the Witnesses.  
 L. C. J. When was this?  
 Mr. Bolron. In September 78; the Plot was not known by us to be discovered then, as I know of.  
 L. C. J. Who did he speak it to?  
 Mr. Bolron. To his Daughter, the Lady Tempest.  
 L. C. J. What said she?  
 Mr. Bolron. She seem'd to like it very well; I did not hear any Thing to the contrary: And I heard a Letter read afterwards from Cornwallis, that he had received it; but it was too little for the carrying on so great a Design.  
 L. C. J. Who is Cornwallis?  
 Mr. Bolron. And it was for the arming the poor Catholicks when the Blow should be given.  
 L. C. J. Is his Daughter living?  
 Mr. Att. Gen. Yes, she is out under Bail.  
 Mr. Recorder. My Lord, I shall desire to ask but one Question, which concerns the Prisoner at the Bar: How long after the Discourse that you had with the Priest in the Gallery was it that Sir T. Gascoigne spoke to you of the same Thing?  
 Mr. Just. Pemberton. Mr. Recorder, if you ask him but one Question, let it not be that which he hath answered before; he says the same Day.  
 Mr. Hobart. I desire to ask him one Question.  
 Mr. Just. Pemberton. No; tell Sir Thomas first what he hath said, and see if he will ask him any Questions.  
 Mr. Hobart. Sir Thomas, here is Mr. Bolron hath given Evidence against you, will you ask him any Questions?  
 Mr. Just. Pemberton. Read your Minutes to him.  
 Then Mr. Hobart repeated the first Part, about his coming to Sir T. Gascoigne's Service, and the Colliery Conveyance.  
 Mr. Just. Jones. Ask him if he will ask any Questions upon this Part.  
 [Which he did.]  
 Sir T. Gascoigne. No, 'tis no great matter at all, for it is true; when 'twas I can't tell, there was something I did seal to Sir William Ingleby, and some Money I had of him.  
 Then Mr. Hobart repeated his Saying to Metcalfe, he would send 3000 l. to the Priests in 76.  
 Sir T. Gascoigne. How comes that? I deny that utterly.  
 Mr. Bolron. 'Tis all true that I have said, by the Oath that I have taken.  
 Sir T. Gascoigne. There is no such Thing at all.  
 Mr. Hobart. He says it was return'd by Mr. Phiswick.  
 Sir T. Gascoigne. Phiswick was a Servant to me, and return'd some Money for me sometimes, but it was all for my Children, my Sons and my Daughters, and my Kinspeople, to whom I paid Annuities; but it was a far greater Sum of the whole than 3000l. and for one great Sum of 1000l. you know how it was dispos'd of.  
 Mr. Hobart. He says, that in the beginning of 77, you said you had return'd this 3000l. to London, and if you had a thousand times as much, you would give it for so good Cause.  
 Sir T. Gascoigne. I never said any such thing, never thought of any such thing in my Life.  
 L. C. J. Now tell him of the Meeting at Barmbow.  
 Mr. Hobart. He says, in the Year 77 there were several Gentlemen met at your House at Barmbow.  
 L. C. J. Name them. [Which he did.]  
 Mr. Hobart. These were all together with you.  
 Sir T. Gascoigne. No such Matter at all.  
 Mr. Hobart. And he said all these Persons did discourse with you about establishing a Nunnery at Dolebank, and another at Heworth, and another at Broughton.  
 Sir T. Gascoigne. Not one Word of all this is true.  
 L. C. J. Tell him what he said concerning killing the King.  
 Mr. Hobart. He says that the Nunnery was established at Dolebank, and such and such were Nuns.  
 Sir T. Gascoigne. He may say what he will, but not one Word of all this is true.  
 Mr. Just. Dolben. But you skip over the main Thing, what the Gentlemen resolv'd upon at that Meeting.  
 Mr. Hobart. He says, these Gentlemen did resolve the Business should go on for the killing of the King, and that they would venture their Lives and Estates for it.  
 Sir T. Gascoigne. I never heard of any such thing as killing the King. Sir, did I ever say any such thing?  
 Mr. Bolron. It was in your own Dining-Room, and in your own Chamber.  
 Mr. Just. Pemberton. He did not say so, I think, about their Meeting.  
 L. C. J. Yes, he says they all met at his House, and there they had Discourse of killing the King. In what Room was it?  
 Mr. Bolron. In the old Dining-Room.  
 Sir T. Gascoigne. I deny it utterly; there was no such thing: Some Persons might be at several Times at my House, but no such Meeting, nor Words at all at one time or other.  
 Then Mr. Hobart told him of Mr. Gascoigne's and Mr. Middleton's Licenses to go to London, and Intention to go to France.  
 Sir T. Gascoigne. 'Tis very true, my Son did go to London for that End.  
 Mr. Hobart. And so Mr. Middleton, upon pretence of receiving Rent.  
 Sir T. Gascoigne. I cannot tell about Mr. Middleton.  
 Mr. Hobart. He says, your Son would immediately fly into France, and commit the Design into other Hands; and you said you approv'd of it: And this he heard you discourse very plainly.



Sir T. Gasf. But I plainly deny it all.

Mr. Hobart. He says you bid him go up (the 30th of May) to the Gallery to Mr. Rushton.

L. C. J. No, not to him, but when he was in the Gallery, Rushton came to him.

Then Mr. Hobart repeated the Discourse with Rushton about the Oath of Allegiance.

L. C. J. You need not tell him what Rushton said.

Mr. Just. Dolben. Yes, my Lord, it is convenient.

Mr. Bolron. For I told him our Discourse about the Oath of Allegiance myself.

Then Hobart repeated Sir Thomas's further Discourse and Proffer to him.

Sir T. Gasf. There is nothing of all this true: He might come there and talk with any Body, for what I know, but I was not with him.

L. C. J. But ask him what he says to this, that he proffered him 1000l. to kill the King. *[Which he did.]*

Sir T. Gasf. Where should you be paid it?

Mr. Bolron. I would not undertake the Design.

Sir T. Gasf. Did you ever know I was Master of 2000l. together in my Life?

Mr. Bolron. Yes.

L. C. J. Tell him, he says he would not undertake it, and therefore it was in vain to appoint where.

Sir T. Gasf. I utterly deny it all, upon my Life; that's e'en just like the rest, I never heard it before.

L. C. J. He puts it to you, Whether ever you saw him have 2000l. together?

Mr. Bolron. I have seen 5000l. at a time in the House, and I have seen in Phiswick's Hand 7000l. *[Which was repeated to him.]*

Sir T. Gasf. What Phiswick might have of other Men's Monies I do not know, he never had so much Money of mine.

Mr. Bolron. My Lord, Sir T. Gascoigne, I believe, had at that time at least 12000l. a Year of his own Estate. *[Which was repeated to him.]*

Sir T. Gasf. I wish he would make it good.

Mr. Bolron. My Lord, 'tis true enough: I believe he hath settled some Estate upon his Son, about 6000l. a Year.

L. C. J. I can't tell what becomes of the Papists Estates, nor how the Priests drain them, but there are Men of very great Estates among them, but they are greatly in Debt.

Mr. Hobart. Will you ask Mr. Bolron any Questions?

Mr. Just. Jones. You have not repeated to him one Part of the Evidence; that in September, 78, he said to my Lady Tempest, he would send 1500l. to Dolben, in Hopes the Blow would be given shortly. *[Which was then repeated to him.]*

Sir T. Gasf. I know no such thing at all; there is not one Word of all this true.

Mr. Hobart. Will you ask him any Questions, or no?

Sir T. Gasf. I know not what Questions to ask, but where the Money should be paid?

L. C. J. That can be no Question, for the thing was never undertaken.

Mr. Att. Gen. Then pray, Mr. Mowbray, tell your Knowledge.

Mr. Mowbray. My Lord, and you Gentlemen of the Jury, I came to Sir Thomas Gascoigne's in the Beginning of the Year 1674.

L. C. J. Were you his Servant?

Mr. Mowbray. Yes, my Lord, but never an hired Servant.

L. C. J. In what Quality did you serve him?

Mr. Mowbray. In his Chamber, my Lord, and continued with Sir Thomas until 76, in which time I did observe Mr. Thomas Addison, a Priest, Fincham, a Priest, Stapleton, a Priest, Killingbeck, a Priest, and Thwing, the elder and the younger, several times to visit and confer with Mr. William Rushton, Sir T. Gascoigne's Confessor.

L. C. J. Were you a Papist then?

Mr. Mowbray. Yes, I was.

L. C. J. Are you one now?

Mr. Mowbray. No.

L. C. J. Well, go on then.

Mr. Mowbray. I being very diligent in attending Mr. Rushton at the Altar, I became in great Favour with him, and was permitted to be in the Chamber when the Priests were in private with him, and I heard them often talk and discourse of a Design laid for setting the Popish Religion uppermost in England, and how like the same was to take Effect in a short time.

L. C. J. Who did speak it?

Mr. Mowbray. The Priests in private with Mr. Rushton: I speak now, my Lord, of the Plot in general; I come to Sir T. Gascoigne anon.

L. C. J. When? In what Year was this Discourse?

Mr. Mowbray. In 1676.

L. C. J. Well, what said they?

Mr. Mowbray. Why, they discoursed concerning the setting up the Popish Religion in England, and how like the same was to take Effect, and succeed, in regard that most of the considerable Papists in England had engaged to act for it; and if it could not be done by fair Means, Force must be used; and particularly declared, that London and York were to be fired.

L. C. J. In 76?

Mr. Mowbray. Yes.

L. C. J. What? Would they fire it again?

Mr. Mowbray. And I heard them often say, that the King in Exile had promised them—

L. C. J. Did they say the City was to be fired a second time?

Mr. Mowbray. Yes, to further their Intentions.

Mr. Serj. Maynard. It was effected in Southwark.

Mr. Mowbray. And they did also declare, That the King, when he was in his Exile, had promised the Jesuits beyond Sea to establish their Religion whenever he was restored; which they now despaired of, and therefore he was adjudged an Heretick, and was to be killed.

L. C. J. Who did say this?

Mr. Mowbray. The Priests.

L. C. J. Who was the Heretick?

Mr. Mowbray. The King. Also I did hear Mr. William Rushton tell Addison and the rest of the Priests—

L. C. J. Do you know which of the Priests said the King was to be killed?

Mr. Mowbray. It was Rushton: Rushton and Addison were together; and he did declare to Mr. Addison, that according to Agreement, he had given the Oath of Secrecy and the Sacrament to Sir T. Gascoigne, Esq; Gascoigne his Son, my Lady Tempest his Daughter, Mr. Stephen Tempest, and had communicated the whole Design to them.

L. C. J. Were you by when he said this?

Mr. Mowbray. Yes, in his Chamber.

L. C. J. How long after the Discourse of the Priests was this?

Mr. Mowbray. My Lord, he told them he had done it according to Agreement before; and they did approve of it, and had severally engaged to be active, faithful and secret, and would do to the utmost of their Powers, as far as their Estates would permit, to establish the Roman Catholick Religion in England: And about Michaelmas, 1676, there was another Meeting of these Priests, and others, where they declared, That the King was an Heretick, and that the Pope had excommunicated him, and all other Hereticks in England, Scotland and Ireland, and that Force was to be made use of.

Mr. Just. Dolben. When was that, Sir?

Mr. Mowbray. About Michaelmas, 1676.

Mr. Just. Jones. You were his Servant then?

Mr. Mowbray. Yes, my Lord: And then did Rushton produce a List of Names of about 4 or 500, and he read them over, all of whom, he said, were engaged in the Design; and he did read the Names of Sir T. Gascoigne, T. Gascoigne, Esq; my Lady Tempest, Mr. Vavasor, Sir Francis Hungatt, Sir J. Savile, the two Townleys, Mr. Sherborne, and others.

L. C. J. Did you see this List?

Mr. Mowbray. I saw several Subscriptions to it, and amongst the rest I saw Sir T. Gascoigne's own Hand.

L. C. J. Do you know it?

Mr. Mowbray. Yes, very well.

L. C. J. And upon the Oath you have taken, do you believe that was his Hand to the List?

Mr. Mowbray. Yes, my Lord, I do believe it was his Hand.

L. C. J. Did you know any other Hands? Do not you know his Son's Hand?

Mr. Mowbray. No, nor any but Sir Tho. Gascoigne's.

L. C. J. It was in several Hands, was it not?

Mr. Mowbray. Yes, it seemed to me to be so.

L. C. J. What did they subscribe to do?

Mr. Just. Pemberton. 'Tis was in 77?

Mr. Mowbray. No, it was about Michaelmas, 1676.

L. C. J. What was it for?

Mr. Mowbray. The Title of it was, as I remember, *A List of them that are engaged in the Design of killing the King, and promoting the Catholick Religion.*

L. C. J. Was that writ on the Top?

Mr. Just. Pemberton. They were Words, I suppose, to that Effect.

Mr. Mowbray. Yes, it was to that Effect, my Lord.

L. C. J. Was it mentioned in the List for killing the King?

Mr. Mowbray. Yes: And then they declared also, that the Pope had given Commission to put on the Design, and prosecute it as quick as they could; and that he had given a plenary Indulgence of 10,000 Years for all those that should act, either in Person or Estate, for killing the King, and setting up the Romish Religion in England, besides a Pardon and other Gratifications. And so much as to the Plot in general. Now, my Lord, I come to the Particulars as to the Prisoner at the Bar, Sir T. Gascoigne. About Michaelmas, 1676, much about that time, there was Sir Tho. Gascoigne and his Son, my Lady Tempest, and Rushton the Priest together; where I heard them hold several Discourses of this Design about killing the King, and firing the Cities of London and York; and Sir T. Gascoigne did declare and assure Mr. Rushton, that he would not swerve from what he had said, but would keep to the Oath of Secrecy he had given him, and that he would do to the uttermost of his Power for the killing of the King, and the establishment of Popery.

L. C. J. Were you in the Room?

Mr. Mowbray. I stood close at the Door, where I heard very well, the Door was not quite shut.

L. C. J. They did not know you were there?

Mr. Mowbray. No.

L. C. J. They would not trust you with it, then?

Mr. Mowbray. They did not know I was there. And they did unanimously conclude, That it was a meritorious Undertaking, and for the good of the Church, and they would all venture their Lives and Estates in it.

L. C. J. Rushton was there, was he not?

Mr. Mowbray. Yes, Rushton was there; and Dr. Stapleton, a Priest, coming from another Door, and finding me at the Door, went in and desired them to speak lower, for there was one at the Door: Whereupon my Lady Tempest call'd me in, and order'd me to go below and entertain some Strangers: So much for the Particulars concerning Sir T. Gascoigne.

Mr. Just. Pemberton. Was Sir Miles Stapleton there at that time?

Mr. Mowbray. Yes, he was there.

L. C. J. Where?

Mr. Mowbray. In an upper Room.

L. C. J. Who were by?

Mr. Mowbray. Mr. Gascoigne, and the Priest, and my Lady Tempest.

L. C. J. This is all you say?

Mr. Mowbray. Yes, so far as to the Particulars of this Matter.

Mr. Serj. Maynard. Have you any more to say?

Mr. Mowbray. No, no more but these Particulars, unless some Questions be ask'd.

Then Hobart began to repeat this Evidence to Sir T. Gascoigne, how he came to be his Servant.

Sir T. Gasf. He came as a Boy to me, without hiring.

Then Mr. Hobart repeated the Priest's Discourse at Rushton's.

Sir T. Gasf. I deny it all.

L. C. J. He was not present, this was a Discourse among themselves.

Then Hobart told him about the Oath of Secrecy and the Sacrament.

Sir T. Gasf. No, there is no such thing, there is not a Word of it true.

L. C. J. Then tell him of the List. *[Which was done.]*



Sir T. Gasc. 'Tis a most impudent Lie.  
 Mr. Hobart. What say you to your Hand being to that List?  
 Sir T. Gasc. Not one Word of it.  
 Mr. Hobart. But he says 'twas your Name to it.  
 Sir T. Gasc. He had a pair of Spectacles on, sure, that could see any thing: Was it a printed List, or a Written one?  
 Mr. Mowbray. It was written, your Name was put to it, with your own Hand-writing. [Which was told him.]  
 Sir T. Gasc. He makes what he will.  
 Then Mr. Hobart repeated Rushton's declaring that he had given him the Sacrament of Secrecy.  
 Sir T. Gasc. I'll warrant you he hath gotten this Oath of Secrecy out of the News-Books; for I never heard of it before: Let me ask thee: Didst thou ever hear of it before you came to London?  
 Mr. Mowbray. Yes, Sir Thomas, I did.  
 Mr. Hobart. But will you ask him any Question?  
 Sir T. Gasc. No; it is all false he speaks, not a Word of Truth comes out of his Mouth.  
 Mr. Serj. Maynard. My Lord, We will now go on to another piece of our Evidence.  
 Sir T. Gasc. I must leave it to the Jury to take notice of their Conversations and mine.  
 Mr. Serj. Maynard. Whereas he says he was never Owner of 200*l.* together, we will produce his own Almanack under his own Hand.  
 L. C. J. Do it, and we will shew it him, and see what he says to it.  
 Sir T. Gasc. Why did not he discover it before?  
 Mr. Hobart. If your Lordship please, Sir Thomas desires he may be ask'd, Why he did not discover it before?  
 Mr. Mowbray. Because the Papists did threaten me at such a Rate, and I being a single Person against them, durst not.  
 L. C. J. When did you first discover it?  
 Mr. Mowbray. It was about Michaelmas last: The Papists did threaten me, that if I did discover it, they would take my Life away.  
 L. C. J. When did you turn Protestant?  
 Mr. Mowbray. When the Plot broke out, then I took the Oaths of Allegiance and Supremacy.  
 L. C. J. Why did not you discover it as soon as you turn'd Protestant?  
 Mr. Mowbray. My Lord, I was not in a Condition to make any Friends, or come up to London upon such an Account: Besides, my Lord, they did threaten me, and particularly after the Plot was come out, Addison did threaten me.  
 L. C. J. But this was a great while before the Plot broke out.  
 Mr. Just. Dolben. So long he continued a Papist, and then he would not discover.  
 Mr. Mowbray. This Addison was often with me, and he flatter'd me, and made me continue a Papist, lest I should discover it.  
 L. C. J. Where is he now?  
 Mr. Mowbray. He is fled.  
 L. C. J. What said Addison when you did turn Protestant?  
 Mr. Mowbray. He said if I did discover he would take away my Life.  
 L. C. J. I wonder they did not give you the Oath of Secrecy.  
 Mr. Mowbray. Yes, my Lord, I did receive it from Rushton's own Hand.  
 L. C. J. When?  
 Mr. Mowbray. In '76.  
 L. C. J. Who received it with you?  
 Mr. Mowbray. It was given to me after the Communicants were gone from the Chapel.  
 L. C. J. What was the Oath?  
 Mr. Mowbray. He reserved the Sacrament for me, and swore me by it, that I should be faithful and secret, and should not reveal any Discourse I was privy to.  
 L. C. J. Reveal no Discourse? What Discourse did they mean?  
 Mr. Mowbray. Those Discourses when the Priests were in private with him.  
 Then Sir T. Gascoigne's Almanack was produced.  
 Mr. Att. Gen. Who proves Sir Thomas's Hand? Is this Sir T. Gascoigne's Hand?  
 Bolron and Mowbray. Yes, it is his Hand.  
 L. C. J. Shew it him himself. [Which was done.]  
 Mr. Hobart. Is that your Hand?  
 Sir T. Gasc. Yes, I think I saw it at the Council Table; this is my Writing, and I will justify every Word that is written there.  
 Mr. Att. Gen. Read that one Place.  
 Clerk. The 15th to Peter for 100*l.* to Corker.  
 Mr. Att. Gen. If your Lordship please, I desire he may be asked what that 100*l.* was for.  
 Mr. Hobart. Look you here, Sir, did you order 100*l.* to be paid to Corker?  
 Sir T. Gasc. It may be I did.  
 Mr. Hobart. What was it for?  
 Sir T. Gasc. For the Portion of a Child I had.  
 Mr. Hobart. What Child was that?  
 Sir T. Gasc. I know not who it was, Mary Appleby, I think.  
 Mr. Att. Gen. Pray ask him how it came to Corker's Hands? Why it was returned to Corker?  
 Sir T. Gasc. I know not that, because we did not know where she liv'd, she was beyond Sea.  
 Mr. Hobart. Where is she?  
 Sir T. Gasc. She is at Paris.  
 Mr. Att. Gen. Here is another Book of his that does make mention of 900*l.* to Mr. Corker, upon an Agreement between them.  
 L. C. J. Ask him how much money he might return to Corker from time to time. [Which was done.]  
 Sir T. Gasc. My Lord, I don't know, we have been several Years returning of money.  
 L. C. J. Hath he returned 8 or 900*l.* in all?  
 Sir T. Gasc. No, I don't think so much.  
 Mr. Att. Gen. Pray ask him how much was Mrs. Appleby's Portion?  
 Sir T. Gasc. Indeed I can't certainly say; but as the Rents came in I was to pay several Sums to several Persons; it was 100*l.* a Year to that Mary Appleby, it may be 2000*l.* in all from first to last, but I shall satisfy you about that.  
 Mr. Att. Gen. Will you satisfy us anon why 900*l.* was paid in one Year?

Then the Book was shewn to Sir Thomas, who owned it to be his Hand.  
 L. C. J. Read it.  
 Clerk. Q. Of Mr. Corker, what Bills, for how much, and to whom directed, he hath received of me since the 21st of July, 1677, to June 1678, vid. the Book, p. 45. and the great Book, fol. 54. where you may find P. for 900*l.* and agree in this Account, Corker, the 7th of August, 1678.  
 Mr. Att. Gen. First he makes a Query, how much he returned, and then, says he, the 7th of August I and Corker agreed.  
 L. C. J. Let him read it himself. [Which he did.]  
 Mr. Hobart. What say you to that, that you sent so much Money to Corker?  
 Mr. Just. Pemberton. You must understand he is one of the Priests, and Bolron swears, that he intended to send 2000*l.* and by 300*l.* apiece, he reckons up 900*l.*  
 Sir T. Gasc. It was a great many Years, and several times.  
 L. C. J. Tell him it was between July '77, and June '78.  
 Sir T. Gasc. That does not appear.  
 Mr. Att. Gen. Yes, it does, by the Book.  
 Mr. Just. Dolben. Then how came you to return 900*l.* in one Year to Corker?  
 Mr. Serj. Maynard. And never had 200*l.* he says, together.  
 Mr. Att. Gen. Then here is another Passage in this Book, if it please your Lordship to have it read.  
 Clerk. Take Heworth of an easy Rent of the Widow—and purchase the Reversion of Craddock—and in the Interim Dawson.  
 Mr. Just. Dolben. Ask him what he did mean by taking of Heworth?  
 Sir T. Gasc. I took no House there.  
 Mr. Just. Dolben. But did he agree to buy the Reversion of it?  
 Sir T. Gascoigne. It was for my Niece Thwing. She was born in the House, and was very desirous to be in the House.  
 Mr. Just. Dolben. Ay: But why did he take the Lease of the Widow, during her Jointure, and why buy the Reversion?  
 Sir Thomas Gascoigne. I know no Reason but my Affection to her.  
 Mr. Att. Gen. Ask him who he did intend should live in the House?  
 Sir Thomas Gascoigne. Nay, I don't know what they intended, my Niece Thwing.  
 Mr. Just. Dolben. Did you intend to buy it for your self?  
 Sir Tho. Gascoigne. No, I lent her the Money.  
 Mr. Just. Dolben. Did you intend it for her?  
 Sir Tho. Gascoigne. I might do with it what I would.  
 Mr. Att. Gen. Ask him if his Niece Thwing was a single Woman, and was to have the whole House to her self?  
 Sir Tho. Gascoigne. She had her Brother with her.  
 Mr. Hobart. He says Mrs. Ellen Thwing was a Nun, Mrs. Lassels was to be Lady Abbess, Mrs. Beckwith was her Assistant, and Mrs. Cornwallis and others were Nuns.  
 L. C. J. Ask him if Mrs. Lassels was not to be Lady Abbess, and live there?  
 Sir Tho. Gascoigne. I know nothing of it.  
 Mr. Att. Gen. Ask him if there was not one Mrs. Benningfield to be there?  
 Sir Tho. Gascoigne. No.  
 Mr. Bolron. Yes, she was to be there.  
 Mr. Just. Jones. Why, do you know any thing of her?  
 Mr. Att. Gen. She is in York Goal.  
 Mr. Bolron. No, she is gone from thence. My Lord, Ellen Thwing was a Nun, and was sent for from beyond Sea to instruct all them that should be made Nuns; and this Father Cornwallis was Father Confessor to the Nuns. He is now in York Goal, taken with two Women.  
 Mr. Just. Jones. Ask him what he meant by that Writing in the Almanack?  
 Sir Tho. Gascoigne. I did write things here for a Memorandum to help and assist my Niece, and the poor Children of my Brother; and so the Widow that was Sir Walter Vavasor's Sister, was to sell the House, and one Craddock meant to sell all the Lordship, and the Children were desirous to keep the House, and so they bought the House and one Clofe, and all the rest was sold; so I writ it only that they should have the Assistance of Sir Walter Vavasor to have the House.  
 Mr. Just. Dolben. Pray ask him what he means by the Words, in the interim Dawson.  
 Sir Tho. Gascoigne. Nay, what do I know?  
 L. C. J. Ask if Mrs. Thwing were not a Nun?  
 Sir Tho. Gascoigne. They did desire, if they could not get that House, that they might have another House.  
 Mr. Just. Dolben. And all this for Mrs. Thwing? Ask him if she was not beyond Sea, and kept in a Nunnery.  
 Sir Tho. Gascoigne. Nay, I can't tell what she was.  
 Mr. Att. Gen. Here is another Note in this Almanack, pray read it. It was first shewn to Sir Thomas Gascoigne, who owned it to be his Hand.  
 Clerk. Mr. Harcourt, next House to the Arch within Lincoln's-Inn-Fields, Mr. Parr's.  
 L. C. J. No question but he was acquainted with all the Priests about the Town, and had Directions to write to them.  
 Mr. Just. Pemberton. He hath been Priest-ridden by them, that is plain.  
 Mr. Recorder. Ask him what he means by the last Mark there set under London?  
 Sir Tho. Gascoigne. I can't tell what it is, 'tis a Query.  
 Mr. Att. Gen. In the Almanack there is a Memorandum to acquaint Mr. Thwing with the whole Design; what it was I can't tell.  
 L. C. J. Ay, pray let's see that.  
 Mr. Att. Gen. This Thwing is a Priest in Newgate at this time.  
 Clerk. The 15th of April 1676. Memorand. Acquaint Mr. Thomas Thwing with the whole Design.  
 L. C. J. Now shew him that.  
 Sir Tho. Gascoigne. Look you, what is it you would have?  
 Mr. Hobart. What Design was that?  
 Sir Tho. Gascoigne. It was my providing Monies for him and his Sister, that they should tell how to purchase the House.  
 Mr. Att. Gen. What, a Priest and a Nun?  
 Mr. Just. Dolben. They had vow'd contrary to that.  
 Mr. Just. Pemberton. Ask him whether Thwing be not a Priest?  
 Mr. Hobart. Is not this Thwing a Priest? Thomas Thwing?  
 Sir Tho. Gascoigne. No, it was Ferdinando Thwing, that is now dead.  
 Mr. Att. Gen. No, but this is Thomas Thwing: Is he a Priest?



Sir Tho. Gascoigne. I do not know. What have I to do?

L. C. J. Then consider how likely it was; he was to purchase an House for a Priest and a Nun, for some such Business as is sworn.

Mr. Hobart. He says no, my Lord.

L. C. J. What is the Meaning of it, then, that he should name the whole Design?

Mr. Hobart. He says, it was the Brothers and Sisters that lived next Door to him.

L. C. J. Ay, but 'tis said, Acquaint Thomas Thwing with the whole Design.

Mr. Hobart. He might acquaint Thomas Thwing with such his Intention.

Mr. Att. Gen. We will now shew your Lordship a Letter, taken among the Papers of Sir Thomas Gascoigne, wherein is this Proviso, talking of the Settlement, *In the formal Settlement, let this Proviso be added, If England were converted, then to be disposed so and so.*

L. C. J. Mr. Bolron, How came you by that Paper?

Mr. Bolron. I took this Paper in Sir Thomas Gascoigne's Chamber, with several others: I remember some had his Hand to them, others had not, and some were signed *Pracid*, and some *Cornwallis*.

L. C. J. Is there any Mark of his Hand to that Paper?

Mr. Att. Gen. Yes, there is a Mark in this of Sir Thomas's own Hand, the Word *(Yes)* in the Margin.

Clerk.

*Dolebank, June the 9th, 78.*

Most honoured Sir,

AFTER most grateful Acknowledgment of all your charitable Favours, as to my own particular; I am also herewith to present most humble and heartiest Thanks on behalf of your Niece, and Mrs. Hastings here, who both would esteem it a great Happiness to see you here, as also my Lady, your honoured Daughter, to whom we beseech our humble Respects may be presented. I have sent the Paper safely to good Mrs. Beddingfield, from whom shortly you will have religious Acknowledgments. I told her that I supposed you would judge fitting to insert into the formal Writing the Proviso, viz. *That if England be converted, then the whole 90l. per Annum is to be apply'd here in Yorkshire, about or at Heworth, &c. The which, doubtless, will be as acceptable unto her, and as much to God's Glory as possibly can be imagined.* Now, dearest Sir, let me not be too much troublesome, save only to wish you from his Divine Majesty, for whose everlasting Glories greater Praise and Honour you do this most pious Action, the happy Enjoyment of that Glory everlasting. I would lastly advise you in God's holy Name, to compleat the Business by drawing the formal Writing as soon as possible; and without making any material Alteration from what you have already signed, save only the Proviso above written. I should be glad to know concerning the Receipt hereof; and when Sir Miles and your Son are likely to attend you to finish the Business: As also when Mr. Pierpoint shall be arrived. These good Religious are very desirous with your Approbation (and Mrs. Bed. at my coming from her wished the same) to try for a Removal to Mr. Dawson's; the Impediments here being essential, as the House incapable to receive more Scholars, with many other Inconveniencies also. Time permits no more, only we again express our earnest Desires to see your Honour here with my Lady, as the greatest Satisfaction we can desire: I remember you hinted to Mrs. Bedding. not long since, that perhaps you might see her at Hammer Smith; and how much easier you may come hither, we earnestly beseech you to take into Consideration to the Purpose.

Most Honoured Sir,

Your Honour's most obliged

faithful Servant,

J. O. P R A C I D.

L. C. J. I think it is pretty plain there was a Design of erecting a Nunnery.

Mr. Serj. Maynard. If England is converted, then the whole 90l. a Year to be employed in Yorkshire about a rotten House, which would be much for God's Glory.

L. C. J. What other Evidence have you?

Mr. Recorder. If your Lordship please, we have another Letter dated from York Castle, and the backside of the Letter is indorsed by Sir Tho. Gascoigne's own Hand, the Time when he received it.

L. C. J. When was it?

Mr. Recorder. The last May, he dates it from York Castle, where he was in Prison, and therein gives Sir Thomas an Account of the Opinion of the Doctors of Sorbonne about the taking the Oath of Allegiance.

L. C. J. No doubt all of them do not approve of it.

Mr. Just. Dolben. As I believe this same *Pracid* was the Occasion of so many Gentlemen refusing the Oath of Allegiance; I convicted above forty of them in that Country for not taking of it.

Mr. Serj. Maynard. *Nosctur ex comite.* You see if this be the Effect of it, what Reason we have to rid ourselves of these Priests: One that dares write such a Letter; and 'tis found in Sir Thomas's Study.

Mr. Just. Pemberton. And Sir Thomas's own Hand on the Back of it.

Mr. Serj. Maynard. My Lord, under Favour, I do take it, that the debauching of Men in point of Conscience, that they may not take the Oath of Allegiance, is to set them loose from the Government, and loose from the King, and make them ready to arm when they have Opportunity.

Mr. Just. Pemberton. No doubt of it, Brother.

L. C. J. All the Jesuits say they may not take it, but some of the Sorbonnists say they may.

Mr. Just. Pemberton. But now you see they are against it.

L. C. J. Some will, and some will not allow it.

Mr. Just. Jones. They take or leave Oaths, as it is convenient for them. Then the Letter being shewn to Mr. Mowbray, and the Indorsement acknowledged to be Sir Thomas's Hand, was read.

Clerk.

*York Castle, May the 24th.*

Honoured and ever dearest Sir,

LONGER Time having pass'd since your last writing, it is fit to inform you how God's holy Providence disposes concerning us. All the Out-prisoners being call'd into the Castle, (as you may have heard) Mrs. Hastings's Room was needed, and so she went into Castle-gate to reside at the former Lodging of one Mrs. Wait, (who is now in the Goal) where she remains with Mrs. Wait's two Children, and their Maid-Servant, teaching the Children as formerly; also the Moor's Niece

goes daily thither; and Mrs. Hastings lives without Charge as to Diet and Lodging, as I formerly told you; she spends all her Time well, God be praised, and comes every Morning about Seven o'Clock to serve God at the Castle: But I and two others are much abridg'd of that Happiness by her Room being left by her here. My Liberty of going abroad is restrain'd with the rest, none being as yet permitted the least since these last were forced to come in. Madam was here the other Day, and seem'd somewhat timorous about Mrs. Hastings's teaching: But most in the Castle persuaded her that it was most commendable and most secure, and so she rests satisfied: Mrs. Cornwallis is recovered of her Ague, God be blessed: She desires her dutiful Respects may be always presented unto you, and intends herself to write to you. Mrs. Wood and her Companion are well, but dare not as yet walk in their own Garden. All our now Prisoners are chearful, and each of us comforted, in hopes that God will make all Catholicks of

\* Mr. Record. That one Mind: For I have a Letter from our \* Spr. at is Superior.

London (who was the same Day taken and carried to Prison), wherein he declares, alledging Authority, *That the pretended Oath of Allegiance cannot be taken as it is worded; adding, that three Briefs have formerly been sent from the Pope expressly prohibiting it; and in the third it is declared damnable to take it. And yesterday we had a Letter communicated amongst us, sent by Mr. Middleton (now at Paris) to his Friends here, containing the Attestation of all the Sorbonne Doctors against it; adding, that whosoever here in England give Leave, they deceive People, and are contrary to the whole Catholick Church. There was also a Meeting some Years ago of all the Superiors both Secular and Regular, wherein it was unanimously declared, that it could not be taken. Mr. Hutchinson (alias Berry) who has lately printed a Pamphlet in Defence of the Oaths, has the other Day declared himself Protestant at St. Margaret's, Westminster. And so I rest,*

Honoured Sir,

Your ever obliged,

J. P.

Mr. Recorder. That is all, the other is private.

Mr. Att. Gen. If your Lordship please, we shall now prove by some Witnesses, that he hath returned great Sums of Money, because he said, he never had 200l. together; and for this we call Mr. Phiswick. (Who was sworn.) Come, Sir, were you a Servant to Sir Tho. Gascoigne?

Mr. Phiswick. Yes.

Mr. Att. Gen. For how long Time?

Mr. Phiswick. For six Years and upwards.

Mr. Att. Gen. In that six Years time, what Sums of Money did you return to London?

Mr. Phiswick. 'Tis abstracted in a Note.

Mr. Att. Gen. Did you return all the Sums in that Note?

Mr. Phiswick. I refer myself to my Almanack.

Mr. Att. Gen. Did you set down this Account?

Mr. Phiswick. Yes, Sir.

Mr. Att. Gen. Then thus, Sir, pray what comes it to?

Mr. Phiswick. Those Sums do come to 6128l.

L. C. J. Whose Money was that?

Mr. Phiswick. Part of it was Sir Thomas's; part his Son's, and part my Lady Tempest's.

L. C. J. Can you tell how much in any one Year you return'd upon the Account of Sir Thomas?

Mr. Phiswick. Not unless I had my Almanack.

L. C. J. It will be endless to look over the Particulars.

Mr. Just. Pemberton. Can you make any Estimate in six Years how much you return'd for Sir Thomas himself?

Mr. Phiswick. No, not without my Almanack, because I returned Money for them all.

Mr. Att. Gen. My Lady Tempest and Mr. Gascoigne, it hath been proved, were in all the Discourses.

L. C. J. But that hath not any Influence upon Sir Thomas.

Mr. Phiswick. The Esquire liv'd much in London.

Mr. Just. Dolben. What Estate had he to live upon?

Mr. Phiswick. Betwixt 4 and 500l. a Year.

Mr. Just. Pemberton. What Estate had Sir Thomas besides?

Mr. Mowbray. My Lord, I believe it was 1600l. a-year, besides what Mr. Gascoigne had.

Mr. Just. Dolben. And what had my Lady Tempest?

Mr. Phiswick. Three hundred Pound a-Year.

Mr. Just. Dolben. But she liv'd in Yorkshire.

Mr. Phiswick. Yes.

Mr. Just. Dolben. So she needed little Returns to London.

Mr. Just. Pemberton. But admit they had return'd all, there was 300l. a year to be return'd for Sir Thomas.

Mr. Att. Gen. My Lord, here is Mr. Mawson, I think 2500l. was received by him.

Mr. Phiswick. I paid in the Country, at Leeds, Money, that he paid here in Town.

Mr. Att. Gen. Here is the 25l. paid to Harcourt, I would ask him whether it were the same Harcourt that was executed?

Mr. Just. Pemberton. I think not that material.

Mr. Att. Gen. My Lord, if you please, we will shew you the Examination taken before the Council, that Sir Thomas did own this Bolron had been his Servant, and never unfaithful, but always took him to be, as he now found him, a Fool.

Mr. Just. Dolben. If he object any Thing, it will come in properly by way of Reply.

Mr. Att. Gen. Then now we have done till we hear what the Prisoner says to it.

L. C. J. Tell him they have done with their Evidence against him; if he will have any Witnesses examined, he must call them.

Mr. Hobart. The King's Evidence have been all heard, and said as much as they can; the Court asks you if you would call any Witnesses, or say any thing for yourself? Have you any Witnesses here?

Sir Thomas Gascoigne. Yes.

Mr. Hobart. Name them, Sir.

Mr. Just. Dolben. Ask what he will have done with them?

Mr. Just. Jones. Let him tell us to what purpose he will call them.

Sir Tho.



Sir Tho. Gascoigne. To examine them to the Credit and Demeanour of the Men, and that there is no Probability in their Suggestions.

Mr. Hobart. Name them, Sir.

Sir Thomas Gascoigne. They are all in that Note.

Mr. Babbington was first examined.

Mr. Just. Pemberton. Ask Sir Thomas what he would have him asked.

Sir T. Gascoigne. Look you, Sir, what do you know concerning the Difference between Mr. Bolron and I?

L. C. J. Well, what say you to that Question?

Mr. Babbington. My Lord, I have not been employed in Sir Thomas Gascoigne's Business before the last Winter.

Mr. Just. Dolben. What do you know then?

Mr. Babbington. About Spring last Sir Thomas Gascoigne was consulting with me about Money Bolron owed him upon two Bonds, and gave me Directions to sue them. And likewise he was giving me Directions to deliver Declarations in Ejectment for gaining the Possession of his Farm, because he did not pay his Rent.

L. C. J. How much were the Bonds for?

Mr. Babbington. I have them here, I think.

L. C. J. You need not look for them, you may tell us the Sums.

Mr. Babbington. The one is for twenty-eight Pounds, the other twenty, to the best of my Remembrance. Mr. Bolron having Notice of this, did desire he would accept of a Conveyance of an House he had at Newcastle for Satisfaction of his Debt. Sir Thomas was unwilling to accept of it, but I did prevail with him to accept it, not in Satisfaction, but as an additional Security; and the Deeds I have here that I drew for that End.

Mr. Just. Pemberton. What time was this?

Mr. Babbington. This was a little before last Trinity-Term begun. I have taken a Memorandum within a Day or two, if your Lordship will give me leave to look upon it.

Mr. Just. Dolben. Have you not had all this time to get your Papers ready?

Mr. Babbington. My Memory is very short, indeed. But now I see about the third or fourth of June, Sir Thomas gave me Orders to deliver Declarations in Ejectment.

Mr. Just. Dolben. When did he first bid you question him for Monies upon the Bonds?

Mr. Babbington. It was sometime in May.

L. C. J. Did he tell you you must sue him?

Mr. Babbington. Yes.

L. C. J. What then did Bolron say?

Mr. Babbington. Bolron did then desire that Sir Thomas would accept of Security out of his House at Newcastle. Sir Thomas was very hard to be persuaded, but at length I did prevail with him, and I used this Argument, that it was not to lend so much Money upon that Security, but his Money was already out of his Hands, and else desperate, and this was a further Security, and that it would not lessen his other Security, and upon these Persuasions he did let me draw a Deed to that Purpose.

L. C. J. Was this some time in May?

Mr. Babbington. This Discourse was in May.

L. C. J. Are you sure of it?

Mr. Babbington. The Directions that I had for drawing the Deed was in June, but the Discourse with Sir Thomas was in May, and I do perfectly remember it by a Circumstance which I shall tell your Lordship. After the Deeds were Drawn (for drawing of which I had a Letter under Bolron's own Hand, and if occasion be, I have the Letter here to produce), I came from York, having been there, and appointed a Day for the sealing of them. I came to the House where Bolron lived, and Sir Thomas met me, and there I produced the Deeds, and he of himself was very ready and willing to the sealing of them, but his Wife, who was joined in the Deeds with him, would not by any Means seal, unless Sir Thomas would deliver up the Bonds he had taken for the Money, but Sir Thomas did utterly refuse to deliver up the Bonds.

L. C. J. What time in June was this?

Mr. Babbington. A little before Whitsuntide.

L. C. J. What time was that?

Mr. Babbington. That was the 14th of June, as I remember, that I delivered the Declaration; and the Day before, which was the 13th, to the best of my Remembrance, I had this Communication and Discourse about sealing the Writings, which the Wife refused to join in; but Sir Thomas would only take it as an additional Security, refusing to deliver up the Bonds, but he would suspend further Prosecution, and Bolron did then desire no longer time than a Month for Payment of the Money. But his Wife, though she were urged to seal the Writings would not be persuaded, but utterly denied it. After we had spent a great deal of Time there, Bolron comes to me, and desires me to come another Time, and he would persuade his Wife to seal the Deed. Nay, said I, 'tis not fit for me to come up and down unless it be to some Purpose, and your Wife will seal. Will! nay, says he, I will force her to it. My Answer was this, If you take these Courses, Mr. Bolron, I must by no means be concerned in the Matter; for your Wife must pass a Fine, and we must examine her secretly, and if she tells me she does it by your Force, I will not pass it if you would give 1000*l*. After this, about a Fortnight, he sent for me to come and his Wife would seal.

L. C. J. By the way, are you a Protestant?

Mr. Babbington. Yes, I am, Sir.

L. C. J. And always was?

Mr. Babbington. Yes.

Mr. At. Gen. Yes, he is an Attorney at large, I know him very well.

Mr. Babbington. This was a Fortnight or three Weeks after that, the latter End of June he sent for me to his House, and that his Wife would be contented to seal. And this he desired might be done on the Tuesday, which was Leeds Market-day, and I could not go. The next Day I called upon him at Shippen-Hall; he was then within, and desired me to go up to Barmbow to Sir Thomas Gascoigne's with him: He said he should go within two or three Days to Newcastle, for he had a Chapman that would lay down the Money, and take the Security of the House, and he desired he might have the Liberty to go thither to treat about it. I told him I did believe it would be no hard Matter to persuade Sir Thomas to

Vol. III.

that, for he would be very glad of it. I went up with him to Barmbow; and as we went along, he asked me if Sir Thomas did intend to sue him upon his Bond? I told him I had Directions so to do. He asked me likewise if he would turn him out of his Farm? I told him, Yes, if he would not pay his Rent; and the Truth of it is, he did then deny he had received the Declaration in Ejectment: But my Man afterwards made his Affidavit of Delivery, and had Judgement upon it. Afterwards I went up to Sir Thomas, and told him what Bolron desired; and he consented to it as readily as it could be asked; and in coming away he told Bolron, that in the Management of his Coal-pits he did neglect very much, and did go Abroad, staying away two or three Days together. To this Bolron made some Excuse, and said it was for collecting his Debts. Said Sir Thomas, I know not what you are about, but if you do well for your self, I am satisfied.

L. C. J. How long had he been from him, and left his Service, then?

Mr. Babbington. I know not when he went, but this was in June last. After this we went back again, and in coming back he was very inquisitive to the same Purpose; he was asking me—

L. C. J. You say he chid him, and told him he was not a good Husband in his Colliery.

Mr. Babbington. Yes; and as we came back he was inquisitive whether Sir Tho. Gascoigne would sue him, and turn him out of his Farm. I did then enter into the same Expressions, and told him, if he did not pay, he must be sued.

L. C. J. You told me, Sir Thomas had agreed to stay so long, when was this?

Mr. Babbington. My Lord, this was after we had parted with Sir Thomas.

L. C. J. After Sir Thomas had promised him to stay so long Time, then, said he, as you were coming Home, do you think he will sue me, and turn me out of my Farm?

Mr. Babbington. Yes, said I: Well, said he, then by God I will do that which I did not intend to do. What he meant by it I cannot tell; but this was a little before he came to London, which I judge to be the latter End of June; and this is all I have to say.

Then Obadiah Moor was called.

Mr. Just. Jones. Did you tell Sir Tho. Gascoigne what he said, Then I will do what I never did intend to do?

Mr. Babbington. I did never tell him, my Lord, for I looked upon it as an idle Expression. And I will tell your Lordship why; because this Man that is now to be examined did tell me how that he was bound for him, and that Bolron, to encourage him to be bound, said, You need not fear, for if Sir Thomas sues me, I will inform against him for keeping Priests in his House; and I did look upon it as an idle Expression.

Mr. Moor. My Lord, in September last was Twelve-month, Mr. Bolron did desire me to be bound with him to Sir Tho. Gascoigne. Said I, I told him, Mr. Bolron, I have some small Acquaintance with you, but I have no reason to be bound with you. Said he, Do not fear; there is my Brother Baker and Stephen Thompson are to be bound as well as you. Said he, I will give you my Counter Security. That signifies nothing, said I. You need not fear any Suits, said he; for if Sir Thomas sues me, I will inform against him for keeping Priests. Said I, When must this Money be paid? Said he, At Candlemas next. So we went and were bound; the one Bond was to be paid at Candlemas last, and the other in August. And after Candlemas he did not pay the Money; and said I, Mr. Bolron, I don't like these Bonds, you must make new Bonds for my Security. I was afraid of being sued, and I desired Mr. Babbington to bring a Writ against him, which he did; and upon Holy-Thurs'day I had two Bailiffs ready to arrest him, but he could not be found; and I had two likewise the Saturday before at his Pits. Presently after he came up to London, and made an Information; and on the 8th of August last I met him in Ferry-Bridge, and he came along with me; said he, Mr. Moor, you and I have often discoursed of Sir Tho. Gascoigne, you may do me Good, if you do not, pray do me no Harm. You have been often at his House. With that, I asked him if he was concerned in the Plot? For, said I, you have been often telling me, and sworn it, and denied it utterly, that he was no more concerned than any body else. But I did but equivocate then, said he, for I was a Papist, and if I had told 1000 Lies, or killed 20 Protestants, our Priest would have forgiven me for it. And so coming to Farnborn, two Miles from Ferry-Bridge, he plucked out ten Shillings, and said, I have no more Money in my Pocket but this, but pray be kind, and do me no Harm, for you know I have denied it all along.

Mr. Just. Jones. Hath he done so?

Mr. Moor. Yes, several Times.

L. C. J. How came you to discourse with him, and question him about it?

Mr. Moor. Because there was a general Discourse in the Country, that there were few Papists but what were concerned, and guilty of the Plot.

L. C. J. When was that Discourse?

Mr. Moor. The latter end of September was Twelve-month, when the Plot was first discover'd. And he said, Sir Thomas was no more concerned than the Child that was to be born.

L. C. J. Had you any Discourse with him about May last?

Mr. Moor. No, my Lord; in August, as I told you, I had.

L. C. J. When was the last time that he told you, Sir Thomas had not an Hand in the Plot?

Mr. Moor. I can't certainly remember, but I think it was in February, when I told him I would sue the Bond, or have better Security. It was a small time after Candlemas.

Mr. Just. Jones. What are you, a Protestant or a Papist?

Mr. Moor. A Protestant, bred and born so.

Mr. Just. Pemberton. He would have sworn it no doubt at that Time, for he was under an Oath of Secrecy.

L. C. J. But you say August was the first time that he discoursed to you that Sir Thomas was in the Plot?

Mr. Moor. Yes.

Then Stephen Thompson was called.

Mr. Just. Dolben. Well, what do you know of this Business?

D

Mr. Thompson.



Mr. Thompson. My Lord, if you will give me leave to speak, I know a great deal of the Unkindness betwixt Sir Thomas and Mr. Bolron. He came down to me, he was Sir Thomas Gascoigne's Steward of his Colliery, and Sir Thomas liked not of his Accounts, and turned him forth. There was a great deal of Money owing to Sir Thomas, and he came to Sir Thomas to agree about it, and he desired me to be bound with him to Sir Thomas: Said I, Mr. Bolron, how shall I be secured? Said he, There is a great deal of Money, of which I never gave Sir Thomas any Account, I will gather it in, and secure all; and so Sir Thomas Gascoigne knew nothing of it. So Bonds for 60*l.* were entered into to pay 28*l.* at Candlemas. So, Sir, when Candlemas came, and he did not pay the Money, I went up to him, and asked him what he would do about this Money, what Course he would take to satisfy? Oh! never fear, said he. Why, said I, hath he any Hand in the Plot? If he hath, let us know it; for he had made a great deal of his Goods away, and then I thought I should not be secured. Oh, said he, he is finless of it.

L. C. J. Who did make away his Goods?

Mr. Thompson. Bolron did.

L. C. J. When was this?

Mr. Thompson. Candlemas last. For then I thought Sir Thomas might sue me for the Money, and I would fain have known if Sir Thomas had any Hand in the Plot, and I pressed him much to tell me. Then it passed on, and having a Writ out against me, I durst not stir out myself, but I did send my Man to him to know what he did intend to do about it: He told my Man, Brother, tell thy Master he need not to fear at all. Why, said my Man, do you know he hath any Hand in the Plot?—

Mr. Just. Dolben. That is but what your Man said.

Mr. Just. Pemberton. Is your Man here?

Mr. Thompson. No.

Mr. Just. Dolben. Therefore you must not urge that he said to you, 'tis no Evidence.

Mr. Thompson. On Thursday after I went up to him myself, and got him to go up to Sir Thomas; and so when he came to Sir Thomas, he would give him no Time but a Fortnight to pay the Money; Bolron desired but three Weeks Time, and he would procure him his Money; so away we came down. Said I, What do you intend to do in this Case? Said he, If he do sue me, I will do him an ill turn; and soon after he went to London, and said, he would go to sell his Land at Newcastle: And a while after I went out to see if he were come again; and meeting him, it was when he was going to London again to carry on his Design, said I, Robert Bolron, what do you say in this Case? You now are going to leave the Country, and how shall I be secured against Sir Thomas? Do not question it, said he, for I am to receive on the King's Account 30*l.*

L. C. J. Upon whose Account?

Mr. Thompson. Upon the King's; concerning the taking Sir T. Gascoigne.

Mr. Bolron. But I never had a Farthing of it.

Mr. Thompson. But, said he, I will not take it, for another bids me 60*l.* and I know what Oates and Bedloe had, and I won't abate a Farthing of that.

L. C. J. When was this?

Mr. Thompson. It was after he had taken him; and on Holy Thursday he did say, If he did sue him, he would do him an ill turn.

Then the Lord Chief Justice, being to sit at Nisi Prius at Guildhall, went off.

William Backhouse was next called.

Mr. Just. Jones. Let him ask Backhouse what he will.

Sir T. Gasc. I would ask him what Threats he gave to his Wife to swear against her Conscience, and Promise of 500*l.* he should gain by it.

Backhouse. I served the Warrant to carry the Witnesses before Squire Lowther and Squire Tindall: I was charged the 7th of July last to help fetch the Witnesses before the Justices, and to take Sir Tho. Gascoigne, I and two of my Sons, and he opened the Door his own self. When we had taken him, Squire Lowther directed us to bring the Witnesses before him, and we did so. When we came to Bolron's House, his Wife was sick on Bed, and I said that she must go before the Justice of Peace to swear against Sir T. Gascoigne for High-Treason: She said she knew nothing against Sir Thomas; but Bolron said she must go, or he would have her drawn at the Cart's Arse.

Then Hamsworth was called.

Mr. Just. Jones. What will he ask him?

Sir T. Gasc. I ask him about the threatening of his Wife.

Hamsworth. May it please you, my Lord, the same Day that Sir Tho. Gascoigne was taken, Robert Bolron came to his Wife, and told her she must go to Squire Lowther to swear against Sir Tho. Gascoigne: She fell a weeping, and would not go by no means; he threatened if she would not go, he would tie her to the Horse's Tail.

Mr. Just. Dolben. Did he tell her what she should swear?

Hamsworth. I did not hear him, only to swear against Sir Thomas.

Mr. Just. Dolben. What she knew, was it?

Hamsworth. Yes; and she said, she did not know anything of Misdemeanour of Sir Thomas Gascoigne touching his sacred Majesty, or the Church Government.

Mr. Just. Jones. Art thou sure she said those Words?

Mr. Mowbray. My Lord, he is a Papist.

Hamsworth. I am a Protestant.

Mr. Just. Pemberton. How long have you been a Protestant?

Hamsworth. I was born so.

Mr. Just. Jones. Well, thou hast added a few fine Words that I dare say she never said.

Mr. Just. Pemberton. Were you never a Papist?

Hamsworth. Yes, I was.

Nicholas Shippon was called.

Mr. Mowbray. This Man is a Papist too.

Mr. Just. Dolben. Do you think he is not a Witness, for all that?

Sir T. Gasc. What Discourse he had May 30, the Day after the Race.

Mr. Just. Pemberton. Well, ask him what you will: What do you say?

Shippon. Mr. Bolron was with me the 30th Day of May.

Mr. Just. Dolben. What, May last?

Shippon. Yes, the Day after Ascension-day: He came to my House about two o'Clock in the Afternoon, and staid at my House all that Afternoon

while an Hour after Sun-set before he went away; he came and brought a Letter with him to carry to Newcastle, and it was sent away thither.

Mr. Just. Dolben. Are you sure it was the Day after Ascension-day? How if it should fall out to be another Day?

Shippon. Yes, Ascension-day was the 29th of May; he came to me about two o'Clock.

Mr. Serj. Maynard. Pray what Reason had you to take Notice of this?

Shippon. He came and brought a Letter to me that was to go to Newcastle, and desired me, that my little Boy might carry it to a Kindian's House of mine; for he said, he was afraid of the Bailiff, and did not care for stirring out; my Wife brought him some Meat and Drink, and he said it was better than he had at Home; and she said she was the more sorry Things were no better with him.

Mr. Just. Dolben. But how came you to take Notice that this fell out the 30th of May?

Shippon. The Night before I met him coming from the Race, which was the 29th of May, and he asked me if I saw any Bailiffs waiting for him; and I said Yes; and he said, It was well if he missed them; and he asked me, if I saw Bennet Johnson?

Mr. Just. Jones. How long was it you say he staid?

Shippon. He came about two o'Clock, and staid till an Hour and Half after Sun-set.

Mr. Serj. Maynard. What Religion are you of, Friend, let us know?

Mr. Just. Dolben. What say you to the Truth of this, Bolron?

Mr. Bolron. My Lord, there is not a Word of it true; for I was about two o'Clock at Sir Tho. Gascoigne's; they were marking some Sheep, and I was there most of the Afternoon.

Mr. Just. Jones. Were you ever at his House at any other time to send any such Letter?

Mr. Bolron. I never sent any such Letter: Indeed that Day I was a little of the Afternoon at his House, but I staid there but Half an Hour; But I was most Part of the Afternoon at Sir Tho. Gascoigne's seeing them mark Sheep.

Then Roger Gregson was called.

Mr. Just. Jones. What do you say to him?

Sir T. Gasc. Let him speak his Knowledge.

Mr. Serj. Maynard. I desire he may ask the Question, for he only generally refers to them what they know.

Sir T. Gasc. What did he say to you about August last?

Gregson. My Lord, I will tell you: We met about August last, Robert Bolron and I, about a Week before Bartholomew-day: We had some Discourse; he came from London a little before that, and I asked him how Sir T. Gascoigne did.

Mr. Just. Dolben. Was he apprehended in August last?

Gregson. Yes, he was in the Tower. He said, Well. I asked him how he would come off about the Plot (as they call it)? Said He, he may come off well enough, but it will cost him a great deal of Money. I then did ask, how they came to fall out? And he said it was long of that Rogue Addison, Brother to the Priest, who had called him to Account, or else he never had done Sir Thomas that Injury; and I suppose that was the Cause of it. And then we had some more Discourse, and that Discourse was this: He rides a little from me (he was on Horseback) and came back again; said he, I can tell you, the King was at Windsor, and one of the Privy-Council made an Attempt to stab the King, and the King made his Escape, and now they will believe my Informations the better.

Mr. Just. Pemberton. Go on.

Gregson. That is all I have to say.

Mr. Just. Jones. What are you, a Papist?

Gregson. No, I am no Papist, I deny it.

Mr. Serj. Maynard. Nor never was?

Gregson. Nor never was.

Then James Barlow was called.

Mr. Serj. Maynard. My Lord, I conceive this Man ought not to be heard, for he is under an Accusation of the same Crime; and we have had two Orders of Council to apprehend him.

Mr. Att. Gen. There was an Order of Council within this Fortnight to send for him up in Custody.

Mr. Just. Dolben. There is nothing upon Record against him, and you may discredit his Testimony, but you cannot refuse him; he is not to come upon his Oath.

Mr. Sol. Gen. \* Bolron swears too, that he was at the \* Sir Francis Winnington.

Mr. Just. Dolben. Let us hear him what he says; we must leave it to the Jury what to believe.

Mr. Serj. Maynard. They would question him about Mr. Bolron's cozening, which ought not to be.

Mr. Sol. Gen. This Man hath sworn against him.

Mr. Hobart. Why did you not indict him, Sir?

Mr. Serj. Maynard. Sir, you ought not to prate here.

Mr. Just. Dolben. Come, I doubt you are a little too pragmatical.

Mr. Just. Jones. If you had any Record of the Indictment to shew against him, we would not examine him.

Mr. Hobart. Will you ask him any Questions, Sir?

Sir T. Gasc. You know, Sir—

Mr. Serj. Maynard. That is not proper, he tells him what he knows.

Mr. Just. Pemberton. Look you, Sir, we did not intend that you should come here to manage all as a Counsel; it was said, he could not hear well, and so you were only to tell him what was said.

Sir Tho. Gasc. I would ask him what he does know concerning taking of Money, and stealing from me?

Mr. Just. Dolben. But that must not be asked. [Which Hobart told him.]

Sir Tho. Gasc. Then you must tell me what I must ask.

Mr. Just. Pemberton. Come, you have been pragmatical, Sir, and made him a Brief, and he cannot manage it without you.

Mr. Serj. Maynard. Did you write this Brief? [Meaning a Brief in Sir Tho. Gascoigne's Hand.]

Mr. Hobart. No, an't please you, Sir.

Then Mr. Ravenscroft offered to speak what this Witness had told him.

Mr.



Mr. Just. Dolben. Look you, Mr. Ravenscroft, if what he says tend any thing to this Business, that Sir Tho. Gascoigne comes to know of his feeling, and then turned him out of his Service, it is material; but if you come to tell a Story here of another Man's Knowledge, we can't spend our time so.

Mr. Ravenscroft. It was not known but last Night to me; and if you will not let me tell you what it is, how shall you know it?

Mrs. Ravenscroft. He is a chief Witness for my Grandfather, and I desire he may be heard, for he discovered it but last Night to my Husband.

Mr. Just. Dolben. If it tend any thing to this Business, that Sir Thomas turned him out of Doors, and therefore this Man bears him an ill Will—

Mr. Just. Pemberton. We had as good hear Mr. Ravenscroft, however; but pray, Sir, make your Story short.

Mr. Ravenscroft. He came to me and said these Words; *I have kept a Secret a long while, in which I have done very ill—*

Mr. Just. Pemberton. Then it does not tend at all to this Affair; for you must not come to tell a Story out of another Man's Mouth.

Mr. Just. Dolben. Pray sit still, Sir, and be quiet.

Mr. Just. Jones. Indeed you must be satisfied.

Mr. Just. Pemberton. If you have any other Witnesses, call them, and do not spend our time.

Mr. Just. Jones. For the Jury must be told, that 'tis no Evidence coming out of another Man's Mouth.

Mr. Just. Dolben. 'Tis as if a Man should come and say, I can say something to Sir T. Gascoigne, when I know nothing but what another Man told me.

Mr. Just. Jones. Ask Sir Thomas if he would have this Barlow examin'd? Sir T. Gascoigne. Yes.

Mr. Just. Pemberton. Then what Questions will you ask him?

Sir T. Gascoigne. What Conspiracy was had to take away a great deal of Money from me; and how he concealed it, because he would not do him a Mischief?

Mr. Just. Dolben. What is that to Sir Thomas's Life?

Mr. Ravenscroft. I cannot tell you by bare Assertion, but if you will hear what I have to say, do. Last Night, late at Night, about Nine o'Clock, Barlow came to me; says he, Mr. Ravenscroft—

Mr. Just. Dolben. Come, don't tell us the Preamble, but the Story.

Mr. Ravenscroft. Said he, I have a Thing that sticks upon my Thoughts, which I doubt may endanger Sir Thomas's Life.

Mr. Just. Dolben. Well, was it about taking Money?

Mr. Ravenscroft. Said he, If I am silent, I doubt it will cost Sir Thomas's Life. Then I asked him what it was? Says he, Mr. Mowbray, who is a Witness in this Court, and I, did just a little before his going away, combine, or rather he did seduce me—

Mr. Just. Pemberton. Was it about Money?

Mr. Ravenscroft. Money is in the Case.

Mr. Just. Dolben. He did conspire, what to do?

Mr. Ravenscroft. If you will hear me, I will tell you.

Mr. Just. Jones. Pray do it quickly then.

Mr. Ravenscroft. Did combine to rob Sir Thomas of a great Sum of Money; and whereas I held my Tongue, thinking not to spill his Blood, I see now if I do not tell the Truth, I shall make good his Credit, and so endanger Sir Thomas's Life.

Mr. Just. Dolben. Well, I'll ask you, or any Man alive now, two Men combine to rob Sir Thomas, whether one man be a competent Witness against the Credit of the other Witness? He makes himself a Rogue by combining, and you have made him a Knave by his own Confession.

Mr. Ravenscroft. I may perhaps err in that Word; he did not say combine, but the other seduced him.

Mr. Just. Dolben. You have told a Story to no Purpose.

Mr. Just. Pemberton. You think it a fine Thing to be a Catholick, and to appear brisk for them.

Mr. Ravenscroft. Who says I am a Catholick?

Then George Dixon appeared.

Sir T. Gascoigne. What do you know of any Conspiracy of these People against me?

Dixon. My Lord, I was at William Batley's in August last in the Morning at ten o'Clock, and Mr. Bolron and Mr. Mowbray came in, and called for a Flaggon of Drink; and when it was brought, they fell into a Discourse together concerning Sir Thomas Gascoigne and my Lady Tempest. Says Mr. Mowbray, I know nothing of Sir Thomas but that he is a very honest Man.

Mr. Serj. Maynard. He was not bound to tell you what he knew.

Mr. Just. Jones. When was this, in August last?

Dixon. Yes; but, said he, if I knew any thing against my Lady Tempest, I would discover it, for I would hang her if I could. And they sat down at Mr. Batley's House to consult what they should do.

Mr. Just. Pemberton. Before you?

Dixon. Yes, I heard every Word.

Mr. Just. Jones. And what did they say?

Dixon. They said they would meet at Mr. Bolron's House; and if they would compleat their Business, they should be very well gratified.

Mr. Just. Dolben. Against whom?

Dixon. Against my Lady and Sir Thomas.

Mr. Just. Dolben. But you say, Mowbray said he knew nothing against Sir Thomas Gascoigne?

Dixon. No; he said he knew no Hurt by them.

Mr. Just. Dolben. How came they to say they would contrive their Business.

Mr. Mowbray. What Man is that, Mr. Bolron?

Mr. Bolron. I know him not, nor ever held any such Discourse.

Mr. Mowbray. Nor I.

Mr. Just. Jones. How far do you live off one from another?

Dixon. I live at Leeds, Mr. Mowbray knows me.

Mr. Mowbray. I don't know that ever I saw you.

Dixon. He hath drunk with me.

Mr. Mowbray. I know him not, nor where he dwells.

Mr. Just. Dolben. What Trade are you of?

Dixon. A Cloth-dresser by Trade, but I keep a Publick-House.

Mr. Just. Dolben. This Discourse was at Leeds, was it not?

Dixon. Yes.

Mr. Just. Dolben. They say both they do not know you, nay, they swear it. And 'tis very like you were but very little acquainted; would they let you hear them talk thus?

Dixon. We were as well acquainted as can be, but that he will deny it.

Mr. Att. Gen. Pray what Religion are you of?

Dixon. A Protestant.

Mr. Att. Gen. How long have you been so?

Dixon. All the Days of my Life.

Mr. Att. Gen. I can't but wonder at the Strangeness of your Acquaintance.

Mr. Mowbray. My Lord, I have not drunk at that Place which is near the old Church at Leeds, not this two Years:

Then William Batley was called.

Batley. And if it like your Honour, these two Gentlemen, Mr. Bolron and Mr. Mowbray, came to my House, and called for a Pot of Drink.

Mr. Att. Gen. Do you not know this Man neither?

Mr. Mowbray. Yes, I do, but I was never three times in his Company in my Life.

Batley. I filled them a Flaggon of Ale, and when I had done I left them. They began to discourse of the Plot, and Sir Thomas Gascoigne, and Mr. Bolron—

Mr. Just. Dolben. At your House; where is your House?

Batley. My House is near the old Church at Leeds.

Mr. Just. Dolben. Is that the same Place the other Man speaks of?

Batley. Yes. Says Mr. Bolron to him, Thou knowest that Sir Tho. Gascoigne hath been very severe against thee and me, and now here is an Opportunity offered us to take a Revenge upon Sir Tho. Gascoigne. Mowbray replied again, As for Sir Thomas, he is a very honest Man, and I know no Hurt by him; but as to my Lady Tempest, if I knew any thing against her I would hang her, for I would discover it. But thou knowest, says Bolron, that Sir Thomas sues and troubles me, and if I do not make somewhat out against him, he will ruin me, and it must be done by two Witnesses. To which Mr. Mowbray answered again, How shall we bring this Business about? If thou wilt but come to my House, said he, I will put thee in a Way to contrive it, and we shall have a considerable Reward. And Mowbray told him he would come to him such a Day.

Mr. Just. Dolben. Was that Man that went out last, with you all the time they spake?

Dixon. Yes.

Mr. Just. Dolben. He does not say half so much as you do.

Mr. Just. Pemberton. Were you in the Room?

Batley. No, I was at the Stairs-head.

Mr. Just. Pemberton. What did you stand there for?

Batley. I hearing them discourse of Sir Tho. Gascoigne, hearkened what they did say.

Mr. Just. Dolben. The other Man said he was in the Room with them; were you in the Room?

Batley. I stood upon the Stairs.

Mr. Just. Jones. Were you in their Company at all that Day?

Batley. Yes, my Lord, I carried up a Flaggon of Ale.

Mr. Just. Jones. Was the Door left open?

Batley. Yes.

Mr. Just. Dolben. Would any Man talk in such a Place as this, that all the World may hear them, when they are contriving to take away a Man's Life?

Mr. Just. Pemberton. You were in the same Room, Dixon, were you not?

Dixon. They were at the Grice Head, and we at the Foot.

Mr. Just. Jones. But the other says he was at the Top of the Stairs, the Head of the Stairs.

Dixon. We were at the Stairs-foot, and they were in the Room.

Batley. The Table they sat at joined just upon the Head of the Stairs.

Mr. Just. Jones. Did you hear them down to the Stairs-foot?

Dixon. We did stand there to hear them discourse.

Mr. Just. Dolben. Could you see them where you were?

Dixon. Yes, as fair as I see you.

Mr. Just. Dolben. Could they see you?

Batley. No, they could not.

Dixon. Yes, if they had looked down.

Mr. Just. Dolben. Why then I ask you, Do you think, if you stood in so open a Place to be seen, and they had seen you, can you imagine that they would talk so about taking away Sir Tho. Gascoigne's Life?

Batley. I do imagine they did not know I was there, nor believe any one heard or saw.

Mr. Just. Pemberton. Do you know how they came there?

Batley. They said they came out of Leeds, and said one Mr. Legat was to come that Way, who they were to speak with.

Mr. Just. Jones. I ask you if you were in the Room under them?

Batley. And if it like your Lordship, I stood at the Stairs-foot.

Mr. Just. Jones. Just now you said it was the Stairs-head.

Mr. Just. Pemberton. Did you say any thing to them about this?

Batley. No; I did not open my Lips to them about it, but I told it to a Friend about three or four Weeks after.

Mr. Just. Jones. To whom?

Batley. To a Neighbour of mine: I suppose it was told Mr. Babbington.

Mr. Just. Dolben. What say you, Mr. Babbington? How came you to know of this?

Mr. Babbington. When the Commissioners of Oyer and Terminer were sitting at Leeds, there was one came and told me, George Dixon could afford me something that would be very advantageous for the Benefit of Sir Tho. Gascoigne.

Mr. Just. Dolben. Who was that Man?

Mr. Babbington. Bennet Johnson, or Francis Johnson.

Mr. Just. Dolben. Was that the Man you spoke to?

Batley. No, I spoke it to a Smith, one Richard Loftus.

Mr. Babbington. I'll tell you another Person I heard it from, that was Mr. Bailiff of Leeds.

Mr. Just. Pemberton. Well, was this the common Discourse of Leeds? Mr. Just.



Mr. Just. *Dolben*. He says so. Was it then presently?

Mr. *Babbington*. The Bailiff did not tell me so suddenly.

Mr. Just. *Dolben*. Would it not have been to your purpose to have brought the Bailiff here?

Mr. *Babbington*. It was after the Commission of Oyer and Terminer that I had it from him, which was in *October*.

Mr. *Bolton*. In the time of *August* I was not at *Leeds*, I was in *Northumberland* searching for Priests, and in the Bishoprick of *Durham*, all but a little of the first of it.

Then Mrs. *Jefferson* was called.

Mr. Just. *Pemberton*. What do you ask her?

Sir *Tho. Gascoigne*. Pray be pleased to speak to the Conspiracy and Combination against me.

Mr. Just. *Jones*. Whose Combination? Come, Mistress, what do you know?

*Jefferson*. I asked Mr. *Mowbray* one time what he knew concerning Sir *Tho. Gascoigne*? And he said he knew nothing, but Sir *Thomas* was a very honest Gentleman for what he knew, and the best Friend he had.

Mr. Just. *Jones*. Is that all you know?

*Jefferson*. He thought he was wrongfully accused.

Mr. Just. *Pemberton*. When was this? Was this after the time he was accused by *Bolton*?

*Jefferson*. It may be it might be, I think it was in *August*.

Mr. Just. *Jones*. In *August* last?

*Jefferson*. Yes.

Mr. Just. *Dolben*. But you must needs know (it was the Talk of the Country) when Sir *Thomas Gascoigne* was sent for up to Town; was it after that time?

*Jefferson*. Yes, I think it was.

Mr. Just. *Jones*. Then you say, you heard *Mowbray* say that Sir *Tho. Gascoigne* was an honest Gentleman, and he could say nothing against him.

*Jefferson*. Yes, ask him else.

Then *Matthias Higgringil* was called.

Mr. Just. *Dolben*. Was he one at the Meeting?

Mr. *Bolton*. He was at the sealing the collusive Conveyance.

Mr. Just. *Jones*. This *Higgringil* is a Protestant, is he not?

Mr. *Bolton*. I know not, I think so.

Mr. Just. *Dolben*. Come, Sir, what say you in this Matter?

*Higgringil*. To whom?

Mr. Just. *Dolben*. What can you say to the Business about Sir *Tho. Gascoigne*?

Sir *T. Gascoigne*. Speak to the Threatnings to take away my Life.

*Higgringil*. I have nothing to say to *Bolton*; but *Mowbray* on the 25th of *September* last, being at an Alehouse, Mr. *Legat* and he were together, consulting how to disgrace Sir *Thomas*, and take away his Life; and he calls me out to speak with me: Now, said he, I shall match them, for they have done what they could to disgrace me.

Mr. Just. *Jones*. How did he mean that?

*Higgringil*. I suppose he had taken away some Money and Gold, and they spoke of it, and that was to disgrace him.

Mr. Just. *Dolben*. Was it charged upon him?

*Higgringil*. It was suspected always he had taken it away.

Mr. Just. *Dolben*. But was there any such thing talked of in the Country?

Mr. Just. *Jones*. What did he say to you?

*Higgringil*. He said, they did what they could to disgrace him, and take away his Life, and he would requite them.

Mr. Just. *Pemberton*. Who, they?

*Higgringil*. Sir *Thomas Gascoigne* and my Lady *Tempest*.

Mr. Just. *Pemberton*. Why? Did Sir *Thomas* indict him?

*Higgringil*. No; but the Noise was about the Country.

Mr. Just. *Dolben*. When was this? In *September* last?

*Higgringil*. Yes.

Mr. Just. *Dolben*. What Profession are you of, *Higgringil*?

*Higgringil*. An Husbandman; I graze, and I farm a Farm.

Mr. Just. *Dolben*. You know this Man, do you not, Mr. *Mowbray*?

Mr. *Mowbray*. Yes; Sir *Thomas* employs him, he is a kind of Collector to him.

Mr. *Ravenscroft*. He is no Papist.

Then *Francis Johnson* appeared.

Mr. Just. *Dolben*. Well, come, what do you know?

*Johnson*. He hath sustained great Losses by him.

Mr. Just. *Dolben*. He! Who?

*Johnson*. Sir *Thomas Gascoigne*.

Mr. Just. *Dolben*. By whom?

*Johnson*. By Mr. *Bolton*.

Mr. Just. *Dolben*. What loss hath he received?

*Johnson*. The very first Month he entered, he wronged him of 3*l*.

Mr. Just. *Jones*. How do you know that?

*Johnson*. I cast up the Account myself.

Mr. Just. *Jones*. But he kept him two Years after that?

*Johnson*. Yes, he did.

Mr. *Bolton*. My Lord, I lost 3*l*. the first three Weeks, and Sir *Thomas* forgave me it, I don't deny it.

Mr. Just. *Dolben*. Do you know of any Malice between them, and that he said he would do him any Mischief?

*Johnson*. No.

Then Mr. *Pebbles*, Clerk of the Peace in the County of *York*, was called.

Sir *T. Gascoigne*. I would desire you to speak of the Carriage of Mr. *Bolton* to you, Sir, what you know.

Mr. *Pebbles*. My Lord, I was in *York* last Assizes, and Mr. *Bolton* came to me into a Room where I was with some Gentlemen, and asked me how I did? and asked me if I did not know him? I told him I did not remember him: Said he, I am the Prosecutor against Sir *Tho. Gascoigne*. So when he was sat down, after a little while he desired to discourse with me, and asked me, If a Man was indicted as a Traytor, whether it were fit to pay him Money? I owe, said he, Sir *Tho. Gascoigne* Money, and I would know whether it be fit to pay it to him? Said I, I think you may

safely pay him his Money before he be convicted, but then 'tis the King's, in my Opinion. Nay, said *Bolton*, he is sure to be convicted: Then said I, I think it not safe to pay it, therefore I leave that to your own Discretion, whether you will or no. A little after he desired to have my Opinion concerning the two Judges that came our Circuit, for I am mightily abused by them, said he, they will not at all give me Audience; I came from the King and Council, and they slight me, and will not hear me speak: Said I, I believe if you will go to them, they will hear you. I went to speak with them, and they sent some of their Servants out to know what I would say to them; but I have writ a Letter to them to tell them my Mind. But, said I, I can't believe that any one will presume to carry such a Letter; but for that I will leave it to you. So I came away from him, and after he follows me out, and desires to speak with me again: Said he, I have something against you concerning this Business in hand, I can do you a Prejudice if I will: Said I, God bless me, I know nothing of it, and I do not at all intend to court your Favour, I have no mind at all to that: Said he, I will not do it; and he spoke as if he had no Desire to do it: I would not court him, but came away and left him: He followed me to the Street again, and said, Will you help to apprehend a Traytor? Who is it, said I? It is a Gentlewoman, said he; a Woman greatly concerned in the Plot; you may apprehend her in the Street, and 'tis the best time. Now the Street was full, and I thought it a little unseasonable; so he looked after me, but I never offered to go from him: But, said I, was she in the Plot? Yes, said he, she was to be the first Lady Mayorefs of *York* after the Plot took Effect, and the King was killed; but he did not lay hold upon her; so I parted with her. Then, said he, I can have no Respect. Said I, I have nothing to do with you; I am Clerk of the Peace of the *West-Riding* in this County, and am always ready to do my Duty there; so away I went and left him. The next News I heard was, he had procured a Warrant of the Council against me; and he brings the Warrant to a Justice of Peace, and that Justice of Peace told him there would be several Justices of Peace at *Leeds* within two or three Days after, and then they would examine the Business. I chanced to be in a Room with some Gentlemen, not knowing of the Warrant that was out against me; and this Gentleman that was the Justice of Peace called me into another Room, and told me of this Business: I admired at it, and told him I did know nothing of it, nor that I had disobliged him, unless it was because I did not give him the Compliment and Ceremony of my Hat, nor give him Money; neither did I know what Information he had procured that Warrant upon. He told me Mr. *Mowbray* and Mr. *Bolton* were in Town: So I desired him to send for the other Justices into the Room, where he acquainted them with the Matter, and said he, if you will we will examine it to-night; so they sent notice to Mr. *Mowbray* and Mr. *Bolton*, that they would examine the Business that Night at six o'clock, and they came; and he was asked what he had to say against me? He said I had taken Money for keeping a Man from taking the Oath of Allegiance, and they had Witnesses to prove it—

Mr. Serj. *Maynard*. Must he be here admitted to make his own defence?

Mr. Just. *Dolben*. Brother, let him go on.

Mr. *Pebbles*. The Witnesses was called upon, and they asked him to that Point, and he denied absolutely upon his Oath that he gave me any Money, and also swore he had taken the Oath when it was tender'd to him. Then, my Lord, there was one Mr. *Dunford* an Attorney was spoken of, as if he could prove something, but he was fourteen Miles off, and they could not send for him, and so I begg'd they would appoint another Time for hearing when he could be there; they appointed *Monday* following, and ordered me to attend, and one of the Justices of the Peace undertook to give *Dunford* notice. Accordingly I came there, but there was no Mr. *Bolton* nor Mr. *Mowbray*; but I desired that Mr. *Dunford* might be examined upon his Oath, and they did take his Information in Writing, and he swore he knew nothing of it, neither did he ever give me Money upon such Account.

Mr. Just. *Dolben*. You were not by when it was sworn?

Mr. *Pebbles*. I saw the Examination taken in Writing.

Mr. Just. *Pemberton*. And you were discharged?

Mr. *Pebbles*. Yes; for he could not make out any thing at all.

Mr. Just. *Pemberton*. It was well for you he could not make it out.

Mr. *Pebbles*. They said they could prove it, and vouched these two Persons, but both denied it upon their Oaths.

Mr. Just. *Dolben*. Is that all you know?

Mr. *Pebbles*. That is all I can say in particular, I have not a mind to speak against him in general, because he is the King's Evidence.

Mr. Just. *Dolben*. You can say nothing of his Repute?

Mr. Just. *Pemberton*. You were a Stranger to him, you did not know him?

Sir *T. Gascoigne*. I desire he may speak what Reputation he had among the Justices.

Mr. *Pebbles*. I have no mind to reflect on the King's Evidence; and if I did, it would seem as if I should speak in Malice; he hath done me wrong, but I never did him any.

Mr. Just. *Jones*. But what is his Reputation generally?

Mr. *Pebbles*. Truly, 'tis not very good in the Country.

Mr. Just. *Jones*. Among whom?

Mr. *Pebbles*. The Grand Jury and the Gentlemen of the Country.

Mr. Just. *Jones*. Is it a common Fame in the Country?

Mr. *Pebbles*. Most People discourse ill of him.

Mr. Just. *Dolben*. Did he say he did not speak with the Judges?

Mr. *Bolton*. No, my Lord, I did not.

Mr. Just. *Dolben*. You did speak with us; indeed you would have had us allowed you a Guard for your Safety, which we could not do.

Mr. *Bolton*. Whereas he says I gave in a wrong Information, this same *Hunt* when he came before them confessed he gave him 40*s*. but he would not swear for what it was.

Mr. Serj. *Maynard*. 'Tis nothing to the purpose one thing or other that he hath said.

Mr. Just. *Dolben*. 'Tis altogether uncertain; no body knows what to make of it.



Then Hardwicke was called.

Sir Tho. Gasc. Do you speak what Threats Bolron hath used to his Wife to swear against me.

Hardwicke. When the Pursuivants came up to Barmbow, the chief Constable ordered me to assist Mr. Bolron in Execution of the Warrant, and to carry the Witnesses before a Justice. We went to Robert Bolron's House to take the Witnesses, and there was his Wife, his Brother, and his Sister: We were to carry them before a Justice, and they refused to go; his Wife pretended to be sick and could not go, and they begg'd of us to excuse them.

Mr. Just. Dolben. Who do you call they?

Hardwicke. His Wife, his Brother and his Sister: Bolron told them they must go, and William Backhouse and I ordered them by all means to go along with us; I suppose it was to testify what he had sworn.

Mr. Just. Jones. What were they to do, did he tell them?

Hardwicke. They were to go to tell what his Testimony was above, as well as I understood the Discourse.

Mr. Just. Dolben. We have had two Persons to this purpose before. They say he would have his Wife go, and she refused to go; and cried; but they do neither of them say he pressed her to speak any thing more than she knew, or against her knowledge.

Mr. Just. Pemberton. No, one of the Witnesses said, he told her it was to speak her Knowledge.

Then William Clow was examined.

Mr. Just. Dolben. Come, what say you?

Clow. The 22d of May last I had a Writ against Bolron, and my Man arrested him and brought him to my House.

Mr. Just. Dolben. At whose Suit?

Clow. At the Suit of one Higgringil that was Servant to Sir Thomas; and there I had him two Days, and would not carry him to the Goal, for he begg'd of me I would not; but then I told him I would keep him no longer there, for he had no Money for Lodging and Diet; but he begg'd so hard of me that I would but tarry till Higgringil came, and then he did not care what they did with him; for he would make Sir Thomas pay Higgringil his Debt that he owed him, or he would play him such a Trick as he little dreamt of.

Mr. Just. Dolben. When was this?

Clow. The 21st or 22d of May last, or thereabouts.

Mr. Just. Dolben. May last?

Clow. Yes. And so Higgringil came over, and they did agree, and he gave him a Lease of an House he lived in, and Higgringil took the Charge of both the Debts upon him.

Then Hobart stood up.

Sir Tho. Gasc. Speak whether he pretended he writ a Letter to the Duke of Monmouth from Leeds.

Mr. Hobart. My Lord, I have nothing to say to that.

Mr. Just. Jones. What can you say then?

Mr. Hobart. All I can say is to the Sums of Money returned to Town.

Mr. Just. Dolben. He did not mention that.

Mr. Hobart. If you please to let me declare what I know about the returning of the Money.

Mr. Just. Pemberton. Pray speak what you know of your own Knowledge.

Mr. Hobart. For most part of it, I know of the Payment of it, and to whom; 1800l. there was paid to Mr. Trumbal about the Purchase, it was paid at Mr. Mawson's: I was a Witness to the Deed, and to the Receipt.

Mr. Att. Gen. That is some, but what to the rest?

Mr. Hobart. 200l. was paid to a Client of mine, 80l. was paid to one Widow Cawson that was upon Bond.

Mr. Just. Dolben. How much was paid to Mr. Corker?

Mr. Hobart. Several Sums, above 300l. paid to Corker in six Years time.

Mr. Just. Pemberton. Nay, in four Years time.

Mr. Hobart. This 300l. and 300l. before I drew the Receipt for; and commonly he ordered me when Mr. Corker came for it, that I should have a Receipt from Mrs. Mary Appleby; and it came back signed by her, to whom Sir Thomas was Guardian.

Mr. Just. Dolben. And was all this Money paid to Corker upon the Account of this Appleby?

Mr. Hobart. It was mentioned in the Receipt.

Mr. Just. Dolben. How much was she to have by the Year?

Mr. Hobart. 100l. by the Year, or 2 sometimes.

Mr. Just. Dolben. How came she to have 900l. in four Years?

Mr. Hobart. My Lord, I will tell you; for that there was a great Arrear upon a Suit between Sir Thomas and Mr. Appleby, this Mrs. Appleby's Father; and upon the hearing of the Cause, my Lord Keeper Bridgman was pleased to order, that this Money should be paid to Sir Thomas for the Use of the Daughters; 200l. a Year, that is 100l. a-piece; and there was an Arrear for 3 or 4 Years during the Suit, about 2 or 300l. it was: I drew a Receipt for it, and Sir Thomas being pressed for the Money by Mrs. Appleby, who went beyond Sea, he sent to Corker to get the Money returned to her.

Mr. Just. Dolben. Ay, but you dance about the Bush: Was there an Arrear of 500l.?

Mr. Hobart. For three or four Years, and Mrs. Ravenscroft was one of the Sisters; her Part was paid when she was married, but this Gentlewoman's was paid beyond Sea.

Mr. Just. Dolben. Were there Arrears from Sir Thomas to the Gentlewoman beyond Sea?

Mr. Hobart. Yes.

Mr. Just. Dolben. Are you sure there was?

Mr. Hobart. Yes, Sir Thomas told me so.

Mr. Just. Pemberton. Who was to pay this Money?

Mr. Hobart. Mr. Appleby, by Order of my Lord Keeper.

Mr. Just. Jones. Sir Thomas was Guardian, was the Estate in Yorkshire?

Mr. Hobart. It did arise out of Rents there.

VOL. III.

Then one Culliford was called.

Mr. Just. Dolben. What say you? What do you know of this Matter? Culliford. This Gentleman lodged at such a time at my House; the 4th of June 1677, he was at my House 7 Weeks; and he was gone 3 Weeks and returned again; he was 3 Weeks away.

Mr. Just. Jones. What Gentleman was this?

Culliford. Mr. Mowbray.

Mr. Just. Dolben. What is that to the purpose?

Mr. Just. Jones. How do you apply that?

Mr. Hobart. Mr. Mowbray hath said he sent a Letter to the Duke of Monmouth.

Mr. Just. Dolben. There hath been no mention made of any such thing: Have you any more Witnesses?

Mr. Hobart. No.

Mr. Just. Dolben. Then ask Sir Thomas what he hath to say for himself.

Mr. Hobart. Have you any thing to say to the Court for yourself?

Sir Tho. Gasc. No, I refer myself to the Judgment of the Court.

Then a Woman Witness appeared.

Sir Tho. Gasc. What do you know concerning Mowbray, whether he was suspected of stealing when he was at my House?

Witness. Yes, he was, my Lord; he would have given me 5l. to have gone away, and he did intend to have clapped me in Prison, and to have laid it all upon me.

Mr. Just. Dolben. How do you know that?

Witness. He told me so.

Mr. Mowbray. This is a common Woman, and not to be believed.

Mr. Serj. Maynard. My Lord, we will reply but one short thing in matter of Evidence. Much of this that hath been given by the Defendant hath been to take off the Credit of the Witnesses; and for Bolron, they would suggest that he hath been dishonest to Sir Thomas; but when Sir Thomas himself was examined to that Point before the Council, he said he found him honest, but only accounted him a Fool.

Mr. Just. Dolben. That is proper for you to do now, Brother.

Mr. Serj. Maynard. And Sir Thomas being examined about Rushton, he said he did not know such an one, and then afterwards he did say he knew one of that Name. Here is Sir John Nicholas, the Clerk of the Council. [Who was sworn.]

Mr. Att. Gen. Pray, Sir, do you know what Sir Thomas Gascoigne said at the Council-Table?

Sir John Nicholas. He was asked whether he knew Bolron? He said, he knew him very well, he had been his Servant till within this Twelve-month, or something more; but for his Honesty, he had nothing to say to it, till of late that he had not behaved himself so well, in giving Informations against him: But he did find him now, what he did always take him to be, a Fool.

Mr. Just. Dolben. What did he say about Rushton?

Sir John Nicholas. At first he did say, he did not know Rushton the Priest; but after it was brought to his Memory, he said he knew one of that Name.

Mr. Att. Gen. 'Tis taken down in the Minutes; Sir John, look upon them.

Sir John Nicholas. He denied at first that he knew Rushton the Priest; and afterwards the next time he came to the Council, he said he did deny it, because he was afraid of an old Law against harbouring of Priests.

Mr. Att. Gen. If your Lordship please, we will now trouble you with a Witness or two in answer to what Backhouse and Hardwicke have said as to Bolron's threatening of his Wife. We will call the Wife to give you an Account of that.

Mr. Just. Dolben. They did not charge him, that they pressed her to swear falsely.

Mr. Just. Pemberton. That does not at all touch upon the Witnesses.

Mr. Att. Gen. If the Court be satisfied, we will trouble you with that no farther.

Mr. Just. Jones. I believe Backhouse did say, That this Bolron would have his Wife go before the Justice of Peace; she said she knew nothing at all, yet he would have her go and testify her Knowledge; and if she would not, he would have her dragged at the Horse's Tail.

Mr. Att. Gen. I think 'tis necessary to call a Witness or two to that. First to call her herself. [Then Mrs. Bolron was sworn.]

Mr. Att. Gen. What did your Husband threaten you to make you swear against Sir Thomas Gascoigne?

Mr. Just. Dolben. Now you are upon your Oath, speak the Truth.

Mrs. Bolron. No, never in his Life did he threaten me upon any such Account.

Mr. Just. Dolben. Do you remember when the Constable came down to have you go before Squire Lowther?

Mrs. Bolron. Yes, my Lord.

Mr. Just. Dolben. How chance you did not go with him?

Mrs. Bolron. I was unwilling to go then, because I could say little to the purpose.

Mr. Just. Dolben. Did he use any Threats to you to make you swear against Sir Thomas?

Mrs. Bolron. No, my Lord; but he would have me go, whether I said any thing or no.

Mr. Just. Dolben. Did he ever desire you to speak any thing you did not know?

Mrs. Bolron. No, my Lord, never in his Life.

Mr. Att. Gen. My Lord, Mr. Bolron desires to have this Woman, his Grandmother, beasked whether he threatened his Wife? [And she was sworn.]

Mr. Sol. Gen. She was by at that time.

Mr. Just. Dolben. Were you by at that time when the Constable came to carry the Witnesses before Mr. Lowther?

Mrs. Bolron Sen. Yes.

Mr. Just. Dolben. Heark you, did not you see the Woman that went over there cry, and say she was unwilling to go?

Mrs. Bolron Sen. Her Husband said she should go, though she said nothing.

Mr. Just. Dolben. But her Husband did not press her to say any thing but what was Truth?

E

Mrs. Bolron



Mrs. *Bolton* Sen. No, indeed did he not.

Mr. Just. *Pemberton*. And did not seem to stick before?

Mr. Att. Gen. What can you say to this honest Man here, your Son?

Mr. Just. *Dolben*. I'll warrant she will say he is honest still.

Mr. Att. Gen. But here are a Company of People would make him a dishonest Man.

Mrs. *Bolton* Sen. Sir *Thomas Gascoigne* said he was as truthful a Servant as ever he had in his Life.

Mr. Just. *Dolben*. Did you hear him say so?

Mrs. *Bolton* Sen. I heard him say so in his own Chamber.

Mr. Just. *Dolben*. When?

Mrs. *Bolton* Sen. After he was married: And besides, Sir *Thomas* did say he would do any thing he could for him, in relation he had been a true Servant to him.

Mr. Just. *Dolben*. Call Mr. *Phiswick* again. (*He appeared*.) Look ye, Sir, you are a Man that I see hath been trusted by all the Family of the *Gascoignes*, and you know in what Reputation he was.

Mr. *Phiswick*. Sir, while I was his Fellow-servant, I knew no Ill by him.

Mr. Just. *Dolben*. Was he accounted an honest Man?

Mr. *Phiswick*. I can say nothing to the contrary.

Mr. Serj. *Maynard*. Then, my Lord, to conclude, I desire to speak a word. On the one side here is an ancient Gentleman's Life in Question, and that or his Death are to be the Issue of this Cause; on the other Side, here is the Discovery of a Plot upon which all our Lives, our Religion, and the Life of our King depend. It did require your Patience, and you have yielded it. Where lies the Question? If these Witnesses that have been examined be believed, there is no Question but he is highly guilty of the Plot: The Witnesses tell you, when there was no talk of the Plot, there was a Preparation of a false and fraudulent Conveyance to be drawn by Advice of Counsel; and why was this made? Left he should forfeit his Estate. This is proved in the beginning. You find next a Meeting of the Priests, and there what they did do: does not concern this Gentleman at the Bar, till he took Notice of it, and then joined in it, and approved of it, and did declare it was a worthy Plot, a meritorious Plot for the Good of the Church, and at last particularly he would give 1000*l.* to *Bolton* to destroy the King and murder him. The other Witness agrees with him. And what is said against all this? They have call'd and examined I think nineteen or twenty Witnesses, three touching the threatening of his Wife, but that falls out to be nothing; two Alehouse-keepers that stood at the bottom of the Stairs, and overheard their Discourse; but you have all heard how they have contradicted one another, they had not agreed well enough together on their Story. All that the rest do is meant thus, and so far they make something of it, that there should be a Debt due from this *Bolton* to this Gentleman, and so it were some Contrivance as if he would do it by way of Revenge; it does fall out many times that Men do quarrel, but this is a Business of another Nature. They say that he should threaten he would serve him a Trick, or there were some such Words; but under Favour, the Question is of the Truth of his Testimony; now it is not likely, that they knew what his Testimony would be; and there is nothing against the other Witness that concurs with him, but the Fellows that were upon the Stairs, that talk one of one part of the Stairs, and the other of the other. The Matter is clearly, Whether the Witnesses be to be believed, or whether there be any thing sufficient offered to take off their Testimony. You will be pleased to observe as to what was spoken about the Money and the Nunnery: We brought you a Letter from the Priest who was mention'd to be one of them at the Meeting, *Pracid*, that writes and dates his Letter from the Place the Witness speaks of, and there you will observe that in one of the Letters 'tis express'd; *If England be converted*, (there is the main of the Plot) for all I suppose goes to that Purpose. Pray who thought of *England's* Conversion at that Time? What led them into that, but a Conscience of a Design to convert *England*? My Lord, another piece of a Letter there is concerning the Oath of Allegiance, you have heard it read, and every body knows what the Meaning of it is; it is the Engine of the Jesuits, that if they can but draw Men off from their Fidelity to the King, whereof there is no Testimony so great as the Oath of Allegiance, they need not use so much of Equivocation; but that is an abominable Thing, and not to be endured, to go take off the Strength of that Oath that hath been taken by Men more honest than the rest, and not suffering the rest to take it at all: And it is a damnable Thing that they should alient the King is an Heretic, and the Pope has deposed him, therefore it is meritorious to kill him: But you have heard the Evidence fully, and it needs no Aggravation.

Mr. Sol. Gen. My Lord, I think the Evidence hath been already repeated by Mr. Serj. *Maynard*; and, my Lord, I think there is nothing in this Case, but only the Credit of the Witnesses; for if they be to be believed, there is an Evidence as full as can be. I know your Lordship observes how it is introduced, how they are fortify'd in some Circumstances, which Sir *Thomas* did at first deny. They tell you, that he had a pious Intent to found a Nunnery, and did proceed so far as to make a Settlement; this was deny'd by Sir *Tho. Gascoigne*, but hath been verified, and made out by his own Books and Letters writ to him, which were found in his own Custody. This did Sir *Thomas Gascoigne* do with an Expectation of a sudden Change; for the Letters do declare, that *England* was to be converted, as they called it, and therefore they had settled their Matters in order, and they thought fit to insert that Proviso in the Settlement, That if *England* should be converted, then the Money was to be disposed to and so. But your Lordship likewise observes, and you, Gentlemen of the Jury, what other Correspondence Sir *Thomas Gascoigne* had with one *Cornwallis* or *Pracid* a Priest. He receives a Letter which shews you what the Principles of all the Catholics are, how far they have proceeded to take away even the Oath of Allegiance, and the Consequence of that how far it will go, when they think themselves obliged in Conscience to cast off Fidelity to their Prince; and what Mischief may ensue no Man knows, but we may in part imagine. You have already had sufficient Discovery to make out the Use of this instilled Principle, and that is the Design to kill the King; for this you hear what the Evidence say. Mr. *Bolton*, one of them; is sent to the Priest to be instructed by him; and by him was chid for offering to go against their Principles to take the Oath, and told him he was damned for so doing. And presently after he

was examined by Sir *Thomas Gascoigne* upon some Discourse with him what *Rushion* had said, who had moved him likewise to kill the King, as he says. Sir *Tho. Gascoigne* knew to what Purpose he sent him thither, not only to renounce the Oath of Allegiance, but to carry on the Design which he had in hand, and did introduce, by laying aside the Oath, and tells him he must engage in the Design to kill the King. He examines him what the other had spoke to him of, and he said he knew it was more than bare chiding of him for taking the Oath of Allegiance; and he told him for his better Encouragement to go on; that if he would undertake, he should have 1000*l.* And this is the Sum of *Bolton's* Evidence, as to Sir *Thomas Gascoigne*. What then says *Mowbray*, the second Witness? He was so faithful a Servant, and so diligent, that he was employed by *Rushion* the Confessor to attend him at the Altar; and being in service immediately about him, and he being by that means so dear to him, waited upon him in his Chamber, and was privy to all the Consultations held there. And he gives you an Account how long this Plot hath been in Agitation, for they had been discoursing a good while of it; and resolved it should be done, if not by fair Means, by foul, and tells you plainly by killing the King: And that he heard Sir *Thomas Gascoigne* himself declare that it was a meritorious Act to kill the King; and that as before he had the Oath of Secrecy given him by *Rushion*, so he did declare (which *Mowbray* standing at the Door heard) that he would never swerve from the Oath, but he would assist to the utmost of his Power; and they that were with him said, they would stand by it with their Lives and Fortunes; and when my Lady *Tempest* understood he was there, and was jealous of him, she bid him go down, and entertain the Guests below Stairs. So here is an Evidence from two Witnesses as full as can be in any Case, that Sir *Tho. Gascoigne* was privy to the Conspiracy, and himself Partaker of it, to kill the King. All that hath been said against 'em, is to vilify their Reputation. As to *Mowbray* I hear but little, only there are two Witnesses that touch him; and indeed if these Witnesses were to be believed, they say a great deal; that is, they were in an Alehouse together, and heard them conspire to take away the Life of Sir *Thomas Gascoigne*. Indeed *Mowbray* said, for Sir *Thomas Gascoigne*, I know nothing but that he is a very honest Gentleman, but for my Lady *Tempest*, if I could hang her I would: That they should hear them contrive this together, and conspire how they should take away the Lives of this Gentleman, and the others. Indeed, if these Men say true, 'tis a great Matter to take off the Credit of their Testimony; but you heard, Gentlemen, how they did vary; for the one said, as I apprehended, at first he was in the Room, afterwards he was below Stairs. Ask the one, Could you hear them? Yes. Could you see them? No; said the other Yes. So that they were not well provided, as to that Matter, nor had they consulted that Point well, where they should agree to stand to overhear the Matter. Now if that be likely, they should in the Presence of two Persons whom they did not know, and one of them they never saw, but in the Court, declare and discourse of such a Matter as this for the taking away the Life of Sir *Thomas Gascoigne*, then we have nothing to say to them, we must leave the Credit of that to you; you will observe their Variety in the Story, and the Improbability of the Thing. But then for Mr. *Bolton*, the Evidence against him is, that he is a very dishonest Man, and that this is all out of Malice to Sir *Thomas Gascoigne*, because he would sue him upon his Bonds. You observe how he does behave himself under that Prosecution; all that he hath he is willing to part with for Payment of his Debt; he makes over his Estate for Satisfaction and Security, and does as much as an honest Man can do, all he had shall lie at stake: And as for Sir *Thomas Gascoigne* himself, he hath no such Opinion of him in point of Dishonesty, for he declared he lived in his Service without Exception, and said before the Council, he knew nothing of Dishonesty by him, but only this Information, and now he found him to be (what he always thought) a great Fool. Now whether he thought him a Fool for telling this Story, or what else, you may explain the Meaning of his Expression; but as for any thing of Dishonesty, there is nothing against Mr. *Bolton*. He was in Debt, 'tis true, but what he had lay at Stake for the Payment of it, and as far as it would go Sir *Thomas* might take it; but that for Malice he should come to swear against him, there is nothing clearly made out. One Witness says indeed, that he should say, Does Sir *Thomas Gascoigne* intend to sue me, then I will do what I did not intend to do. Whether that be a Speech of Malice or no, or rather does confirm the Truth of his Evidence, is left to your Consideration: It shews rather, there was something that he had in his Power to do before any Prosecution from Sir *Thomas Gascoigne*, or any occasion of his Malice against him; it hath not the necessary Import of a malicious Speech, that he did intend not to do such a Thing, and because he was sued did do it; that therefore is only Truth, and no Malice. For the other Matter that is said against him, that he should endeavour to suborn his Wife to swear falsely, that was by no means fully proved, but rather that Matter hath been sufficiently clear'd; that though she said she knew nothing, yet he would have her go, though she said nothing; and you hear what the Evidence hath been for Mr. *Bolton*, that he never did press her to swear falsely, nor threaten her if she would not, but only desired her to declare her Knowledge if she knew any Thing, the Truth, and nothing but the Truth. These are all the Objections made against the Credit of the Witnesses; and I think if their Credit do stand, you cannot have a clearer Evidence to convict any one than hath been given you to Day; but that we leave to you, and submit these Objections, whether they have any Weight in them, and whether they have not been fully answered.

Mr. Serj. *Maynard*. And our Evidence is given in all upon Oath, and theirs is not.

Mr. Just. *Jones*. Gentlemen, you of the Jury: The Prisoner at the Bar stands indicted for High-Treason, and for High-Treason of the highest Nature, for conspiring to take away the Life of the King, and for endeavouring to change the Religion, the Protestant Religion into Popery; that is, contriving to extirpate the Religion of Protestantism here, and introduce Popery instead of it; and certainly greater Crimes than these no Man can be accused of. There have been produced, on the Behalf of the King, two Witnesses, Mr. *Bolton* and Mr. *Mowbray*, both of them Servants to Sir *Thomas Gascoigne*, the Prisoner, and therefore might very possibly and probably enough be privy to all they have said and testified



ified in this Case. It does appear by them both, that Sir Thomas Gascoigne was a very early Man in the Plot (if they say true). We heard nothing of it till the Long Vacation (78); but it seems Sir Thomas Gascoigne was a Plotter and Conspirator in the Year 75 or 76. And that he might be able to do this somewhat more safely, he contrives how he might convey away his Estate to prevent the Forfeiture; and he makes an Assurance of it to Sir William Ingelby, colourably, as the Witnesses swear, for 1000 l. And it does appear likewise, as to the Introduction of the Popish Religion here, they began to settle a Nunnery, and it was fit to do so against England should be converted; first, in such a Place; but if it happened England were converted, then to be removed to another Place. There was at this Nunnery appointed an Abbess, an Assistant, and several Nuns; and Sir Tho. Gascoigne so well knew of this, that one of them that was appointed to be a Nun, at the time of her taking Horse, he said to her, *There goes an old Maid and a young Nun.* And there are Letters come from that very Nunnery, and from the Priest that was appointed to attend them as Confessor, which have been read to you. And there is another Preparation thought necessary to introduce this Plot; and that is, That all Papists might be seduced into an Opinion that it was a dangerous thing to take the Oath of Allegiance, and that it was a damnable Sin. For this Purpose Letters came from the Doctors at Sorbonne, and they determine it to be so; lest any Man of that Religion should be so good a Subject as to profess Obedience to the King in Temporals. Then the Plot goes on between Sir Miles Stapleton, Sir Francis Hungart, Sir Charles Vavasor, Sir Tho. Gascoigne, Mr. Gascoigne, Middleton, Rushton, my Lady Tempest, and a great Company more; all met together and consulting in Sir Tho. Gascoigne's House, in his great Room, his old Dining-Room, to this Purpose, not only to bring in their Religion, but kill the King expressly (so says the Witnesses). I think they had often talked of it before the Witnesses in the Priest's Chamber; for he being then a Papist was privy to his Master's Design, and the rest of the Confederates, for killing the King, which was the only thing they desired to effect, as the best way to bring in their Religion; and there was great Reason to do it, they said too, for the King had not kept his Word with them when he was in his Exile; for they said, he had promised, if he was restored to his Kingdoms, he would restore the Popish Religion; but now he was returned and had broke his Promise, and nothing more was to be done, the Pope having declared him an Heretick, but to destroy him; and this was that which was agreed among them. The 30th of May last, after divers other Consults had about it, the Priest Rushton being at Sir Tho. Gascoigne's House, Bolron is desired to go into the Gallery, and there presently comes in Rushton, Sir Thomas's Priest; Bolron acquaints him that he had been at the Sessions, and taken the Oath of Allegiance. As soon as ever he heard it, he cries out, He had committed a damnable Sin, he must of necessity renounce it, and repent of it, and he could give him a Pardon, for he had an extraordinary Power, more Authority than others, he could give him Absolution if he did repent of it, and that no Catholick must by any means take the Oath. A while after they had a Discourse concerning killing the King; and the Witnesses says indeed, he was not actually in the Room, for he says he stood at the Door, and heard all the Discourse, till at last the Lady Tempest, one of the Conspirators, taking notice of his being there, sent him down Stairs.

Mr. Just. Pemberton. That is Mowbray.

Mr. Mowbray. I was called into the Room, and then sent down.

Mr. Just. Jones. 'Tis true, Brother, that was Mowbray: But as to Bolron's Discourse with Rushton; when Sir Tho. Gascoigne, who was not in the House at the time Bolron was with Rushton, but had given a Charge he should not go before he spoke with him: When he did come home and spoke with him, he takes upon him to go on with the Discourse concerning the Plot, and he swears positively that he offered he would give him 1000 l. and this he swears he should have paid him in London. This is expressly the Testimony of Bolron. Now what says Mowbray? He tells you (tho' that is but Introduction to make his Evidence more probable) that there was great Resort of Priests to the Prisoner's House. He tells you of the Discourse and Consultation the Priests had in the House, and that it was expressly and precisely for killing the King. He tells you, that he did stand at the Door and heard it, as I observed before; and he tells you too, which hath not been observed, that at that time there was produced a List of four or five hundred Persons that had engaged in the Design of killing the King: he did see the List, he did see Sir Tho. Gascoigne's Hand, which he very well knew and was acquainted with, and which might very well be, being his Servant. So that here is not only a Discourse and Agreement by Paroll, that he should be in the Conspiracy; but if you believe him, he says, that here is actually the Hand of Sir Thomas to the Engagement to do the Villainy; and truly they that were of that Persuasion at that time, might easily be induced to it. For it was agreed amongst them, that they should have a plenary Indulgence of 10000 Years, and it was a meritorious Act; and tho' Sir Thomas perhaps was not so ready to contribute in all Things, yet hearing of the Meritoriousness of the Act, and withal that he should be canonized for a Saint for this Piece of Piety, he certainly might readily consent to it. Mr. Mowbray indeed was ask'd, Why he did not discover it sooner? He tells you why, He was in fear of the Papists; he was threatened; and very like he might be possessed with Fear, and so might a Man of greater Constancy till the Business was discovered; and therefore he did not talk of it in the Country, but came up here, where it was more safe to discover it, and hath been here ever since. Besides this Testimony of these Witnesses, Gentlemen, there are some Papers produc'd, some that mention Money that hath been convey'd by Sir Thomas Gascoigne, in Confirmation of the Testimony of Bolron the first Witness, who does swear that he heard Sir Thomas say he would send 3000 l. to the Jesuits to go on and prosecute this Plot; and afterwards he did hear him say, he had sent the 3000 l. that he had promised. Now it does appear by Sir Thomas's Almanack, that he had sent several Sums; his Receiver Phiswick did speak of 6000 l. and he himself did give a Touch towards it. Indeed Phiswick was a Receiver for Sir Thomas, and likewise for his Son, and for the Lady Tempest; but it is impossible, if they had sent all the Money that ever they had; and considering too that the Lady Tempest, as appears by the Witnesses, lived in the Country, that it could have amounted to near that Sum of Money; for

she had but 300 l. a-year, and the eldest Son had but 400 l. a-year; how then could 6000 l. be returned for them in four years time? 'Tis true, there is some Answer given as to that 3000 l. by that Witness Hobart, who says there was a Suit, and 100 l. a-year decreed to be paid to Mrs. Appleby, Sir Thomas's Niece, for so many Years; and he to take care of sending that to her: and tho' that was but 100 l. a-year; yet there was a Decree, or some Order, to pay the Arrears with the other Money, which made it up 3000 l.

The Evidence for the King against the Prisoner is but two Witnesses, but they as positive and express as possibly can be: What then is said by the Prisoner, or the Witnesses, in his Defence? There is one, that is Shippen, that gives some Testimony against the very Evidence, and the Possibility of it to be true in one part of it: For Bolron, he tells you, that the 30th of May was the time when there was that Consult held at Sir Tho. Gascoigne's in the Gallery with the Priest, that he staid there till Night, and that then Sir Thomas talked with him, and made this Proffer to him for the Murder and Destruction of the King. Here comes a Witness, Shippen, and tells you, that that very 30th of May, Bolron was at his House at 2 o'clock, and staid an Hour or two after Sun-Set. If that were true that he were there all that time, it is not then true that he speaks of about Sir Thomas Gascoigne; and it was impossible that he should be at the Consult at that time when he says he was there, and afterwards spoke to Sir Thomas Gascoigne. Now, Gentlemen, you have the King's Witnesses upon his Oath; he that testifies against him is barely upon his Word, and he is a Papist too, for that he was ask'd, and he did confess himself so. I do not say that a Papist is no Witness, a Papist is a Witness, and he is a Witness in a Papist Cause, and for a Papist; but I must tell you, there is less Credit to be given to a Papist in a Cause of this Nature, who can easily believe they may have Indulgences and Pardons enough for saving one from the Gallows who is to be canonized for a Saint if the Plot take effect. He hath only affirmed it who is a Papist, the other who is a Protestant swears what his Evidence is.

Mr. Babbington, who was the first Witness examined for the Prisoner, he tells you there had been some Debates and Differences about Rent and Money that was owing by Bolron to the Prisoner. He laboured and interceded often on his Behalf; but at length not being able to prevail that he should not be sued, the Witness swears, I will then do that which I did not intend to do. What he meant by it is doubtful, and it is an ambiguous Speech; but to interpret it that he would swear falsely to take away a Man's Life, and so commit both Murder and Perjury, is hard to infer and conclude from such doubtful Words. There are some Witnesses that tell you, that is, Moor and others, that Bolron did say and swear that Sir Tho. Gascoigne was never concerned in the Plot: That might very well be, especially if you take the Time when he did say this, he was a Papist a great while after Sir Thomas had engaged himself in the Plot; and while he was so, it is not unlike he would venture an Oath to save any of the same Persuasion and Religion he himself was of. But whatsoever he said, it was not judicially, he was not bound to discover to him he spoke to; he is now upon his Oath, and you have heard what an express Testimony he gives. As to what is said concerning his Wife, that he should endeavour to persuade her, contrary to her Knowledge, to give Testimony against Sir Tho. Gascoigne, and therefore he is not to be believed here upon his own Oath, who would have his Wife forswear herself to fortify him; there is no such Thing; and it does appear by the Evidence of those that are sworn, that he was earnest, and would have his Wife go and testify her Knowledge; but did not infuse or intimate any thing to her she should say, whether she did know it or no: And to assure you that, you have the Oath of the Woman herself, who hath been present here, and tells you the same thing. Dixon he comes and says, in August last, Mowbray said he knew nothing of the Prisoner, which may be answered by his Fear; but concerning the two Witnesses that Mr. Solicitor did take notice, he did tell you, and 'tis plain, how very improbable it was two Persons should speak in the Presence of Strangers, and tell them they were about to take away the Life of another Person, the one of the Lady Tempest, who had done him a Displeasure, the other of Sir Tho. Gascoigne; but Mowbray at that time said he knew nothing of Sir Tho. Gascoigne; but, Gentlemen, besides what was said before, this is improbable any such thing should be, and you hear the Witnesses, at least one of them, that he never knew one of the two.

Mr. Bolron. I knew neither of them.

Mr. Just. Jones. I should be very loth to omit any thing on the Witnesses side, or that hath been materially testified against them on the Prisoner's. I did not conceive the Evidence given by Mr. Pebles to come to any thing at all. There was a Discourse between Bolron and him at last Affizes; after some Talk Bolron tells him he had something to say to him, and what was it? Bolron was told that he had discharged some Persons that he ought not to do, (excused them for Money that did not take the Oath of Allegiance as they ought to have done) and it seems he did it here, and so far he went as to bring Witnesses before the Justices of Peace to prove it. And although they did not give Evidence against Mr. Pebles in that very Particular, yet certainly he thought they would have said something; but that does not argue at all, that because he did accuse Mr. Pebles (as he thought justly in that Particular), therefore that now he should falsely accuse Sir Thomas in a Matter that concerns his Life so highly. There are some other Things that were said by the Witnesses that would tend towards the proving of some Malice in the Witnesses towards Sir Tho. Gascoigne, and therefore they give in this Evidence; One thing indeed was spoken by Hickeringil; that is, it was generally reported in the Country, that Mowbray had taken away Money from Sir Thomas Gascoigne, and that Mowbray himself said, that as they had endeavoured to take away his Fame and Life, now he had found an Opportunity to requite them, so saith the Witness, but 'tis not very probable. I leave it with you upon the Credit of the Witnesses for the King, who have sworn it upon their Oaths, and the others that go upon their Words, and not their Oaths, whether they have taken away the Force and Strength of the King's Evidence, which is as full, express, and positive as can be by two Witnesses.

Gentlemen, here is on the one Side the Life of an ancient Gentleman before you; on the other side there is a Conspiracy against the Life



of the King, who is the Breath of our Nostrils, and whom God long preserve. I know you being upon your Oaths will take into your Considerations both, and give a Verdict according to the Evidence you have heard.

Mr. Just. Dolben. I will tell you, Gentlemen, I cannot forbear saying one thing to you. There is some Evidence that makes it a very improbable thing to be true what Mr. Bolton hath said; and yet Mr. Bolton having said it so positively, and *Mowbray* agreeing with it, Probabilities must give way to positive Proofs. I saw you did observe it when it was mentioned; and 'tis true, to me it seems improbable, that at the very same time that Sir *Tho. Gascoigne* should sue him upon his Bond, and take a Course to turn him out of his House, that he should then be privy to such a Conspiracy; 'tis improbable either that Sir *Thomas* should offer him such a Sum of Money to kill the King, or if he had, that he should afterwards take that Course at Law against him. Now for that I say this to you, You are to give a Verdict according to your Evidence. They have such Secret Contrivances amongst themselves, (and he was a Papist at that time) that where there are two Men that positively tell you a thing that lies within their own Knowledge, and swear it is true, it is scarce any Improbability that should weigh against such an Evidence.

Mr. Just. Pemberton. And, Gentlemen, consider withal as to that; for truly my Brother *Dolben* hath rightly minded you of that Improbability, for it was no more: But then you must consider all the Circumstances. 'Tis indeed at the first Blush improbable that a Man would communicate so great a Secret to another, if he did intend to sue him for Money he ow'd him; but then 'tis likewise as improbable that he would provoke him by a Suit, if his Life were in his Hand; but consider the delivering of the Lease of Ejectment, and those things were the 13th of June.

Mr. Babbington. But I had sued him before, my Lord.

Mr. Just. Dolben. The 2d of June, he says.

Mr. Babbington. I had Direction long before I did it.

Mr. Just. Pemberton. They threaten'd him the 2d, but they did not do it. But look you, Gentlemen, consider this; I do not doubt but Sir *Thomas Gascoigne* was sure that this Man durst not discover any Thing of this, for they had given him the Sacrament and an Oath of Secrecy, which they look upon as a Tie among themselves, as long as they continue in that Religion, not upon any Account whatsoever to be undone; and they have such confidence in it, that they will trust their Lives and every thing in a Man's Hand when they have given that Oath. Alas! how could these People have the Confidence to plot one with another, as they do, when they know their Lives are in the Hands of any one of all the rest, but upon this Account? Do but swear them unto Secrecy, and give them the Sacrament of the Mass upon it, and then they think such a one is Proof enough against any Thing in the World, for that is Damnation if they break it, as their Priests tell them; but I doubt not but Sir *Thomas* thought he had them as fast as can be upon that Lock. But as to Sir *Thomas's* Evidence of those two Men at *Leeds*, this is after the Accusation

of Sir *Thomas* that they spake of; and can any Man alive believe that they would go and plot to contrive the Death of these two Persons in the Face of two Strangers, after he was accused? 'Tis so strange an Evidence, that no Man alive can believe it to be Truth. Look you, Gentlemen, Persons that go to contrive such things as these are, go in secret; and hope they should never be discovered, but by one of themselves. Who would contrive when two be by? and, if they say true, might see them as well as hear them? though they did contradict one another in their Evidence; the one said he was above, the other said he was below; the one said he might see them, the other not. Look you, Gentlemen, I do see that they do lay some Stress upon this, that he was his Debtor, for that they seem to prove by their Witnesses; but you must lay no great Stress upon that at all, for the Money were not quit if Sir *Thomas* were found guilty; the Money is due to the King then; he saves nothing by it, his Money must be paid; let the Prisoner be found guilty or not guilty, 'tis all one to him. You must consider this Case, Gentlemen: If you believe these Men are perjured Men, and have gone and contriv'd a malicious Design against a Man's Life, then God forbid they should be believed any way: but it is a positive Evidence; and 'tis not an Evidence barely of itself, but introduced by a great many Circumstances that went before; they tell you the whole Affair, that it does seem they have been privy to the Affairs of these Jesuits all along, and Sir *Tho. Gascoigne's* House hath it seems abounded with them; he hath been very beneficial to that Sort of People, mighty charitable, as they call it, in Superstition; and you must consider, that nothing can seem strange to them that will be ridden by Priests; they put them upon all the Immoralities and Villainies that can be found out for the Cause of Religion, as they call it; nothing can seem strange that is testified against them. Therefore I must leave it to you, upon what you have heard, and upon their Credit, whether you believe the Witnesses or not.

Mr. Just. Jones. Ay, 'tis left upon their Credit that are your own Countrymen, better known to you than us.

Mr. Just. Dolben. Look you, Sir *Thomas Hodson*, and the Gentlemen of the Jury, if you will come in again in any time we will stay in Court, otherwise you must lie by it all Night, for we can take no privy Verdict in this Case.

Mr. Just. Pemberton. Ay, we will stay and hear Motions a little while.

Then the Jury withdrew from the Bar, and after half an Hour returned again, and being call'd over gave their Verdict thus:

Cl. of Cr. Sir *Thomas Gascoigne*, hold up thy Hand. Look upon the Prisoner: How say you? Is he Guilty of the High-Treason whereof he stands indicted, or Not Guilty?

Foreman. Not Guilty.

Cl. of Cr. Did he fly for it?

Foreman. Not that we know of.

Then the Verdict was recorded, and the Court rose.

## XCVI. *The Trial of ELIZABETH CELLIER, at the King's Bench for High-Treason, June the 11th, 1680. Trin. 32 Car. II.*

After the Jury were sworn, the Clerk of the Crown read the Indictment, viz.

THE Jurors of our Lord the King do present, that *Elizabeth Cellier*, Wife of *Peter Cellier*, late of the Parish of *St. Clement Danes* in the County of *Middlesex*, Gent. stands Indicted, for that she as a false Traitoress against our most Illustrious and Excellent Prince, King *Charles II.* her natural Lord, not having God before her Eyes, not weighing the Duty of her Allegiance, but by the Instigation of the Devil moved and seduced, and the cordial Love and true due natural Obedience which all faithful Subjects of our said Lord the King towards him should bear, and of right are bound to bear, utterly withdrawing, and devising, and with all her Might intending the Peace and common Tranquillity of this Kingdom to disturb, and to bring and put our said Lord the King to Death and final Destruction, and the true Worship of God in this Realm by the Law establish'd and used, to alter to the Superstition of the Church of *Rome*; to move and stir up War against the King in this Kingdom, and to subvert the Government of this Realm; the first Day of *November*, in the thirty-first Year of the said King's Reign, at the Parish of *St. Clement Danes* aforesaid, with divers other false Traitors unknown, traiterously did compass, imagine, and intend the Killing, Death and final Destruction of our said Lord the King, and to change, alter, and utterly to subvert the ancient Government of this Realm, and to depose, and wholly to deprive him the said King of his Crown and Government of this Kingdom, and to extirpate the true Religion within this Realm establish'd; and to fulfil and accomplish the same most wicked Treasons and traitorous Imaginations and Purposes, the same *Elizabeth Cellier*, and other false Traitors unknown, the said first Day of *November*, in the thirty first-Year aforesaid, with Force and Arms, &c. at the Parish of *St. Clement Danes* aforesaid, advisedly, devilishly, maliciously, and traiterously assembled, united, and gathered themselves together, and then and there devilishly, advisedly, maliciously, cunningly, and traiterously consulted and agreed to bring the said Lord the King to Death and final Destruction, and to depose and deprive him of his Crown and Government, and so introduce and establish the *Romish* Religion in this Kingdom; and the sooner to fulfil and effect the same most wicked Treasons and traitorous Imaginations and Purposes, the said *Elizabeth Cellier*, and other unknown Traitors, then and there did contribute, pay and expend divers great Sums of Money to several unknown Persons, to procure them traiterously to kill the said King, and introduce the *Romish* Religion in this Realm; and for the better concealing of the Treasons aforesaid, the said *Elizabeth Cellier* then and there did pay

and expend to divers other Persons unknown, divers other Sums of Money, falsely to impose the said Treasons upon some other Persons unknown, against the Duty of her Allegiance, and against the Peace of our Lord the King, his Crown and Dignity, and against the Form of the Statute in such Case made and provided, &c.

*John Gadbury* Sworn.

L. C. J. Mr. *Gadbury*, What do you know concerning Sir *William Scroggs* this Plot?

Mr. *Gadbury*. I know nothing of it, neither one way nor another.

L. C. J. Do you know of any Contrivance of Mrs. *Cellier's* to kill the King?

Mr. *Gadbury*. No, rather the contrary.

L. C. J. Do you know of any Attempts to change the Government?

Mr. *Gadbury*. I will tell your Lordship what I do know, if these Gentlemen will not be too nimble for me. I have suffer'd a great deal of Prejudice of late in relation to a Plot, as if I had known of a Plot; but God is my Witness, I know of none, unless it were a Plot to bring Sir *Robert Peyton* over to the King's Interest. That Plot I had some concern in, and had some Knowledge of Mrs. *Cellier's* Concern in it; but she was so far from doing any Thing against the King's Interest, that she was willing to bring over with him the three Gentlemen turn'd out of Commission when Sir *Robert* was. So that how she could be acting for the King and against the King at the same Time, I do not understand.

L. C. J. Mr. *Gadbury*, you are a Man of Learning, pray will you give your Testimony of the Things that you know in relation to Mrs. *Cellier*.

Mr. *Gadbury*. Mrs. *Cellier* was not committed upon my Accusation; therefore, I hoped she might have been tried without my Testimony. But when I was in danger of my Life, when I lay in the *Gate-House*, Mrs. *Cellier* was reported to be a third Witness against me, and then I raked up every Trifle; but if I had thought it Treason, I would have discovered it before. And as to that particular Business concerning Mr. *Smith*, that *Smith* some time since did come to me, being my old Acquaintance, to ask my Advice in his Affairs; and he had then an Affair of so great Moment, that it was necessary to ask my Advice in it, which was to go to the Lords in the *Tower*. I asked him, what to do? Saith he, I can say enough against Dr. *Oates* to serve them, and take off his Evidence, and asked me if he should do it. By no means, Mr. *Smith*, said I. Mrs. *Cellier*



Cellier afterwards told me this Smith and one Phillips were willing to tell some Stories or other of Mr. Oates and Mr. Bedloe, and I told her this very Story; saith she, You being acquainted with him, it is possible you may do some good upon him; and saith she, I had as lieve as ten Guineas that you could do it.

L. C. J. That is, when that you advised Mr. Smith not to meddle with any thing against Dr. Oates.

Mr. Gadbury. She said, she did not care if she had been at the Charge of ten Guineas, if he would be honest and discover the Truth. And, my Lord, she did say she had heard Mr. Dangerfield talk of a Nonconformists Plot that would off the Popish Plot.

L. C. J. Did she say that she had heard Dangerfield say there was a Nonconformists Plot, and that he was to have a Commission among them? And did she say, that she had heard him say, that he hoped under the Colour of that the Popish Plot would go on? Or did she say it of her own accord, that she hoped that would carry on the Popish Plot?

Mr. Gadbury. My Lord, I cannot remember Particulars.

L. C. J. There is a great deal of difference between Dangerfield's saying it, and her saying it.

Mr. Gadbury. I have no reason to spare her: But I am unwilling to speak any thing that is contrary to Truth, though she hath done me the greatest Injury in the World.

L. C. J. How came you to talk of a Nonconformists Plot?

Mr. Gadbury. It was only common Discourse, as it was at Coffee-Houses.

Mr. Just. Raymond. Had you heard of it before she spake of it, that you say it was common?

Mr. Gadbury. No, not till she spake of it.

L. C. J. Did Mrs. Cellier tell you of any Popish Priests or Jesuits coming hither from beyond the Seas?

Mr. Gadbury. Upon the going over of one Clay, I think she did say she heard there were some more coming over.

L. C. J. What to do?

Mr. Gadbury. God knows what.

L. C. J. Did she speak of any Plot or Contrivance to kill the King?

Mr. Gadbury. No, she was always an Enemy to Plots, or else I would not have kept her company.

L. C. J. Did she say there were, or that she heard there were several Priests and Jesuits coming over?

Mr. Gadbury. My Lord, I think she said she heard it. And I have said several times to her, the Popish Plotters would be destroyed: But she answered, she was afraid the Nation would be destroyed first.

L. C. J. Did she say she was afraid of it, or that the Nation would be destroyed first? I ask you once more, we must try People according to their Oaths. By the Oath you have taken, when you said you thought the Popish Plotters would be destroyed, what Answer did she make?

Mr. Gadbury. She said she was afraid the Nation would be so; because she said, abundance of the best of the Nation went into other Nations, to weaken our Nation, and spend their Money, and therefore she was afraid the Nation would be destroyed before them.

L. C. J. What Discourse had you with Mrs. Cellier passing through Westminster-Abbey?

Mr. Gadbury. My Lord, my Memory hath been exceedingly bruised; but I remember, my Lord, as I was going through the Abbey in a rainy Afternoon, she said, this Abbey was formerly filled with Benedictine Monks, or something to that purpose; and, saith she, what if it should be so again?

L. C. J. Are you a Protestant or a Papist?

Mr. Gadbury. A Protestant, my Lord.

L. C. J. He talks as like a Papist as can be, was it, what if it should be filled?

Mr. Gadbury. She said, what if it should be again?

L. C. J. What did you say to that?

Mr. Gadbury. I only smiled to hear a Woman's Discourse, my Lord.

L. C. J. You make all the Company laugh: What did she say of the Temple?

Mr. Gadbury. That the Temple had been filled with Friars too.

L. C. J. And what then? Did she talk of filling it again?

Mr. Gadbury. Saith she, this Place was filled with Benedictine Monks, and the Temple with Friars.

L. C. J. This may do well enough: But what did she say else concerning the Temple?

Mr. Gadbury. Nothing, my Lord.

Mr. Serjeant Maynard said something to him here, which was not heard, but Mr. Gadbury replied,

Mr. Gadbury. Mr. Serjeant, I was none of the Tribe of Forty-one. Here Mr. Gadbury was going to read in his Paper; but the Court told him that would not be allowed; but he might refresh his Memory with it.

L. C. J. Now tell me what she said: Mr. Gadbury, keep it in your Hand.

Mr. Gadbury. My Lord, she put it by way of Interrogation to feel my Pulse.

L. C. J. What did she else?

Mr. Gadbury. There was nothing but transient Discourse, my Lord.

L. C. J. We must ask you what the Truth is, and you have looked upon your Paper. Now consider what you say, and consider that you are upon a solemn Occasion, and are to testify it in the Presence of God Almighty. I would have you tell plainly what it is, and neither to make it more, nor stifle it.

Mr. Gadbury. It was only transient Discourse.

L. C. J. Say what it was. Was it, This Place was once filled with Benedictine Monks?

Mr. Gadbury. She said that the Abbey had been filled with Benedictine Monks, as the Temple had with Friars.

Mr. Just. Jones. Look upon your Paper.

L. C. J. You have looked upon the Paper, and pray tell us what she said. Did she say she hoped to see this Place filled with Benedictines?

Mr. Gadbury. My Lord, I do not remember that Word Hope.

L. C. J. How long have you been acquainted with Mrs. Cellier?

Mr. Gadbury. Ten or a dozen Years.

L. C. J. Did she never ask you any Questions about the Life of the King?

Vol. III.

Mr. Gadbury. My Lord, when the King was very ill at Windsor, and all People were fearful that he would die, she did move the Question to me.

L. C. J. What Question?

Mr. Gadbury. To know, whether I thought his Majesty would live or die? But it was her fear that he would die.

L. C. J. Had you seen the King?

Mr. Gadbury. No, my Lord.

L. C. J. How then did she expect you should give her an Answer? From your Art?

Mr. Gadbury. From my Art, my Lord!

L. C. J. Did she desire you to consult your Art, how long the King would live?

Mr. Gadbury. She did as I said.

L. C. J. What did you say to that?

Mr. Gadbury. I would not tell her, because he was my Sovereign.

L. C. J. What answer did you make?

Mr. Gadbury. I told her I would not meddle with it.

L. C. J. She would have had you consult your Art or Scheme, or whatever it is, to know whether the King would live or die?

Mr. Gadbury. It was something of that.

L. C. J. And you said you would not meddle nor make with it?

Mr. Gadbury. Yes, my Lord.

L. C. J. She desired you to make a Scheme?

Mr. Gadbury. No, my Lord, I can't say she mentioned a Scheme, but she asked the Question.

Mr. Just. Raymond. What did she ask else?

Mr. Gadbury. Only that Question.

L. C. J. How often do you believe she spake of it?

Mr. Gadbury. Never, my Lord, but when he was ill. I will not baffle any thing that may conduce to the Safety of the King and Kingdom.

L. C. J. Indeed it is very conducive to the Safety of the King and Kingdom, if any go about to destroy him, and with evil Intentions to ask how long he will live, and you ought in Duty to God and your Sovereign to declare it. Did she ever make any Enquiries about the King's Death more than what you have said?

Mr. Gadbury. No more, my Lord; and then she was fearful he would die.

L. C. J. Did she say she would go to somebody else?

Mr. Gadbury. My Lord, when she perceived me shy, she said, I see you are afraid of me, I will go to some other Astrologer.

L. C. J. For what?

Mr. Gadbury. To satisfy her Curiosity, as a great many do.

L. C. J. What Curiosities did she ask besides this?

Mr. Gadbury. She would ask me sometimes about the Condition of Bodies, Whether they would be prosperous in the World, and several other Questions.

L. C. J. Were you nice in these Curiosities?

Mr. Gadbury. Truly, my Lord, I was shy of meddling with any thing, when I heard there was a Talk about Plots.

L. C. J. Was you nice to give her Satisfaction according to her Hopes concerning these Things you call Curiosities, questioning whether one should be well wed, how many Children she should have, &c. were you scrupulous in that?

Mr. Gadbury. I think I might not be nice in that very particular.

L. C. J. How came it, then, that she would go to another Astrologer?

Mr. Gadbury. She asked me something about Mr. Dangerfield.

L. C. J. For what?

Mr. Gadbury. How to get him out of Prison.

L. C. J. Pray how came she to say she would go to another Astrologer? You were not shy to give her an Answer to these Questions?

Mr. Gadbury. It was something about Mr. Dangerfield, my Lord, she asked me something about some Deeds or Papers which he was to search for, or seize, which concerned Mr. Bedloe.

L. C. J. She had better have gone to one of the Clerks than to a Conjuror for them. But why would she go to another Astrologer?

Mr. Gadbury. Because I was shy.

L. C. J. You were not shy in these Things about Bedloe. Did she not say, when you refused to meddle with the Death of the King, that she would go to another Astrologer?

Mr. Gadbury. Yes, my Lord.

L. C. J. Did you any thing for her at that time?

Mr. Gadbury. My Lord, I did calculate a Scheme, which since I found to be for Mr. Dangerfield, but I knew not for whom it was when I did it.

L. C. J. How! Can you apply one Scheme to any body?

Mr. Gadbury. My Lord, when Mrs. Cellier came to me, she gave me the time of a Person's Nativity, and I set the Figure of the Heavens to that Sign, to know whether he were a Person fit to be trusted, her Husband being a French Merchant, to get in Money.

L. C. J. For aught you know, Dangerfield was a Woman, and the Question was, Whether Dangerfield was with Child, and he happens to be a Man—How did it fall out?

Mr. Gadbury. I have forgotten, my Lord.

L. C. J. When did you know it was for Dangerfield?

Mr. Gadbury. My Lord, never before I came before the King and Council; neither did I know his Name before, for he went by the Name of Willoughby before.

L. C. J. What other Discourse had you with her? Did she not at any time talk of Mr. Dugdale?

Mr. Gadbury. She did say she had heard of some People that were to discourse with Mr. Dugdale; she had heard such a thing, but I don't know whether she knew any thing of it or no.

L. C. J. What Discourse had you about that?

Mr. Gadbury. She told me there was a Woman to go down to Windsor to beg Mr. Dugdale's Pardon, for he was penitent for what he had said in some Trial or other.

L. C. J. Call another Witness.

Mr. Att. Gen.\* Mr. Dangerfield, pray give the Court Sir Creswel an Account of what you know of Mrs. Cellier, the Prisoner at the Bar.

Mrs. Cellier. My Lord, I except against that Witness.

L. C. J. Why so? You must shew some Reason, and then we will do you Justice in God's Name.

F

Mrs. Cellier.



Mrs. Cellier. If I can prove he was whipp'd and transported, pilloried, perjured, &c. he is no Witness. The last time I was upon my Trial, he threatened some of my Witnesses, that if they would not swear as he would have them, he would kill them.

L. C. J. If you can shew any Record whereby he is convicted of any thing that can by Law take away his Testimony, do it.

Mrs. Cellier. He has been indicted for Burglary.

L. C. J. (to Mr. Dangerfield) Was you indicted for Burglary?

Mr. Dangerfield. I will take it at their Proof.

Ralph Briscoe, a Witness for the Defendant, Sworn.

L. C. J. Do you know Dangerfield?

Briscoe. I remember one Thomas Dangerfield; I saw him burnt in the Hand at the Old-Bailey.

L. C. J. Is this the same Man?

Briscoe. I do believe it is the same Man; but I have not seen him these several Years.

L. C. J. Let every body have their Right, in God's Name. Have you any more?

Mrs. Cellier. My Lord, I can prove him perjured.

L. C. J. Have you any Records to shew he was perjured? Is he convicted?

Mrs. Cellier. No.

L. C. J. Then you can't do it.

Mrs. Cellier. My Lord, I can prove him guilty of Forgery.

L. C. J. If you don't produce the Record, you do nothing.

Mr. Recorder. That which she calls Forgery, is not that which the Law calls Forgery; it is counterfeiting Guineas.

L. C. J. Can you shew he forged any Deeds? If you can prove that he hath committed Forgery, and be not convicted, it is no Error.

L. C. J. Have you your Pardon? She hath proved the Conviction of Felony, prove your Pardon.

Mrs. Cellier. I have the Copies of several Records here in Court, which will be sworn to.

To which Mr. Dangerfield pleaded his Majesty's most gracious Pardon. To which Mrs. Cellier replied, That she had a Copy of the said Pardon in Court, but it did not extend to some of the Crimes for which he stood convicted; and then produced a Record, wherein it did appear he was outlawed upon a Felony. Upon which the Court commanded Mr. Dangerfield to go and fetch his Pardon; in the interim examining several of the King's Witnesses.

Thomas Williamson Sworn.

L. C. J. Did you ever see Dangerfield and Mrs. Cellier in Company?

Williamson. No, my Lord, but I have been employ'd for Mrs. Cellier in several Businesses of Charity to get Prisoners out. When Mr. Dangerfield was in Newgate, she employed me to get him out.

L. C. J. Why was she so kind to Dangerfield?

Williamson. My Lord, I don't know that; but she bid me get him out, whosoever staid behind.

Mr. Just. Raymond. Why should she get him out? Did she tell you what she would do with him when she had him out?

Williamson. No, my Lord.

Mr. Recorder. We bring him for a Witness, that she had a great Kindness for Dangerfield.

Margaret Jenkins Sworn.

L. C. J. What Discourse have you heard between Dangerfield and Cellier?

Jenkins. I never saw them together but twice. It is a Year since I came from them.

L. C. J. When you saw them at Dinner or Supper together, what other Company was there?

Jenkins. Her Husband was with her one time.

L. C. J. What did they talk about?

Jenkins. They were talking about the Prisoners that were condemned.

L. C. J. Where was it, at her House?

Jenkins. No, at my Lady Powis's House.

L. C. J. How came you there?

Jenkins. I carried Notes backwards and forwards.

L. C. J. Did you never hear no Discourse about the Plot?

Jenkins. No.

Susan Edwards Sworn.

Mr. Recorder. What Intimacy have you known between Dangerfield and Mrs. Cellier?

L. C. J. Did you ever see them together?

Edwards. Yes, very often, my Lord. She said, That the Popish Plot would turn to a Presbyterian Plot.

L. C. J. Who did she say that to? To Dangerfield?

Edwards. No, my Lord; but I have heard him say those Words, and that he would make it his Interest it should be so.

L. C. J. What did you say to him, when he said he must turn Rogue, and discover all their Plots?

Edwards. I said, he would be no greater Rogue than he was before.

L. C. J. You were pretty nimble with him.

Edwards. He thought he should be hanged.

L. C. J. For what?

Edwards. If he did not turn Rogue he thought he should be hanged.

(Edwards to Mrs. Cellier.) You were very often together in your Chamber.

Mrs. Cellier. Who gave you your Clothes?

Edwards. Her Husband was gone to Church one Morning, and he was with her in her Chamber.

L. C. J. I can't see why you should prove this Matter too far.

Mr. Recorder. Susan is a civil young Woman.

Edwards. She said she would do my Business for me, and I go in danger of my Life.

Bennet Dowdal Sworn.

L. C. J. What do you know of any Intimacy between Dangerfield and Mrs. Cellier?

Dowdal. I have seen them together.

L. C. J. What did they talk about?

Dowdal. Mrs. Cellier proposed a Match between Mrs. Mary Agrey and I, and they used to talk of that when I was with them.

L. C. J. Did they talk of the Plot at any time?

Dowdal. No.

L. C. J. Did you ever hear them talk of the King?

Dowdal. No.

L. C. J. Have you any more?

Mr. Recorder. Not till Mr. Dangerfield comes.

L. C. J. (to Mrs. Cellier) Have you any Record to shew he was put in the Pillory?

Mrs. Cellier. Yes, my Lord.

Upon which the Copy of a Record from Salisbury was read, of his standing on the Pillory for uttering counterfeit Guineas: As also a Copy of a Record of an Outlawry for Felony.

L. C. J. What say you to this Outlawry?

Mr. Recorder. It is not the same Person.

L. C. J. We ought to be very careful in these Concerns, else we may do a Work this Day may make all the Kingdom rue it. It is a sad thing that People of a vicious profligate Life, both before they came to Newgate, and all along in their Life-time, should be suffered to be Witnesses to take away the Life of a Woman. I question whether he will come again, or no, he hath been gone a great while. Such are fit to be employed to find out, but hard to be believed when they find out.

L. C. J. Captain Richardson, is this the Man that broke Chelmsford Goal?

Capt. Richardson. My Lord, I can say nothing to that, but he was brought by an Habeas Corpus from thence to me.

L. C. J. Was he burnt in the Hand for Felony?

Capt. Richardson. Yes, my Lord, I believe he was.

L. C. J. He made me believe as tho' he would fly, I believe he is. We will not hood-wink our selves against such a Fellow as this, that is guilty of so notorious Crimes. A Man of Modesty, after he hath been in the Pillory, would not look a Man in the Face. It appears that after he hath been burnt in the Hand, he hath been Outlaw'd for Felony, and so it doth appear by Record.

After about half an Hour's Stay, Mr. Dangerfield returned and brought his Pardon; which was read, and the Word Felony omitted; and instead of Utlagaria qualiacunque pro Feloniis quibuscunque, there was only inserted; Omnia Maleficia & Utlagaria qualiacunque; which Omission had made the Pardon defective, it being my Lord Chief Justice his Opinion, that the Word Utlagaria did only reach to Outlawries between Party and Party; by which his Evidence was wholly laid aside.

L. C. J. (to Mr. Dangerfield) Such Fellows as you are, Sirrah, shall know we are not afraid of you.

He produces us here a Pardon by the Name of Thomas Dangerfield of Waltham, and says, his Father and Kinsman are both of that Name and Place. Will you have him sworn, whether his Father or Cousin Thomas were ever convicted of Felony? It is notorious enough what a Fellow this is, he was in Chelmsford Goal. I will shake all such Fellows before I have done with them. Have you any more to say? Are there any Waltham Men here?

Mr. Dangerfield. My Lord, this is enough to discourage a Man from ever entering into an honest Principle.

L. C. J. What? Do you with all Mischief that Hell hath in you, think to brave it in a Court of Justice? I wonder at your Impudence, that you dare look a Court of Justice in the Face, after having been made appear so notorious a Villain.

Mr. Just. Jones. Indeed, if he be the same Man, he is not fit for a Witness.

L. C. J. And that he is the same Man is very notorious. Come, Mrs. Cellier, what have you more to say?

Mrs. Cellier. Enough, my Lord.

L. C. J. You have said enough already. Come, Gentlemen of the Jury, this is a plain Case; here is but one Witness in a Case of Treason, and that not direct; therefore lay your Heads together.

Which being done, they returned her Not Guilty: Upon which the Clerk of the Crown bid her down on her Knees; which she did, and cried, God bless the King and the Duke of York.

L. C. J. Where is Dangerfield? Is he gone? Call him.

Who being come, the Court asked if he had Bail for his good Behaviour?

Mr. Dangerfield. No, my Lord, but with the leave of the Court I will fetch some.

L. C. J. Let a Tipstaff go with him, and return before the Court rises.

Mr. Dangerfield. My Lord, that cannot be, for I can't return so soon.

L. C. J. Then let him be committed.

Which was accordingly done.

## XCVII. The Trial of ROGER PALMER, Esq; Earl of CASTLEMAINE, in the Kingdom of Ireland, at the King's-Bench, for High-Treason, June 23. 1680. Trin. 32 Car. II.

Roger Palmer, Esq. having been arraign'd of High-Treason, and pleaded Not Guilty, was this Day brought to his Trial.

Cl. of Cr. CRYER, make Proclamation.

Proclamation for Silence.

Crier. O yes! Our Sovereign Lord the King doth strictly charge and command all manner of Persons to keep Silence, upon pain of Imprisonment.

O Yes! If any one can inform our Sovereign Lord the King, the King's Serjeant at Law, the King's Attorney General, or this Inquest now to be taken of the High-Treason whereof Roger Palmer, Esq; Earl of Castlemaine in the Kingdom of Ireland, stands indicted, let them come forth and they shall be heard; for the Prisoner stands at the Bar upon his Deliverance.

Cl. of Cr.



Cl. of Cr. *Cryer*, make an O. Yes.

*Cryer*. O Yes! You good Men that are impaneled to enquire between our Sovereign Lord the King, and *Roger Palmer*, Esq; Earl of *Castlemaine*, within the Kingdom of *Ireland*; answer to your Names.

Cl. of Cr. *Roger Palmer*, Esq; Earl of *Castlemaine*, in the Kingdom of *Ireland*, Hold up thy Hand: These good Men that were lately called, and now here appear, are to pass between our Sovereign Lord the King and you upon your Life or Death; if you challenge any of them, you are to speak as they come to the Book to be sworn, and before they are sworn.

Sir *John Cutler*, Kt. Bar.  
Sir *Reginald Foster* Bar.  
*Henry Herriot* Esq;  
*Richard Cheney* Esq;  
*Thomas Johnson* Esq;  
*John Roberts* Esq;

Jur' *Fr. Dorrington* Esq;  
*Hugh Squire* Esq;  
*Charles Good* Esq;  
*John Pulford* Esq;  
*Edw. Claxton* Esq;  
*Fr. Mayhew* Gent.

*Cryer*. O Yes! Our Sovereign Lord the King doth strictly charge and command all manner of Persons to keep Silence; upon Pain of Imprisonment.

Cl. of Cr. *Roger Palmer*, Esq; Earl of *Castlemaine*, in the Kingdom of *Ireland*, hold up your Hand.

You Gentlemen of the Jury that are now sworn, look upon the Prisoner, and hearken to his Charge.

You shall understand, that he stands indicted by the Name of *Roger Palmer*, Esq; Earl of *Castlemaine*, in the Kingdom of *Ireland*; for that he as a false Traitor against our most Illustrious and Excellent Prince and Lord *Charles the Second*, by the Grace of God of *England*, *Scotland*, *France*, and *Ireland* King, Defender of the Faith, &c. and his Natural Lord; not having the Fear of God before his Eyes, nor weighing the Duty of his Allegiance, but being moved and seduced by the Instigation of the Devil, his Cordial Love, true, due and natural Obedience, which true and faithful Subjects of our said Sovereign Lord the King ought to bear towards him, altogether withdrawing; and contriving, and with all his Might intending to disturb the Peace and common Tranquillity of this Kingdom, and to bring and put our Sovereign Lord the King to Death and final Destruction, and alter the true Worship of God within this Kingdom established, to the Superstition of the *Romish* Church; and to stir up and move War against our said Sovereign Lord the King within this Realm of *England*, and to subvert the Government thereof; the twentieth Day of *June*, in the thirtieth Year of the Reign of our said Sovereign Lord *Charles the Second*, of *England*, *Scotland*, *France* and *Ireland* King, Defender of the Faith, &c. at the Parish of *St. Giles in the Fields*, in the County of *Middlesex*, with divers other false Traitors to the Jurors unknown, did traiterously imagine and intend the Killing, Death and final Destruction of our said Lord the King, and to change and alter, and utterly subvert the ancient Government of this Kingdom, and to despoil and wholly to deprive our said Lord the King of his Crown and Government of this Realm of *England*, and to extirpate the true Protestant Religion: And to accomplish and fulfil the same most wicked Treasons and traiterous Imaginations and Purposes aforesaid, the said *Roger Palmer*, Esq; Earl of *Castlemaine*, in the Kingdom of *Ireland*, and other false Traitors to the Jurors unknown, the same twentieth Day of *June*, in the thirtieth Year aforesaid, with Force and Arms, in the Parish of *St. Giles in the Fields* aforesaid, in the County aforesaid, advisedly, devilishly, maliciously and traiterously did assemble, unite, and gather themselves together, and then and there advisedly, devilishly, maliciously, subtilly, and traiterously did consult and agree to bring our said Sovereign Lord the King to Death and final Destruction, and to deprive him of his Crown and Government of *England*, and to introduce and establish the Religion of the Church of *Rome*, in this Kingdom; and the sooner to fulfil and accomplish the same most wicked Treasons and traiterous Imaginations and Purposes aforesaid, he then and there did falsely, maliciously and traiterously promise divers great Rewards, and did pay divers Sums of Money to several Persons unknown; and then and there falsely and traiterously did write divers Notes, to incite several other Persons to accomplish the Treasons aforesaid, against the Life of our Sovereign Lord the King, his Crown and Dignity, and contrary to the Form of the Statute in such Case made and provided.

Cl. of Cr. Upon this Indictment he hath been arraigned, and hath pleaded thereunto *Not Guilty*; and for his Trial he puts himself upon God and his Country, which Country you are.

Your Charge is to enquire, Whether he be Guilty of the High-Treason whereof he stands indicted, or *Not Guilty*? If you find him Guilty, you are to enquire what Goods and Chattels, Lands and Tenements he had at the Time when the High-Treason was committed, or at any time since? If you find him *Not Guilty*, you are to say so, and no more; and hear your Evidence.

*Cryer*. O yes! If any one will give Evidence on the Behalf of our Sovereign Lord the King, against *Roger Palmer*, Esq; Earl of *Castlemaine*, in the Kingdom of *Ireland*, let him come forth and he shall be heard; for the Prisoner now stands at the Bar upon his Deliverance.

Mr. *Bonithon*. May it please you, my Lord, and you Gentlemen of the Jury, the Prisoner at the Bar stands indicted for High-Treason; for that he intending to disturb the Peace within this Kingdom established, and to destroy and alter the Government, and to bring the King to Death and final Destruction, and to alter our Religion to the Superstition of the Church of *Rome*, did, on the 20th Day of *June*, in the 30th Year of the Reign of our Sovereign Lord the King, consult and treat with several other Persons, and that he with these Persons did agree to destroy the King, and alter the Religion, and cause Rebellion; and further to accomplish these Treasons, he did promise and agree to pay several Acccompts, and deposit several Sums of Money, and did likewise write and publish several Books.

To this he hath pleaded *Not Guilty*; if we prove these Things, you are to find him Guilty.

Mr. *Att. Gen.* \* May it please your Lordship, my Lord

\* Sir *Creswell Castlemaine* here stands indicted for High-Treason; that is, For designing to murder the King, and alter the Government and Law. And this is but a Parcel of the Plot, which hath been carrying on a great while, and many Persons tried for it, and some have suffered and been executed for it: And, my Lord, we will give your Lordship Evidence, That my Lord *Castlemaine* hath at several times conspired the Death of the King, and he hath reproved Persons for not doing it. And, my

Lord, he hath been in Consults among Jesuits, where these Matters have been carried on, and this whole Design hath been negotiated; and my Lord *Castlemaine* hath been consenting and agreeing to all these Matters. And, my Lord, when the Trials were in Hand, it did appear upon those Trials there were many Persons brought from *St. Omers* to be Witnesses against Dr. *Oates*, to prove he was not in *England* at that time when he said in his Depositions that he did consult with the Jesuits; and these Persons my Lord *Castlemaine* had the Management and Instruction of at that time: And all along at the *Old Bailey* my Lord *Castlemaine* was present there, and did countenance these Persons, and was an Intercessor for them. These are but Branches and Circumstances; what is material we will prove by Witnesses.

Mr. *Att. Gen.* Come, Dr. *Oates*, pray tell what you know.

Prisoner. My Lord, I have a long time wished for this Day; and your Lordship may very well remember it. The Reason why I have so much desired a Trial is, because I thought it a means, and the best means, and the only means to shew to the World my Innocency, and also to shew to the World how much I have been calumniated by this Charge.

L. C. J. \* What have you to say? Have you any thing to say against Dr. *Oates*?

Prisoner. No, my Lord: I only say this, Here I am a Prisoner at the Bar, and I have pleaded *Not Guilty*, and throw myself upon this Court; and therefore I am very willing to hear what this Man will say:

Dr. *Oates*. My Lord; I humbly move the Court, Whether or no I may use my own method?

L. C. J. Give your Charge, we direct nothing.

Dr. *Oates*. My Lord, in the Year 1677, I was sent over into *Spain* by the Jesuits that were here in *England*; where I remained for several Months; and transacted Business for them, and, my Lord, I returned from *Spain* in *November*, and brought several Letters from some *English* Fathers there; among which there was one directed for my Lord *Castlemaine*. My Lord, I did not deliver the Letter to him; but, my Lord, the Contents of the Letter was to this Effect—

L. C. J. How came you to see the Contents?

Dr. *Oates*. My Lord, I was at the writing of the Letter, and so I did see the Contents of it.

L. C. J. Did the Priests shew it you, or did you only see it yourself?

Dr. *Oates*. No, my Lord; it was shewn me by them: And the Contents of this Letter were, That the Fathers in *Spain* were very zealous to concur with the Fathers here in *England* in the Design; which was the Subversion of the Government, altering the Religion, and the Destruction of the King.

L. C. J. Was that in the Letter?

Dr. *Oates*. No, my Lord, not in Words at Length.

L. C. J. What was, as far as you know, the very Expression of the Letter?

Dr. *Oates*. The Word *Design*, my Lord.

L. C. J. Only that, to promote the Design?

Dr. *Oates*. Yes, my Lord; and under that Word we did comprehend all those things; that is, as we usually took it among one another.

L. C. J. Did you deliver this Letter to my Lord *Castlemaine*?

Dr. *Oates*. No, my Lord, I did not deliver this Letter; but when I went to *St. Omers*, we received an Account from my Lord *Castlemaine* of his Receipt of this Letter.

L. C. J. What did you do with it?

Dr. *Oates*. I left it with the Provincial, my Lord, who was then Mr. *Strange*.

L. C. J. Was it not given to you to give it to him?

Dr. *Oates*. It was given me to give the Lord *Castlemaine*; but being then a Stranger to him, I was willing to send one of his own Messengers with it.

L. C. J. Where was my Lord?

Dr. *Oates*. I can't tell, my Lord; I did not see him then; I went over to *St. Omers* in *December* 77, or the latter End of *November*.

L. C. J. Where were you when you gave this Letter to the Provincial?

Dr. *Oates*. I was in *London*, my Lord.

L. C. J. Where did you receive this Letter?

Dr. *Oates*. In *Spain*, my Lord, at *Valladolid*, of one *Armstrong*.

L. C. J. Who was it directed to?

Dr. *Oates*. To my Lord *Castlemaine*; but I did not then know him, and so I gave it the Provincial, my Lord: I went over to *St. Omers* in the latter End of *November*, or the Beginning of *December* 77, and after I had been there some few Days, there did arrive a Pacquet from *London* to *St. Omers*, in which there was a Letter from my Lord *Castlemaine*.

L. C. J. To whom?

Dr. *Oates*. To the Fathers of the Society of *St. Omers*; in which my Lord *Castlemaine* gave them an Account of a Letter that he had lately received from *Spain*.

L. C. J. How did you know the Contents of this Letter?

Dr. *Oates*. My Lord, I was privy to their Letters.

L. C. J. Was you acquainted with my Lord *Castlemaine's* Hand?

Dr. *Oates*. My Lord, I will give an Account of that; I did not know it then, but only as it was generally said amongst us.

L. C. J. How was it subscribed?

Dr. *Oates*. *Castlemaine*, my Lord; and sometimes, my Lord, he subscribed himself *Palmer*.

L. C. J. How many Letters have you seen?

Dr. *Oates*. Several Letters.

L. C. J. Was this the first?

Dr. *Oates*. This was the first, as near as I can remember. And, my Lord, he gave an Account in that Letter, that he had received a Letter from *Spain*, and was glad the Fathers in *Spain* had so good an Opinion of his Integrity in the Cause.

L. C. J. Did he say from whom he had received it?

Dr. *Oates*. My Lord, I can't remember that; that he had received a Letter, I am certain.

L. C. J. Do you know what the Purport of the Letter was?

Dr. *Oates*. Yes, my Lord, I will give you a plain Account. My Lord, he wrote he had received a Letter from *Spain*, and that he was glad the Fathers in *Spain* had so great Confidence in his Integrity. And, my Lord, in *March* there came another Letter from my Lord *Castlemaine*; for my Lord *Castlemaine* had left some Things at *Liege*, wherein he did complain of the Fathers, that they made no more Haste for to send his Things to



to him some odd Things he had left there; and my Lord, he gave an Account of a certain Letter he received from the Rector of *Liege*, whose Advice he did not like: for the Rector of *Liege* and the Rector of *Gant* were mighty zealous that the secular Clergy should be personally present in this Affair.

L. C. J. Did he write so? I would have you say what he writ.  
Dr. Oates. My Lord, I have told you, he gave an Account, that he was unwilling to have the secular Clergy engaged, because they were a loose sort of Men, and of no Principles, and therefore he thought them not fit to be trusted. My Lord, in April there was a Consult; I came over from *St. Omers* in April, some three, or four, or five Days before the Consult, I am not able to guess at the particular Time; but it was near upon the Consult. My Lord, this Consult was divided into several Companies, after they had met at the *White Horse Tavern*, wherein they did some Things that did relate to the Order, as to send Father *Gary* to *Rome*. And after they had divided themselves into several Companies, wherein they did agree in ordering the Death of the King.

L. C. J. You were by?

Dr. Oates. My Lord, I was employ'd by them to give an Account of the Sense of one Company to another.

L. C. J. Were you by when they concluded the Death of the King?

Dr. Oates. Yes, my Lord, I was then present.

L. C. J. Did you sign among the rest?

Dr. Oates. My Lord, I don't come here to accuse myself.

L. C. J. You are pardon'd, if it be so.

Dr. Oates. My Lord, I did consent. My Lord, in this Consult they met together, and an Oath of Secrecy was administered; my Lord *Castlemaine* was there too within some few Days after the Consult: That is, the Gentleman whom I accuse for Treason, I say, did come, and enquir'd about the Copies of some Letters for to be sent up into *Germany*, and did desire, that an Agreement between them and the Monks might be made up, there being a Difference between 'em, so that they might have the Assistance of that Order to carry on the Design.

L. C. J. What Gentleman was this?

Dr. Oates. It was the Prisoner, my Lord, at the Bar.

L. C. J. Would the Gentleman let you hear him say, that he desired Assistance to carry on the Design, and you a Stranger to him?

Dr. Oates. My Lord, I do not think I was a Stranger to him so much as he was a Stranger to me; he knew I was their Servant, and employ'd by them.

L. C. J. Would he say in your Hearing, that he desired their Assistance to carry on the Design, and you did not know him?

Dr. Oates. My Lord, I did not well know him at that Time; and I brought several Messages from the Fathers, and from Mr. *Langborn*, and gave them an Account before him.

L. C. J. How often had you seen him?

Dr. Oates. That time he was there, my Lord.

L. C. J. How many Messages had you?

Dr. Oates. I will tell your Lordship where I had been: I had been at Mr. *Simmonds's*, who was then Confessor to the Earl of *Arundel*, who is since turned Protestant; Confessor to him, as he pretended, and we looked upon him to be so. And I had been at Father *Gain's*, who was in *Turnmill-Street*; and I had been, my Lord, at Mr. *Langborn's* in the *Temple*; and some other Places which I do not now remember; it is so long since. So, my Lord, I gave them an Account of my Business, and I did see that Gentleman, but did not know his Name till, my Lord, in June.

L. C. J. When was this?

Dr. Oates. This was, my Lord, as near as I can remember, in May.

L. C. J. So you did not know his Name till three Weeks or a Month after?

Dr. Oates. No, my Lord, it was in the latter part of June.

Mr. Just. *Jones*. You saw him first in May?

Dr. Oates. Yes, my Lord.

Mr. Just. *Jones*. And you did not see him till after the Consult? I don't ask you whether he was there or no? But whether you saw him before the Consult was sign'd?

Dr. Oates. No, my Lord.

L. C. J. How did you come to know his Name?

Dr. Oates. My Lord, in June Mr. *Langworth* and I were going over *Lincoln's-Inn-Fields*, intending to go to the Fountain in *Fuller's-Rents*, because there was a Sort of Drink that he loved, and we were to drink together, it was in the Evening; and so in our way as we went, we met with my Lord *Castlemaine*, whom Mr. *Langworth* did salute, and then we came back to Mr. *Fenwick's* Chamber.

L. C. J. With whom did you come back?

Dr. Oates. With my Lord *Castlemaine*.

L. C. J. Did you know his Name?

Dr. Oates. Mr. *Langworth* told me it was the Prisoner at the Bar, my Lord, and the Prisoner at the Bar was giving an Account of some Letters he had received out of the Country; and Mr. *Langworth* was giving an Account how forward the Rector of *Liege* and the Rector of *Gant* were in offering to have the secular Clergy engaged with them; and some other Discourse they had which I can't remember, but about the Design.

L. C. J. What did they talk of at that Time? You must, as near as you can, tell us what Discourse they had.

Dr. Oates. I will give your Lordship this, they were speaking of the Transactions of the Consult, and how unanimous the Fathers were in signing the Consult.

L. C. J. Who were speaking of it?

Dr. Oates. Mr. *Langworth* and Mr. *Fenwick*, and my Lord *Castlemaine* was present.

L. C. J. They did talk of it?

Dr. Oates. Yes.

L. C. J. Did they mention the Particulars of that Consult?

Dr. Oates. Yes.

L. C. J. What was that?

Dr. Oates. Laying aside the King.

L. C. J. And what else?

Dr. Oates. And bringing in the Popish Religion, the Catholick Religion, I speak their own Words.

L. C. J. And this Discourse they had in the hearing of my Lord *Castlemaine*?

Dr. Oates. Yes; and my Lord *Castlemaine* said, *Now he should be revenged for the Injuries done to him*.

L. C. J. Go on.

Dr. Oates. I have nothing else to say of my Lord *Castlemaine* that I can think of at present.

L. C. J. Now, my Lord, you may ask him what Questions you think fit.

Prisoner. Mr. Oates, repeat your Journey again.

Dr. Oates. My Lord, I say this: I went a Ship-board in April, I returned from *Valladolid* in November, I arrived in *London* in November, and staid in *London* some Time, and then I went to *St. Omers* in November or December, New Style or Old Style; I staid at *St. Omers*; from thence I went to *Watton*; then, my Lord, in the Month of March we went to *Liege*, and returned back again; in the Month of April we came hither, some time before the Consult, and staid here some time after.

Pris. What time were you at *Liege*, pray, Sir?

Dr. Oates. In March 77.

Mr. Just. *Jones*. The end of 77?

Dr. Oates. No, my Lord, we were at *St. Omers* again in March.

L. C. J. You returned in March 77-8?

Dr. Oates. Yes, my Lord, the Style does so alter.

Pris. That is before Lady-Day.

Dr. Oates. Yes, my Lord, it was before Lady-Day, we arrived here in *London* in May or in April, and we staid here some few Days.

Pris. When did you come over again, pray, Sir?

Dr. Oates. My Lord, it is now two Years ago, or better, and I can't remember every particular time; my Lord, we were here in May.

Pris. I will ask him as many Questions as I think reasonable; and when, my Lord, I do desire Time, and he can't tell the Times, he must tell me so.

L. C. J. Mr. Oates, answer my Lord what Questions he asks you.

Dr. Oates. I will tell my Lord *Castlemaine* as near as I can remember, my Lord.

Pris. Mr. Oates, When was it you came over?

Dr. Oates. Really it was some few Days before the Consult.

Pris. How many Days do you think?

Dr. Oates. Really I can't remember.

L. C. J. I suppose you have your Memorials.

Dr. Oates. Really, my Lord, no.

L. C. J. Have you any thing more to ask?

Pris. Yes, my Lord, a great many Questions. Were you present, Mr. Oates, pray, at that Consult, when I consented to the King's Death?

Dr. Oates. I was present at the Consult; but I do not charge you to be at the Consult.

L. C. J. He asks you where it was he agreed to it?

Dr. Oates. At Mr. *Fenwick's* Chamber, I remember it was about seven or eight o'Clock that we were going over *Lincoln's-Inn-Fields*.

L. C. J. How long might you be at *Fenwick's*?

Dr. Oates. It was about eleven or twelve o'Clock I came away.

Pris. When you met me in *Lincoln's-Inn-Fields*, was I in a Coach or on Foot, or was any body with me?

Dr. Oates. I can't say whether your Lordship had a Man with you, or no.

L. C. J. Was there any body with him?

Dr. Oates. I did not take notice of that.

L. C. J. You were two Hours together, pray let me ask you this Question, What was your Discourse about?

Dr. Oates. That was part of the Discourse, my Lord.

L. C. J. What? You have given us a very short Account of it in four Lines: You were two Hours together, What was the main of your Discourse about?

Dr. Oates. My Lord, I will give you as plain as I can, the Discourse at that time.

L. C. J. Pray let us know what the main of your Discourse was about.

Dr. Oates. One part of their Discourse was about the Revenues of their Colleges, and how they had suffer'd by the *French's* taking *St. Omers*, and what Losses they had sustain'd by reason of the Change of Government by the Conquest; for the Crown of *Spain* had entail'd on the College of *St. Omers* five or six hundred a year, for the maintaining the Foundation of their House, or Foundation-Rent, and it was taken away by reason of the Conquest that *France* had made over the *Spanish* Dominions there; and they were consulting how they should write to Father *Le Chaise* to be an Instrument to move the *French* King to restore this Annuity, that was a Settlement entail'd upon it.

L. C. J. How came you into this Discourse?

Dr. Oates. This was after the other Discourse.

L. C. J. How came you to discourse this Affair here in *England*?

Dr. Oates. I will tell your Lordship as near as I can remember: When we met in *Lincoln's-Inn-Fields*, Mr. *Langworth* recommended me to my Lord *Castlemaine*, and bad me take notice of him. I can't say this is my Lord *Castlemaine*, but this is that Man I saw.

L. C. J. Did he call him by his Name?

Dr. Oates. He told him that I was such a one, and that I was serviceable to them. And upon our way as we went to Mr. *Fenwick's* Chamber, he enquir'd into the Causes of my coming over so soon again, for he said I went over but last Month. Said he, *How came it to pass he came over so soon again?* Saith he, *We wanted him to do some Business for us.* And there were more Particulars of the Transactions of the Consult mentioned to my Lord *Castlemaine*.

L. C. J. How did they bring in the Particulars of that Design?

Dr. Oates. This is as near as I can remember.

L. C. J. How came they to talk of laying aside the King, and bringing in the Catholick Religion?

Dr. Oates. My Lord, after they had given an Account of the Transactions of the Consult: This was one part of the Consult.

L. C. J. Pray how came they to bring it in, in Discourse?

Dr. Oates. My Lord, they spake of the Particulars of it.

L. C. J. I wonder what introduced the Particulars: Was it to acquaint him with those Particulars?

Dr. Oates. My Lord, I have nothing to say to that; they were Things so generally talked of by those of the Jesuitical Party, that whenever they met,



met, they scarce did talk of any Thing else but of that; and so they did at this Time.

L. C. J. Pray tell me the whole Discourse, as you can remember; that relates to this Time.

Dr. Oates. My Lord, I have told your Lordship we met with my Lord Castlemaine in *Lincoln's-Inn-Fields*. I have told you, my Lord, that we went to Mr. Fenwick's; I have told you, my Lord, that after some Discourse (how it was introduced I cannot be positive, but as I can remember) they were speaking of my going over and coming again so soon; my going from the Consult to St. Omer's, and returning again into *England* so soon; and so one Word brought in another.

L. C. J. Did you know then that my Lord Castlemaine had ever heard of this Matter before?

Dr. Oates. My Lord, I don't know; but I am morally certain as to myself; but I can't swear he did.

Mr. Att. Gen. Did he speak of it to him as a Stranger to it?

Dr. Oates. No.

Mr. Just. Jones. By the Letter you speak of he knew before.

L. C. J. Answer my Brother's Question, Was the Letter you had seen, before or after that Discourse at Fenwick's?

Dr. Oates. My Lord, that was after the Consult.

L. C. J. Then you know he did know of the Design?

Dr. Oates. My Lord, I think not of the Particulars of the Design.

L. C. J. That is, he knew of this Design for the main. When you talk of the Design, you always mean the Consult.

Dr. Oates. No, my Lord, when we say the Consult, we mean what was agreed on at that Consult; not concerning these Matters that were done six Months before.

L. C. J. Mr. Oates, Tell me, when you mention the Design and the Consult, do not you always mean the Death of the King and the bringing in Popery?

Dr. Oates. Yes, my Lord, but the Terms are not convertible: For, my Lord, when we say the Consult, there was something else done, my Lord, at that Consult which had not an absolute Relation to the Design; and of that I will give your Lordship one Instance, as the sending Father Cary to Rome, which they did in some three Years.

L. C. J. Some trivial Matters concerning their own Government, but the thing you talk of is the same Consult and Design.

Dr. Oates. When I speak of the Word Design, it was so taken among us, and so received by my Lord Castlemaine.

L. C. J. How can you say it was so receiv'd by him?

Dr. Oates. Because he used the same Word, and answer'd us according to our Interpretation.

Mr. Just. Jones. My Lord, he speaks of the Design thus: There was a Design for the killing of the King, there was a Design of the Priests and Fathers for it; but faith he, *Afterwards there was a general Consultation*, and this Design came to be formed by this General Consult, which my Lord Castlemaine, as he thinks, had no Knowledge of till the time they met together in *Lincoln's-Inn-Fields*, and afterward went and discoursed about it.

L. C. J. It is very fair, that he doth not know that my Lord Castlemaine had any Knowledge before the Consult of this Business; but, he says, *The Design upon which the Consult was, that he might know, which was to destroy the King, and bring in Popery*. And he says, my Lord Castlemaine did understand this Word Design in that Sense they did; because he answered their Letters according to their Interpretation of it. How do you know he understood the Word Design in its utmost Capacity as you understood it?

Dr. Oates. When we have our Words, we have our Keys whereby we understand them. But I will answer this Question to the Satisfaction of the Gentlemen of the Jury. My Lord, he hath many times spoken in his Letters of introducing the Popish Religion, and annex'd it to the Word Design of promoting the Catholick Religion here in *England*.

L. C. J. Now methinks you have brought the Word Design to something else than killing the King.

Dr. Oates. Yes, my Lord, the Subversion of Religion and the Government.

L. C. J. Did he put in Government? Did he talk of bringing in the Catholick Religion, and altering the Government?

Dr. Oates. No, my Lord, I won't say that.

L. C. J. When we are examining concerning Men's Lives, we must be careful of their Words in such Matters.

Dr. Oates. One part of my Evidence I have omitted, Your Lordship did ask me how I came to know my Lord Castlemaine's Hand. My Lord, sometimes we received Letters from him subscribed *Palmer*, and sometimes subscribed *Castlemaine*, sometimes some other Name which I may not remember, and they were generally received as from him. And I have seen, my Lord, my Lord Castlemaine write; for that Night, as near as I remember, it was Post-night.

L. C. J. At Fenwick's Chamber?

Dr. Oates. At Fenwick's Chamber, and my Lord Castlemaine did write a Letter, subscribed it and sealed it, and I was fain to go to the General Post-house, it was so late.

Mr. Just. Jones. What, did he subscribe then?

Dr. Oates. No, my Lord, I saw no more than the Superscription.

L. C. J. Then you did not see his Name to it?

Dr. Oates. No, my Lord. My Lord Castlemaine did ask, Why he had not Answers to such and such Letters? For several Letters I had seen which were not of much Moment.

L. C. J. I wish you had one that was of Moment.

Dr. Oates. It cannot be expected, my Lord, that I should have them.

L. C. J. My Lord, ask him what you please.

Pris. You say, Mr. Oates, you received Letters from me in Spain?

Dr. Oates. I never said so.

Pris. You saw Letters in Spain from me?

Dr. Oates. Yes, I have seen Letters in Spain that were from you.

Pris. Look you, Mr. Oates, pray let me ask you a Question, you said this, That you did not know me when you met me at the Consult?

Dr. Oates. What Consult?

Pris. At Fenwick's Chamber.

Dr. Oates. I did not know you at *Wild-houfe*.

Pris. There you met me first?

Dr. Oates. There I met the Prisoner at the Bar.

VOL. III.

L. C. J. He says he did not know you at *Wild-houfe*, but he came to know you by *Langworth* in *Lincoln's-Inn-Fields*, and then you went together to Fenwick's Chamber.

Pris. Mr. Oates, Did not you say, that at *Wild-houfe* you did not know me, nor I you?

L. C. J. He says he can't tell whether you knew him or no, but he did not know you.

Pris. Was I familiar with you?

Dr. Oates. No, my Lord.

Pris. Did I talk Treason at *Wild-houfe*?

Dr. Oates. It was the Discourse of the Day; but I do not remember every Particular of the Discourse, but I remember what your Opinion was concerning the Rector of *Liege* and the Rector of *Gant*.

Pris. Was there any thing about killing the King at *Wild-houfe*?

Dr. Oates. Really, my Lord; I can't remember, I won't charge it there because I am upon my Oath; though I morally believe, as to myself, that there was Discourse bad enough there.

Pris. Mr. Oates. Pray will you hear me? Then the Acquaintance I had with you was by Mr. *Langworth*, and then we went that Night to *Fenwick's Chamber*, and there we staid very long, and there we had all this Discourse?

Dr. Oates. Yes.

Pris. Look, Mr. Oates, Was there any body by besides Mr. *Langworth* and Mr. *Fenwick*?

Dr. Oates. Really, my Lord, I don't remember any body was by, unless a Maid might come to fill a Cup of Drink or so.

Pris. Mr. Oates, Pray, Mr. Oates, did you and I ever meet together after that time?

Dr. Oates. Really, my Lord, I can't be exact in that.

Pris. Did you never see me nor discourse with me after that time?

Dr. Oates. I cannot recollect my self as to that, I cannot remember.

L. C. J. He does not remember that ever he was with you afterwards.

Pris. You don't know whether ever I discoursed with you afterwards?

Dr. Oates. I don't remember.

Pris. Very well, Mr. Oates: Look you, Sir, you don't remember that I ever had any Discourse with you after that time; and no body was by but Mr. *Fenwick* and Mr. *Langworth*?

Dr. Oates. As I remember.

Pris. Was not there another Priest there?

Dr. Oates. There is no body occurs to my Memory.

Pris. Mr. Oates, you brought me Letters from Spain?

Dr. Oates. I brought a Letter from Spain directed to you in 77.

Pris. Was I in Town or out of Town?

Dr. Oates. I delivered it to the Provincial.

Pris. You went over to *Liege*; did not you see me there?

Dr. Oates. No, my Lord, I did not see you there, I only went to wait upon a Gentleman that was a Priest afterwards, that went to take Orders.

Pris. Did you not see me at *Liege*?

Dr. Oates. No, my Lord.

Pris. You were at *Liege*, did you stay there?

Dr. Oates. I lay there one Night.

Mr. Att. Gen. Have you any thing to ask, my Lord?

Pris. Presently, my Lord.

Mr. Just. Jones. It is very reasonable, my Lord should question you. You own him to be the Lord Castlemaine: When was it you did first discover this Business concerning my Lord Castlemaine?

Dr. Oates. My Lord, I did discover my Lord Castlemaine to be in the Plot the last Sessions of the Long Parliament, and I accused my Lord Castlemaine this *Trinity-Term* was Twelve-months, and my Lord Castlemaine was committed: For when Mr. *Dangerfield* came in and accused my Lord Castlemaine, I brought a Charge a second Time against my Lord Castlemaine.

Mr. Just. Jones. Did you discover all this then?

Dr. Oates. I did charge him for having an Hand in the Design in general.

Mr. Just. Jones. To the Parliament?

Dr. Oates. Yes, to the Parliament.

Pris. You say, when I assented to the King's Death in *Fenwick's Chamber*, that I said I should now find a Time to be revenged?

Dr. Oates. Pray, my Lord, don't put me to mention such reflecting Evidence.

Pris. When you were before the King, you did in Pursuance of this speak of a Divorce.

Dr. Oates. My Lord, I will give Evidence as to that, if that my Lord comes to be indicted for his Priesthood.

L. C. J. My Lord may ask what Questions he shall think fit.

Mr. Att. Gen. My Lord says he has said it, and what he said in another Place he is not to treat now of.

Pris. Suppose I can prove him an ill Man in any Place, is not that fit to be spoken of here? Since he hath brought the King upon the Stage, and since he hath accused me before the King and your Lordships of a Divorce, I ask him whether he saw it?

Dr. Oates. I will tell your Lordship what I said as to the Divorce: I heard it discoursed of generally among the Fathers beyond Sea, and this was some other Part of the Discourse at *Wild-Houfe*; and I heard my Lord Castlemaine say that he had been at a great Charge to carry on that Business of the Divorce.

Pris. At *Wild-houfe*?

Dr. Oates. At *Wild-houfe*. Now, my Lord, I took no Notice of it, because it was not my Business. But, my Lord, after that there was a Priest's Chamber that was searched, and there was the whole Case stated; now what is become of the State of that Case, my Lord, I cannot tell.

L. C. J. By whom was that Case stated?

Dr. Oates. There was a Letter found, whereby my Lord Castlemaine should have the Matter directed, in order to the carrying on the Divorce that was to be between him and his Wife *Barbara*.

Pris. Did not you tell the King that you saw the Divorce in *Strange's* Hand?

Dr. Oates. My Lord, I will tell you this, I gave an Account to the King, that I saw in *Strange's* Hand an Account of a Divorce that was between my Lord Castlemaine and *Barbara* Duchefs of *Cleveland*.

Mr. Recorder \*. My Lord, if he ask too many Questions \* Sir George that don't relate to this Matter, it is impossible to give an Account of every Particular.

G

Pris.



*Prif.* My Lords, I humbly submit this Case.

*Mr. Recorder.* Ask him what you said to such a Man upon the 9th of August was Twelve-month, must he give an Account?

*L. C. J.* He must say he does not know.

*Mr. Recorder.* Indeed it is reasonable that my Lord Castlemaine should ask him some Questions, and that Mr. Oates should give him an Account.

*Mr. Att. Gen.* My Lord, will you give me leave to speak? If he may ask Questions about such foreign Matters as this, no Man can justify himself.

*L. C. J.* This is not so mighty remote but Use may be made of it.

*Mr. Att. Gen.* If he should ask whether he were such a Day at such an House, and tell him yes, and mistake the Day; any Man may be caught thus.

*Prif.* How can a Man be caught in the Truth?

*Mr. Att. Gen.* My Lord Castlemaine may, if he can, catch him in any Thing he gives in Evidence here.

*Prif.* My Lord, if your Lordship over-rule me, I will say no more. *Mr. Attorney* says I come to catch him, I confess I do.

*Mr. Att. Gen.* You should not ask him foreign Questions.

*L. C. J.* He asks a plain Question; why do you labour so much that he should not ask, whether he had seen the Divorce? My Lord Castlemaine, I have asked the Question for you, Whether or no he said he had seen the Divorce? And he does not remember whether he said so or no.

*Mr. Att. Gen.* My Lord, I think, with your Lordship's leave, that he is not bound to answer Questions that are not to the Evidence.

*L. C. J.* If so be he would come to make Application, it may be well enough.

*Mr. Att. Gen.* I say it for the Method of the Evidence, my Lord, that I would not have these Excursions.

*Prif.* I desire your Lordship that I may say out what I have to say. I say this, That no Man in the World that speaks Truth can be caught, neither will Mr. Attorney suffer me to catch him.

*Mr. Att. Gen.* I say you have Liberty to catch him in any Thing that doth belong to the Evidence.

*Prif.* I come to shew you the Fitness of it to this Affair. He comes and tells you, among other Consults, of *Wild-House*, and my meeting him in *Lincoln's-Inn-Fields*, the Recommendations of Mr. Langworth, and going to *Fenwick's Chamber*, where we talked of altering the Government, and my assenting to kill the King: And since you have brought the King upon the Stage, I will refresh your Memory a little; since you talk of revenging my self, look you if you did not mention a Divorce to the King, and also to my Lord Chief Justice.

*Mr. Att. Gen.* My Lord, you are under a Mistake.

*Prif.* Pray give me leave, Mr. Attorney.

*Mr. Att. Gen.* You make such Excursions into foreign Matters.

*Prif.* Mr. Oates, you did say you saw a Divorce. I ask you whether you saw a Divorce, and where; or whether you said so?

*L. C. J.* He says, he does not remember he said so.

*Dr. Oates.* I do not remember whether I said so or no, my Lord, I have it down, but indeed I did not set my Thoughts a-work.

*Mr. Att. Gen.* He hath given you an Answer that may satisfy you.

*Mr. Just. Raymond.* He hath Papers wherein he hath entered Memorandums to refresh his Memory, but these Papers he hath not by him.

*L. C. J.* Then he may say, he hath not.

*Mr. Att. Gen.* That he hath already, my Lord.

*L. C. J.* Have you any more to say?

*Prif.* I have, my Lord, if you will give me leave to write down two Words.

*Prif.* Mr. Oates, you told my Lords the Judges that I did say, I was at great Expence about a Divorce?

*Dr. Oates.* Yes.

*Prif.* That is very well, Mr. Oates.

*Mr. Att. Gen.* Call Mr. Dangerfield.

*Dr. Oates was going out of the Court.*

*Prif.* May Mr. Oates go out of the Court?

*Court.* Yes, yes.

*Dr. Oates.* I will be within Call, my Lord.

*Prif.* I only submit it to your Lordships, Whether or no a Witness may go out of the Court?

*Dr. Oates.* I will stay then.

*Mr. Att. Gen.* Swear Mr. Dangerfield.

*Prif.* Pray stay.

*L. C. J.* Why so?

*Prif.* Here I am a Prisoner, my Lords, and submit it to your Lordships, Whether or no Mr. Dangerfield, who hath had the Censure of this Court, may be a Witness? Whether or no Counsel shall shew Reasons to your Lordship, whether he may speak or no?

*Mr. Just. Jones.* You must shew your Exceptions that you have against him.

*Prif.* My Exception is this: That he was convicted of Felony, that he broke Prison, and was outlawed upon it. Besides this, my Lord, he is a Stigmatick, hath stood in the Pillory, and was burnt in the Hand. Now I humbly beseech your Lordships, that you will be pleased to hear what my Counsel can say: And then, my Lords, if you over-rule, I shall give place with all my Heart.

*L. C. J.* I think it reasonable, if you desire Council, that they should be allowed to speak.

*Mr. Att. Gen.* If your Lordship please, when my Lord's Exceptions appear.

*Mr. Just. Jones.* What are your Exceptions, my Lord?

*Prif.* That I told you beforehand; he is an out-lawed Person, he is convicted of Felony.

*Mr. Just. Jones.* When was he outlawed?

*Mr. Att. Gen.* In the 27th Year of the King, and we say he hath a Pardon in the 30th Year of the King.

*L. C. J.* How do you prove he was burnt in the Hand, my Lord?

*Mr. Att. Gen.* When was he burnt in the Hand?

*Prif.* Call *Brifcoe*.

*Mr. Att. Gen.* We bring a Pardon unto that, and that will restore him.

[A Record produced.]

*Mr. Att. Gen.* That Record we confess; shew the Pardon, shew the Pardon.

*L. C. J.* Now go to that for which he was burnt in the Hand.

*Mr. Att. Gen.* Here is a Pardon that extends to them all.

[The Pardon read: Decimo tertio die Januarii, Anno Regni, &c.]

*L. C. J.* This does not do it.

*Mr. Att. Gen.* Yes, my Lord, it does.

*L. C. J.* Is that the *Newgate* Pardon?

*Mr. Att. Gen.* Yes, my Lord.

*L. C. J.* We have had it in the Court.

*Mr. Att. Gen.* Yes, my Lord.

*L. C. J.* And Felony and Outlawry is in it.

*Mr. Att. Gen.* Yes, my Lord.

*L. C. J.* Where is that for which he was burnt in the Hand?

*Mr. Att. Gen.* For that we give an Answer; he was received to the Benefit of his Clergy; and he was burnt in the Hand, and his Pardon is after that too.

*L. C. J.* So it is.

*Mr. Att. Gen.* Then his Pardon answers them all.

*L. C. J.* Now you see, my Lord, you think *Dangerfield* ought not to be a Witness, who hath gone through so many Punishments, outlawed for Felony, and burnt in the Hand for Felony: Mr. Attorney makes Answer, We have a Pardon, and by that he is restored, as he says, to be a Witness again. If you desire Council to speak to this Point, Whether or no a Man branded and burnt in the Hand for Felony, and afterwards is pardoned, is capable of being a Witness? I see no Reason to deny it you.

*Mr. Att. Gen.* If there be Matter for Counsel to speak, in that Case we must submit, if your Lordship make it a Doubt.

*L. C. J.* I do for my own Part: In this I am clear; if a Man were convicted of Perjury, that no Pardon will make him a Witness, because it is to do the Subject wrong. A Pardon does not make a Man an honest Man; it takes off Reproaches; and the Law is wise in that, the Law will not suffer endless Contumelies to be heaped upon Men, nor to be called perjured Rascals, and such Things; it is only to prevent upbraiding Language, which tends to the Breach of the Peace. But, in my Opinion, if a Man stands convicted in Court for Perjury, no Pardon can ever make him a Witness, and set him upright again. But that is a different Case from this; we are upon this single Case, Whether a Man that is burnt in the Hand for Felony, whether a Pardon can set him right or no? For this I make more doubtful than the other; for a Man may be, that hath committed a Robbery, would be afraid to forswear himself; for though one is a great, the other is a greater Sin, and that in the Subject Matter; which considered, I think it reasonable to allow my Lord Council to speak to that single Point, That a Person being burnt in the Hand for Felony, and afterwards pardoned, Whether he is capable of being a Witness?

*Prif.* Then I do name Mr. Jones, Mr. Saunders, and Mr. Darnal.

*L. C. J.* Very well.

[Mr. Saunders was called, but was not in Court.]

*L. C. J.* Are you prepared, Mr. Jones, to speak?

*Mr. Jones.* No, my Lord.

*Mr. Just. Jones.* My Lord, do you except against that one Particular?

*Prif.* I stand upon both, his being pilloried and burnt in the Hand.

*L. C. J.* Will you admit that he stood in the Pillory?

*Mr. Att. Gen.* I know nothing of it.

*L. C. J.* I will tell you, my Lord, you will see whether it be necessary to protract this or no; for your Council will hardly undertake to argue unprepared about this Point; and if the Trial should be adjourned, it would be very troublesome. I think it the Duty of my Place to discharge my Conscience for you and against you, as the Matter shall fall out; and if so be that you should insist upon it, and he be capable of being a Witness, supposing it so, yet I must say, you may give in the Evidence of every Record of the Conviction of any Sort of Crimes he hath been guilty of, and they shall be read. They say last Day there were sixteen; if there were an hundred they should be read against him, and they shall all go to invalidate any Credit that is to be given to any Thing he shall swear.

*Prif.* My Lord, I humbly submit myself to your Lordship; sixteen we have, I bring but six, you shall have them, Mr. Attorney, when you please.

*L. C. J.* My Lord, if you think it worth your while to put it to Council to argue, Whether he may be a Witness, or whether you think it may be as well for you, supposing he be a Witness, the producing those Things against him, or the Records of those Crimes that he hath been convicted of; whether that will be as well for you or no, I leave it to yourself to do as you think best.

*Mr. Darnal.* I conceive, with Submission to your Lordship, that he cannot be a Witness.

*L. C. J.* Are you prepared to speak to it now?

*Mr. Darnal.* My Lord, I am ready to offer somewhat to your Lordship, why I conceive he ought not to be sworn: But I desire first, that the Pardon may be read, because many Persons and Offences are comprized in it.

*L. C. J.* It is a Pardon for Felonies and Outlawries of Felony in general.

*Mr. Darnal.* If the Persons and their Offences are severally and sufficiently pardoned, then my Lord, I will proceed unto the other Point.

*Mr. Just. Jones.* The whole is good.

*Mr. Darnal.* Then, my Lord, I conceive, notwithstanding this Pardon, Mr. Dangerfield ought not to be sworn; and that no Person attainted of Felony (though pardoned) can be a Witness. My Lord, it hath been adjudged in 11 Hen. IV. *quadragesimo*, That a Man attainted of Felony (as Mr. Dangerfield is) though he be afterwards pardoned, cannot be sworn of a Jury. My Lord, the same Question hath been resolved since, in *nono Jacobi*. It is reported in Mr. Brownlow's and Goldborough's Reports, *Folio tricesimo quarto*. And my Lord Cook in Mr. Bulstrode's second Reports, 154. in *Brown and Crashaw's Case*, is of the same Opinion. He says, A Man attainted and pardoned cannot serve upon any Inquest; and that by the same Reason, the Testimony of such a Man for a Witness is in all Cases to be rejected.

*L. C. J.* Who says so?

*Mr. Darnal.* My Lord Cook.

*L. C. J.* Men do not slight my Lord Cook; where do you say that is?

Mr.



Mr. Darnal. It is in Mr. Bulstrode's 2d Reports, in Brown and Cra-  
shaw's Case, fol. 154.

Mr. Just. Jones. But you should have brought these Books hither.

Mr. Darnal. I suppose, Sir, they may be had in the Hall. My Lord  
Cook gives this Reason for it in that Case; he saith, that notwithstanding  
his Pardon, he is not *probus & legalis homo*.

Mr. Just. Jones. That Pardon was before any Judgment; it was a  
Pardon of Felony before any Trial or Judgment; but here is a Conviction.

Mr. Darnal. My Lord Cook puts the Case there of a Man attainted. And,  
my Lord, in *duodecimo Jacobi*, it is reported in Brownlow's Reports, fol. 47.

Mr. Just. Raymond. Which of his Reports?

Mr. Darnal. I know but of one set out in his Name alone, the other  
(which is call'd the first Part) is set out in his and Goldborough's Name.  
I have Mr. Brownlow's Reports here, and if your Lordship please you  
may see it.

L. C. J. What is the Page?

Mr. Darnal. 47, my Lord; the Case there reported is, the King par-  
don'd a Man attainted for giving a false Verdict; yet he shall not be at ano-  
ther time impannell'd upon any Jury; and the reason given there is,  
that though the Punishment was pardon'd, yet the Guilt remain'd.

Mr. Just. Jones. That is a very short Note, and not so much in the  
Book as you have mentioned.

Mr. Darnal. I writ it word for word out of the Book, Sir, and I am  
sure there is so much in my Book. My Lord, in Mr. Just. Crooke's  
*Elizabeth*, fol. 686, in *Shelborn's* Case, it is held, that though the King  
may pardon *Simony*, yet he cannot enable a *Simoniack* to retain a Living.

L. C. J. The Act doth make him not capable.

Mr. Darnal. I conceive, Sir, it is upon the same Reason, because the  
Pardon cannot take away the Guilt, though it may the Punishment of  
the Offence.

Mr. Just. Raymond. He can't dispense with *Simony*, he can't give a  
Dispensation to take a Living.

Mr. Darnal. My Lord, upon these Resolutions and the Reason of them,  
I humbly submit it to your Lordship, whether Mr. Dangerfield (having  
been attainted of Felony, though he be since pardoned) can be a Witness.

Mr. Att. Gen. My Lord, with your Lordship's Favour, this is quite  
contrary to the constant and general Opinion, and contrary to the con-  
stant Practice: For, my Lord, with your Lordship's Favour, when a  
Man is pardon'd for any Crime, if a Man can't say he is a Felon, or he  
is perjured, then he can't be reckoned so to any Intent or Purpose what-  
soever.

L. C. J. I told you before, it is consonant to all the Reason and Law in  
the World, that a Pardon should stop Men's Mouths from reviling  
Speeches that signify nothing; but it is one thing to say Men shall not go  
reviling, that can have no consequent good, but which tends to the breach  
of the Peace, and another thing to say he shall be *Liber*.

Mr. Att. Gen. My Lord, when the King gives him a Pardon, it is as  
if he had never committed the Offence.

L. C. J. He may be Outlaw'd notwithstanding the King's Pardon,  
and then it is not as if he had never committed the Offence.

Mr. Just. Jones. It restores him to wage Battel, and it makes him  
*liber & legalis homo*: For if a Man may wage Battel, he is *liber & legalis*  
*homo*.

Mr. Att. Gen. Then, my Lord, if he be so, he shall be a Witness:  
For, my Lord, in the point of *Perjury*, a Man that after a Conviction of  
*Perjury* had a Pardon, hath been admitted several times.

L. C. J. Was the Exception taken, Mr. Attorney?

Mr. Att. Gen. Yes, my Lord, and he rejected before he had a Pardon.

Mr. Just. Raymond. How many Men have been Witnesses that have  
been convicted of Felonies, after the Kings have pardoned them?

Mr. Recorder. I will not adventure to say that there hath been a parti-  
cular Objection made, and so that the Court hath had the Debate of it;  
but I will undertake to give your Lordship several Instances of Men that  
have been convicted, and the Judges sitting there knew them to be so  
convicted, and did not take Notice of it.

Mr. Just. Raymond. I speak of *Witherington* particularly.

Mr. Recorder. He was a Witness, tho' every Man did know that *Wi-  
therington* was convicted. I beg your Lordships leaves to speak it, that  
the Judges themselves did know that he was convicted and had received  
Sentence of Death.

† Sir Francis Mr. Sol. Gen. † The constant Practice of the Judges is  
Winnington. a mighty Conclusion.

L. C. J. What think you, Mr. Attorney, if a Man be convicted of  
Felony, and afterwards hath a general Pardon, is he a Witness?

Mr. Att. Gen. Yes truly, my Lord, it signifies the same thing, my  
Lord, as to be a Freeman again.

Mr. Just. Jones. He cannot be of a Jury, if he be attainted of Felony;  
and the Reason is, because he is not *probus & legalis homo*; and why he  
should not as well be of a Jury as a Witness I cannot understand.

Mr. Att. Gen. There is a great deal of difference, my Lord; a great  
many Men may be admitted to be Witnesses, that cannot be admitted to  
be Jurymen.

Mr. Just. Jones. Shew me any Man that is excluded from a Jury and  
admitted to be a Witness, except in the case of kindred.

Mr. Att. Gen. An hundred.

L. C. J. Shew me any Man who being of a Jury was excluded, and  
yet made a Witness.

Mr. Att. Gen. A Villain was not admitted to be a Jurymen, but a Vil-  
lain was always to be a Witness, and that was a point of Infamy.

L. C. J. What Infamy was contained in being a Villain?

Mr. Att. Gen. He was a Criminal, he was not *liber homo*.

L. C. J. But tho' he be not a Freeman, he may be an honest Man.

Mr. Recorder. My Lord Hobart says, A Pardon takes away the Guilt.

L. C. J. It takes away Guilt so far as he shall never be questioned;  
but it does not set a Man as if he had never offended. It cannot in rea-  
son be said, a Man guilty of *Perjury* is as innocent as if he had never  
been perjured.

Mr. Att. Gen. I say, if a Man be pardoned, he is as if he were not guilty.

L. C. J. If I were in my Lord Castlemaine's Case, I would submit it;  
but when he hath given his Testimony, my Lord shall have liberty to give  
in the Records against him of what Crimes he hath committed.

Mr. Just. Jones. I do confess, indeed, that my Lord Hale, in his little  
Book *Of the Pleas of the Crown*, saith, that a Man that hath had the Bene-  
fit of his Clergy is restored to his Credit.

Mr. Just. Raymond. If that Case be allowed, it is a plain Case; for  
there is no Man can wage Battel, but he that is *liber & legalis homo*.

Mr. Recorder. A Man broke Prison, and therefore he could not wage  
Battel; he replies, the King hath pardoned me that Felony, and there-  
upon he is admitted to wage Battel.

Mr. Just. Jones. Where there is no Judgment given in the Case, and  
the King doth pardon a Man, that doth make a very great difference.

Mr. Recorder. In the Case of *Witherington*, my Lord Chief Justice did  
look upon the Records, and afterwards said he was a good Witness, and  
was admitted.

Pris. If you have Law by you, I must consent.

L. C. J. Then you must consent.

Mr. Recorder. There are several Persons who have had Pardons after  
Robberies, and we are forced to make use of some of these Fellows.

L. C. J. Before Conviction.

Mr. Recorder. No, after Conviction, my Lord, I have known a Pri-  
soner at the Bar, when my Lords the Judges have been there, to be a  
Witness; and if the Court had made any doubt, it would have been a  
Question before this time of Day.

Mr. Att. Gen. My Lord, if you please, Mr. Dangerfield may be sworn,  
if your Lordship pleases.

L. C. J. My Lord shall have the Benefit of excepting against his Cre-  
dibility.

Then Mr. Just. Raymond went down to the Court of Common Pleas, to  
know their Opinion.

Mr. Just. Jones. Have you any other Witness in the mean time?

Mr. Att. Gen. No, my Lord, he is a principal Witness.

Mr. Sol. Gen. Besides the common Practice, here is a Book that says  
he shall wage Battel.

Mr. Just. Jones. That is, when there is a Pardon before Conviction.

Mr. Sol. Gen. But here, my Lord, he says the *Reatum* is taken away,  
and then it takes away his Disabilities too. The Difference can be no-  
thing here before Conviction, and after; because before Conviction he is  
disabled from waging Battel: So that that makes no Difference before  
Conviction, and other Cases after Conviction; and the Disability is  
taken away by the Pardon, and he is restored to be a Freeman.

L. C. J. There is a Disability upon Presumption, though not upon  
Conviction.

Mr. Sol. Gen. There is the same legal Impediment in the one as in the  
other; but his Credit is left to the Breast of the Jury.

Mr. Recorder. When a Pardon comes, it takes away not only *Pœnam*,  
but *Reatum*; and the Reason my Lord Hobart gives is—

L. C. J. Nay, give your Reason.

Mr. Recorder. For Felony is *contra Coronam & Dignitatem*, is a Fault  
against the King; and when the King pardons it, it ceases. And in ano-  
ther place it is said, It pardons all Disabilities incident to him.

Mr. Just. Jones. That is before Conviction, still.

L. C. J. Don't my Lord Coke tell you expressly, that the taking a Par-  
don doth not prove any Offence? You take a Pardon, it ought not to be  
concluded that you are guilty; but the proper Conclusion of a wise Man is,  
that you would be safe. It can't be thought that every Man that hath a  
Pardon in England is guilty of all those Offences that are there Pardoned.

Mr. Just. Jones. There is a Difference between a general Pardon, and  
a particular Pardon: When a Man doth accept of a special Pardon, it  
must be intended that he hath some consciousness of Guilt, or else he  
would not take it; but he that is included in a general Pardon may be  
clear, because all Men are included in it, unless some Persons particular-  
ly excepted; and the Difference is taken in that very point, from ac-  
cepting a general and a special Pardon.

L. C. J. That the Acceptance of a general Pardon doth not barely of  
itself intend Men to be guilty of the Crimes, is plain, and the Reason is  
most apparent; for besides that Men be safe, so there be Times that give  
a Reason why Men should have a Pardon, because no Man knows when he  
is safe; *Perjury* so abounds that no Man can say he is safe, and that is a  
Reason why Men should be very willing to accept of Pardons.

Cl. of Cr. Here's my Lord Hale's Book about the Pleas of the Crown.

Mr. Recorder. He says, When the King hath discharged and par-  
doned him, he hath cleared the Person of the Crime and Infamy.

Mr. Just. Jones. It is so, no doubt.

Mr. Sol. Gen. May we pass upon these Authorities?

Mr. Just. Jones. Sir Francis, we are not willing to go about it till it be  
concluded; for that purpose we have desired my Brother Raymond to know  
the Judges Opinions of the *Common-Pleas*.

Mr. Recorder. He doth expressly say, It hath restored him to his Cre-  
dit; and in *Witherington's* Case he did call for the very Records.

Mr. Att. Gen. If it restore him to his Credit, I hope it shall not ble-  
mish him so much when he is sworn, that he shall not be believed.

L. C. J. We won't have any Prepossession in that Case, his Crimes  
shall be all taken Notice of; is it fit to have Men guilty of all Sorts of  
Villainies, and not to observe it?

Mr. Just. Jones. In that very Case my Lord Hobart says, A Man may  
say of a pardoned Man, he was a Felon, though he cannot say now he  
is a Felon; and now what can be objected to this Case?

Mr. Recorder. Things may be objected against a Person, and his Credit  
left to the Jury; but the Question now is, Whether he shall be a Witness or not?

L. C. J. We have Men grown so insolent, they behave themselves  
with that vile Insolence, that now they take upon them to speak against  
whole Societies of Men; as if so be there were any thing in them that  
should render them better than their former Lives or Natures. Humility  
becomes Penitents, and no wicked Man is supposed to be a Penitent that  
hath not that; but these carry it with that Insolency, as if they were  
not



not concerned themselves, when God knows the best of them discover what they do, by being but Parties themselves.

[*Mr. Justice Raymond returned from the Court of Common-Pleas.*]

*L. C. J.* I will tell you what my Brethren's Opinions are; he hath put it to them on both Accounts, That he was convicted of Felony, and burnt in the Hand for it; that he was outlawed for Felony, and hath a general Pardon. They say they are of Opinion, That a general Pardon would not restore him to be a Witness after an Outlawry for Felony, because of the Interest that the King's Subjects have in him. But they say further, That where a Man comes to be burnt in the Hand, there they look upon that as a Kind of a more general Discharge than the Pardon alone would amount to, if he had not been burnt in the Hand. They say, If he had been convicted of Felony, and not burnt in the Hand, the Pardon would not have set him upright; but being convicted and burnt in the Hand, they suppose he is a Witness.

*Mr. Sol. Gen.* Swear *Mr. Dangerfield.*

*L. C. J.* The very Attainder is taken away, and so all is gone.

*Mr. Att. Gen.* Come, *Mr. Dangerfield*, are you sworn?

*Mr. Dangerfield.* Yes, Sir.

*Mr. Att. Gen.* Pray tell what you know of my Lord *Castlemaine*.

*L. C. J.* I perceive my Brethren's Opinion is, That if a Man were convicted of Perjury, if there be no burning in the Hand in the Case, that a Pardon could not set him upright, because of the Interest of the People in the Thing.

*Mr. Att. Gen.* Come, *Mr. Dangerfield*, are you sworn?

*Mr. Dangerfield.* Yes, Sir.

*Mr. Att. Gen.* Then pray say what you do know of my Lord *Castlemaine*.

*Mr. Dangerfield.* About this time Twelvemonth, my Lady *Powis* sent me with a Letter for the Prisoner at the Bar, my Lord *Castlemaine*.

*L. C. J.* Don't you know him?

*Mr. Dangerfield.* Yes, my Lord, this is the Person. And, my Lord, the Contents of that Letter I know not: But his Lordship made me stay till he wrote an Answer, and the Contents of the Answer, my Lord, were to this Effect: For I returned with the Answer to the Lady *Powis*, and she opened and read it while I was present.

*L. C. J.* Aloud?

*Mr. Dangerfield.* Aloud, my Lord.

*L. C. J.* To you?

*Mr. Dangerfield.* To me.

*L. C. J.* Who was there?

*Mr. Dangerfield.* Mrs. *Cellier* was there besides. And the Contents of this Letter were, *This Person I like well, and though he be no Scholar, he will serve to instruct the Youths as he shall be directed.* By the Youths were meant the St. *Omer's* Witnesses.

*L. C. J.* How do you know?

*Mr. Dangerfield.* Because I know my Lord was employed for that Purpose. I know his Lordship did use to instruct the Youths; and it was a common saying among them, when one of them was out of his Part, they used to say, I must go to my Lord *Castlemaine*.

*L. C. J.* What Part?

*Mr. Dangerfield.* That which they were to say; and one of them did say, I am out of my Lesson, I must go to my Lord *Castlemaine*.

*L. C. J.* When did he say so?

*Mr. Dangerfield.* Before the Trial, my Lord; and my Lord *Castlemaine* went along with them to the Trial, and his Lordship complained of some ill Usage that the Witnesses received there. His Lordship was one of the Persons that employed me to get *Lane* out of the *Gate-House*, my Lord, and his Lordship sent me to a Solicitor of his, whose Name was *Mr. Lawson* (the Person is now in Court), to take an Account how far he had proceeded in this Affair. I did take an Account, and I proceeded in it afterwards, and got him discharged.

*L. C. J.* How came you into my Lord's Acquaintance?

*Mr. Dangerfield.* That was the first Time, when my Lady *Powis* sent me with that Letter, my Lord. A pretty while after this, in the Month of *July*, I went to wait upon his Lordship at his House at *Charing-Cross*, the same Place where I found his Lordship before; and I was to take his Advice about some Letters that came from one *Neuil* alias *Paine*. Those Letters and List of Names I shewed his Lordship, and he gave his Approbation of them, and desired good Store of Copies might be writ: For it was of Consequence, and ought not to be neglected. And asked me, Are there working Persons employed in that Business? And said he, Encourage them, and I will pay my Part. So, my Lord, after there were a great Number of Copies writ of these Letters, I writ a Letter to my Lord *Castlemaine*, to let his Lordship know that the People had finished their Work, and that there was something more to be done as a Gratuity; and then his Lordship in answer to this Messenger (who is here also in Court) with a Letter his Lordship sent forty Shillings, for his Part. And Mrs. *Cellier* told me she received forty Shillings, and disposed of it to the Use intended; now, my Lord, the Contents of these Letters were to the same Effect with those Letters and loose Papers which I conveyed into Colonel *Mansel's* Chamber; and these all tended to the promoting the Sham Plot, my Lord.

*L. C. J.* Pray tell me what was the Subject of these Letters; what was the Substance of them?

*Mr. Dangerfield.* To the promoting the Sham-plot, my Lord.

*L. C. J.* That is a General nobody knows what to make of.

*Mr. Dangerfield.* I will give your Lordship an Account in particular: The Contents of many of them were to this Purpose.

*L. C. J.* Were they not all alike?

*Mr. Dangerfield.* The Copies were the same, and there were so many Originals to draw Copies from.

*L. C. J.* Were not the Originals all to the same Purpose?

*Mr. Dangerfield.* Agreeable in Point of Sense.

*L. C. J.* Pray tell us the Purpose of them?

*Mr. Dangerfield.* The Purpose was, that so many Letters should be conveyed into the Houses of several Persons of Quality in this Kingdom, that were called Presbyterians: For that was the Notion, that all Persons that

were not the immediate Promoters of the Catholick Interest, lay under; because they looked upon that Notion to be most obnoxious.

*L. C. J.* Who and where?

*Mr. Dangerfield.* In general, my Lord.

*L. C. J.* In general, where?

*Mr. Dangerfield.* By my Lady *Powis*, and the Lords in the *Tower*.

*L. C. J.* Were you by when the Lords in the *Tower* did agree to it?

*Mr. Dangerfield.* When my Lord *Petre* and my Lord *Arundel* did.

*L. C. J.* What did they agree to?

*Mr. Dangerfield.* My Lord, the Thing is this: After they received an Account from one *Mr. Paine*, I brought a Billet from that *Paine*; where-in was contained a Ground or Scheme of the Presbyterian-plot; so from thence it derived its first Name, my Lord: So that when I came to discourse with the Lords in the *Tower* about it, they called it the Presbyterian-plot; and Mrs. *Cellier* and the Lady *Powis* said, This is a Notion that will do the Business, as it is most obnoxious, and as best to our Purpose.

*Mr. Just. Jones.* How far was my Lord *Castlemaine* concerned in this?

*Mr. Dangerfield.* I have not heard his Lordship speak of it under that Notion.

*L. C. J.* Pray let us hear what you can say against my Lord *Castlemaine*.

*Mr. Dangerfield.* Now, my Lord, some considerable Time after I had gotten *Lane* out of Prison, I was employed by several other Persons, his Lordship was one, and he sent me to his Lordship's Solicitor, that is now in Court. A pretty while after this, and the Letters and Lists of Names, containing Matter to the same Effect as I told you before, as those in *Mansel's* Chamber, and all tending to the Credit of the Sham-plot, or the Presbyterian-plot: Now, my Lord, a pretty while after this, in *August*, as near as I can remember; about the Middle of *August*, I went to wait upon his Lordship the very next Day after I had been treated withal in the *Tower* to kill the King, whom God preserve, my Lord; and his Lordship had a Servant then in the Room, and he sent his Servant down Stairs, and looked upon me with a very austere Countenance: Said he, Why would you offer to refuse the Business for which you were taken out of Prison?

*L. C. J.* To you?

*Mr. Dangerfield.* To me, my Lord.

*L. C. J.* Who was by?

*Mr. Dangerfield.* No body but his Lordship and my self; for he sent his Servant out before: So he asked me, Why I would offer to refuse the Business I was taken out of Prison for? I asked his Lordship, What that was? Said he, Was not you at the *Tower* Yesterday? Yes, my Lord, I was. Would your Lordship have me kill the King, I suppose that's the Business? Yes, that is, said he. Upon which my Lord fell into such a Fury, that I was forced rudely to leave the Room, and went down Stairs. I think at the same time his Lordship was writing the Compendium of the late Plot; for there I saw some Words in a Paragraph that lay upon the Table, which I afterwards saw in that Book. There was Ink set upon the Table, and open in his Lordship's Hand. And his Lordship did use in his Discourse to call his Majesty Tyrant.

*L. C. J.* Have you heard him? In what Company?

*Mr. Dangerfield.* In his familiar Discourse. As to ask when his Majesty will return from *Windsor*? Says he, When the Tyrant pleases. And I remember I heard his Lordship mention the Word Tyrant to Mrs. *Cellier* at *Powis-house*.

*Mr. Att. Gen.* How came that Discourse about killing the King? What was the Occasion of that Discourse?

*L. C. J.* Had you refused it to my Lord?

*Mr. Dangerfield.* Yes, my Lord, I refused.

*L. C. J.* What did you say to him?

*Mr. Dangerfield.* I said, any body but my King, my Lord.

*L. C. J.* He said, Why did you refuse to do that for which you were taken out of Prison? What is that, my Lord? Was not you at the *Tower* Yesterday? Why won't you do it? What is it, my Lord? Is it to kill the King? I suppose that it is, said he, that your Lordship intends. Yes, says he, That is it, why won't you do it? That is what he says.

*Mr. Att. Gen.* That is the Evidence we give.

*Mr. Just. Jones.* You say he was very violent?

*L. C. J.* Was you ever in his Company afterwards?

*Mr. Dangerfield.* No, not after that, my Lord, that I know of.

*L. C. J.* What kind of Fury did he shew to you at that Time?

*Mr. Dangerfield.* My Lord, he was in a great Rage, as his Lordship is very cholerick; he was bustling about, and I knew not what he intended to do, and I was unwilling to stand the Test of his Anger. His Lordship seemed by his Look to be meditating Revenge.

*L. C. J.* How?

*Mr. Dangerfield.* I say this, After his Lordship had sent his Servant out of the Room, said he, Why would you offer to refuse the Business for which you were taken out of Prison? Said he, Were not you at the *Tower* Yesterday? Said I, Yes, my Lord, I was. Would you have me kill the King? Is that the Business? Yes, that it is, said my Lord very angrily.

*Pris.* When did you go to the *Tower*? Was this the next Day after it?

*Mr. Dangerfield.* The next Day after it.

*Pris.* *Mr. Dangerfield*, Pray let me ask you one Question. Did not I threaten to kill you, or have some of my Servants kill you, if you came unto me again?

*Mr. Dangerfield.* One Time his Lordship saw me at my Lady *Powis's* House, and he shewed me a very particular Favour. I speak it in the Presence of Almighty God, nothing out of Revenge, nor for any Sort of Interest.

*Pris.* Was I never angry with you but at that time?

*Mr. Dangerfield.* No, my Lord, I know not of any other Time that your Lordship was angry.

*L. C. J.* Now, what say you, my Lord?

*Pris.* The first Thing I desire to do, is, Here are two Gentlemen give in Evidence against me, the one is *Mr. Oates*, and the other *Mr. Dangerfield*. *Mr. Oates* says, That he in *Spain* did see several Letters from me: That when he came over into *England*, he brought a Letter from *Spain* to me, that that Letter was given to the Provincial, and the Provincial (he supposes) gave it to me. Now, my Lord, I only desire this, that the first Thing that shall be done, is, that you will please to call *Mr. Parker*, who will shew you what a kind of Man *Mr. Oates* is. And I am glad, since you say



say that Mr. *Dangerfield* is a good Witness, that I can prove that every Word he says is a Lie. And so begin with Mr. *Oates*.

*Pris.* I would offer you a Record; a Record of some particular Actions from *Hastings*.

*L. C. J.* Read the Record.

*The Record read.*

*L. C. J.* What Use can you make of this?

*Pris.* My Lord, the Case is only this, my Lord; I will tell you, here is Mr. *Oates*, this is only to shew what kind of Man this Mr. *Oates* is. Mr. *Oates* he comes and accuses a Man at *Hastings* for Buggery, there he is indicted and comes to his Trial, and then he is found innocent: Now, my Lord; I sent for this Mr. *Parker*, to tell your Lordship what kind of Man this Mr. *Oates* was, and for that Purpose shew the whole Proceeding.

*L. C. J.* My Lord, you shall have all the Justice in the World; but we must have right done to the King's Evidence. You have brought in a thing, whereby all you can make against Mr. *Oates* is this, that he was the Prosecutor of a Man for the Crime of Buggery, and is supposed to have taken his Oath there, and notwithstanding the Jury would not believe him, and found the Man Not Guilty.

*Pris.* My Lord, I come to shew you the Motives how the Jury came to clear him, that is, by proving this Man was in another Place at that time; and satisfied the Court and Jury, that he was from Eleven o'Clock or sooner, till Eight or Ten o'Clock with them in Company; where it was only the Malice that was between *Oates* and *Parker*; and several Witnesses that were in the Place where he said the Buggery was committed, said that he was not there; and the Witnesses positively said they were with him, and all looked upon Mr. *Oates* as a detestable Man, and sent him out of the Court.

*L. C. J.* Do you prove this by any but *Parker*?

*Mr. Just. Raymond.* This ought not to be admitted; for if it be, Mr. *Oates* stands here to answer all the Faults that ever he committed.

*L. C. J.* Here is the Case: Supposing it be true now, that Mr. *Oates* prosecuted a Man for Felony, and he gave Testimony, supposing it should be so, and yet the Jury acquitted him; what use can you make of it? You can make no Inference; it is a thing we must allow all the Juries in England: For there is Witness generally given on both Sides; and when there are for the Plaintiff, the Defendant's Evidence are all perjured; and when for the Defendant the Plaintiff's Evidence are perjured.

*Pris.* My Lord, this is the Inference. Thus much I make of it, that this *Parker* is innocent. *Oates* swears positively he did so, the other swears positively this Man was not there; to shew the Malice *Oates* had against him.

*L. C. J.* My Lord, you can go no further than you have gone. The Result of all is, that the Jury found him Not Guilty; for what Grounds no Man can come to say, but the Jurymen themselves. No Man can tell what prevailed with the Jury to find him Not Guilty, that is in their own Consciences, and these are Things that cannot be examined. His Jury, notwithstanding Mr. *Oates* was the only Prosecutor, they found him Not Guilty, and it amounts to nothing.

*Pris.* My Lord, there is another thing: While this Man was in Prison, what does *Oates* do, but comes here to London, accuses the Father, who was a considerable Man in the Town, a Justice of the Peace, and Mayor the Year before; accuses him because he should not assist his Son; accuses him before the King of speaking scandalous Words; then he gets him by a Messenger brought up before the Council: The King was present at the Hearing, and there it was proved to the King, as the Order of Council shews, that he was an honest Man, and so the Council sent *Oates* away with the greatest Contempt, and freed the other Man.

*L. C. J.* Was this before the Plot was discovered?

*Pris.* Yes, my Lord, in pursuance of it.

*L. C. J.* You said it was that he should not help his Son, his Son was not free.

*Pris.* No, he was in Prison, my Lord.

*Mr. Recorder.* My Lord may think it hard if he hath not some competent Liberty; but he must keep to the Business. You say, that notwithstanding he hath the Opinion of the Court, that the Jury must take Notice; then the Jury must take Notice it signifies nothing.

*Pris.* Very well. Having told you this, I desire you would be pleased to take Notice, after *Oates* was thus forced to run away from *Hastings*, here it seems he was converted to be a Papist, by a Person whom Mr. *Oates* hath since converted to be a Protestant; and you shall see what an Account this Gentleman will give of him.

*L. C. J.* What is his Name?

*Pris. Hutchinson.*

*L. C. J.* What will you do against him?

*Pris.* Several things, my Lord.

*L. C. J.* You must not do it: If you are able to disprove Mr. *Oates* in any of these Particulars, you may do it. If you alledge Testimony against the particular Matter he hath sworn, you will do very well; but pray, my Lord, keep to that.

*Pris.* I will, my Lord; I will submit any thing to your Lordship's Commands; and therefore, my Lord, I will tell you for what Reason I sent for this Man, to tell you how Mr. *Oates* went to Spain, and how he lived in Spain.

*L. C. J.* If you can shew the Jury any Reason why they should not believe his Evidence, that will be very proper.

*L. C. J.* What is your Name?

*Hutchinson.* My Name is, *Hutchinson*.

*Pris.* Mr. *Hutchinson*, pray say what you have to say, and not follow Mr. *Oates*'s Method: I only ask you this Question, Sir, Whether you did convert this Man, that is, reconcile him to the Church of Rome?

*Hutchinson.* Yes, my Lord, that I did.

*L. C. J.* You ought not to ask him such Questions, you bring him in danger of his Life; you are not to ask him such Questions.

*Mr. Recorder.* Let us see the Statute-Book.

*Cl. of Cr.* It is High-Treason.

*L. C. J.* You thought this had been meritorious now, and it is High-Treason.

*Mr. Recorder.* This it is to abound in a Man's own Sense. We must beg your Lordship's Advice in this.

*L. C. J.* Are you a Protestant now?

*Hutchinson.* Yes, my Lord.

*Pris.* He was a Priest, and confesses his Error.

VOL. III.

*L. C. J.* Did you know *Oates* first in Spain?

*Hutchinson.* No, my Lord, I knew him first here; and we were in Company, and I told him he could not be a true Priest, since he was of the Church of England.

*Mr. Att. Gen.* He offers such Things as are not Evidence.

*L. C. J.* Pray what do you know of his Employment in Spain?

*Hutchinson.* I received Letters from him when he was in Spain. He went over to study Philosophy and Divinity there, and I saw his Recommendations to the Rector of *Liege*.

*L. C. J.* Did you see him?

*Hutchinson.* Yes, my Lord, I did see him before he made this Disturbance.

*L. C. J.* What Disturbance? Do you know? What Discourse had you with him?

*Hutchinson.* I employed him in writing for me.

*L. C. J.* Writing what?

*Hutchinson.* In writing certain Things against the Corruption of the Church of Rome. He had 10 s. I gave him, and this was before the Discovery he made (as he pretends) of the Plot. And he told me he would suffer no more for Conscience-sake: It is an hard Thing, said he, Mr. Berry, for a Man to want Bread; upon which I gave him 10 s.

*L. C. J.* He says, Having been formerly with Mr. *Oates*, he employed him to transcribe many Things for him; and Mr. *Oates* said to him, He was resolved no more to suffer for Conscience sake. How, saith he, not so? Oh, but, Mr. Berry, said he, it is a very sad thing to want Bread. And upon that, he says, he gave him 10 s. for his Pains in writing.

*Hutchinson.* And hereupon, my Lord, in May was Twelvemonth he sent for me, when I heard he had done some more Mischief; and I went to him, my Lord.

*L. C. J.* That was after the Discovery?

*Hutchinson.* Yes, my Lord, upon that he was very kind to me, and gave me 20 s. Said he, Mr. Berry, you have been civil to me, and you shall never want any thing so long as I have it. Said I, Mr. *Oates*, are these Things true that you swear against the Jesuits? Said he, As I hope for Salvation they are. And that was the truest word he spake these three Years. Then, said I, Mr. *Oates*, answer me this only one Thing. There are an hundred and twenty Persons that saw you every Day, and dined and supped with you at St. Omers; and these you have recommended to me for virtuous People, and I know them to be so. He said, They are Outlaw'd Men.

*L. C. J.* What did Mr. *Oates* say more?

*Hutchinson.* He was with me frequently, my Lord.

*Mr. Recorder.* He paid your Angel well when he gave you 20 s.

*Hutchinson.* Mr. *Oates*, speak the Truth: There is a God in Heaven.

*Dr. Oates.* Shall I be allowed to satisfy the Court as to this Evidence? I will give the Court a very good Account.

*L. C. J.* The Substance is this; that you were poor. Is it true that he gave you 10 s.?

*Dr. Oates.* My Lord, I believe I might not have much Money among them.

*L. C. J.* And you said, You would suffer no more for Conscience Sake?

*Dr. Oates.* That is not so, my Lord.

*L. C. J.* And, That it is an hard Thing to want Bread?

*Dr. Oates.* My Lord, I never wanted Bread.

*Hutchinson.* But you said so to me, Mr. *Oates*.

*Mr. Att. Gen.* Hark, Mr. *Hutchinson*—

*Dr. Oates.* To shew the Invalidity of this Evidence, my Lord, the Bishop of London hath turned him out of his Living at *Barkin*.

*L. C. J.* What is that?

*Dr. Oates.* To shew that he is not fit to be trusted.

*L. C. J.* Why, you have never a Living.

*Dr. Oates.* Yes, I have, my Lord.

*L. C. J.* Where?

*Dr. Oates.* In Kent, my Lord.

*L. C. J.* How long have you had it?

*Dr. Oates.* I was restored to it last Summer.

*Mr. Recorder.* He says that he had Discourse with him concerning his Priesthood; whether Mr. *Oates* thought himself to be a good Priest; that is, as he was made by the Order of the Church of England?

*Mr. Att. Gen.* He says, He converted Mr. *Oates* to be a Papist.

*Dr. Oates.* And I have a Charge of High-Treason against that Man, for seducing me from my Religion, my Lord; I will swear he turned me to the Church of Rome, and I desire it may be Recorded.

*Dr. D.* I have one thing to tell your Lordship, the Man is mad, he is distracted.

*L. C. J.* This Doctor of Divinity is a very honest Man, he will tell you.

*Dr. D.* He was my Curate at *Barkin*, and my Lord of London having some Information against the manner of his Preaching, sent me word to *Rippon* he would provide me another Curate; on Saturday last, dining with him, my Lord told me he was distracted.

*Mr. Recorder.* His Behaviour is a very concurrent Testimony.

*Mr. Just. Raymond.* I appeal to my Lord, if I did not tell him, as he came into the Court, that he was a distracted Man.

*L. C. J.* Call another Witness.

*Pris.* Here's a Gentleman was his School-fellow at *Valladolid*. I ask you, Mr. *Armstrong*, Whether you knew any Thing of Mr. *Oates* there?

*L. C. J.* How long had he been there?

*Armstrong.* He was three Months there before me.

*L. C. J.* How long was he there in all?

*Armstrong.* A matter of a Month.

*L. C. J.* Was he not there four Months?

*Armstrong.* Yes, a matter of four Months in all.

*L. C. J.* He says, he had been there three Months before he came, and a Month after he came; and that then he was but a common Scholar.

*Dr. Oates.* My Lord, I will satisfy the Court when they question me.

*L. C. J.* In what would you satisfy us?

*Dr. Oates.* About being a Scholar. I was ready to commence when they came; but being they were Strangers in the Town, not being Town-Scholars, and not undertaking Philosophical Dictates, the Fathers did pray me to shew them the way to School; and I went with them two or three times.

*L. C. J.* Call another, my Lord.

*Pris.* Mr. *Palmer* and Mr. *Doddington*.

H

*L. C. J.*



*L. C. J.* Did you know Mr. Oates at St. Omers?  
*Palmer.* Yes, my Lord, and he was an ordinary Scholar there, and din'd and sup'd with us.

*L. C. J.* You said he din'd at another Table.

*Palmer.* Yes, my Lord, he did dine at a Table by himself, but it was at the same time.

*Dr. Oates.* Had I Scholars Commons? Pray, my Lord, ask them that.

*Palmer.* He had the same Commons that we had; but they had a Respect for him, as he was an ancienter Man, and that was the Reason that he had more Freedom than the rest.

*Prif.* My Lord, he says he came from St. Omers at the Consult: Pray, Sir, who did you come along with? Did you come with *Hilsley*?

*Dr. Oates.* *Hilsley* came with me in the Pacquet-Boat.

*Prif.* Call Mr. *Hilsley* and *Osbourne*. My Lord, this Gentleman—I would bring nothing to offend your Lordship, or nothing that hath been old, if it had not some new Inference from it; therefore, my Lord, this is the Reason that I sent for Mr. *Hilsley*. Mr. *Hilsley*, did you come with Mr. Oates in April in the Pacquet-Boat?

*Hilsley.* No, my Lord.

*Prif.* You left him at St. Omers?

*Hilsley.* Yes, my Lord.

*Prif.* Now, my Lord, I have several Witnesses to prove this. And pray, Mr. *Osbourne*, tell my Lord what he said to you.

*Osbourne.* My Lord, about the latter end of April I heard Mr. *Hilsley* was in Town; I went to see him, and one time at a Coffee-house about the Turnstile we fell in Discourse.

*L. C. J.* My Lord, you say you have two Persons of Quality: I will tell you, my Lord, what you shall expect; I will not be for one, and not for t'other; but be equal as near as I can. If he comes only to testify what *Hilsley* told him, it signifies nothing.

*Prif.* I do depend upon *Hilsley*; but this is that *Hilsley* told him, that there was one Oates at St. Omers.

*L. C. J.* That is no Evidence, nor can Ladies of Quality prove by their own Experience what Mr. *Hilsley* affirms, that Oates came not over with him.

*Prif.* My Lord, they can tell; and one Lady, a Protestant, that talking with this Gentleman before the Plot—

*L. C. J.* This is only Discourse what another Man says; if Mr. Oates himself should have said so, then indeed it is proper: But to shew you this, it is impossible, supposing they speak truth; that is, if they do witness what they do not, that long before they heard of the Name of Oates, this Gentleman should tell them, one Oates was left at St. Omers; it signifies nothing.

*Prif.* Does not that confirm Mr. *Hilsley's* Testimony?

*L. C. J.* No, indeed.

*Prif.* I only refer this to you, my Lord; *Hilsley* says, in April he did leave Oates, and here are four or five Witnesses that *Hilsley* told them so.

*Mr. Just. Jones.* All that my Lord says, is this, that he did leave Mr. Oates at St. Omers. If it be objected, they are Catholics, as they call them; says my Lord, *Hilsley* did tell this Story before there was any Plot. Why should he tell them so? It is not in favour of that Religion that he speaks; but the time of testifying such a thing shews he speaks true. This is all.

*Prif.* This is the Inference; this is only to corroborate and shew you the Credit of his Testimony.

*Mr. Just. Raymond.* It may be a Mistake, tho', and it is of no more Force than what he says now.

*Mr. Att. Gen.* They were all mistaken in that Matter.

*Dr. Oates.* My Lord, he did leave me at St. Omers, but I overtook him at Calais.

*L. C. J.* Will you swear it, Mr. Oates?

*Dr. Oates.* I say, upon my Oath I did it.

*L. C. J.* It were a great Matter if you had any body to prove, that this Gentleman came alone; but that is still but one Man's Testimony.

*Prif.* But here is Confirmation to his Evidence that he could not invent it.

*Mr. Att. Gen.* You had 16 once, but the contrary was proved and believed, and so it may be again.

*Prif.* Call Mr. *Gregson* and Mr. *Rigby*. Mr. *Gregson*, were not you Landlord to Mr. Oates before the Plot was discovered? How long before the Plot did he lie at your House?

*L. C. J.* What time?

*Gregson.* A Week before Easter, 77.

*Mr. Just. Raymond.* When did he go away from you, Sir?

*Gregson.* The Sunday after Easter-day.

*Mr. Just. Raymond.* When did you see him again?

*Gregson.* He came to me about All Saints.

*Mr. Just. Raymond.* The same Year?

*Gregson.* Yes.

*Dr. Oates.* Who paid for my Quarters? Pray ask him that, my Lord.

*Gregson.* He paid for it himself.

*Dr. Oates.* Did not Mr. *Fenwick* pay for it?

*Gregson.* He did after you came from St. Omers.

*Dr. Oates.* My Lord, when I came last from St. Omers, I went directly to his House.

*Prif.* Was not he in a poor Condition?

*Gregson.* He was then indifferently poor.

*Prif.* My Lord, this is only to prove his Condition.

*Dr. Oates.* My Lord, I had only what the Jesuits allowed me.

*L. C. J.* You had nothing but what they allowed you?

*Dr. Oates.* Nothing else, my Lord.

*Mr. Just. Jones.* They allowed you a very scanty Living.

*Prif.* Call Mr. *Littcott*. Mr. *Littcott*, Do you know any thing about a Divorce?

*L. C. J.* What should he know?

*Prif.* Pray, my Lord, don't discourage me.

*Mr. Just. Raymond.* But you must not ask things that are not to the Purpose.

*Littcott.* My Lord, it was morally impossible there should be a Divorce.

*L. C. J.* Was there any Endeavour by my Lord concerning it?

*Littcott.* There was no such Design.

*L. C. J.* How was that? But pray mind, you will be morally not believed else: Do you know my Lord used any Endeavours, in order to obtain a Divorce?

*Mr. Recorder.* That is all that he says, he never knew any thing.

*Prif.* I only say this, my Lord, Mr. Oates comes here and says, that he heard me say, that I did spend a great deal of Money. Now if I satisfy the Court that I never spent a Farthing towards a Divorce—

*L. C. J.* If he had said, your Lordship laid out Sums of Money, then it had been an Answer to that, if you could prove you had not.

*Prif.* You know I stand here accused for a great Crime; pray give me leave.

*Mr. Just. Raymond.* If it were a matter of Moment, we would.

*Prif.* Pray, my Lord, hear me: Here's a Man says, I spent a great deal of Money about a Divorce? I come to tell your Lordship, that this very Man, before your Lordships, and also before the King, and if your Lordships have forgot it, I will shew you Witnesses that he spake it before the King; and before the House of Commons, that I did actually sue out a Divorce: Now I will shew, my Lord, that I neither could, nor did go about it.

*L. C. J.* We are not to take Notice of that now. If he did say a false Thing before the House of Commons, we cannot take Notice of it now; for we cannot go to try whether he said so, and whether that be true or false.

*Prif.* I humbly beg, my Lord, if this Man that is upon his Oath hath sworn before the King that he did actually see the Divorce, and I prove that it was impossible that he should see the Divorce, because it was impossible to get a Divorce—

*L. C. J.* What then?

*Mr. Just. Raymond.* You must not be permitted to prove that, it is not pertinent to the Question.

*Prif.* My Lords, with humble Submission to you, he hath told me this before your Lordships, that I spent a great deal of Money about a Divorce.

*L. C. J.* My Lord, you will be satisfied, when we have acquainted you what the ordinary Proceedings of a Court of Justice are in Matters of this Nature: what is and what is not to be admitted. If you should come to prove Mr. Oates had falsely sworn a thing in another Court, and five or six Witnesses shall come and say it is not true; we are not to hearken to it. The Reason is this: First, you must have him perjured, and we are not now to try, whether that Thing sworn in another Place be true or false: Because that is the way to accuse whom you please; and that may make a Man a Liar, that cannot imagine this will be put to him: And so no Man's Testimony that comes to be a Witness, shall leave himself safe. And this is another Case, if he swore in another Place what is contradictory to what he says now; then it is proper. If you could prove that he had sworn in another Place that he never saw you, it is very proper: But now to us he says, that he doth not remember whether ever he had seen a Divorce, or that you had sued out a Divorce. All that he remembers is, that you said you had expended a great deal of Money about a Divorce, and this is all he testifies here.

*Prif.* My Lord, my Evidence against Mr. Oates is this, that he waves what he said before, when I came to ask him, and says, I don't remember. Now, my Lord, if he lies in one thing he may in another.

*Mr. Just. Raymond.* No Man can remember all the things that ever he did in his Life.

*Prif.* I have Witnesses to appeal to, to witness every thing; and I represent it here to you, that I would with all my heart have indicted him of Perjury, but for Mr. Attorney General: For I employed two to attend the Clerk of the Peace for Copies of the Indictment against Mr. *Langborn* and Mr. *Ireland*; they did come to the Clerk of the Peace; faith the Clerk of the Peace, I can't do it without Mr. Attorney's Authority. My Lord, faith he, I would give them you with all my Heart, but I must have leave from the Table.

*Mr. Att. Gen.* No, my Lord, I told you I would not give it you without you had an Order from the King, and the Council did not think fit to give it you.

*Prif.* I think this a little pertinent.

*Mr. Just. Jones.* How doth any thing that your Lordship excepts against in this Gentleman's Testimony contradict it self? All that you accuse him of is, that Mr. Oates had said he heard you say, you had spent a great deal of Money about a Divorce.

*Prif.* I only shew, if you are pleased to hear it, that he reported to the King that he actually saw the Divorce.

*Mr. Just. Jones.* That agrees well enough with what he says now.

*Prif.* He said so in your Lordship's Hearing.

*L. C. J.* I don't remember it, if I did I would speak of it; I don't remember it, upon my Word.

*Mr. Just. Raymond.* I protest I don't remember a Word.

*Mr. Just. Jones.* In the Court, did he say it?

*Mr. Just. Raymond.* Here we have all three that were present, I protest I don't remember it; but as to the Business of the Divorce, I might look upon it as impertinent, and so possibly might not mind what he said.

*Prif.* I only offer this to you; and if your Lordships command me to desist, I will desist.

*Dr. Oates.* I desire my Evidence to prove that I was in Town.

*Mr. Just. Raymond.* Pray, Mr. Oates, you are an Evidence, you must be govern'd by Mr. Attorney.

*L. C. J.* It would be very fit, Mr. Attorney, to prove that Mr. Oates did come over with *Hilsley* in the Pacquet-Boat.

*Mr. Just. Raymond.* Mr. Oates, I remember very well, gave an Account of his coming over; said he, I did come over with such and such Persons, and among the rest was Mr. *Hilsley*. This is only to prove that he was at the Consult.

*Mr. Att. Gen.* We can prove it.

*Records produced against Mr. Dangerfield.*

*L. C. J.* Here is, that he was burnt in the Hand, and Out-lawed for Felony, Pilloried for Cheating, twice Pilloried; and see whether he was Whipp'd or no.

*Mr. Sol. Gen.* I know nothing of the Pillory.

*Mr. Just. Raymond.* Here was a Record of being burnt in the Hand, and a Record for putting away false Guineas.

*L. C. J.* For that he was to stand in the Pillory.

*Cl. of Cr.* Here is one Record for another Shilling Gilt.

*L. C. J.* Was that in the Pillory too?

*Mr. Att. Gen.* He was fined Fifty Pounds.

*Cl. of Cr.* Here are three in *Salisbury* for three several Guineas, and he was adjudged to the Pillory for them all.

*Mr. Att. Gen.*



Mr. Att. Gen. It was all at one Affizes, my Lord.  
 L. C. J. My Brother try'd him.  
 Cl. of Cr. He was tried before Mr. Just. Jones, and to stand in the Pillory for all three.  
 L. C. J. What have you else to say?  
 Prif. Call Mrs. Cellier and Mr. Dowdal.  
 L. C. J. What is your Name, Sir?  
 Dowdal. My Name is Bennet Dowdal.  
 L. C. J. What have you to say to him, my Lord?  
 Prif. Mr. Dowdal, the Case is this, Mr. Dangerfield tells me I was angry with him at such a time for a Business at my House; Was I not angry with him at Powis House for going to the Lords in the Tower?  
 Mr. Att. Gen. Then he did go about it?  
 Dowdal. Mrs. Cellier spake to me to speak to Mr. Dangerfield not to be troubled at your Anger.  
 Mr. Just. Raymond. When was this?  
 Dowdal. After the Jesuits died.  
 Prif. He proves this, That Mrs. Cellier spake to him to pacify Mr. Dangerfield, and Dangerfield did tell him I was angry with him for going in my Name to the Lords.  
 Mr. Just. Raymond. He says no such Thing, my Lord.  
 L. C. J. You must not ask him what Mrs. Cellier said.  
 Mrs. Cellier. This Day twelve-month he and I had been employ'd in writing Copies of some Letters, and I sent him to my Lord to know if he would go something towards the printing them, and he went from him to the Lords in the Tower. In an Hour and half after, my Lord came to me very angry: Mrs. Cellier, said he, I thought you would not forfeit your Discretion to send such a Rascal to me; if you send him to me again, I will bid my Servants kick him. And, said I to Mr. Dangerfield, you are not to note that; for he is a very good Man, and may be angry one time and pleased another; and I would have sent him another time, and said he; Pray, Madam, don't send me thither, I would rather go an hundred Miles of your Errand.  
 L. C. J. Dangerfield, That Discourse you had with my Lord, was it before the Jesuits dy'd, or after?  
 Mr. Dangerfield. What Discourse?  
 L. C. J. When you discours'd about killing the King.  
 Mr. Dangerfield. No, my Lord, two Months after.  
 L. C. J. When was the time that these Words were spoken?  
 Mr. Dangerfield. When his Lordship was in that Passion.  
 L. C. J. When was that?  
 Mr. Dangerfield. My Lord, it was about the Middle of August.  
 L. C. J. Was you ever in his Company after?  
 Mr. Dangerfield. No, my Lord, I saw him once at Powis House.  
 L. C. J. Had he ever been angry before?  
 Mr. Dangerfield. No, not till this time, my Lord.  
 L. C. J. Here Mrs. Cellier witnesses, that this Day twelve-month, my Lord was extremely angry, insomuch, that when she would have had you go on an Errand, you would not.  
 Mr. Dangerfield. My Lord, that time I had been with my Lord Castlemaine, I went home to Mrs. Cellier's House, which I did then call my home, and said I, my Lord Castlemaine is most violently angry with me.  
 L. C. J. When was this?  
 Mr. Dangerfield. This was the latter End of August.  
 L. C. J. But the talks of this time twelve-month.  
 Mr. Dangerfield. It is no such thing, my Lord.  
 Mrs. Cellier. I said, Pray carry this Letter to my Lord Castlemaine: Pray excuse me, said he, I had rather go an hundred Miles than go by his Door.  
 L. C. J. Whereas Dangerfield says, he had this Discourse in August, Mrs. Cellier says in June or July; this Day twelve-month particularly she gave him a Letter, and he said, Pray excuse me, I would go an hundred Miles for you; but I would not go into my Lord's Company again if I could help it.  
 Prif. My Lord, Mr. Dowdal can tell it.  
 L. C. J. Did he acknowledge to you my Lord's Anger in the beginning of July?  
 Dowdal. It was within a Week after the Jesuits died.  
 L. C. J. I don't know that.  
 Dowdal. It was about the twenty-first of June.  
 L. C. J. Here are two Witnesses, one says in June or the beginning of July; says Mrs. Cellier, this Day twelve-month he came and told me, my Lord was extremely angry with him. And she would afterwards have had him carried a Letter: But he said, Pray excuse me, I would go an hundred Miles, but he would not go again to him if he could help it. And Dowdal says, he told him about that time of my Lord's Anger with him.  
 Mr. Att. Gen. Hold your Tongue, Mr. Dangerfield.  
 Mr. Just. Raymond. What Jesuits?  
 Dowdal. The five Jesuits.  
 Prif. If you please, my Lords, I would only tell you this. My Lords, you see that these two Witnesses testify that I was angry with Mr. Dangerfield in June; my Lords, I only say this to you, that when I was examin'd at the Council before the King of this Particular, my Lord Chancellor ask'd him the Particulars of it, and he did confess this thing which I now prove. Now, my Lords, I infer this, if I was so angry with him for offering to go to the Tower, when he went to the Tower in my Name—  
 L. C. J. That they have said, that you were very angry.  
 Dowdal. Dangerfield told me so, that he was angry about his going to the Tower in my Lord's Name, unknown to him.  
 L. C. J. Here are two Witnesses to prove that my Lord was angry with him for going to the Tower in his Name; and they both testify he was extremely high, and refused to carry a Letter to my Lord; and yet he says, in August following he had this Discourse.  
 Prif. I have now only one thing to say what hath pass'd between Mr. Oates and Mr. Dangerfield.  
 L. C. J. Do it as near as you can.  
 Mr. Sol. Gen. We have some other Evidence to answer this.  
 Mr. Att. Gen. If your Lordship please, we will call two or three Witnesses to prove the Point. First, to prove this last thing, that we have been in my Lord's Company later than my Lord speaks of.

L. C. J. He says August.  
 Mr. Att. Gen. We will prove after that time, that is the time that pinches us.  
 Prif. My Lady Powis is in Court, will you hear her?  
 Lady Powis. My Lord, I never did send a Letter by Mr. Dangerfield to any body in my life, nor I never read a Letter in Mr. Dangerfield's Presence, nor never had him so much in my Company to read a Letter or any Tittle to him.  
 L. C. J. I will tell you Gentlemen, what he says; Mr. Dangerfield swears he carried a Letter from my Lady Powis to my Lord Castlemaine, and there was an Answer brought back, and that that Answer of my Lord Castlemaine's was read before him; and (you will do well to call Mrs. Cellier in again) my Lady Powis doth deny that she ever sent a Letter by him to my Lord Castlemaine; or any body else, by him in her Life; or that she ever communicated any Letter to him: This is apt Evidence, this is the Truth of it; for it answers directly to what he says against my Lord Castlemaine.

Sir Richard Barker.

L. C. J. What say you, Sir Richard Barker, can you give an Account of Oates? When was Mr. Oates in Town? What time that you know of?  
 Sir R. Barker. My Lord, I remember we were once upon this before your Lordship.  
 L. C. J. In 78?  
 Sir R. Barker. Yes; my Lord; the Evidence that I gave, my Lord; was only this, that my Servants told me that Mr. Oates had been at my House: It was before Whitsontide in May 78.  
 L. C. J. Did you see him then? When was it you saw him?  
 Sir R. Barker. My Lord, I saw him after.  
 L. C. J. How long after?  
 Sir R. Barker. My Lord, it was about the latter end of June.  
 L. C. J. He says, to his own Knowledge he saw him in June.  
 Mr. Att. Gen. But we have his Servants here too, Philip Page, and Cecily Mayo.  
 L. C. J. Do you hear, Mrs. Cellier, was there any Letters sent by my Lord Castlemaine to my Lady Powis, that was read before you and Dangerfield?  
 Mrs. Cellier. No, my Lord.  
 L. C. J. Here are two Witnesses; my Lady says there is no such Thing, and Mrs. Cellier says it.  
 Prif. There is another Thing, that is, the Teaching the Scholars at St. Omers, that I taught the Scholars their Lessons.

— Turner.

Mr. Sol. Gen. Pray inform my Lord and the Jury, what time it was you saw Mr. Dangerfield at my Lord Castlemaine's.  
 L. C. J. What Month can you charge your self to say you saw Dangerfield in my Lord Castlemaine's Company?  
 Turner. I can't say just the time.  
 L. C. J. Might it be August?  
 Turner. I can't well tell, I think it might be about July.  
 Mr. Just. Raymond. Why do you think so?  
 L. C. J. You are not asked to accuse your self in any thing, but when you saw them together.  
 Turner. I was coming down Stairs, my Lord.  
 Mr. Just. Raymond. You don't tell when it was.  
 L. C. J. Tell us whether you can tell or no: If you are doubtful; say you are doubtful; but speak the Truth.  
 Turner. I can't be positive.  
 L. C. J. It might be in June, or July, or August; but you think July.  
 Turner. Yes, Sir.  
 Mr. Sol. Gen. The sooner it is after that, the Evidence is the better against it.  
 Mr. Att. Gen. Madam, I think your Ladyship says you never sent a Letter by Dangerfield?  
 Lady Powis. Yes, Sir.  
 Mr. Att. Gen. Nor did you never receive any Notes from him?  
 Lady Powis. I have received some Notes from Mrs. Cellier, which were his Writing.  
 L. C. J. But did you ever receive a Letter from my Lord Castlemaine?  
 Lady Powis. Never, my Lord.

— Woodman.

Mr. Just. Raymond. What do you say, Mr. Attorney?  
 Mr. Att. Gen. Heark you, Woodman, were you sent with any Letter?  
 Woodman. To whom?  
 Mr. Att. Gen. To my Lord Castlemaine, or any body?  
 Woodman. I was sent with one Letter, it was Mrs. Cellier's, my Lord.  
 L. C. J. To whom?  
 Woodman. To my Lord Castlemaine; as I remember, my Lord, I took it from Mrs. Cellier's Daughter.  
 Mr. Att. Gen. Did you ever receive any Money of my Lord Castlemaine?  
 Woodman. Yes, my Lord.  
 L. C. J. What was it? How much was it?  
 Woodman. About three Pounds, or thirty Shillings, I believe.  
 L. C. J. How do you believe it?  
 Woodman. To the best of my Thoughts it was.  
 Mr. Att. Gen. Was it for Dangerfield?  
 Woodman. My Lord, I don't know that.  
 L. C. J. Have you any more?  
 Mr. Sol. Gen. My Lord, I have this to say, to prove Dr. Oates was in London in April 78.  
 L. C. J. He doth not deny but he might be here too.  
 Prif. I don't dispute it, my Lord, I have only this one Word more. It is not of Treason, but it is against my Reputation; because this Man, before your Lordship, I think, has accused me of it; and I think, my Lord, I shall give you very good Satisfaction: That is, that the Boys that came from St. Omers were not instructed and taught by me. Now, if you please, my Lord, to give me leave to shew it, I have done. Look my Lord, the thing that I can say, is this: Mr. Littcott—  
 Mr. Just. Raymond. You see he said it was morally impossible.

Prif.



*Pris.* Pray, my Lords—

*Mr. Just. Raymond.* I will undertake you will say it is time lost.

*L. C. J.* I will stay some time to observe to the Jury what I have taken notice of, with all my heart, but I should be gone.

*Pris.* I have done, my Lord, I would not say any thing to disgust any body.

*L. C. J.* Gentlemen of the Jury, I will deliver my Observations in this Cause as I would in any Cause, to the best of my Understanding, and I will make those Observations that are as natural as I know how to do; and proper for you to take notice of. It is in vain to dispute what my Lord stands indicted of: It is for attempting to murder the King, and change our Government and our Religion. To prove this there have been two Witnesses only that are material, and that is Mr. Oates in the first place; and Mr. Oates his Evidence, the Sum of it is to be reduced—

*L. C. J.* Mr. Attorney, do you stand up to speak any thing?

*Mr. Att. Gen.* If your Lordship pleases, we will sum up the Evidence for the King, not to offend your Lordship.

*L. C. J.* If you would be short, Mr. Attorney, we would not hinder you of any thing.

*Mr. Att. Gen.* I will be very short.

If it please your Lordship, and you Gentlemen of the Jury, my Lord Castlemaine is here charged with High-Treason. The Proof that we have against him is by two Witnesses, that is, Dr. Oates and Mr. Dangerfield. Mr. Oates he doth swear this, namely, That after the Consult (for I will bring it in short) that after the Consult that was for killing the King and altering the Government, my Lord Castlemaine being acquainted with it at Mr. Fenwick's Chamber, did hope it good Success, and that he should come to be reveng'd. Mr. Dangerfield he hath prov'd, That being treated with to kill the King, and having refus'd to do it, my Lord Castlemaine was very angry with him for it, and said, *Why won't you do that for which you were taken out of Prison?* Here are two Witnesses express. What is said against Mr. Oates signifies nothing. As to Mr. Dangerfield, there are some Exceptions, which we must confess to be true; but he is a Witness, and, my Lord, such Matters are to be expected to be proved by such Witnesses: For if a Man will discover Robberies, he must go to such Persons as do such Things; and if Treasons, it must be among them that have been employed in such Things. Tho' he were a dishonest Man before, yet he may be honest now: He was never guilty of any Treason but as he was employed among them. There are some Witnesses brought to encounter him, and one is my Lady Powis, who, as he says, sent him with a Letter to my Lord Castlemaine; but she says she did never send a Letter by him: And others say, he would never come at my Lord Castlemaine after he was angry, which was in June. Now for that, Gentlemen, you do hear Turner say, That in July or August, for he can't tell which, he thinks it might be July, he saw Dangerfield at my Lord Castlemaine's; so that That encounters that Evidence.

*L. C. J.* If Mr. Attorney had not interrupted me, I would not have left out any thing of this Nature, for I would be certainly careful where the King's Life lies at stake: I would be sure to preserve my Sovereign above all things; and therefore no Man ought to think that I should be partial in a Cause wherein our Religion, and the Life of the King and the Government is in Danger. But I must say on the other side, That there should be good competent Proofs of these Things against those accused, because their Lives and Fortunes, and Honours, and all are at stake. And so, Gentlemen, we shall discharge our Consciences to the best of our Understandings, and deal uprightly on both hands.

For the Case it stands thus: It is truly observed by Mr. Attorney, That there are but two material Witnesses to the Charge of this Indictment, that is to say, Mr. Oates and Mr. Dangerfield. Mr. Oates his Testimony is in two Things; the one close, the other is more remote. That more remote is, That he had a Letter to send to my Lord Castlemaine, which he gave to the Provincial to send it, and as he says, he saw a Letter subscribed Castlemaine; and that afterwards by seeing him write a Superfcription, he could recollect the Character so well, that he believed that to be his Hand which he saw in Spain among the Jesuits or the Fathers, as they call them there, to whom they communicated that Letter; wherein he mentioned the general Design, that is, the bringing in Popery, which is the bringing in the Catholick Religion, as they call it. That is more remote. He says, there were Letters pass'd between them, wherein my Lord approved of some Things, and disapproved of others, which related to the Design; by which, says Mr. Oates, we meant the whole Matter and Transaction of killing the King; and that doth appear by that Letter he saw of my Lord Castlemaine's, for that annexes to design the advancing the Catholick Religion. The first time he saw him he did not know who he was; and there, at *Wild-house*, he says, That my Lord Castlemaine should drop out some Words which were suspicious, and one thing, as if he understood something of this Matter that they had in Agitation.

But more particularly he says, That when he came to Fenwick's Chamber, there was the great Matter. They talked before but of the Design in general, at *Wild-house*; but afterwards meeting in *Lincoln's-Inn-Fields*, where he was told who he was, they went to Fenwick's Chamber, where they fell a discoursing about several Things that related to the Concern, and at last they fell upon the Matter in hand, and said, they were glad to see the Fathers so unanimous in this Matter: I asked about what Matter? He said, the killing of the King and bringing in Popery; to which, he says, that my Lord should make answer, He wished them good Success in their Design, and that then he should be revenged. This is the Substance of what Mr. Oates says; against whose Testimony, I must tell you, there hath been but little. There is but little thrown upon Mr. Oates by way of Disgrace and Infamy; for that Verdict that the Jury found against his Evidence, it is not material, for then every Man must be accused when the Jury does not go according to the Testimony he gives. It is not to be denied, but there is something said against him in another Particular, and that is his coming over from St. Omers; where he says that Mr. Hilsley came over with him in the Pacquet-Boat, but Mr. Hilsley denies it; Mr. Oates would have saved it, by saying he left him at St. Omers. 'Tis true, says Mr. Oates, but I overtook him afterwards; but he says to the Point, that he came not with him. Now, it is not to be denied on the other hand, but Mr. Oates might be here, and my Lord of Castlemaine seems to admit it,

and it is probable enough Mr. Oates might be here. This is all I remember in reference to Mr. Oates. You must weigh well with your selves how probable or not probable what he does swear is: But I must tell the Jury they are to weigh the Natures of People among themselves, as they carry Probability or not, or else the Confidence of a Swearer shall take away any Man's Life whatsoever. And to that Mr. Oates says first, I understand not how he should be so free, Mr. Oates being a Stranger to him, when he knew not my Lord, and doth not know whether my Lord knew him or no. But he says, my Lord must needs see the Jesuits trusted him, and that might make him more confident: That afterwards going to Fenwick's House, he spoke broader in plain English. They were talking of a Design to kill the King and bring in the Catholick Religion; and Mr. Oates says, he wish'd them good Success in the Design, and that then he should be revenged. How far this Oath is to be taken or not, I must leave to your Consideration.

The next is Mr. Dangerfield; for nothing infamous is proved against Mr. Oates. Dangerfield is a Man of whom there is enough. You see what Crimes there are; for it is the Duty of every Judge; and I can't see how he can discharge his Conscience, and the Duty he owes to the Government, in respect of his Oath and Place, if he doth not make those just Observations to the Jury which are done in all Cases: That is to say, when Men have contracted great Crimes upon themselves, tho' by Law they may be Witnesses; yet it hath always been observed, and their Credit left to them to consider of. You see how many Crimes they have produced, a matter of six great enormous Crimes; and by them you will see how far you ought to consider his Testimony. Had Mr. Dangerfield been guilty only of being concerned in the Treason, and come in as a Witness, I should have thought him a very competent Witness, for that is Mr. Oates's Case; but they prove Crimes of another Sort and Nature, and whether the Man of a sudden be become a Saint by being become a Witness, I leave that to you to consider, and how far you are satisfied in the main.

The next thing is the Opposition to his Testimony. He hath sworn that he carried a Letter from my Lady Powis to my Lord Castlemaine, and an Answer returned back from my Lord to her, and that my Lady Powis did read it in the Presence of Mrs. Cellier and him. Of this my Lady Powis hath been asked (it is true, they are not upon their Oaths, but that is not their Fault, the Law will not allow it), and my Lady Powis hath affirmed to it, as much as lay upon her to do, that she never sent a Letter by Mr. Dangerfield to my Lord Castlemaine, nor any body else. And whereas he says Mrs. Cellier was present, she says she knows of no such Letter, nor was any read in her Company. And this is a contradicting his Evidence, supposing him to be a Man otherwise untouch'd. And whereas Dangerfield says, that in August, he was with my Lord, and he said, How chance you would not do that thing for which you were brought out of Prison? *What? Would you have me kill the King?* Yes, faith he, *that is it.* And my Lord speaking very angrily and very roughly, made him think it time to withdraw out of his Company, and never come into his Company more; and that this was the time of his Anger, and no other time, my Lord rather complimenting him, as he would say, with friendly Salutations. But they produce Witnesses against this. Says Mrs. Cellier, This Day Twelvemonth; and says t'other, about a Week after the Jesuits were executed, which was about the beginning of July, faith she, I would have you carry a Letter to my Lord Castlemaine; faith he, I would not do that, I would go an hundred Miles upon another Errand, but I would not go to him. Another Witness says, my Lord was mighty angry with him, and told him the Cause, because he went in his Name to the Lords in the Tower. First, this contradicts what he said, as if there had been no Anger before. The next is, that it is very improbable that my Lord should be angry with him so much, that my Lord should be very angry with him for going in his Name to the Tower, and afterwards for his refusing to kill the King; when he said, *Why did you not do that you came out of Prison for?* *What, my Lord, to kill the King?* Yes, *that.* This is an Argument in Opposition to his Testimony.

The next is a Consideration for his Testimony. Turner says, in answer to that, in July he takes it, but can't charge himself whether June, or July, or August, but he himself thinks July, that he saw him at the Lord Castlemaine's House. And the King's Council would gather from that, there could not be such an Unwillingness to go before that time, it being after the time they speak of that this Man saw him there. Whether or no it was in June, or July, or August, is something uncertain. So that I have repeated, as near as I can, all that is substantial on either Part; and I have, according to the best of my Understanding, dealt fairly on both Sides, and observed to you what hath been sworn against my Lord, and what hath been said in Contradiction to what they swear, and what appears upon Record, as to Dangerfield.

There is a great deal of Difference between Mr. Oates's Testimony and Mr. Dangerfield's; for you may believe one, when you may perchance not believe another. There are not those Things cast upon Mr. Oates that are upon Mr. Dangerfield. Now I must tell you, tho' they have produced two, if you believe but one, I think (if so be by my Brethren's Opinions be otherwise, I would be very willingly contradicted in this Matter) if two Witnesses are produced, both speaking materially to the thing, the one is believed, and the other not. Whether upon these two Witnesses the Jury can find a Person guilty, or no? I am of Opinion, it is but one Witness, if you don't believe one; and I am sure one is not sufficient to find one guilty: And therefore if so be you are of another Opinion, let us deal fairly and above-board, that it may appear we deal rightly between the King and his Subjects, and so preserve Men that are accused, and not guilty.

*Mr. Just. Jones.* I think, in the first place, my Lord hath very faithfully delivered the Evidence; and I do think it necessary, in a Case of Treason, that there must be two Witnesses believed by the Jury.

*Mr. Just. Raymond.* I never heard any Man question it. If the Law says there must be two Witnesses produced, it says they must be both believed.

*L. C. J.* Now you have our Sense of it.

[The Jury went from the Bar, and returned.]

*Cl. of Cr.* Are you all agreed of your Verdict?



*Jury. Yes.*  
*Cl. of Cr. Who shall speak for you?*  
*Jury. The Foreman.*  
*Cl. of Cr. Roger Palmer, Esq; Earl of Castlemaine in the Kingdom of Ireland, Hold up thy Hand, look upon the Jury.*  
*Cl. of Cr. Is Roger Palmer, Esq; Earl of Castlemaine in the Kingdom*

of Ireland, Guilty of the High-Treason whereof he stands indicted, or Not Guilty?  
*Jury. Not Guilty.*  
*Cl. of Cr. This is your Verdict, You say he is Not Guilty, so you say all?*  
*Jury. Yes.*

XCVIII. The Trial of HENRY CARR, at the Guild-hall of London, for a Libel, July 2, 1680, 32 Car. II.

**A**N Information was filed in the Crown-Office against Henry Carr, which sets forth, that a certain Plot of a traitorous Conspiracy was lately had within this Kingdom of England, amongst divers false Traitors of this Kingdom of England, to put to Death and murder our Lord King Charles II. and the Government of this Kingdom of England, and the sincere Religion of God within this Kingdom of England well and piously established, to destroy and subvert, and the Romish Religion within this Kingdom of England to introduce; and that also divers Traitors for High-Treason aforesaid, were lawfully convicted and attainted, and other Persons, for High-Treason, aforesaid, were by due Course of Law tried and acquitted. Nevertheless, one Henry Carr, of the Parish of Sepulchres, London, Gent. knowing well the Premises, but minding, and maliciously intending the Government of the Kingdom of England, and the Administration of Justice in the same Kingdom to scandalize, and to bring the same in Contempt:

The first Day of August, in the Thirty first Year of our now Lord the King, at the Parish of Sepulchres, London, a certain false, scandalous and malicious Book, Entituled, *The Weekly Packet of Advice from Rome, or the History of Popery*, maliciously and unlawfully hath printed, and caused to be published: In which Book is contained among other Things, as followeth: There is lately found out by an experienc'd Physician, an incomparable Medicament, call'd *The Wonder-working Plaster*, truly Catholick in Operation, somewhat of kin to the *Jesuits Powder*, but more effectual. The Virtues of it are strange and various. It will make Justice Deaf as well as Blind, takes out Spots out of deepest Treasons, more cleverly than Castle-Soap does common Stains. It alters a Man's Constitution in two or three Days, more than the Virtuofos Transfusion of Blood in seven Years. Is a great *Alexipharmick*, and helps Poisons, and those that use them. It miraculously exalts and purifies the Eye-sight, and makes People behold nothing but Innocence in the blackest Malefactors. It is a mighty Cordial for a declining Cause, stifles a Plot as certainly as the Itch is destroyed by Butter and Brimstone. In a word, it makes Fools wife Men, and wife Men Fools, and both of them Knaves. The Colour of this precious Balm is bright and dazzling, and being apply'd privately to the Fist in decent Manner, and a competent Dose, infallibly performs all the said Cures, and many others not fit here to be mentioned:

To the great Contempt of our Lord the King and his Laws, to the great Scandal of the Government of our now Lord the King, and the Laws of this Kingdom of England, and the Administration of Justice in the same Kingdom; to the evil Example of all others in such a Case offending, and against the Peace of our Lord the King, his Crown and Dignity.

To which Information appeared in the Court of King's-Bench, Henry Carr, by his Attorney, *Benedict Brown*, the eleventh of February, and having heard the Information aforesaid, said that he was not Guilty.

Issue being join'd, it was tried by Writ of *Nisi Prius*, at the Guild-hall, before the Lord Chief Justice *Scroggs*, upon the Second of July, 1680, where a Jury was summon'd, whose Names are as followeth:

<i>Benjamin Thorogood.</i>	<i>John Debmam.</i>	<i>Richard Blaney.</i>
<i>Richard Blackburn.</i>	<i>Lewis Wilson.</i>	<i>Henry Averie.</i>
<i>Godfrey Richards.</i>	<i>Henry Lashoe.</i>	<i>Joseph Hall.</i>
<i>Leonard Bates.</i>	<i>Thomas Salter.</i>	<i>William Bridges.</i>
<i>Philip Harman.</i>	<i>Jeremiah Gregory.</i>	<i>Thomas Lee.</i>
<i>Francis Breerwood.</i>	<i>Nicholas Bondy.</i>	<i>Richard White.</i>
<i>Thomas Kemble.</i>	<i>George Day.</i>	<i>Randal Dod.</i>
<i>William Longman.</i>	<i>Nicholas Dawes.</i>	<i>Richard Bowater.</i>

Of all which only Four appeared and were Sworn, viz.

<i>Nicholas Bondy.</i>	<i>Henry Averie.</i>
<i>Leonard Bates.</i>	<i>Randal Dod.</i>

Whereupon a *Tales* was prayed and granted, and then were sworn and added to the principal Pannel, according to the Form of the Statute,

<i>Nicholas Caplin.</i>	<i>William Yap.</i>	<i>John Odenfel.</i>
<i>Richard Cavotham.</i>	<i>James Wood.</i>	<i>Emanuel Conyers.</i>
<i>Arthur Young.</i>	<i>Thomas Gilby.</i>	

After which the Court proceeded, and the Recorder began to open the Offence, as follows.

*Sir George Jefferies.* Mr. Recorder. This Person among others, intending to scandalize the Government, hath caused a Book to be published, which I have here in my Hand, called, *The Weekly Packet of Advice from Rome*; there are some Papers besides what are bound up together, that are continued on, which, my Lord, would not be amiss for us that are of the King's Council to take Notice of, not only for the Jury's Satisfaction, but likewise for the Satisfaction of this great Auditory, some whereof I know come to pick Advantage, and to know whether or no Rascals may have Liberty to print what they please. Now all the Judges of England having been met together, to know whether any Person whatsoever may expose to the publick Knowledge any manner of Intelligence, or any Matter whatsoever that concerns the Publick: They give it in as their Resolution, that no Person whatsoever could expose to the publick Knowledge any thing that concern'd the Affairs of the Publick, without Licence from the King, or from such Persons as he thought fit to entrust with that Affair. But such is the Age that we live in, that Man that hath Wit enough to libel any Man in the Government,

thinks he hath Licence enough to expose that Man to publick Knowledge also. And they do it under specious Pretences, because they think that any Man may be exposed to the publick Censure that they can either call a Papist, or but popishly affected; and that Man is either the one or the other, that is not agreeable to every Rascally Humour that some People affect. I acknowledge, my Lord, that any Man that will in a legal manner endeavour to suppress Popery, ought to be encouraged in his Endeavour, to the utmost; but if in case any Man will be transported with Zeal, because he is of a Party, and under Pretence of endeavouring to suppress Popery, should support a Party, that Man ought to be detected. The Author of this Packet of *Advice from Rome*, or the Publisher of it, Mr. Carr, that is now the Defendant, he thinks he can scratch the Itch of the Age, and that he may libel any Man concern'd in the Government, if he can but call him a Papist, or popishly affected; let a Man be never so honest, let a Man be never so much for the Support of that Religion that every honest Man ought to support, that is, the Protestant Religion, as it is establish'd by Law, without going to Rome or Amsterdam for Assistance. I will not mention the Persons that are concern'd in it, but I will apply my self wholly to this Matter, that it is the Opinion of all the Judges of England, that it is the Law of the Land, that no Person should offer to expose to publick Knowledge any Thing that concerns the Government, without the King's immediate Licence. Now we are to try whether this Person exposed this Thing to publick Knowledge, and that is the Matter, Gentlemen, that you are to try. The other is the Business of the Court; we are to say whether, if we prove the Fact, this Man is guilty of Punishment, and no doubt the Justice of the Nation will punish him. But when I see so many swarm about me, I am willing to hear what Proof there is.

*Sir Francis Winnington.* I am of Council for the Defendant, I only offer it to your Lordship, that the Information may be proved.

*L. C. J.* Here are two Things we are to keep to, the Matter of Proof according to the Information, and accordingly are we to proceed as in common Justice we find the Case to be. I must say that for the Prisoner, he has behav'd himself with as much Modesty as in Duty and Honesty he ought; but I find that *Sir Francis Winnington* puts you upon proving.

*Sir Francis Withins.* My Lord, we will prove it.

*L. C. J.* Let them that are not of the Jury go forth, the Jury is no more to be corrupted than the Judge.

*Sir Francis Withins.* We must be allowed the first Part, that there was a Plot.

*L. C. J.* The Jury may take that upon their Oaths, they know there was a Plot, the certainest of any Thing of Fact that ever came before me.

Mr. Stevens, Printer.

*L. C. J.* Did Mr. Carr own he writ this Packet, had you any from him? *Printer.* I had several from him.

*L. C. J.* Of whom else had you any?

*Mr. Recorder.* Besides Carr?

*L. C. J.* You are upon your Oath; from whom ever had you any besides? *Printer.* I do not remember that I had any from any body else.

*L. C. J.* You printed them, did you?

*Printer.* Yes, my Lord, I did.

*L. C. J.* And you know of none from any else, but by him or his Orders? *Printer.* No, my Lord.

*Sir Francis Winnington.* Shew him the Paper. Can you swear upon your Oath, that Mr. Carr did send or deliver to you that very Paper?

*Printer.* I can't tell that any body else did send it.

*L. C. J.* We must do here, as we do in all Cases: He saith, I had divers of these Papers from him, I printed them, and I know of none that ever was but by him or his Order.

*Sir Francis Winnington.* He saith so, but, my Lord, the Information is to such a particular Book Entituled, *A Packet of Advice from Rome*.

*L. C. J.* He says this in Answer to it, I can't charge my self with this Particular, to say positively I had it from him: But this I can say, we had several from him, and I know of none else, but all were by him or his Order.

*Sir Francis Winnington.* Will your Lordship give me Leave to ask him one Question? Can you swear that any that came from him contained the very Matter in that Book? Was it the Matter or Words?

*Mr. Recorder.* Do you believe it?

*Sir Francis Winnington.* Good Mr. Recorder, let me alone. Can you say it is the very Matter contain'd in that Paper?

*Printer.* I can't say that.

*L. C. J.* It is not an easy Matter for a Man to remember the Matter of a Paper that is writ on all Sides. He swears that they had several; and that they had none, though he printed them, from any but him or his Order. This Question *Sir Francis Winnington* asks, Had you this particular Paper from him? He cannot swear it was the same he had from him; but he does swear, all the Weekly Intelligences were from him or his Order; he does not swear for the Matter of this Book, which no Man will do: But he does swear that these Papers were always by him or his Orders, and that several were received from him.

*Mr. Williams.* I ask you upon your Oath, he brought it to you in Writing, did he not?

*Printer.* They came in Writing.

*Mr. Williams.* Have you any of these Papers to shew?

*Printer.* We did not regard them when they were printed.



*L. C. J.* His Cause shall be try'd very justly, and very indifferently.  
*Mr. Williams.* Had you ever a Paper from Carr's Hand, or no?  
*Printer.* We had few from his own Hand.  
*Mr. Williams.* Had you any?  
*Printer.* I can't remember.  
*L. C. J.* Had you any? You are upon your Oath.  
*Printer.* My Lord, I can't remember.  
*L. C. J.* Had you one, or two?  
*Printer.* Indeed, my Lord, I can't remember, I can't say upon my Oath he ever brought one.  
*L. C. J.* How then came you to say, you had several from him?  
*Printer.* Ay, my Lord, from him, that is, by him, or his Order.  
*L. C. J.* Are you sure it was by his Order?  
*Printer.* I did conceive so, my Lord.  
*L. C. J.* Had he any Money?  
*Printer.* From me?  
*L. C. J.* Had he any Money from any body for printing any of these Papers, as you can remember?  
*Printer.* I do suppose so, I have heard he had.  
*L. C. J.* Did you give him any?  
*Printer.* No, my Lord, I was not concern'd. The Publisher, my Lord, was between him and me.  
*L. C. J.* Who is that?  
*Printer.* That is one Curtis.  
*L. C. J.* Did Curtis pay him any Money?  
*Printer.* I never saw him pay him any, my Lord.  
*L. C. J.* Hath he owned at any time he had any Money?  
*Printer.* My Lord, I never had any Occasion for that Question.  
*L. C. J.* Have you talk'd with Carr?  
*Printer.* Yes, my Lord.  
*L. C. J.* Now I shall have you: For I do believe you are an honest Man. Did Carr ever own himself to you to be the Author of this Book, or any of these Papers?  
*Printer.* My Lord, as I said in the other Case, so I say in this, I had no Occasion to dispute it, I took it for granted.  
*L. C. J.* Have you ever heard him own it?  
*Printer.* I have heard him deny it.  
*L. C. J.* How did you come to take it for granted that he was the Author, when he did once deny, but never own'd it? Answer me that Question, and thou shalt be a brave Man.  
*Printer.* My Lord, there was never Occasion for that Discourse.  
*L. C. J.* Look you, Sir, you must answer me in a way agreeable to common Reason and Understanding. Why did you say just now, you took it for granted that he was the Author, and yet you say he hath deny'd it, and never owned it? Why should you then believe he was the Author?  
*Printer.* I don't say, my Lord, he never own'd it.  
*L. C. J.* What Tricks we have in this World!  
*Mr. Recorder.* I would ask the Gentleman, I will not quarrel with him at all, if he thinks not in his own Conscience he has reason to quarrel with himself. Did he ever own it to you?  
*Printer.* I don't remember he ever own'd it to me in so many Words.  
*L. C. J.* Did he treat with you in these Circumstances as if he were the Author?  
*Printer.* Yes, my Lord, I grant that.  
*Mr. Recorder.* But do you swear it is so? We don't care for your granting: I ask you upon your Oath, did you ever discourse him as the Author of these Papers?  
*Printer.* I supposed him to be the Author.  
*L. C. J.* Did he deny it, or baulk when you discours'd him of this Matter?  
*Printer.* My Lord, I must needs say as I said before, it was taken for granted.  
*Mr. Williams.* You had it in Writing, Where are those Writings?  
*Printer.* We seldom regard those Writings.  
*L. C. J.* It is hard to find the Author, it is not hard to find the Printer: But one Author found is better than twenty Printers found.  
*Mr. Williams.* My Lord, I will ask this Man a Question. Upon your Oath, Who brought you that Writing?  
*Printer.* What Writing?  
*Mr. Williams.* That by which it was Printed: Who brought you that Paper?  
*Printer.* I don't remember particularly I had any of Mr. Carr himself.  
*Mr. Williams.* Can you name the Person that brought this Paper, or any one Person that brought any one Paper?  
*Printer.* There was a little Boy.  
*Mr. Williams.* Whose Boy?  
*Printer.* Mr. Carr's Boy.  
*Mr. Recorder.* Now it is out.  
*Mr. Williams.* Name the Boy.  
*Printer.* I do not know his Name.  
*Mr. Williams.* Can you name another, can you name any body else?  
*Printer.* Truly, Sir, I don't remember any body else.  
*Mr. Williams.* Now I will ask you one Thing: Had you any Directions for the Printing this Paper?  
*L. C. J.* To what Purpose was this written Paper brought to you?  
*Printer.* To be printed, my Lord.  
*Mr. Williams.* Who gave Directions?  
*Printer.* It was the Publisher that chiefly directed me.  
*Mr. Williams.* Who was that?  
*Printer.* I have named him.  
*Mr. Williams.* Name him again.  
*Printer.* Curtis.  
*Mr. Williams.* Did Carr never direct you to print this Paper?  
*Printer.* He did not deal immediately with me.  
*Mr. Recorder.* When the little Boy came, who did you take him to come from? From Mr. Carr, or Mr. Curtis?  
*Printer.* From Mr. Carr.  
*L. C. J.* He says he was Carr's Boy, and that he came from him: This I speak to the Jury; and I promise you this, if my Life and For-

tune were at stake, I would be try'd by this Jury at the Bar, and would do in this, as in all Cases. Mr. Carr is look'd upon as the Author of this Book; that it either came from him, or by his Order, his Boy (he can remember no body else) did bring it. This is now remaining only: Are you sure Mr. Carr sent him? Saith he, We talk'd with Mr. Carr several times.

*Sir Fr. Winnington.* Thus it is, my Lord, in the Information, *Mali-ciose & illicite imprimi causavit & publicavit.* Now I would only ask him a Question, my Lord, Whether or no did Mr. Carr own to you that he sent the Boy to have it printed?

*Printer.* No, Sir, I think not.

*L. C. J.* That is the same Question ask'd before. Did Mr. Carr ever own it as his, or no? Upon your Oath, Did Carr own this Packet to be his, when you discours'd with him about it?

*Printer.* My Lord, I humbly crave your leave to explain myself. I mean by the Discourse I had, common Conversation, as the drinking a Glass of Wine; but I know not that ever we discours'd upon this thing.

*L. C. J.* I mean so: When you talk'd about this Matter, Did you take it, by his Discourse, for granted, that he was the Man that published it?

*Printer.* I took it for granted, because I had it from him.

*L. C. J.* What say you to this? Have you blamed Carr for writing too sharply in this Book against the Government?

*Printer.* My Lord, I do confess I have.

*L. C. J.* What Answer hath he made, when you blamed him for writing too sharply, as you thought? Did he deny that he did it?

*Printer.* I don't remember that.

*L. C. J.* What sort of Answer did he make to excuse it? That he thought it not too sharp; or did he say, I care not.

*Printer.* My Lord, I can't particularly say what Answer he made.

*L. C. J.* When you blamed him, by the Oath you have taken, upon that Blame of yours, did he deny he wrote it?

*Printer.* No, my Lord, I do not remember he did.

*Mr. Williams.* Did Carr at any time deny he was the Author or Publisher of it?

*Printer.* He hath at some times.

*Mr. Williams.* What did he deny?

*Printer.* That he was the Author.

*Mr. Williams.* Of what Book?

*Printer.* Of the Pacquet.

*L. C. J.* Did he deny he was the Author of this particular Book for this Week, or deny it in general? Did he deny in general that he was the Author of that Book that is call'd, *The Pacquet of Advice*?

*Printer.* I have heard him say sometimes that he was not the Author.

*Recorder.* And sometimes what?

*Printer.* I have heard him say some time or other that he was not the Author.

*Mr. Recorder.* And what else?

#### The Printer's Servant.

*Mr. Williams.* Are you acquainted with Carr?

*Man.* I never had any Converse with him.

*Mr. Williams.* Do you know any thing of the *Pacquet of Advice*?

*Man.* I know we have had Pacquets from him: I fetch'd some from him.

*Mr. Williams.* What, from his Hands?

*Man.* Yes.

*Mr. Williams.* What, from his own Hands?

*Man.* Yes, in Pieces, no whole Sheets.

*Printer.* This is my Servant, I am not always there.

*Sir Fr. Winnington.* My Lord, I would ask this Man a Question. This printed Paper that is put in the Information, Did he ever deliver that to you?

*Man.* I can't speak particularly to any one.

*Mr. Recorder.* But generally to all?

*L. C. J.* Have you done?

*Mr. Williams.* I ask you a Question.

*L. C. J.* If you could, Mr. Williams, shew me any Author besides Mr. Carr, I would say something.

*Mr. Williams.* Who brought you this Paper?

*Man.* Which Paper?

*Mr. Williams.* I don't speak of this Paper particularly. Did any bring any besides Carr?

*Man.* Yes, his Boy.

*Mr. Williams.* Did any body else bring any from any Place?

*Man.* No body else that I know of.

*Mr. Williams.* The Pacquet he brought you, had it been printed before? I ask you upon your Oath, was it printed before he brought it?

*L. C. J.* Did he bring Papers to print that were never printed?

*Man.* They were never printed that I know of.

*Mr. Williams.* Did he bring any to print?

*Man.* I can't say he brought any.

*Mr. Williams.* Did Mr. Carr bring any?

*Man.* No, the Boy.

*Mr. Williams.* Who directed you to print them? Did Carr direct you?

*Man.* I can't tell, I am a Servant in the House.

*L. C. J.* I will assure you, a *Non est Factum* can't pass at this rate.

*Mr. Just. Jones.* Who did you take to be the Man that sent you all the Pacquets?

*Man.* I very seldom took any, because I was not always in fight.

*L. C. J.* Who did you understand?

*Man.* I understood they came from Mr. Carr.

*L. C. J.* Have you any more? Read the Words in the Information.

*Clerk.* Friday the 1<sup>st</sup> of August 1679. There is lately found out by an experienced Physician, an incomparable Medicament, call'd, *The Wonder-working Plaster*; truly *Catholick in Operation*; somewhat of kin to the *Jesuits Powder*, but more effectual. The Virtues of it are strange and various. It makes Justice deaf, as well as blind, and takes out Spots of the deepest Treason more cleverly than *Castle-Soap* does common Stains. It alters a Man's Constitution in two or three Days, more than the *Virtuosus Transfusion of Blood* in seven Years. 'Tis a great *Alexipharmick*, and helps Poisons, and those that use them. It miraculously exalts and purifies the *Eye-sight*, and makes People behold nothing but Innocency in the blackest Malefactors. 'Tis a mighty *Cordial* for a declining Cause; it



stiffes a Plot as certainly as the *Ich* is destroyed by *Butter and Brimstone*. In a word, it makes *Fools* wise *Men*, and wise *Men* *Fools*, and both of them *Knaves*. The Colour of this precious Balm is bright and dazling; and being applied privately to the Fift, in decent Manner, and a competent Dose, infallibly performs all the said Cures, and many others not fit here to be mentioned. *Probation est.*

Sir Fr. *Winnington*. May it please your Lordship, and you Gentlemen of the Jury, I am Council in this Cause for the Defendant: And the Question is, Whether or no we must take the Information as it lies? And truly, for the first Part of it, whether there was a Plot or no, I do not intend to make Exceptions; for I believe there was one, and do intend to take it as in the Information. Gentlemen, we are to proceed now to this other Question; which is, my Lord, Whether or no this Defendant, that is, *Carr*, did *falsely and maliciously*, and with *Design to scandalize the Government*, cause to be printed and published this false Libel that is in the Information. Now truly, my Lord, we that are for the Defendant, say we are not guilty. My Lord, we very well know how penal a Thing it is for a Man to be the Author of a Libel that relates to the Scandal of the Government. And, my Lord, whether this Defendant be guilty of this, or no, we must submit that to your Lordship's and the Jury's Consideration. They have produced two Witnesses, that is to say, the Printer and his Man. Now, my Lord, there hath been going out for some Time, *A Weekly Pacquet of Advice from Rome*; and I did ask the Witnesses (for the Information points at one Paragraph, and puts the Paragraph in *hec verba*)—I did ask him whether or no he did send, or whether the Matter that he sent is that contained in this Information. That he could not swear: but must be left in point of Evidence, it being, we allow, a very penal Matter. The second Witness and the first Witness likewise say, there was a Boy; but whether that Boy came by his Master's Direction, he does not know. I asked him if ever his Master sent the Boy; he does not know, he says, that he sent him. But the last Witness says, divers were had from the Hands of *Carr*; but whether it was the Thing that is now complained of, there is the Question, and that is in the Dark: For, by your Lordship's Leave, I do not understand that ever this Man was complained of to any publick Magistrate for writing this Book; for it was thought he was a *Satyrist* against *Papery*, and thought to be very well liked on till this Fault was found with it; and it may be very justly; whether or no we be guilty of this, is uncertain: For we know, in the Age we live in, there are too many Shams put upon Men; and who knows but that the *Papists*, that might have an Ill-will to this Mr. *Carr*, that hath been no Friend to them, might shuffle in this Paragraph, by that Means to have Justice come upon him? I would not contrive against common Evidence, where a Man is guilty to the Publick; but we know there are Abundance of Artifices in this Age to abuse Men. For this Purpose I hope your Lordship and the Jury will expect that you should have positive Evidence against him. Now granting your Lordship should have conjectural Evidence that he did cause it to be printed and published, that this Man did write it, is, I say, very uncertain, for there is no positive Evidence. What a Man may have in his private Thoughts of it, is not enough: But, whether *secundum allegata & probata*, it shall be alledged and proved, that this Man was the Author of it. Now, my Lord, I say, I must submit it to your Lordship, I say, that as to the causing it to be printed, or the causing it to be published, or that this individual Paragraph was writ by him in order to its being printed or published; my Lord, I say, there is but remote and conjectural Evidence, and an angry *Papist* might contrive this Way to have an innocent *Protestant* found guilty.

People. Hem—

L. C. J. You see what a Case we are in, Gentlemen; you see what a Sort of People we are got among. Go on, Sir *Francis*.

Sir Fr. *Winnington*. With your Lordship's leave I have one thing to put to your Lordship. The Information says, *false, illicite & maliciose*. I know there are some Things that do imply Malice in themselves. Truly, my Lord, I am upon a tender Point, and know not how to express myself. I say, supposing it should fall out that this Man writ this Book, and he might have some little Extravagancies in his Head in writing; whether this Man did it maliciously to scandalize the Government, as the Information says, is a Question. Truly, my Lord, there is many an indiscreet Act a Man may be guilty of, that cannot be called a malicious Act; and that is the second Thing. There must be Evidence that this Man did it maliciously, or that he did it with a Design to scandalize the Government. If you be of Opinion that it is otherwise, that is in your Lordship's Breast; we are of the Negative, and we say we can't prove a Negative. But if you find him innocent, I suppose there will be no Cause to complain of him afterwards, for he had no Malice in his Heart.

Mr. *Williams*. My Lord, it can never be supposed that a good Man, and a good Subject, should do an ill Action. If he be a very good Subject, if he be upon a Square in every Respect, a Person that loves his King, and loves the Government in Church and in State; if he be such a Person, he cannot be thought guilty. My Lord, we will prove him to be such a Man, and I hope the Gentlemen will believe us.

Call Mr. *Sutton*, Mr. *Ayliffe*, and Mr. *Ambler*.

Mr. *Williams*. Mr. *Sutton*, Do you know Mr. *Carr*?

Mr. *Sutton*. I know him very well.

Mr. *Williams*. How long since have you known him?

Mr. *Sutton*. Two or three Years.

Mr. *Williams*. Does he go to Church or Meeting?

Mr. *Sutton*. He hath been with me at Church often.

Mr. *Recorder*. Does he receive the Sacrament according to the manner of the Church of England?

Mr. *Sutton*. I was never with him at the Sacrament.

Mr. *Williams*. Is he one of them you call Dissenters?

L. C. J. Did he ever discourse with you concerning this Book?

Mr. *Sutton*. My Lord, I have often spoken to him.

L. C. J. Has he disowned he was the Author?

Mr. *Sutton*. He has sometimes.

L. C. J. How do you believe it was upon that Discourse?

Mr. *Sutton*. I do not think he is able to write such a Book.

L. C. J. That is not the Question, answer me what I ask.

Mr. *Sutton*. It did seem something like his writing, methought.

L. C. J. Did it seem by his Answer to your Discourse with him?

Mr. *Recorder*. Pray tell us, Did you look upon him to be the Author?

L. C. J. By the Discourse you had with him, How did it appear upon that Discourse? Pray tell us plainly and clearly, how you do think, by the Discourse you had with him concerning this Pamphlet, whether he was the Author or no?

Mr. *Sutton*. My Lord, about a Year, or a Year and half since, I did ask him whether this Book were licensed? He told me it was licensed by Mr. *L'Estrange*; but he did not tell me he was the Author.

L. C. J. How did it seem by his Discourse?

Mr. *Sutton*. I did apprehend he might write it.

Sir Fr. *Winnington*. My Lord, but the Question is, whether he wrote this Paragraph.

Mr. *Ambler*.

Mr. *Williams*. Mr. *Ambler*, pray do you acquaint my Lord, do you know Mr. *Carr*?

Mr. *Ambler*. Yes, Sir.

L. C. J. How long have you known him?

Mr. *Ambler*. Three Years.

Sir Fr. *Winnington*. Of what Conversation is he, and how affected to the Government?

Mr. *Ambler*. He went to Church with me.

Sir Fr. *Winnington*. Do you look upon him as a Man well affected to the Government? Do you think he would maliciously write any Thing to scandalize the Government?

Mr. *Just. Jones*. How do we know how Mr. *Ambler* understands the Government?

Mr. *Recorder*. Mr. *Ambler*, Had you any Discourse with him about the *Pacquet of Advice*?

Mr. *Ambler*. Never in my Life.

Mr. *Recorder*. Did you ever hear of the Book?

Mr. *Ambler*. Yes, Sir.

Mr. *Recorder*. Upon your Oath, Did you look upon him to be the Author?

Mr. *Ambler*. The common Report was, that Mr. *Carr* was.

Mr. *Ayliffe*.

Mr. *Williams*. Mr. *Ayliffe*, Do you know Mr. *Carr*?

Mr. *Ayliffe*. Yes, Sir.

Mr. *Williams*. Is he a conformable Man to the Government in Church and State? Does he go to hear *Common-Prayer*?

Mr. *Ayliffe*. I have seen him at Church, and at Divine Service.

Mr. *Recorder*. Did he behave himself reverently there?

Mr. *Ayliffe*. Yes, Sir.

L. C. J. Do you think he writ this?

Mr. *Ayliffe*. My Lord, I never asked him.

Sir Fr. *Winnington*. My Lord, it seems he was accounted the Author of the Books; but whether of this particular one in the Information, we conceive not proved.

Mr. *Recorder*. If we should not do right, we disclaim that Service we owe to the Crown, and that Respect we owe to the Government as honest Men and as true *Protestants*, and as much against *Papists* as any Man whatsoever. I shall endeavour to give the World Satisfaction that this Man is guilty of this Offence. My Lord, for any Man to come and pretend that we must prove that a Man is malicious; or because that a Man writes against the *Papists*, he must never therefore be convicted of Malice, surely is a strange Argument. And I wonder to hear any Man that pretends to Reason, Men of Sense, and Conscience, and Understanding, so out of their common Sense and Understanding, as to make that go as an Argument. Gentlemen, the Things themselves bespeak their Malice. For so we in our common Discourse, when we bring our common Actions (of which you have heard a Number), if in case any Man call a Man *Thief*, we say he does falsely, and maliciously, and scandalously call a Man *Thief*: If we prove he called him *Thief*, the very Thing does intimate he does it falsely, scandalously, and maliciously; therefore the Thing itself is a sufficient Indication of the Malice and Depravity of it. There's no Man but may know in plain English what's the Meaning of these Words; it is as plain as can be in the World: We must debase our Understandings, and be as great *Dolt-heads* as they would make all Men that will not be of their Party, if we don't plainly see into the Meaning of these Words, that *Justice is to be bribed with Money*. In the next Place, Gentlemen, we do not come and say, that the Information lies against these very particular Words; that is a Mistake of the Information. But the Information is, That he did cause to be printed and published a Book, in which among others there were such Words as these; though if they had been the very Words themselves, the very Words have been proved. Now, There is no better Proof under the Heavens, than the Proof we have offered. The Printer himself, he comes here and says, That *Carr* did acknowledge himself the Author, and he did generally publish the Book; I appeal if you do not believe it. This they would now come and excuse; for they are glad to make a Rascal of any of their Party, if they can but save a Man that is guilty. But Things come out with much Difficulty and much Straitness; and I must say, if ever any Thing were an Instance of *Papery*, then that Man is one of the Jesuited Fellows that ever was; for he does *cant so like them*, that a Man can't tell how to govern himself. Who was it that should write these Things? Truly, he had discoursed with him about the Matter. Who sent the Boy? Do you know? Truly I can't tell: And wonderful great *Snuffing* and *Canting* before he comes to the Business. Besides, what can there be more plain than the Proof-pieces before the publishing? T'other Man says, that he was the Man that fetched Pieces from *Carr's* own Hand, and that he always looked upon it that all did come from *Carr*.

Now every Man that knows any Thing of Printing, knows this, that after it hath first taken the Press, it is always carried back again to the Author, to see whether it be done according to his Mind; and after that it comes to the publick View. And that this Man, *Carr*, is the Author, Mr. *Sutton* and the rest of his Witnesses, if they speak according to Conscience, they themselves looked upon this very Man to be the Author. Their own Witnesses looked upon it so. It was not only the private Opinion



Opinion of these Men, but the general Report of all. So that, my Lord, had it not been necessary to the Support of the Government, I should have scarce troubled my self to give your Lordship and the Jury this Trouble. But I must say, and I do believe, that there is no Man whatsoever, that stands to have Vices of this Nature convicted and punished, but desires the Protestant Religion may be supported to the utmost, and that Popery may be suppressed. But I say, whoever it is, that after this Evidence, who is bound by his Oath to go according to Evidence, shall acquit this Man, he must be a Man of a humming Conscience indeed.

Sir *Fr. Withins*. I shall hint one thing to your Lordship in this Case: That it is an unlikely Thing that a Papist should set out this Pacquet at this Time. For then, my Lord, how came it to pass that Mr. Carr had none come out that Week; for his is a *Weekly Intelligence*? If Mr. Carr's had come out, and this likewise, there had been some Pretence for this: But since there came out but one, that the Papists set out this is unlikely. They have not pretended to bring in any body else as the Author; but their own Witnesses say, and they themselves say, he was looked upon as the Author. Those things that are done against the Government, are never done in the Face of the Government.

L. C. J. Really, Gentlemen, I thought not that this had been a Cause of that Moment that now I find it. For their very Disturbance hath altered it from Mr. Carr's, to a publick Concern. The Noise which they make, this Way that these People use, that with their Shouts and Noise attend the Cause, hath quite spoiled it: As in the Case of *Harris*. But those People that did then attend him, leave following him in a Goal for five hundred Pounds, which may be five Shillings apiece had discharged him of, if they had been as free of their Purfes as they are of their Noises and Acclamations: So that in Truth they are only violent against the Government whilst they can make Shouts and Noises, but if it comes once to deliver a Man from a penal Sum, they will let him rot in Goal. For so *Harris* sent to me, that his Party had all forsaken him, and no Man would give him any thing. And this is for those *Hummers*, those brave Fellows that seem to espouse a Cause, and yet leave their Party in Distress. But let them go away with this, that they prove themselves hereby Enemies to the Government, and false to that Interest and Men that they seem to espouse; that come only here to affront a Court of Justice with their Shouts and Noises, and will not relieve their Party: For this is the Complaint of *Harris*, and the Disparagement of all Men that come to espouse it. This Cause, the Truth on't is, I did not look upon to be of this Nature and Moment, when it was opened. For though there are in this very Paper upon which the Information is grounded, Words malicious and reflective enough; yet they were not so apparently appropriated, that a Man might observe an extraordinary Design in them. This I thought; but really the Case is altered even by those Men. For I'll tell you, *Harris* is poor, and his keeping in Prison is principally occasioned from the Manner of the Reception of his Punishment, which he calls his Pardon. And therefore these Fellows, these *Hummers*, let them all know, whenever they come to espouse a Cause of publick Concern against the Government, they spoil it; and when they are taken, then they ruin one another. And this is like to be so, for none will help them with a Groat. And this is the Misfortune of that unfortunate Man *Harris*, that he hath no Place of Mercy left him from the King, because he was attended with such a Rabble as these People are, that have made a Noise here, and yet will give him no Help nor Assistance when he wants it: And let them know, it hath turned this Man's Cause into a publick Cause, because here are People that do espouse it, and the Government is hereby concerned much more than by any one Action that this Carr could have done. I have said so much more of this, that I might shew you to what a sad Case this is brought from what at first it was. For if it had passed without such a Noise, as you see how they express themselves, I should not have thought much Matter in it; and though you had convicted him, I should have thought a better Sentence might have served the Turn: But they have undone Carr, if you find him guilty; and so it's like to prove, whenever there is popular Attendance upon publick Causes that concern the Government.

The present Case it stands thus: Mr. Carr, here is an Information brought against him for publishing a printed Pamphlet called, *The Pacquet of Advice from Rome*, and in it there are recited some Particulars, which were observed to you before, which was not well done; but yet not so insolently done as some perhaps do conceit. The Question is, Whether he was the Author or Publisher of this: You hear he is thought the Author, but say his Council, it is not plain; and that is true. But it seems by their own Witnesses, to any Man's Understanding, that they looked upon him as the Author. But then, is he the Author and Publisher of this particular Book? I had rather Mr. Carr, with all his Faults about him, and his *Hummers*, should go away with Applause, and have him found not guilty, than do him wrong in one Circumstance; for I come to try Causes according to the Truth of Fact; I come not to plead on one Side nor another; not to condemn Men that are innocent, nor to acquit them if they be guilty. Now it remains for you to consider what Proofs you have, as to this particular Book against which the Information lies; and that's the Printer himself, who is one of the best Sorts of Evidence that can be had: For you very well know that Evidences of Fact are to be expected according to the Nature of the Thing. That is, Forgery is not to be proved so plainly, as to expect Witnesses as you do at the sealing of a Bond; for Men do not call Witnesses when they forge a Thing. Therefore in Things of that Nature we are fain to retreat to such probable and conjectural Evidence as the Matter will bear. I believe some of you have been of Juries at the *Old-Bailey*, and that even

for Men's Lives, you have very often not a direct Proof of the Fact, of the Act, or of the actual Killing; but yet you have such Evidence by Presumption, as seems reasonable to Conscience. If there be a known Case in Men's Lives, certainly that should govern in Offences, and especially when Offences are of a Nature that reflect upon the Government. As for those Words, *illicite, malicious, unlawful*; for that I must recite what Mr. Recorder told you of at first, what all the Judges of England have declared under their Hands: The Words I remember are these: When, by the King's Command, we were to give in our Opinion what was to be done in point of the Regulation of the Press; we did all subscribe, That to print or publish any News-Books or Pamphlets of News whatsoever, is illegal; that it is a manifest Intent to the Breach of the Peace, and they may be proceeded against by Law for an illegal Thing. Suppose now that this Thing is not scandalous, what then? If there had been no Reflection in this Book at all, yet it is *illicite*, and the Author ought to be convicted for it. And that is for a publick Notice to all People, and especially Printers and Booksellers, that they ought to print no Book or Pamphlet of News whatsoever, without Authority. So as he is to be convicted for it as a Thing *illicite* done, not having Authority. And I will assure you, if you find any of those Papers, I shall be more merciful in the Consideration of their Punishment, if it be inoffensive. But if so be they will undertake to print News foolishly, they ought to be punished, and shall be punished if they do it without Authority; though there is nothing reflecting on the Government as an unlawful Thing. The Reason is plain: So fond are Men in these Days, that when they will deny their Children a Penny for Bread, they will lay it out for a Pamphlet. And it did so swarm, and the Temptations were so great, that no Man could keep two Pence in his Pocket because of the News. But still they never repented of laying out their Money, till they found there was nothing against the Government. This is not worth a Farthing, there is nothing of Treason in it, we will not give a Farthing for it. Therefore this Book, if it be made by him to be published, it is unlawful, whether it be malicious or not. Now for the Matter, the Subject Matter. What, doth Carr think he hath too much Wit to fool us that are to try the Malice? It was fillily writ, if he did not believe we understood it, and that were very intolerable in us; I hope I speak plain: That is, the Sort of Books that he writ; it must be with an Intent People should know what Reflections he made; and shall all Mankind know, and shall they that try the Cause not know it? If you find him Guilty, and say what he is guilty of, we will judge whether the Thing imports Malice or no. Sir Francis Wilmington hath told you there are some Things that do necessarily imply Malice in them. If this Thing doth not imply it, then the Judges will go according to Sentence; if it doth, so that it concerns not you one Farthing, whether malicious or not malicious, that's plain. Now, there remains only one Thing, that is, Whether or no he was the Publisher of this Book? For that we have this Evidence. The Printer tells you, he was the Person that they looked upon to be the Author of this Book, that he sent this Book to be printed by his Boy. The Printer saith, that he often discoursed with him, and he took it for granted. His Boy brought it. To what Purpose? To be printed. The Printer's Servant says, they looked upon him as the Author, and I have fetched Sheet by Sheet, several Sheets from his own Hand. I will do Right in the Case, be it what it will, let him escape or not. Say his Council, Had you this particular Paper from him? I urge this as clearly, as their own Council have objected. For that you must consider, whether he is the Author of the Book. You must take Evidence in this Case, as you do all the Year long; that is, in other Cases, where you know there is an absolute Certainty that the Thing is so: For human Frailty must be allowed; that is, you may be mistaken. For you do not swear, nor are you bound to swear here, that he was the Publisher of this Book; but if you find him guilty, you only swear you believe it so. God help Juries, if so be in Matter of Fact they should promise otherwise. They can't swear it. Now the Question is, Whether you have Evidence enough here to swear he was the Publisher: For this is the main Thing, to prove that he is so. Now the Printer tells you that he knew the Man, that he had frequent Converse with him about it, and that he took it for granted. Now consider, when a Man talks at this rate, he does not say he was, but that he took it for granted; he does not as much as say he is. They will own he writ several Sheets of this Book; then, why not all this Book? Now we come to the more principal Matter of Fact, according to Reason and the probable Evidence of Things. That this Person is taken to be the Author, and that it was his Boy that brought these Papers to be printed. If you can't say he sent him, you can give no Verdict while you live, if you expect that. The Printer says, he had been often discoursing with him, that his Boy brought them, and that he knew no other Person in the World that had any Pretensions to be the Author, and if he were the Author, no doubt but he is the Publisher. Whether or no any body else had an Hand in this, we don't know. If you are satisfied in your Consciences that you believe he is not the Author, you must acquit him. If you are satisfied it is not he, you must find him Not Guilty. So that as you are honest Men and wise, as I believe you are; if you believe he was not the Publisher of this Pamphlet, that he did not send his Boy to have it printed, but that he came of his own Head, you must find him Not Guilty.

*The Jury went from the Bar, and nigh an Hour after returned, and brought him in Guilty.*

L. C. J. You have done like honest Men.  
Mr. Recorder. They have done like honest Men.



XCIX. The Trial of JOHN GILES at the Old Bailey, for Assaulting and Attempting to Murder John Arnold, Esq; July 14, 1680. 32 Car. II.

THE Sessions began on Wednesday the seventh Day of July 1680. The ninth Day Mr. John Giles was brought to the Bar to be tried; and there pretended that he had Witnesses at Monmouth, who could testify very material Things for him, and therefore pray'd the Court to put off his Trial until the next Sessions. Then the Court asked him his Witnesses Names, and what they could say? Which he then declared to the Court. Upon which Mr. Arnold, being present, and Prosecutor (*Tam pro Domino Rege, quam pro seipso*), the Court asked his Consent, and what he could say why the Trial should not be put off; that so all the World might hereafter say, That Mr. Giles had all the Favour that he could reasonably desire, and what the Court could in Justice shew him, and that no manner of Excuse might be left him.

After which Mr. Arnold, in a very pertinent Speech, declared part of the Fact and also of the Proceedings before his Wounding, as it had occurred between him and Mr. Herbert; and of his favourable and just Proceedings against Mr. Herbert, and also against John Giles, after the Fact was committed; and declared that Giles had sufficient Notice of his Trial; but notwithstanding he did submit himself to the Judgment of the Court.

Thereupon the Court advised a Minute or two's Space; it was ordered, That the Court should be adjourned until the Wednesday following; by which time Mr. Giles might send to Monmouth, and have what Witnesses brought up he could get.

And the Day appointed being come, and the Court being sat, Proclamation was made according to Custom. Then the following Jury were called and sworn, viz.

Christopher Plucknet,  
William Dodd,  
Anthony Nurse,  
John Burton,  
Nathan Goodwin,  
George Wood,

Jur

James Partridge,  
Lawrence Wood,  
John Bradshaw,  
William Withers,  
Edward Proby,  
Rich. Bromfield.

Who, according to the Form of Law, were charged to enquire, Whether the Prisoner were guilty of the following Indictment upon which he had been arraigned, and had pleaded Not guilty?

*Cl. of Cr.* The Jurors of our Lord the King, upon their Oaths, do present, That John Giles late of the Parish of St. Dunstan in the West, in the County of Middlesex, Gentleman, not having God before his Eyes, but being moved and seduced by the Instigation of the Devil, contriving, and maliciously, by a most wicked Conspiracy, with divers other Malefactors to the Jurors unknown, forethought and had, intending one John Arnold, Esq; a faithful Subject to the King, and one of the Justices of the Peace for the County of Monmouth, inhumanly to maim, wound, kill, and murder, the fifteenth of April, in the thirty-second Year of the Reign of our Sovereign Lord Charles the Second, by the Grace of God, King of England, Scotland, France, and Ireland, Defender of the Faith, &c. with the said Malefactors unknown, at the Parish of St. Dunstan in the West aforesaid in the County of Middlesex aforesaid, in and upon him the said John Arnold, then and there being in the Peace of God and the King, unlawfully, voluntarily, and of his Malice forethought, with Force and Arms; that is to say, with Swords, Staves, and Knives, of Design, and by lying in wait, did make an Assault; and him the said John Arnold did then and there beat, wound, maim, and evilly entreat, and the Throat and Face of him the said John Arnold did grievously cut with a certain Knife; also divers almost mortal Wounds then and there to the said John Arnold; that is to say, one Wound of the depth of seven Inches in his Body, between his Belly and his Left Pap, two Wounds upon his Breast, and two Wounds in his Left Arm, with certain Swords, did then and there give and impose, so that it was despaired of the said John Arnold's Life, and other Enormities then and there unto him did bring, to the great Danger of the said John Arnold, and against the Peace of our said Lord the King, his Crown and Dignity.

Mr. Gibbs. Gentlemen, this is an Indictment against John Giles, the Prisoner at the Bar, for assaulting and intending to dispatch and murder John Arnold, one of his Majesty's Justices of the Peace, on the 15th Day of April. This John Giles and several others did intend to kill Mr. Arnold, and set upon him in Jackanapes-Lane, threw him down, and endeavoured to thrust their Swords into him; but finding no Penetration there, they kneeled upon him, and with a Knife endeavoured to cut his Throat, and in one Place made a very large Gash, and cut his Face; he endeavouring to keep them from his Throat, they gave him a Wound in his Side seven Inches deep, between his Belly and Left Pap. They gave him several other Wounds. To this he has pleaded Not Guilty.

Mr. Holt. May it please your Lordship, and you Gentlemen of the Jury, I am Council for the King, and the Indictment hath represented to you the most horrid, vile, and barbarous Assault that has been almost ever committed, and that any Man has heard of; and which I think scarce any thing in History can parallel. It was, Gentlemen, in its Nature most cruel, by the giving him so many Wounds as are set forth in the Indictment; having first way-laid and surprized him near a Place, and at such a Time, as was convenient for the Execution of their wicked Design. This Mr. Arnold having Occasion to go through Bell-Yard between the Hours of ten and eleven of the Clock at Night, at the End of Jackanapes-Lane, he was suddenly seized by two Men, and by them hauled into the Lane, where they gave him several Wounds, and used him in a most barbarous Manner. And this did not arise from any private Difference or Animosity that they could conceive against Mr. Arnold; but from a Cause more general, that is, the Prosecution of the horrid Popish

Plot; against which Mr. Arnold, as became him, and according to the Duty of his Office, he being a Justice of the Peace, was a very zealous Person. Gentlemen, in the first place we will call Mr. Arnold, who shall plainly prove that this Prisoner at the Bar was one of the three Assassins; and he proves it by a miraculous Providence: For just before they seized upon him a Woman in Bell-Yard held out a Candle, which gave Mr. Arnold an Opportunity to see the Prisoner at the Bar, and did perfectly discern him. Gentlemen, though this is enough, considering the Integrity and Reputation of the Person; yet we shall fortify his Evidence by strong and undeniable Circumstances, Circumstances that do particularly relate to this Matter. In the first Place, Gentlemen, the very Day that this Fact was done, this Person, though he had a good Sword by his Side, yet he did enquire where he might buy a more convenient Sword, and did desire to know where he might have a Rapier, which was thought more convenient for this Design; and the very next Day after this Fact, though Mr. Arnold's having Armour on was a Secret which no Persons but Mr. Walcup, a Justice of the Peace, and Mr. Arnold himself knew; yet this same Giles could say, Arnold had Armour on; and if Arnold had not had Armour on, his Business had been done. And after this Fact was committed, this Giles goes into Gloucestershire, and being pursued by a guilty Conscience, he durst not stay there, for he was afraid, as he said himself, of being apprehended for assassinating Mr. Arnold. After this, Gentlemen, he came to one Darcy a Cutler in Monmouthshire, with his Sword which was broken, and desired him to mend his Sword. How now, says he, how came this Sword to be broken? Have you been fighting with the Devil? No, says he, I have been fighting with damn'd Arnold. And at the very same time when these Villains thought they had effected their bloody Purpose, and gave Mr. Arnold his Dispatch, one of them said to him, Now, Villain, if thou hast any Life in thee, pray for the Soul of Captain Evans; which Evans was a Priest executed in Wales upon Mr. Arnold's Prosecution, at whose Execution this Giles was present, and dipp'd his Handkerchief in his Blood. Now, Gentlemen, considering all this, which we will make plain to you by Mr. Arnold, and all these Circumstances; I suppose you will have sufficient Evidence to find him guilty.

Mr. Thompson. My Lord, and you Gentlemen of the Jury, the Indictment has been opened, and the Matter of it, that base Attempt made upon Mr. Arnold, that was a Justice of the Peace in Monmouthshire, that is shewed in the Indictment. But I must crave your Lordship's Leave, that I may more particularly open this Case. This is a Case, Gentlemen, of very great Consequence, and though it more immediately concerns Mr. Arnold, yet it highly concerns every Man present; you of the Jury, and I; nay, every other Freeman of England, which ought to be protected by the Laws, must needs be concerned at so great a Violation of them, and cannot but set our Faces against such villainous and barbarous Attempts as these, wherein there did not want the Good-will of the Actors to make it a most barbarous and bloody Murder. In the Course of our Evidence, and the Method we will take to proceed in, it will be necessary to do these three Things. First of all, we shall acquaint you with that which we apprehend to be the Reason and Occasion of this horrid Fact. Next we shall tell you what that Fact was. And in the last place, enquire how far this Defendant is guilty thereof.

For the First; give me leave to acquaint you with what we apprehend to be the true Reason of this Assassination. 'Tis notorious to most Men, but especially to the County of Monmouth, where Mr. Arnold was a Justice of Peace, how active and diligent, how faithful and vigorous a Man he has been in the Discharge of his Duty to his King and Country, in putting the Laws in Execution against the Papists, and endeavouring to suppress Popery: This was the Ground of their Malice, as you will find by the Evidence, and by the several Threats that he had before this Act was done. But more particularly there was this occasion; there was one whom they call'd Captain Evans, but indeed was Father Evans, a Popish Priest; this Man in Monmouth was taken by Mr. Arnold, and was prosecuted according to Law, and convicted. I mention this Circumstance, because our Evidence will refer to it, and that you will see out of the Actors own Mouths, if we may believe the Actors in this bloody Tragedy when they did the Fact: This Prosecution of Father Captain Evans, was no small Occasion of their Villainy which they acted upon Mr. Arnold. These were the Grounds of their Malice, Gentlemen, and what happened to Mr. Arnold was the Effect. And I do the rather mention this Particular, that you may know what Sort of People these were that practised this Villainy upon Mr. Arnold; for it will be a necessary Circumstance in our Proof against this Prisoner at the Bar, to shew that he is one of that bloody Tribe.

Gentlemen, the next Thing is to shew what this Fact was, and how it happened. Mr. Arnold had a Controversy with one Mr. Herbert, another Justice of the Peace in Monmouthshire: that Cause between them was to be heard before the King and Council the next Day after this Fact was committed: I mention Mr. Herbert, but I hope he is more a Gentleman than to be concerned in such a Villainy. We will not at this time give any Evidence that relates to him: For truly I believe this could only be the Contrivance of a Jesuit, and the Practice of a bigotted Papist. But thus it happen'd: Mr. Arnold going to attend his Council upon this Occasion, to prepare himself for this Hearing that was to be before the King and Council; in Bell-Yard there he is set upon, there he is wounded, there he is murder'd, as these Assassins thought. And this Mr. Arnold will prove to you when he comes to give his Evidence. This to the Fact.

K

Gentlemen,



Gentlemen, the next is now to consider how far this Man at the Bar is guilty of it; and for that, Gentlemen, we will give you Evidence of several Sorts:

1. The positive Proof of Mr. *Arnold* himself, who, as Mr. *Holt* has observ'd before, almost by a Miracle, discover'd the Defendant's Face; for a Light accidentally coming out of one of the neighbouring Houses, and the Defendant looking at Mr. *Arnold* to see whether he was the Man they wanted, immediately upon that he was assaulted and carried into *Jackanapes-Lane*, and was wounded in several Places. This, Gentlemen, is plain, and will be positively prov'd; and then when this Man was taken up on Suspicion, and was carried before a Justice of the Peace, and Mr. *Arnold* was sent for, though Mr. *Arnold* had no private Intimation, no kind of Knowledge before-hand of *Giles's* being taken; and there were several Men stood beside this Man, yet though he had never seen him before, but at the time when the Fact was done, Mr. *Arnold* immediately charged him with the Fact, and as soon as he heard him speak he knew his Voice. This was so plain upon *Giles*, that he had not the Power, though he might have had the Confidence, at that time to deny it: But instead of a Denial said, The Matter could but amount to an Assault and Battery. In the next Place we have Evidence from the Defendant's own Mouth, which in a Case of this Nature ought to weigh as much as can be, and I think is as much as the Nature of the Thing is capable of. This Man the very next Day after Mr. *Arnold* had been thus assaulted, discoursing with one *Phillips* by Name, and relating the Business which happened to Mr. *Arnold*, and before he could know he had Armour on, as we will prove from the Circumstance of the Time (what does *Giles* say?) Says he, *Damn him, rot him*, Mr. *Arnold*, said he, *had Armour on*. And this, Gentlemen, could not be known by him at that time, if he had not been a Party in this base Attempt. And there is a Circumstance that goes yet beyond this, which I would have you observe, that when Mr. *Arnold* was assassinated, when they made their Attempt, in the very Act were these Words used, *Damn him, rot him, he has Armour on*. These very Words were spoken then, and upon that they fell to cut his Throat. We have this Circumstance more; he had broken his Sword, and went to a Cutler, one *Darcy* by Name; this Man was a Papist, and says he, *Where hast thou been Giles, fighting with the Devil? No, it was with damn'd Arnold*. This we will prove to you: These are Evidences that are positive.

Some other Witnesses we have, that will be very material to prove to you what sort of Man the Defendant is: That he has declared there is no Plot; that those that believe it are Rogues; and if ever any of the Lords in the Tower should suffer, this Nation should feel a bloodier War than ever it had done; by which you may see his bloody Nature. Gentlemen, besides this we shall prove (according to their Custom of Shamming) that he has from time to time pretended as if Mr. *Arnold* had done this Business himself, or some of his Friends, to revive the Plot. A very fine Contrivance indeed! for a Person to stab himself, and cut his own Throat, to revive the Plot. These Things we will make out clearly to you: And I must tell you it is a notorious Crime, such a Fact as has no Precedent: There's no Remembrance in History, that I know of, of such barbarous Attempts, except in the Case of Sir *Edmundbury Godfrey*, who was most barbarously murdered by this sort of Men. And this Case, Gentlemen, differs from that only in this, that there they accomplish'd their Villainy upon him: But the Providence of God saved Mr. *Arnold's* Life, and I hope to as good Purpose: For as Providence ordered That to confirm the Truth of the Popish Plot; so this Assassination of Mr. *Arnold* must convince all Mankind (not concerned in the Plot it self) that this damn'd Popish Plot still continues, and that 'tis high Time for all honest Men, as much as in them lies, to endeavour to suppress it. You, Gentlemen, will do your Duty in finding this Man guilty (if the Evidence we give satisfies your Consciences that he is so, else God forbid), and then I doubt not but the Court will do their Duty, in putting such an Exemplary Punishment upon this Villain, that may deter the like barbarous and bloody Attempts for the future.

*Mr. Arnold sworn.*

Mr. *Thompson*. Pray, Mr. *Arnold*, give an Account of this Business.

Mr. *Arnold*. My Lord, I was ordered by the King and Council to attend upon them the next Day after this Villainy befel me. I was upon the 15th Day of April in my Chamber in the Afternoon, and my Lord *Chandos* and several other Persons came to my Chamber, and one *Evans*, one of the Messengers belonging to the Council, came to give me Notice that my Hearing (which I was inform'd was to be at Four in the Afternoon) was ordered to be at Ten in the Morning, which was the Reason I sent my Servants out to give Notice of this Alteration to my Witnesses and Council. And though I had resolv'd not to stir out that Night, I went out with the Company to the *Devil-Tavern*, where we were, and staid till about Ten, or past; and just as we were breaking up, I recollected that I had some Business with Mr. *Phillips*, who is a Counsellor at Law, and lives near the End of *Bell-Yard*. I desired the Company to stay, and I would come to them in a Moment. I went to the Room where several Servants were, and called to some of them to go with me; For several of my Friends and Neighbours being in Town, I very often took their Servants with me, when mine were busy or out of the way. As I went cross *Fleet-Street*, I did see Two Men in Campaign-Cloaks follow me, and I thought them to be Servants belonging to some of my Company, who had followed me on my Calling; and as I came into *Bell-Yard*, one of them went faster than I went, and got before me, and turned and looked earnestly in my Face, and I went by him, when a Woman standing in a Door about the middle of *Bell-Yard*, with a Candle in her Hand, I looked in his Face, and that Person was the Prisoner at the Bar; and when his Companion or Companions came up to him, I heard them laugh aloud; I took no Notice, but went on, and went as far as to that House.

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to find the Kennel, a Cloak was thrown over my Head, then I found very rough Hands upon my Shoulders, and they ran me into *Jackanapes-Lane*, just cross the Lane, against the opposite Wall, and they run my Head so hard I think they broke it; I drew my Sword before, but before I could use it, I was struck, and immediately upon that, one of them struck me; then I apprehended what it was, but could not turn to make any Defence. I received a second Blow and fell, and the first thing I was sensible of was a very sharp quick Thrust in my Side, and the Point at that Thrust ran into my Belly; then I recovering began to make what Defence I could. With a broad Sword I was run through my Arm, and with a small Weapon I was run through in another Place of my Arm. I had several other Wounds; one of them set his Foot hard upon my Breast, and kept me down, and he was, as I conceive, run into the Leg by one of his Companions; for I heard him say, *Damme, thou hast spoiled my Leg*. They laughed all the while, and were exceeding merry. I had then on a Pair of Bodice of Whalebone, notwithstanding which I had four or five Wounds in my Body through them, for they were not Proof, but they imagin'd they were, finding their Swords double sometimes, and then said one of them, *Damme, he has Armour on, cut his Throat*. Immediately one knee'd down, and gave me several Cuts in the lower Part of the Face, and I did what I could to defend my self, but they have given me some indelible Marks, Characters that will never be obliterated while I live, and I am afraid I shall never be my self again, by Reason of the Bruises in my Head and Breast. By a Candle in a Window, I conceive in Sir *Thomas Baldwin's* House, and some Women in his Yard, gave them the first Disturbance, and a Boy coming by with a Link the same time, I both saw the Face of the Prisoner at the Bar again, and remember'd I saw him in the Lane just before. They then pulled the Cloak from off me, and I seeing the Light, and being eased of the Weight, I strained all my Strength and cried out, and then some Company came in, who are here to prove it; but seeing me all Blood and Dirt, they stood gazing on me a time, but at last took me up and carried me into the *Sugar-Loaf*, and from thence I was carried to my Lodging, where all the Company I left came to me, and a Surgeon was sent for, who is also here to prove his Knowledge of the Condition he found me in. And when they went away, they did not steal away as other Malefactors used to do, but clapt their Swords close to their Bodies, and went away laughing aloud; but as they were going, one of them said these Words, *Now, you Dog, pray for, or pray again for the Soul of Captain Evans*. Captain *Evans* was a Jesuit, and was executed at *Cardiffe* for being a Priest; and I have been informed by several Persons of good Quality, that when the Under Sheriff came to give him Notice that he had a Warrant for his speedy Execution, the said *Evans* being in a Game at Tennis, said, *God damme, I will play out my Set first*.

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Mr. *Arnold*. I will take it upon my Oath, as far as a Man can do, for one Man, 'tis possible, may be like another both by his Voice and his Face; I can swear I believe he is the Man.

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Mr. *Arnold*. Yes, Sir; and he can tell you that by a very good Token, for I had like to have run him thro'.

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Mr. *Arnold*. Upon my Conscience I do believe he was the Man.

Mr. Recorder. What o'Clock was it?

Mr. *Arnold*. About eleven o'Clock, or between ten and eleven.

Mr. Recorder. When the Link came there, was there three? And do you believe by the Light you had by the Link, that that was one of the Persons that were there?

Mr. *Arnold*. I saw his Face and Habit, and believe he was.

Mr. Recorder. What Habit had he on?

Mr. *Arnold*. He had a grey Cloak, a Campaign Cloak, and a Coat, I think lin'd with Red. It is impossible to give an Account of every Particular under those Circumstances I was in.

Mr. Recorder. It is not to be expected that a Man under your Circumstances should be extraordinary precise in Circumstances; therefore it is I asked you, that according to the best of your Apprehension, you might acquaint the Court with those Circumstances that may be remember'd by the Jury, that they may see there be no Injury done to the Prisoner at the Bar, but that Right be done on both Sides, and that in every Circumstance.

Mr. *Holt*. Now, Sir, we will call Mr. *Phillips*, with whom he had this Discourse the next Day.

Mr. Recorder. Will the Prisoner ask him any Questions?

Prisoner. Truly Mr. *Arnold* knew me in *Monmouthshire*, and knew me as well as any Man in the City.

Mr. Recorder. Did you not very well know him?

Mr. *Arnold*. It is very possible I might see him, and often at Assizes and Sessions, but not to know him; nor did ever know whether his Name were *Giles*, or what it was. Your Lordship sees many Persons here, and often, and it's possible do not know them; he lives I think a dozen Miles from me.

Pris. That's a Wonder; if it please you, Sir, my Wife is a near Relation to you, both by Father and Mother, and I have spoken with you in your Chamber.

Mr. *Arnold*. 'Tis possible she may, but I do not know it.

*Stephen*



Stephen Phillips.

Mr. Holt. Pray, Mr. Phillips, give an Account of what Discourse you had with Giles the Day after the Business was done.

Mr. Phillips. We went to the Tavern, and drank two or three Bottles of Wine, and we had some Discourse concerning Mr. Arnold; it was about Eight or Nine o'Clock in the Evening the next Day, some Discourse happened concerning his miserable Condition, and how he was hurt, and of that Nature.

Mr. Recorder. How many was there in Company?

Mr. Phillips. One or two more.

Mr. Recorder. What House?

Mr. Phillips. At the Crown Tavern in New-Street, in Covent-Garden; and among the rest, Mr. Giles was talking of it, and said he, God damn him, God rot him, he had Armour on; the Word was, God damn him, or, God rot him, he had Armour on, they say.

Mr. Holt. What time of Night was that?

Mr. Phillips. As near as I can remember, it was about eight or nine the next Day in the Evening.

Mr. Thompson. The very Words that Mr. Arnold swears when they went to cut his Throat.

Pris. My Lord, if you please, there was Mr. Phillips and another; and I spake nothing but what I heard as News, that they had killed him if he had not had Armour on.

Mr. Recorder. For that Matter, Mr. Giles, you shall have your Time, and you may call up other Witnesses, but the Gentleman positively swears you said these Words; and if so, I'll assure you it does not look as if you were a-kin to him, or your Wife either.

Walter Watkins.

Mr. Holt. Mr. Watkins, What did you hear that Giles should say in Gloucestershire about this Business?

Mr. Thompson. What said he about this Business of Mr. Arnold?

Mr. Watkins. My Lord, all I can say is this: I being at the stating some Accounts between Mr. John Giles and Mr. Richmond, I asked Mr. Giles for some Horsehair to make a Fishing-Line: Mr. Giles replied, That he had left very good Hair for me at a Farrier's in Gloucester; for he and Mr. Herbert Jones made such Hastle through the Town of Gloucester, that they did not call for the Horsehair. I asked Mr. Giles what was the occasion of his Hastle? Said he, For fear we should be stopp'd in our Journey, as suspected to be concern'd in Mr. Arnold's Business.

Mr. Recorder. What time was that?

Mr. Watkins. About the 5th of May.

George Richmond.

Mr. Holt. Mr. Richmond, what can you say concerning this Thing?

Mr. Richmond. I desired Mr. Giles to meet me, that we might even our Accounts; and upon the 5th of May last he met me, and I desired Mr. Watkins to be present as a Witness.

Mr. Recorder. Where was it?

Mr. Richmond. At Uske. And as we were making up the Account, said Mr. Watkins to Mr. Giles, Where is the Horsehair you promised me to make Fishing-lines? Giles replied, He left very good Horsehair at a Farrier's in Gloucester: And he asked him, Why he left it? He said, He made Hastle for fear of being taken and stopp'd for Mr. Arnold's Business. I cannot say whether he called him Esq; Arnold, or Mr. Arnold, or what; he seldom used to give him so good Words.

Walter Powel.

Mr. Holt. What do you know concerning Giles his being at the Cutler's?

Mr. Powel. If it please you, Sir, I was at the Cutler's.

Mr. Recorder. Name the Time when, and the Place where.

Powel. The 5th of May, at a Place called Uske in Monmouthshire, Mr. Giles and I we came there; and Mr. Giles asked Peter Darcy, Whether he would mend him that Sword or no? But Mr. Darcy had some Business that he could not get Time to mend it that Morning, but would do it in the Afternoon. Says Darcy, Where have you been? You have been hot at it. What, have you been fighting with the Devil? No, said he, with damn'd Arnold.

Mr. Recorder. What did you say when the Cutler asked him, Whether he had been fighting with the Devil? And he said again, No, not with the Devil, but with damn'd Arnold?

Powel. Peter Darcy said he must not speak such Words; and Giles's Wife pluck'd him by the Coat, and bid him hold his Tongue.

Mr. Darnal. Who was by?

Powel. There was one Peter Darcy.

Mr. Darnal. Was one John Jones there?

Powel. I think there was another indeed by, the Apprentice.

Mr. Recorder. There was the Apprentice, but he does not know his Name, and Darcy, and Giles and his Wife.

William Richmond.

Mr. Holt. What did you hear Giles say about the Rapier?

W. Richmond. He asked me in the Afternoon before Mr. Arnold was hurt, where he might buy a very good Rapier? I told him I could not tell. He then had a good Back-Sword in the House.

Mr. Gibbs. Tell the Court what Acquaintance Giles had with Father Lewis the Jesuit, since executed.

W. Richmond. My Lord, he told me he would go to the Executioner, and persuade him not to execute Mr. Lewis, but I had the Executioner lock'd up, and I would not suffer him; but I did see him very active at the Execution, dipping Cloths in Lewis's Blood.

Mr. Thompson. What do you say as to his coming to his Lodging?

W. Richmond. We went to several Places that Day, and at eight or nine, or between eight and nine, we came to the King's-Arms in St. Martin's-Lane, and I left him at the Kitchen Fire, and went up into the Chamber, and drank a considerable Quantity of Drink; and as near as I can guess, it was between twelve and one o'Clock before he came to his Bed; for after I was going to Bed, about one of the Clock I heard John Giles come up the Stairs, and bid me good Night; he called at my Door just as I was pulling off my Breeches to go into Bed.

Mr. Recorder. What time was this?

W. Richmond. As near as I can guess, it was between twelve and one, or very near one.

Mr. Recorder. At what House was it?

W. Richmond. The King's-Arms in St. Martin's-Lane.

Mr. Recorder. What did you say when the Maid was making the Bed?

W. Richmond. I asked her who it was for? And she said, for a Man that was not willing to lie with any body.

Mr. Recorder. What time did you come to the House?

W. Richmond. About nine.

Mr. Recorder. Did you stay in that House till that Time?

W. Richmond. I lay in the House, Sir.

Mr. Recorder. You were not out of the House the while?

W. Richmond. No, Sir, I was not out of it.

Mr. Recorder. And you are sure that you did not see him again till he came to your Door going to Bed?

W. Richmond. Yes, Sir.

Mr. Recorder. What Time was that?

W. Richmond. Nigh one.

Mr. Thompson. You see the Contradiction between this, and what this Fellow says upon his Examination; where he says he was a-bed at Nine o'Clock.

Mr. Recorder. Where did you go at that time?

W. Richmond. We went to Long-Lane, to one Philpot's; and she told us her Husband was gone to Exercise at the next Church; I do not know the Church's Name, and there we went and looked upon the Soldiers, but did not see him; we came back to his House again; and the Gentlewoman gave us a Tankard of Beer or Ale. And after that we went back, and we had a mind to make Sport with a Country-Fellow we had with us, and went into Whetstone's-Park, from thence we went to the Helmet in Drury-Lane.

Mr. Recorder. You went to Whetstone's-Park, and what did you spend there?

W. Richmond. Six-pence, and he paid it.

Mr. Recorder. Whither did you go from thence?

W. Richmond. Into Drury-Lane.

Mr. Recorder. How long did you stay in Drury-Lane?

W. Richmond. It was not long, Sir, about an Hour.

Mr. Recorder. Where after that?

W. Richmond. From thence to the Peacock, and staid till eight or nine.

Mr. Recorder. Who did you meet withal between your going from the Helmet in Drury-Lane to the Peacock?

W. Richmond. We met with one Powel, and another, and one Elizabeth Edwards.

Mr. Recorder. What did you drink there?

W. Richmond. We did drink both Ale and Brandy.

Mr. Recorder. Well said: How long did you stay there?

W. Richmond. We staid there a pretty while, an Hour or more, or two Hours.

Mr. Recorder. What time of Night was it that you went from thence?

W. Richmond. About eight or nine.

Mr. Recorder. And then you went to your Lodgings?

W. Richmond. Yes.

Mr. Recorder. Did you drink at the King's-Arms?

W. Richmond. No, we drank not all together.

Mr. Recorder. And there you staid till twelve or one o'Clock?

W. Richmond. Yes.

Mr. Recorder. But can you remember, as near as you can guess, what time was it you saw this Maid making of the Bed?

W. Richmond. I cannot say positively, but I judge it was about twelve o'Clock.

Mr. Thompson. As to that Circumstance of his coming home at twelve at Night, desire Mr. Arnold to give an Account of his Examination, what time of Night he came to his Lodging.

Mr. Holt. Do you believe that is John Giles's Hand?

Mr. Recorder. That is a Copy.

Mr. Recorder. He did confess it before a Justice of the Peace, that he was at his Lodging at ten o'Clock: This I heard him say, and I believe he won't deny it; and I heard him own this Examination, my Man will prove it.

Giles. Deny it? Yes, I will deny it, there was no such word said: I did say, Mr. Arnold, I went to Bed then.

Mr. Att. Gen. The Jury must take Notice of this; that Sir Creswel upon his Examination he says, he came home by nine; Levinz. which is before the Thing was done: But by Proof he did not come in till Twelve, which was after the Thing was done.

Mr. Holt. Who will give you now, Gentlemen, an Account of this Man's Principles.

Mr. Recorder. This is the Business: Richmond says, they came together to their Lodging before Night, but he left him at the Kitchen Fire, and went into another Room to drink with some Company; and this Mr. Richmond says, his Bed was not made till Twelve o'Clock, and that he himself went to Bed about one of the Clock, and that he heard the Prisoner at the Bar, while he was pulling off his Breeches, call to him, and therefore he took Notice of that as a Circumstance, that he does particularly remember he did not go to Bed till that Time; and he says he did not stir from that Place after nine o'Clock.

Mr. Thompson. There is a Contradiction in that.

Mr. Recorder. There is no Contradiction: The other Witness says, that he came along with him at Nine o'Clock.

Mr. Thompson. I will tell you where this is a Contradiction.

Mr. Att. Gen. He says he came to the House at nine o'Clock, but he came not to Bed till after one.

Mr. Recorder. The Evidence does not go so far: Richmond says they came to the King's-Arms, and left him in the Kitchen at nine o'Clock, and he went into his Chamber and staid up till one, and all that time he did not come to Bed.

Mr. Thompson. So far it lies upon him to give an Account where he was between nine and twelve.

Bridges.

Mr. Holt. Hark you, Sir, have you had any Discourse with Giles concerning the Plot, and concerning the Lords in the Tower? And what did he say to you?

Mr. Bridges.



Gentlemen, the next is now to consider how far this Man at the Bar is guilty of it; and for that, Gentlemen, we will give you Evidence of several Sorts:

1. The positive Proof of Mr. *Arnold* himself, who, as Mr. *Holt* has observ'd before, almost by a Miracle, discover'd the Defendant's Face; for a Light accidentally coming out of one of the neighbouring Houses, and the Defendant looking at Mr. *Arnold* to see whether he was the Man they wanted, immediately upon that he was assaulted and carried into *Jackanapes-Lane*, and was wounded in several Places. This, Gentlemen, is plain, and will be positively prov'd; and then when this Man was taken up on Suspicion, and was carried before a Justice of the Peace, and Mr. *Arnold* was sent for, though Mr. *Arnold* had no private Intimation, no kind of Knowledge before-hand of *Giles's* being taken; and there were several Men stood beside this Man, yet though he had never seen him before, but at the time when the Fact was done, Mr. *Arnold* immediately charged him with the Fact, and as soon as he heard him speak he knew his Voice. This was so plain upon *Giles*, that he had not the Power, though he might have had the Confidence, at that time to deny it: But instead of a Denial said, The Matter could but amount to an Assault and Battery. In the next Place we have Evidence from the Defendant's own Mouth, which in a Case of this Nature ought to weigh as much as can be, and I think is as much as the Nature of the Thing is capable of. This Man the very next Day after Mr. *Arnold* had been thus assaulted, discoursing with one *Phillips* by Name, and relating the Business which happened to Mr. *Arnold*, and before he could know he had Armour on, as we will prove from the Circumstance of the Time (what does *Giles* say?) Says he, *Damn him, rot him*, Mr. *Arnold*, said he, *had Armour on*. And this, Gentlemen, could not be known by him at that time, if he had not been a Party in this base Attempt. And there is a Circumstance that goes yet beyond this, which I would have you observe, that when Mr. *Arnold* was assassinated, when they made their Attempt, in the very Act were these Words used, *Damn him, rot him, he has Armour on*. These very Words were spoken then, and upon that they fell to cut his Throat. We have this Circumstance more; he had broken his Sword, and went to a Cutler, one *Darcy* by Name; this Man was a Papist, and says he, *Where hast thou been Giles, fighting with the Devil? No, it was with damn'd Arnold*. This we will prove to you: These are Evidences that are positive.

Some other Witnesses we have, that will be very material to prove to you what sort of Man the Defendant is: That he has declared there is no Plot; that those that believe it are Rogues; and if ever any of the Lords in the *Tower* should suffer, this Nation should feel a bloodier War than ever it had done; by which you may see his bloody Nature. Gentlemen, besides this we shall prove (according to their Custom of Shamming) that he has from time to time pretended as if Mr. *Arnold* had done this Business himself, or some of his Friends, to revive the Plot. A very fine Contrivance indeed! for a Person to stab himself, and cut his own Throat, to revive the Plot. These Things we will make out clearly to you: And I must tell you it is a notorious Crime, such a Fact as has no Precedent: There's no Remembrance in History, that I know of, of such barbarous Attempts, except in the Case of Sir *Edmundbury Godfrey*, who was most barbarously murdered by this sort of Men. And this Case, Gentlemen, differs from from that only in this, that there they accomplish'd their Villainy upon him: But the Providence of God saved Mr. *Arnold's* Life, and I hope to as good Purpose: For as Providence ordered That to confirm the Truth of the Popish Plot; so this Assassination of Mr. *Arnold* must convince all Mankind (not concerned in the Plot it self) that this damn'd Popish Plot still continues, and that 'tis high Time for all honest Men, as much as in them lies, to endeavour to suppress it. You, Gentlemen, will do your Duty in finding this Man guilty (if the Evidence we give satisfies your Consciences that he is so, else God forbid), and then I doubt not but the Court will do their Duty, in putting such an Exemplary Punishment upon this Villain, that may deter the like barbarous and bloody Attempts for the future.

Mr. *Arnold* sworn.

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Mr. *Arnold*. Upon my Conscience I do believe he was the Man.

Mr. *Recorder*. What o'Clock was it?

Mr. *Arnold*. About eleven o'Clock, or between ten and eleven.

Mr. *Recorder*. When the Link came there, was there three? And do you believe by the Light you had by the Link, that that was one of the Persons that were there?

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Mr. *Recorder*. What Habit had he on?

Mr. *Arnold*. He had a grey Cloak, a Campaign Cloak, and a Coat, I think lin'd with Red. It is impossible to give an Account of every Particular under those Circumstances I was in.

Mr. *Recorder*. It is not to be expected that a Man under your Circumstances should be extraordinary precise in Circumstances; therefore it is I asked you, that according to the best of your Apprehension, you might acquaint the Court with those Circumstances that may be remember'd by the Jury, that they may see there be no Injury done to the Prisoner at the Bar, but that Right be done on both Sides, and that in every Circumstance.

Mr. *Holt*. Now, Sir, we will call Mr. *Phillips*, with whom he had this Discourse the next Day.

Mr. *Recorder*. Will the Prisoner ask him any Questions?

Prisoner. Truly Mr. *Arnold* knew me in *Monmouthshire*, and knew me as well as any Man in the City.

Mr. *Recorder*. Did you not very well know him?

Mr. *Arnold*. It is very possible I might see him, and often at Assizes and Sessions, but not to know him; nor did ever know whether his Name were *Giles*, or what it was. Your Lordship sees many Persons here, and often, and it's possible do not know them; he lives I think a dozen Miles from me.

Prif. That's a Wonder; if it please you, Sir, my Wife is a near Relation to you, both by Father and Mother, and I have spoken with you in your Chamber.

Mr. *Arnold*. 'Tis possible she may, but I do not know it.

Stephen



Stephen Phillips.

Mr. Holt. Pray, Mr. Phillips, give an Account of what Discourse you had with Giles the Day after the Business was done.

Mr. Phillips. We went to the Tavern, and drank two or three Bottles of Wine, and we had some Discourse concerning Mr. Arnold; it was about Eight or Nine o'Clock in the Evening the next Day, some Discourse happened concerning his miserable Condition, and how he was hurt, and of that Nature.

Mr. Recorder. How many was there in Company?

Mr. Phillips. One or two more.

Mr. Recorder. What House?

Mr. Phillips. At the Crown Tavern in New-Street, in Covent-Garden; and among the rest, Mr. Giles was talking of it, and said he, *God damn him, God rot him, he had Armour on*; the Word was, *God damn him, or, God rot him, he had Armour on, they say*.

Mr. Holt. What time of Night was that?

Mr. Phillips. As near as I can remember, it was about eight or nine the next Day in the Evening.

Mr. Thompson. The very Words that Mr. Arnold swears when they went to cut his Throat.

Pris. My Lord, if you please, there was Mr. Phillips and another; and I spake nothing but what I heard as News, that they had killed him if he had not had Armour on.

Mr. Recorder. For that Matter, Mr. Giles, you shall have your Time, and you may call up other Witnesses, but the Gentleman positively swears you said these Words; and if so, I'll assure you it does not look as if you were a-kin to him, or your Wife either.

Walter Watkins.

Mr. Holt. Mr. Watkins, What did you hear that Giles should say in Gloucestershire about this Business?

Mr. Thompson. What said he about this Business of Mr. Arnold?

Mr. Watkins. My Lord, all I can say is this: I being at the stating some Accounts between Mr. John Giles and Mr. Richmond, I asked Mr. Giles for some Horsehair to make a Fishing-Line: Mr. Giles replied, *That he had left very good Hair for me at a Farrier's in Gloucester; for he and Mr. Herbert Jones made such Haste through the Town of Gloucester, that they did not call for the Horsehair*. I asked Mr. Giles what was the occasion of his Haste? Said he, *For fear we should be stopp'd in our Journey, as suspected to be concern'd in Mr. Arnold's Business*.

Mr. Recorder. What time was that?

Mr. Watkins. About the 5th of May.

George Richmond.

Mr. Holt. Mr. Richmond, what can you say concerning this Thing?

Mr. Richmond. I desired Mr. Giles to meet me, that we might even our Accounts; and upon the 5th of May last he met me, and I desired Mr. Watkins to be present as a Witness.

Mr. Recorder. Where was it?

Mr. Richmond. At *Uffe*. And as we were making up the Account, said Mr. Watkins to Mr. Giles, *Where is the Horsehair you promised me to make Fishing-lines?* Giles replied, *He left very good Horsehair at a Farrier's in Gloucester*: And he asked him, *Why he left it?* He said, *He made Haste for fear of being taken and stopp'd for Mr. Arnold's Business*. I cannot say whether he called him Esq; Arnold, or Mr. Arnold, or what; he seldom used to give him so good Words.

Walter Powell.

Mr. Holt. What do you know concerning Giles his being at the Cutler's?

Mr. Powell. If it please you, Sir, I was at the Cutler's.

Mr. Recorder. Name the Time when, and the Place where.

Powell. The 5th of May, at a Place called *Uffe* in Monmouthshire, Mr. Giles and I we came there; and Mr. Giles asked Peter Darcy, Whether he would mend him that Sword or no? But Mr. Darcy had some Business that he could not get Time to mend it that Morning, but would do it in the Afternoon. Says Darcy, *Where have you been? You have been hot at it. What, have you been fighting with the Devil?* No, said he, *with damn'd Arnold*.

Mr. Recorder. What did you say when the Cutler asked him, Whether he had been fighting with the Devil? And he said again, No, not with the Devil, but with damn'd Arnold?

Powell. Peter Darcy said he must not speak such Words; and Giles's Wife pluck'd him by the Coat, and bid him hold his Tongue.

Mr. Darnal. Who was by?

Powell. There was one Peter Darcy.

Mr. Darnal. Was one John Jones there?

Powell. I think there was another indeed by, the Apprentice.

Mr. Recorder. There was the Apprentice, but he does not know his Name, and Darcy, and Giles and his Wife.

William Richmond.

Mr. Holt. What did you hear Giles say about the Rapier?

W. Richmond. He asked me in the Afternoon before Mr. Arnold was hurt, where he might buy a very good Rapier? I told him I could not tell. He then had a good Back-Sword in the House.

Mr. Gibbs. Tell the Court what Acquaintance Giles had with Father Lewis the Jesuit, since executed.

W. Richmond. My Lord, he told me he would go to the Executioner, and persuade him not to execute Mr. Lewis, but I had the Executioner lock'd up, and I would not suffer him; but I did see him very active at the Execution, dipping Cloths in Lewis's Blood.

Mr. Thompson. What do you say as to his coming to his Lodging?

W. Richmond. We went to several Places that Day, and at eight or nine, or between eight and nine, we came to the *King's-Arms* in St. Martin's-Lane, and I left him at the Kitchen Fire, and went up into the Chamber, and drank a considerable Quantity of Drink; and as near as I can guess, it was between twelve and one o'Clock before he came to his Bed; for after I was going to Bed, about one of the Clock I heard John Giles come up the Stairs, and bid me good Night; he called at my Door just as I was pulling off my Breeches to go into Bed.

Mr. Recorder. What time was this?

W. Richmond. As near as I can guess, it was between twelve and one, or very near one.

Mr. Recorder. At what House was it?

W. Richmond. The *King's-Arms* in St. Martin's-Lane.

Mr. Recorder. What did you say when the Maid was making the Bed?

W. Richmond. I asked her who it was for? And she said, for a Man that was not willing to lie with any body.

Mr. Recorder. What time did you come to the House?

W. Richmond. About nine.

Mr. Recorder. Did you stay in that House till that Time?

W. Richmond. I lay in the House, Sir.

Mr. Recorder. You were not out of the House the while?

W. Richmond. No, Sir, I was not out of it.

Mr. Recorder. And you are sure that you did not see him again till he came to your Door going to Bed?

W. Richmond. Yes, Sir.

Mr. Recorder. What Time was that?

W. Richmond. Nigh one.

Mr. Thompson. You see the Contradiction between this, and what this Fellow says upon his Examination; where he says he was a-bed at Nine o'Clock.

Mr. Recorder. Where did you go at that time?

W. Richmond. We went to *Long-Lane*, to one *Philpot's*; and she told us her Husband was gone to Exercise at the next Church; I do not know the Church's Name, and there we went and looked upon the Soldiers, but did not see him; we came back to his House again, and the Gentlewoman gave us a Tankard of Beer or Ale. And after that we went back, and we had a mind to make Sport with a Country-Fellow we had with us, and went into *Whetstone's-Park*, from thence we went to the *Helmet* in *Drury-Lane*.

Mr. Recorder. You went to *Whetstone's-Park*, and what did you spend there?

W. Richmond. Six-pence, and he paid it.

Mr. Recorder. Whither did you go from thence?

W. Richmond. Into *Drury-Lane*.

Mr. Recorder. How long did you stay in *Drury-Lane*?

W. Richmond. It was not long, Sir, about an Hour.

Mr. Recorder. Where after that?

W. Richmond. From thence to the *Peacock*, and staid till eight or nine.

Mr. Recorder. Who did you meet withal between your going from the *Helmet* in *Drury-Lane* to the *Peacock*?

W. Richmond. We met with one *Powel*, and another, and one *Elizabeth Edwards*.

Mr. Recorder. What did you drink there?

W. Richmond. We did drink both Ale and Brandy.

Mr. Recorder. Well said: How long did you stay there?

W. Richmond. We staid there a pretty while, an Hour or more, or two Hours.

Mr. Recorder. What time of Night was it that you went from thence?

W. Richmond. About eight or nine.

Mr. Recorder. And then you went to your Lodgings?

W. Richmond. Yes.

Mr. Recorder. Did you drink at the *King's-Arms*?

W. Richmond. No, we drank not all together.

Mr. Recorder. And there you staid till twelve or one o'Clock?

W. Richmond. Yes.

Mr. Recorder. But can you remember, as near as you can guess, what time was it you saw this Maid making of the Bed?

W. Richmond. I cannot say positively, but I judge it was about twelve o'Clock.

Mr. Thompson. As to that Circumstance of his coming home at twelve at Night, desire Mr. Arnold to give an Account of his Examination, what time of Night he came to his Lodging.

Mr. Holt. Do you believe that is John Giles's Hand?

Mr. Recorder. That is a Copy.

Mr. Recorder. He did confess it before a Justice of the Peace, that he was at his Lodging at ten o'Clock: This I heard him say, and I believe he won't deny it; and I heard him own this Examination, my Man will prove it.

Giles. Deny it? Yes, I will deny it, there was no such word said: I did say, Mr. Arnold, I went to Bed then.

Mr. Att. Gen. The Jury must take Notice of this; that Sir Creswel upon his Examination he says, he came home by nine; Levinz. which is before the Thing was done: But by Proof he did not come in till Twelve, which was after the Thing was done.

Mr. Holt. Who will give you now, Gentlemen, an Account of this Man's Principles.

Mr. Recorder. This is the Business: Richmond says, they came together to their Lodging before Night, but he left him at the Kitchen Fire, and went into another Room to drink with some Company; and this Mr. Richmond says, his Bed was not made till Twelve o'Clock, and that he himself went to Bed about one of the Clock, and that he heard the Prisoner at the Bar, while he was pulling off his Breeches, call to him, and therefore he took Notice of that as a Circumstance, that he does particularly remember he did not go to Bed till that Time; and he says he did not stir from that Place after nine o'Clock.

Mr. Thompson. There is a Contradiction in that.

Mr. Recorder. There is no Contradiction: The other Witness says, that he came along with him at Nine o'Clock.

Mr. Thompson. I will tell you where this is a Contradiction.

Mr. Att. Gen. He says he came to the House at nine o'Clock, but he came not to Bed till after one.

Mr. Recorder. The Evidence does not go so far: Richmond says they came to the *King's-Arms*, and left him in the Kitchen at nine o'Clock, and he went into his Chamber and staid up till one, and all that time he did not come to Bed.

Mr. Thompson. So far it lies upon him to give an Account where he was between nine and twelve.

Bridges.

Mr. Holt. Hark you, Sir, have you had any Discourse with Giles concerning the Plot, and concerning the Lords in the Tower? And what did he say to you?

Mr. Bridges.



Mr. Bridges. I had some Discourse with him concerning the Papists; he that said that it was the best Religion, and those that were not of that Religion should be damn'd: I alledg'd against him, and told him the contrary: I thought not. Can it be such a Religion, said I, that will act such Things against the King and the Government? Says he, If any says there is such a Plot against the King or the Government, he is a Rogue and a Thief.

Mr. Holt. What did he say of the Lords in the Tower?

Bridges. Nothing more.

Giles. How along ago was this?

Mr. Recorder. When was this?

Bridges. This was, my Lord, about a Twelve-month ago.

Mr. Thompson. Did he speak any thing to you further concerning the Plot?

Bridges. Not further.

Giles. My Lord, I beseech you I may speak to this Man. Do you hear, Sir, Were not these the Words that I said when you charged me to be a Papist, that I knew of no Popish Plot, and they that said I was a Papist, or knew any thing of the Plot, were Rogues or Whores, or worse?

Bridges. You said thus, that the Papists were the best Religion, and that those that were not of that Religion were damn'd.

Giles. Have not you been a Papist, Sir?

Bridges. I am not now.

Giles. Will you say that I am a Papist?

Bridges. I say you defended it so much, I thought you were. Said I, I wonder, it being such a good Religion, that they would offer to act such a thing against the King and Government. Said he, He that says this Plot is acted by the Papists, is a Rogue and a Thief.

Giles. How long ago is this?

Bridges. A Twelve-month ago; you remember it well enough; you remember when you sent for me to the George.

Walter Moor.

Mr. Holt. What Discourse have you had with him concerning the Plot?

Mr. Thompson. What has he said about it?

Moor. He said, if the Lords in the Tower were executed, there would be a greater War than ever was in England, and swore that if these Lords were put to Death, it would cost more Blood than ever was spilt. And I asked him again, Why they should not be put to Death, if they should deserve it? For if a poor Man had done such a Fault, he would be hanged out of the Way presently. He said again, they did not deserve it, for there was no Plot at all.

Giles. Pray, Sir, Who was with you when you say I said these Words?

Moor. I was at George Taylor's House.

Giles. Did not you say that George Taylor discoursed this with you?

Mr. Thompson. Is this the Man that spake it, upon your Oath?

Moor. Yes, this was the Man.

Giles. What did Taylor say to you? Do you think, my Lord, I would say such a Thing to such a Man as this is?

Mr. Recorder. Do you hear, Mr. Giles, for that Matter is not the Question; the Man has sworn it; except the Jury know of their own Knowledge that the Man is perjured, he is not so as to me.

Moor. It is the first time that I ever took an Oath.

Mr. Reynold.

Mr. Holt. Mr. Reynold, What have you heard Giles say concerning Mr. Arnold?

Reynold. Sir, I was in Company with John Giles and another, and we had Discourse concerning one Arnold, and John Giles said—

Mr. Recorder. What was that?

Reynold. I being in Company with him, we fell in Discourse about Justice Arnold, how he was wounded.

Mr. Recorder. Where was it?

Reynold. In Monmouthshire, at Langoone, the second Day of May: John Giles answered us, that he could not see but he wounded himself.

Mr. Recorder. What Day did you say?

Reynold. The second Day of May.

Mr. Recorder. He did discourse the 5th Day of May at Uske, I would fain know when he came through Gloucester.

Mr. Thompson. What did he say about Mr. Arnold?

Reynold. He thought that he wounded himself. Says his Wife, How could he wound himself in his Arms? Said he, It was himself, or some of his Friends.

Mr. Recorder. Or some of his Relations.

Reynold. Some of his Friends.

Mr. Hobbs.

Mr. Thompson. Mr. Hobbs, Pray tell how you found Mr. Arnold when he was wounded.

Mr. Hobbs. I found Mr. Arnold bleeding.

Mr. Thompson. Tell what Wounds they were.

Mr. Hobbs. Two in his Arm, two others upon the Face, another upon the Throat, which bled very much; another two upon the Breast, and one in the Belly.

Mr. Thompson. What Depth might that be?

Mr. Hobbs. Two Inches and a Half long.

Mr. Thompson. Where else?

Mr. Hobbs. There was another upon his Breast.

Mr. Thompson. What Depth?

Mr. Hobbs. They were not very deep, but there was one upon the Belly six Inches and an Half; there were two through his Arm, and a Wound and several Bruises in his Head.

Mr. Thompson. This is likely to be a fine Contrivance, that he should do it himself, as likely as that Sir Edmundbury Godfrey put his own Sword through his own Body after his Neck was broke. A great Shout given.

Lord Mayor. Do you believe a Man could wound himself so?

Mr. Hobbs. No, Sir.

Mr. Recorder. I believe a Man could do it, but I believe a Man would not do it himself.

Fifteen or Sixteen Witnesses more for the King, that were attending in the Court were not examin'd, the Court being in some haste, and the King's Council not pressing to have them examin'd, there being so full Evidence: Nor was there one word replied to the Prisoner's Witnesses, they being all either frivolous or contradictory.

Mr. Darnal. May it please your Lordship, and you Gentlemen of the Jury, I am of Council for Giles, the Prisoner at the Bar, and I must needs say there has been a strong Evidence given against him; and if I were sure he was concern'd in this barbarous Attempt upon Mr. Arnold, I would not open my Mouth in this Cause: But if my Brief be true, I make no Question but to satisfy your Lordship and the Jury, nay and Mr. Arnold himself, that he had no Hand in this bloody Action.

And first, my Lord, in Answer to the Evidence that hath been given, there have been sworn among others, Mr. Richmond, Mr. Phillips, and one Powel. First, as to Phillips's Evidence, or what passed in Discourse at the Crown Tavern in Covent-Garden; we have a Witness here who was present at the same Time, that will give you an Account of the whole Discourse, and that there were no such Words said by Giles in relation to Mr. Arnold, as *Damn him, he had Armour on*; and as to the Evidence given by Watkins, of what passed at Uske, about Mr. Herbert Jones's and the Prisoner's making such Speed through Gloucester, we have Witnesses here, my Lord, that will satisfy your Lordship and the Jury, that when they came to Gloucester, though it was at the time of the General Quarter Sessions, yet they staid there four or five Hours, at a Publick-House, without the least Sign of their Apprehension of any Pursuit; which shews the Improbability of any such Discourse at Uske: and, my Lord, as to the Evidence of Powel of what was said in Darcy's the Cutler's Shop at Uske; we have, my Lord, a Witness here that was present at that time, who will give your Lordship and the Jury an Account, that the Words said then by the Prisoner did much differ from what Mr. Powel swears; besides the Improbability that any Man should be so weak to publish himself guilty of such a Crime as this in this manner; after his Majesty's Proclamation out, with the Promise of so great a Reward to any Man that would make a Discovery of this horrid Action: So far, my Lord, we shall answer the Evidence that hath been given; but to satisfy your Lordship and the Jury, that it was impossible the Prisoner at the Bar could be concern'd in this foul Action, we shall prove to your Lordship, that upon the 15th of April, upon the Evening of which Day this bloody Attempt was made upon Mr. Arnold, the Prisoner at the Bar came first to Town; and we shall prove that he came to Town but at one a Clock that Day. We shall prove further, if my Brief be true, by five or six substantial Witnesses, against whom there can be no Exception, how and where he employ'd himself all that Day, from the Minute that he came to Town: And that when he return'd to his Inn, about nine o'Clock at Night, the Maid of the Inn lock'd his Chamber-Door, after he was a-bed, and kept the Key of the Chamber all Night. And, my Lord, if all this be clearly prov'd, I make no doubt but your Lordship and the Jury, and all Persons here, will be satisfied that the Prisoner at the Bar is not guilty of this Indictment. My Lord, we will first begin with Mr. Philpot.

Mr. Philpot.

Mr. Darnal. Mr. Philpot, Pray do you acquaint my Lord, and the Jury, what Discourse pass'd between you and Giles at the Crown Tavern in Covent-Garden.

Mr. Philpot. We drank one Bottle of Claret, Mr. Phillips came in when the Bottle was almost ended. But by and by some Friends came in, and they asked him what News, Sir? Said he, I hear of no News but a cruel Assassination upon Mr. Arnold, but for my part I am sorry for it: But, said he, if any Thing should be upon Mr. Arnold, it is a very strange Thing.

Mr. Darnal. Were you there all the time, Sir?

Mr. Philpot. Yes, Sir, all the time.

Mr. Darnal. And you heard no other Discourse?

Mr. Philpot. No, he did not say damn him nor sink him, for I hate such Company.

Mr. Holt. Mr. John Philpot, Where do you live?

Mr. Philpot. In Long-Lane.

Mr. Holt. What Sign do you live at?

Mr. Philpot. At the Crown.

Mr. Holt. What Trade are you?

Mr. Philpot. A Salesman.

Mr. Darnal. Now we will go on to the Discourse at Uske, about their passing with such Speed through Gloucester.

Mr. Recorder. Mr. Darnal, they do not pretend you were in great Fear, but they say you said so. It is not the Question, Whether you did stay long at Gloucester, or no? But the Question is, Whether you told this Man so? Because the Man asked you, Why you would leave the Hair at the Farrier's, in order to a Fishing-line? Truly I was in great Haste, for fear I should be taken up about the Business of Mr. Arnold.

Mr. Darnal. It is very true, and therefore we bring this Evidence to shew the Improbability that we should say any such Thing, when it was false, and especially when it was to accuse our selves of a Crime.

Herbert Jones, Mayor of Monmouth.

Mr. Darnal. Mr. Jones, Pray give an Account to the Jury of your passing through Gloucester, and how long you staid there.

Mr. Jones. My Lord, I came with the Prisoner.

Mr. Recorder. What Day did you come through Gloucester?

Mr. Jones. I cannot positively tell you the Day: We went out of Town upon Friday, we came to Gloucester either Wednesday or Friday, and there we went to the Old Bear in Gloucester, and there staid an Hour before we went to Dinner; it was a publick time, the Quarterly Sessions, and several People came to us to hear the News; we told them, and were as sorry for it as any Persons could be, and did confess it a very ill Thing. We went from the Old Bear after we had dined to the New Bear, and drank several Pints of Cyder. I believe, by the Oath I have taken, we were several Hours in the Town.

Mr. Milbourn. Do you know Mr. Arnold is acquainted with Mr. Giles?

Mr. Jones. I do believe Mr. Arnold has great reason to be acquainted with Giles.

Mr. Thompson. Yes, now he has.

Mr. Milbourn. Was he chief Constable?

Mr. Jones. Yes, he was; and certainly Mr. Arnold in Reason would take Notice of the chief Constable.

Mr. Milbourn. Mr. Herbert Jones, I am informed that you know this Gentleman goes to Church and receives the Sacrament. Give an Account what Religion he is of.

Mr. Jones.



Mr. Jones. Always a Protestant; I saw him at Church within this half Year.

Giles. I can shew a Certificate of my going to Church since I came to Town.

Mr. Recorder. There are many People that can go to Church to serve their Turn.

Giles. And, my Lord, I have taken the Oaths of Allegiance and Supremacy.

Mr. Thompson. An excellent Protestant to discourse so of the Plot, I must needs say that.

John Jones, the Cutler's Apprentice.

Mr. Recorder. How old are you?

Jones. Between fifteen and sixteen.

Mr. Recorder. Hark you, do you know the Danger of forswearing yourself?

Jones. Yes, Sir.

Mr. Recorder. What is it?

Jones. I am in Danger of everlasting Fire.

Mr. Recorder. Very well.

Mr. Darnal. My Lord, this is the Apprentice to the Cutler, in whose Shop *Powel* says we had such Discourse: *Jones*, pray tell my Lord and the Jury, Whether you were by when one *Walter Powell* came into your Master's Shop, when he and *Giles* were talking about *Giles's* Sword?

Jones. Sir, *John Giles* came in the Morning and brought a Sword, my Master was not within; and he told me, Give this Sword to your Master to be mended; so I took the Sword and laid it up till my Master came in: When he came in, I told my Master of it; and when he came again, this *Walter Powell* was in the Shop: Said *Giles* to my Master, Did you mend my Sword? says he: Says my Master, Mr. Giles, How came your Sword broke? Have you been fighting with the Devil? No, says he, for I never met with Arnold.

People. His 'm, his.

Mr. Recorder. It does not become the Decency and Gravity of a Court of Justice, to be humming and hissing when Facts are trying of this great Concernment..

Mr. Milburn. It was the common Discourse there that Mr. Arnold had been assaulted.

Mr. Recorder. You have been in a great Combat; have you been fighting with the Devil? What did he say to that?

Jones. He never met with Arnold; my Master asked him, Mr. Giles, Have you been in some Battle or other? Have you been fighting with the Devil? No, Sir, for I never met with Arnold.

Mr. Recorder. You did not hear his Wife bid him hold his Tongue?

Jones. No, Sir.

Mr. Thompson. Did he tell you how he did break his Sword?

Jones. No, Sir.

Giles. My Lord, here is Mr. *Philpot* can tell, that I was sitting down in a Chair, and broke off a Piece of the Guard.

Mr. Thompson. You will do well to prove it, Sir.

Mr. Milburn. Was there any Discourse in the Country about Mr. Arnold?

Mr. Recorder. Did they not talk any Thing about killing the Devil?

Jones. No, Sir.

Mr. Darnal. If your Lordship pleases, we will call Witnesses to give an Account when we came to Town, and where we were all that Day; and we will call the Maid that locked the Chamber-Door after we were in Bed, on the same Night when this Fact was committed.

John Howel.

Mr. Darnal. *John Howel*, Pray tell my Lord and the Jury when *Giles* came to Town?

Howel. If it please you, my Lord, I came to Town, and *John Giles* together.

Mr. Recorder. What time of Day was it?

Howel. It was twelve o'Clock.

Mr. Recorder. Who is thy Master?

Howel. *William Richmond*.

Mr. Darnal. What time of Night was it, Friend, when you heard him call to your Master, and bid him Good-night?

Howel. About eleven or twelve o'Clock.

Mr. Milburn. You say about nine you were at your Lodging with him? Did your Party company with him?

Howel. Yes, Sir, we did.

Mr. Thompson. Where did you go at that Time?

Howel. We went into the Chamber, and drank two Pints of Brandy.

Mr. Thompson. What time of Night was that?

Mr. Recorder. After two Pints of Brandy, I wonder how he can remember any thing.

Ann Beron.

Mr. Milburn. Tell what time of the Night *Giles* came in; where you were in his Company; what time of Night it was?

Mr. Recorder. Speak as loud as thou would'st do if thou wer't at Home: When was this?

Ann. The Thursday after Easter.

Mr. Recorder. The Thursday in Easter-Week, or the Thursday in the next Week?

Ann. The Thursday in Easter-Week; we were never out of Company; when he came home to his Lodging I believe it was near ten o'Clock.

Mr. Recorder. Where was your Lodging, at the King's-Arms?

Ann. At the King's Arms.

Mr. Recorder. Good Woman, Did you go with him to *Whetstone's-Park*?

Ann. No, not I.

Mr. Recorder. Were you with him at the Artillery-Ground?

Ann. No, not I.

Mr. Recorder. Were you with him in *Drury-Lane*?

Ann. No, not I.

Mr. Recorder. He did not go out of your Company at all?

Ann. Yes, about ten o'Clock.

Mr. Recorder. Woman, you must be mistaken; he came to Town at twelve or one, and might be in thy Company: But it is plain he went to a Broker's in *Long-lane*, and so to the Artillery-Ground at *Cripplegate*, for I guess it might be so; then they went to *Whetstone's-Park*, and spent Six-pence, and after that they went into *Drury-Lane*.

Pris. My Lord, she don't say she was with us all the while; but we came to an House where she was, and several other People our Neighbours.

Mr. Recorder. She says you did go out some time: Now see whether I mistake you.

VOL. III.

Ann. Yes, you do mistake me.

Mr. Recorder. He went out, did he?

Ann. Yes, he went out after he came into the City, he and some others; and then they came back to me again in two or three Hours.

Mr. Recorder. Then you were two or three Hours at Dinner. Now I ask you, after they came back, was you with him all the while?

Ann. Yes, that I was.

Mr. Recorder. Where was it?

Ann. At the *Peacock*.

Mr. Recorder. That is the Place in *Drury-Lane*.

Ann. No, indeed, it is in *Covent-Garden*.

Mr. Darnal. When did he go to bed? Do you know that, upon your Oath?

Ann. We were in the Inn between nine and ten o'Clock, nearer ten than nine, and I saw him sitting taking a Pipe of Tobacco.

Mr. Darnal. What time was that?

Ann. A little after Ten, I believe.

Mr. Thompson. He sat there till he was called away to do his Business,

Elizabeth Crook.

Mr. Darnal. *Elizabeth Crook*, Pray do you tell my Lord and the Jury about what time *Giles* went to Bed?

Crook. Indeed, Sir, he went to Bed between Ten and Eleven.

Mr. Darnal. How long was it that he came to his Lodging before that? Can you say how long he was in the House before he went to Bed?

Crook. I asked him if I should take away his Candle; he said he would put his Candle out, but I might lock him in and take the Key, but I did not do it.

Mr. Thompson. Did he go to Bed as soon as he came in?

Crook. No, I think he did not.

Mr. Recorder. You made the Bed, did not you?

Crook. I did.

Mr. Recorder. Upon your Oath, what Time of Night was it?

Crook. I think it was nearer Eleven than Ten.

Mr. Recorder. Did you make the Bed after he went into it? What Time did you make the Bed, upon your Oath?

Crook. I made the Bed about Ten o'Clock.

Mr. Recorder. I ask you, Do you remember *Richmond* came in to you, and asked you any Thing about making the Bed? Do you remember he was in the Chamber?

Crook. In whose Chamber?

Mr. Recorder. Did *Richmond* come in when you were making the Bed?

Crook. He was not there, as I knew of.

Richmond. Was not I in the Chamber when you made the Bed?

Crook. No, I don't remember you.

Richmond. My Lord, when this Maid went to make the Bed, I went into the Room after her, and had some Discourse with her; we leaned together upon the Window, and I told her I was in love with her; I told her, if she liked of it, I would marry her the next Morning; I did it to make merry, for indeed I am a married Man.

Mr. Recorder. What Time of Night was it?

Richmond. About Twelve o'Clock.

Mr. Recorder. If you forget your other Sweethearts, can you remember this? Do you remember now he was there?

Crook. I remember he was there.

Pris. Mr. Arnold, pray do not laugh at my Witnesses, and make May-games at them; it is not the Part of a Gentleman.

Richmond. And she told me that he would lie by himself, though the House was very full.

Mr. Recorder. Do you remember any such Discourse?

Crook. I do remember that Mr. *Richmond* did come in.

King's-Council. What Time of Night was it that he was making Love to you?

Crook. I think about Ten o'Clock.

King's Council. Time passed merrily away with you, then.

Richmond. It was Twelve o'Clock.

Crook. Why do you say so? Our House was all quiet presently after Eleven.

Richmond. Why will you say so? Were not we singing and roaring together?

Mr. Recorder. Come, don't be angry, you were not angry when you were making Love together.

Richmond. I am not angry indeed, Sir.

Edward James.

Mr. Milburn. Tell my Lord what Time of Night *Giles* came into his Lodging, and where it was?

James. It was in Easter-Week he came in, and so were drinking at the King's-Arms in *St. Martin's-Lane*, and from Dinner, and from Nine o'Clock.

Mr. Recorder. How! You did not dine there, you dined at the *Peacock*.

James. Yes, we dined there, but from Nine o'Clock we were there till Twelve.

Mr. Recorder. How do you know?

James. I was there with him.

Mr. Recorder. After Twelve o'Clock you say you left him?

James. Yes.

Mr. Recorder. Where did you leave him?

James. In the Kitchen.

Mr. Recorder. Are you sure?

James. Yes, my Lord, I am sure of it.

Mr. Recorder. I ask you, because I have an unhappy Memory: You are sure it was Twelve o'Clock when you saw him in the Kitchen, and here is a Maid saw him go to Bed at Eleven.

Mr. Recorder. Have you any more? You know the Matter that was the Occasion of the Dispute t'other Day: I would not by any Means, that in a Cause of this publick Concern, there should be any Pretence for any to say they were surprized; therefore call as many Witnesses as you please.

Robin Gibbon.

Mr. Milburn. What can you say, when Mr. *Giles* came into his Lodging? Gibbon. It was about Ten o'Clock. I gave his Horse about half a Peck of Oats.

Mr. Milburn. Where?

Gibbon. At the King's-Arms in *St. Martin's-Lane*.

Mr. Milburn. Do you know how long he staid before he went to Bed?

Gibbon. No, Sir, I cannot tell.

Mr. Thompson. He speaks honestly, this Man.

L

Mr. Recorder.



Mr. Recorder. Have you any more?

Giles. There is another, a Translator, my Council knows his Name.

John Chadwick.

Mr. Recorder. What is your Name, Sir?

Chadwick. John Chadwick.

Mr. Recorder. Go on.

Chadwick. I say, this John Giles was at my House between eight and nine o'Clock.

Mr. Recorder. Where is your House?

Chadwick. My House is—

Mr. Recorder. Can you say any more to it?

Mr. Chadwick. No.

Elizabeth Crook.

Mr. Recorder. What have you to say?

Crook. Sir, I went with Mr. Giles Home, and it was between nine and ten o'Clock, and I saw him in his Lodging, and I saw him in the Morning.

Mr. Recorder. Are you sure he went to Bed when you made it?

Crook. It was between ten and eleven o'Clock.

Mr. Thompson. You see how they contradict one another.

Mr. Recorder. Is your Name James?

James. Yes, Sir.

Mr. Recorder. You say, you are certain you left him in the Kitchen at twelve?

James. Yes, Sir.

Mr. Recorder. But here is one that says he went to Bed by eleven.

James. O Lord, no, Sir.

Mr. Holt. These are your own Witnesses, Mr. Giles.

Mr. Thompson. You see how they contradict one another.

Peter Powel.

Powel. My Lord, I met some of my Country-men about an Hour before Night.

Mr. Thompson. What Day?

Powel. About Thursday, Sir.

Mr. Thompson. What Week was it in?

Powel. I believe in Easter Week, and I heard them say that Mr. Arnold was come to Town, and Mr. Herbert and he was to have an Hearing the next Day.

Mr. Recorder. How long was you in his Company?

Powel. I had been in my Friend's Company about an Hour before he came, and we staid till near nine or thereabouts, and then we parted, and I never saw him afterwards till last Monday was seven-night.

Roger How.

Mr. Recorder. What say you?

How. Mr. Giles was in my Company, and staid till about nine o'Clock, or thereabouts, and then we went away, and I saw him no more for that Night.

Mr. Recorder. Have you any more?

Giles. No.

Then Sir George Jefferies the Recorder gave Directions to the Jury to this Effect:

Gentlemen of the Jury, the Evidence has been very long, and I know you have taken particular Care to write down and take Notice of all the Circumstances that have been offered to you in this Case: According to the best of my Memory, I shall refresh yours with such of them as I apprehend to be most material in this Cause; and if any Thing happen to be omitted, others will supply it.

In the first Place I am to take Notice, and I think I am bound to do it in Discharge of my own Conscience, and of my Duty to the Court, that certainly if the Prisoner at the Bar be guilty of the Offence of which he now stands indicted, the Punishment that we can inflict upon him, cannot be proportionable to the Offence: For the Offence is too great for any Punishment that the Law can inflict, for Men are not presumed to be guilty of such Actions as this; and therefore the Law has not proportioned Punishments to them, because it presumes no Man to be guilty of so base and barbarous an Action as this; and because it never could be presumed that any Man would be guilty of such Offences, therefore the Law has not provided Punishment proportionable to them. But this is not your Question, the Question before you is, Whether this Man be guilty or not guilty? That there was a Popish Plot, no Man sure doubts at this Time of Day. Certainly there can be none here under so strange an Infatuation, as in the least to doubt but that there was a Plot, especially when so many Persons, upon full and clear Evidence and Trials, have been convicted as Instruments in that bloody Tragedy. But you are not to make Use of these Things by way of Evidence against the Prisoner at the Bar: But only in the general to premise some Things by way of Introduction to their particular Evidence; and I must plainly tell you (for it is fit it should be mentioned), that if any Villainy can come near that horrid Murder of Sir Edmundbury Godfrey, this does; and I am sorry with all my Heart, that within the Government of the City of London, or so near it, there should be such a barbarous Attempt as this made and concealed so long. It would not be strange to hear of such Villainies committed in other Popish Countries: But for the Honour and Credit of that Religion which I hope we shall maintain with our Lives, that is, the Protestant Religion, I say in a Protestant Country, where the Protestant Religion is professed, I never heard of such a barbarous Act committed before this one; because our Principles of our Religion will not allow us to commit such Villainies by any Dispensation whatsoever. Justice and Truth, and Righteousness, are the Things that our Religion teaches us. God Almighty, and our blessed Saviour Jesus Christ, by whom alone all Mankind must be saved, have commanded the contrary.

Their Religion may dispense with such villainous Actions; but this I can say in Vindication of ours, ours cannot do it; nay, it would be no Religion if it could.

In the next Place, Gentlemen, all Circumstances of Time and Place, of Men and Things, should be taken Notice of; for dark Cases must be made appear by Circumstances: For as I hinted before, no body calls Witnesses when they do such Facts and Works of Darkness, the Works of the Devil, that is the Father of all such Works. I do not mean the Devil, Mr. Arnold, but I mean they are the Works of the Devil: Belieze-

but himself, the Prince of Devils, can be only an Instrument and an Agent in Affairs of this Nature.

Another Thing that is fit to be taken Notice of by you, is this, that by Way of Circumstance, whatever has been said one Way or another, relating to the Plot, relating to the Business of Sir Edmundbury Godfrey, is not to be taken Notice of as Evidence against the Prisoner. You shall have a faithful Account of what has been said by every Witness, both for and against him; for Right is to be done. Our Law comes even to a Proverb, *We must give the Devil his Due*; we must give every body Right. You know that this Business was deferred, that the Prisoner at the Bar might be left without all Manner of Excuse; for if innocent, all Mankind would be glad to have him cleared; if guilty, every honest Man would have him convicted. Now this being premised, the Evidences against the Prisoner are several, and I will, as far as I can, give you an Account of them. And

First of all, It is not doubted but Mr. Arnold has behaved himself like an honest Man, and as every honest Man ought to do for the Interest of his Religion; for there is no Man can do too much, if he does it legally, for the Preservation of his Religion; of that Religion which he is bound to rely upon for the Salvation of his immortal Soul. Now, says Mr. Arnold, in the first Place he gives an honest Account of his being one Night, one Thursday Night in Easter Week, at the Devil-Tavern, about nine or ten o'Clock, with some Friends, and he went out between ten and eleven o'Clock, and his own Servant not being there, he did intend to call some other Servants by; but as it happened, he went away without them, and he perceived two Men in Campaign-Cloaks follow him into Bell-Yard. He does take it upon his Oath, that about the Middle of the Lane, there happened to be a Candle coming out, and one of these two, that he did so observe to dog him, having a Campaign-Cloak upon him, and likewise a Coat lined with red, he did observe came before him; and he doth take it upon his Oath, that he does believe the Prisoner at the Bar to be that very Man that so came before him; he does say that he had a perfect Sight of him, and he does say, that the Reason why he should believe him to be the Man, is, that he does remember his Face, and knew his Voice. He tells you likewise that there were Persons cast a Cloak over his Head, ran him into Jackanapes-Lane, fell upon him, bruised his Head, and wounded him in several Places; particularly he mentions, that there was at the same Time said by one of them, *Pray for the Soul of Captain Evans*; and at the same Time, which is a wonderful Circumstance, *Damn the Dog, he has got Armour on, cut his Throat*. He says that one Man held him up by the Chin, having several Passes made at him, and he says he had something or other to preserve him; but notwithstanding that, he was run into the Side; there were three Men, he does tell you, and that one overtook him in Bell-Yard, and he continues to swear it was the Prisoner at the Bar, according to the best of his Understanding and Conscience; he says it was he, and he discovered him by the Sight of a Candle. Besides this, which is a material Circumstance, some other Persons being brought to Mr. Arnold about it, Mr. Arnold did not tax them, but did positively tax that Person to be one of the Persons. But he tells you he suffered by Passion, as I cannot blame any Man for being in a Passion at such a Time. But his Witnesses determine the Thing, that that is the Man, and he did positively say it, his Memory being better settled than he could at first pretend to; but however, he gives that for another Evidence, that he was not deceived in the Person. This is the Substance, as I remember, I would not do any Injury to the Prisoner, by repeating any thing that has not been said; nor would I do any Injury to the Evidence for the King, in omitting any Thing that occurs to me. The next is one Philip, and he tells you that the next Day, being Friday, about six or seven o'Clock at Night, he happened to be in Company with him at an House in Covent-Garden, and having some Discourse concerning Arnold, and concerning that bloody, base, and foul Attempt that was made upon him, and was so far from having the Bowels of an Englishman, or any Thing of Christianity in him, that he does say he broke out into this extravagant Expression, *Damn him, rot him, he had Armour on: Damn him, rot him, he had Armour on*: I speak it twice over, because Mr. Arnold tells you that the Persons during the Fact was committing, said, *Damne, cut his Throat, he has Armour on*. The next Person comes and tell you, at a certain Place in Monmouthshire, upon the 5th of May following, that he went with one of the Richmonds to this Giles, and had some Discourse: Says he, *How chance you have not been as good as your Word, about providing me Horse-hair to make Fishing Lines, and you promised to leave it at the Furrier's in Gloucester?* How chance it was not so? He immediately adds, *We were in such extraordinary Haste, because we thought we were pursued about the Business of Arnold*. And that he gives as the Reason why he did not stay at Gloucester. If in Case it had not been so, why should he come and tell him he could not stay about the Business of the Hair, because he was like to be pursued about the Business of Arnold? The next Thing, Gentlemen, is concerning one Powel; Powel, he tells you, that he being at one Darcy's House, a Roman Catholick, that is a Sword-Cutler, that lives, I think, likewise at Uske: And it seems the Prisoner at the Bar came to him to have his Sword mended. By the Way, I should have told you that the Prisoner at the Bar, before the Fact was done, did enquire at a Place where he might have a good Rapier: That was before the Fact was done. The Witness spake of it last, which was the Occasion that I did not give it you in order. He asked where he might have a good Rapier?

But now to come to Darcy: Darcy having been very familiar with him, enquir'd, Wherefore, having had his Sword so lately, he should have it to mend already? Have you, said he, been fighting with the Devil? Immediately upon that he swears the Prisoner returned, *No, but with damned Arnold*. And upon that his Wife plucked him by the Coat, and bid him hold his Tongue. I think that is the Substance of what he swears. He says there were by at that Time the Prisoner at the Bar, the Apprentice to this Darcy, and a Woman that is the Prisoner's Wife.

William Richmond, he comes and gives you a further Account, that he being in his Company, he tells you, they went to some Place in the City to enquire after their Friends, and afterwards went to the Artillery to see the Exercise, then to Long-Lane, from thence to Whetstone's-Park, and afterwards to Drury-Lane; and that about nine o'Clock at Night they came to their Inn, and he left Giles taking a Pipe of Tobacco in the Kitchen, and went



went up into his Chamber with some other People, drinking and making merry; and he does positively say, that between eleven and twelve o'Clock at Night, he saw the Servant Maid come up into the Room, and did see she was making the Bed; that he seem'd to be a little surprized that any body should make a Bed at that time of Night, which occasioned him to go in to her, and ask her the Question. The Answer that he had was very material, that she said, *There is a Gentleman below that I must make this Bed for, he does not desire to have any body lie with him.* That was the Answer the Maid gave. There was, he says, some little Talk of Love between him and the Maid, and that he positively says was near upon twelve o'Clock. He says that after this, he went into his own Chamber, and continued in his own Chamber till nigh One; and about One being pulling off his Breeches, the Prisoner at the Bar came and knocked at his Chamber-door, and spake to him, and that was near One o'clock at Night. But it is plain, during that Time, the Prisoner was not in his Chamber, if you believe him; nor indeed is there any Account given of the Prisoner from Nine o'Clock till near One, till he knocked at his Door, as he was pulling off his Breeches and going to Bed. As to the Answers that are given by the Witnesses of the other Side, I shall give you them when I descend to give the Testimonies of the other Side.

To give you yet this further Testimony, say they, We do not only give you this Testimony that he is guilty of this Fact, but we do give you an Account of him, that he is very likely to do such a Thing; for he is an ill Man in himself. As on the other Side, no Man can give a better Testimony to himself in Matters that are dark and obscure, than the Testimony of his Conversation, that he is upright in his Conversation, and therefore cannot be thought guilty of so base an Action: So they think they give a good Evidence against him, and that he is an ill Man in himself; and therefore because he is an ill Man, he may be guilty of such a Thing. And to prove that, they call up these Witnesses.

First of all, one *Bridges* comes and gives you an Account, that discoursing with him concerning the Papists, he damn'd the Plot, and said that all were Rascals that were not Papists; and if in case that the Lords that were in the Tower should happen to suffer, it would be a bloody Day, and it would make a bloodier Work in England than ever was known: Which shews he is a bloody ill Man. The Prisoner ask'd him, If he were not a Papist? It's likely he was a Papist before, or he would not have trusted him so. And this is one Circumstance to prove that he is an ill Man, that he hath given out such and such Expressions.

There is another, one *Reynolds*, who comes and gives you an Account of his having some Discourse with him afterwards about this Business of Mr. *Arnold*, that the Prisoner talked slightly of it, and said that he might do it himself.

This, Gentlemen, I take in general to be the Substance of what has been offer'd for the King. If there be any thing else that does not occur to my Memory, if it doth to yours, you will do well to consider of it.

Say the Council for the Defendant, and that every Man of the Long Robe ought to say, that if the Person, which is the Prisoner at the Bar, were guilty of such a barbarous thing as this, no Man would offer to open his Mouth. And therefore they offer Evidence for their Client as they are instructed to offer to you, and you are to try whether their Client be guilty.

Say they, You first call one *Philips* to give an Account; and as to what *Philips* says about the Business in *Covent-Garden*, about *Damn him*, and *rot him*, they bring one that was there all the Time, and says he, *I was by all the Time, and I heard no such Words.* So far was he from making any particular Reflections upon Mr. *Arnold*, that he cried it was a very horrible, a very barbarous Thing. Nay, says he, to give Credit to this Testimony of his, I never use to keep company with them that use such Words, as *Damn him*, and *rot him*, as he says.

The next Witness is Mr. *Herbert Jones*; he comes and tells you, I went with him from *London*, I went with him to *Gloucester*, I staid at an Inn call'd the *Old-Bear*, and staid and dined with him there. I went after that to the *New-Bear*, we went thither and drank Cyder together; and this was very publick: For several Persons that liv'd in the Town, came to us and enquired after the Business of *Arnold*; and if in case we had been under any such Jealousy as that was, we would not have staid so long, as, says he, we did. Say they on the other side, We do not say that you did not stay in *Gloucester*; but, say they, by way of Objection against the Prisoner at the Bar, we say that you yourself, on the fifth of *May*, said, in answer to the Person that came to ask you, Why you had not brought the Hair, that he might go a Fishing? You said, We durst not stay for fear of Pursuit upon the Account of Mr. *Arnold*. This you yourself said, and by saying so, you have contracted that Guilt in point of Circumstance, which is objected by us against you. This is the Answer given to that that Mr. *Jones* says.

The next Person that comes to give you an Account is one *John Jones*, who is the Apprentice: Says he, you bring a Witness against me that I said such a thing at *Uske*, at *Darcy's* the Sword-Cutler's, and you say the Apprentice was by: And he gives you this Evidence: Says he, I was by at such a Time as the Man speaks of, and being by at that Time, I do very well remember, that there was a Discourse concerning some great Conflict that Mr. *Giles* had been in, and that *Giles's* Wife was by, and so was the other Person that gave the Evidence, that such a Discourse there was of fighting with the Devil; but now he inverts the Saying of the other Man, and says that he should say, *He never met with Arnold the Devil.* The one answers, when the thing was asked him, Whether he had been fighting with the Devil? No, not with the Devil, but with *Arnold*; the other swears, *He did not meet with the Devil Arnold.* He tells you likewise, his Wife did not pull him by the Clothes, and bid him hold his Tongue.

The next Witness is *Powel*; and he gives you an Account that he came with him to Town: He gives you an Account how he staid with him, and came along with him till Nine o'Clock at Night; for he does not pretend to give you an Account after Nine.

Then comes *Crook*: And *Crook*, that is the Maid Servant, she says, I cannot positively tell you when he came in, but will positively say, that I made his Bed about ten, and before eleven I asked him about his Candle;

he bid me lock the Door, and he would put out the Candle himself, and she went away and left the Candle. And that is very material; for the Time this Fact was committed was between ten and eleven; this is what the Maid says: Now there is this Answer to what she swears. She first of all forgot that ever *Richmond*, that speaks concerning the Breeches and other Circumstances, that ever he was there at all; but you hear he has refreshed her Memory with a Love Story, that he was in the Room, and she does agree in these very Circumstances he speaks of; so that that gives Credit to the Testimony of *Richmond*, and puts a Disparagement upon her Testimony, since she could be so exceeding forgetful, as not to remember such a Circumstance.

The next is an old Woman: And she swears point blank she was with him most part of the Day; and that she was with him at Dinner, and was with him till Nine of the Clock at Night, and then went to Bed. And though she seemed to differ and blunder in some part of her Testimony, because she knew nothing of his going into *Long-Lane*, and other Places; however, she gives an Account about the time of Nine o'Clock, that she left him in the Kitchen, and then she went to bed.

The next Witness is *James*: And *James* doth positively swear, that he was drinking with him in the Kitchen till past Twelve o'Clock at Night; but that cannot be true, if the Wench that made the Bed swear true; for she swears she made the Bed before Ten, and he went to Bed before Eleven; so that he could not be a Bed before Eleven, if he swears true; and he could not be in the Kitchen at twelve o'Clock, if she swears true.

Gentlemen, *Richmond's* Man he gives you no farther an Account than what runs square to his Master's Testimony; that he left him at nine o'Clock at Night, and he heard him call at his Master's Chamber about Twelve, and so they punctually agree. But he gives no manner of Account where he was between Nine and Twelve, between which Hours this Fact was done.

Next, Gentlemen, there have been some more Witnesses called for the Prisoner at the Bar, who gave you an Account where he was before such time as he came to his Lodging. Now it is not denied on either Side, but that he might be till within Night at that House they speak of; but the Account that is desired to be given of this Matter, is to know where he was between nine o'Clock and twelve, when this Fact was committed.

These, Gentlemen, according as it occurs to me, are the substantial parts of Evidence, both on the one side and the other. The Matter therefore resolves itself within this narrow Compass: If upon what you have heard from Mr. *Arnold*, attended with the rest of the Circumstances that you have heard sworn by the Witnesses, you do believe the Prisoner at the Bar is guilty; for he might be at his Lodging at nine o'Clock, and he might be at his Lodging at Twelve or One, and he might do this Fact: For it is certain it was not a sudden Matter, for it was a thing done preparedly; and therefore you must not expect that Men that are guilty of such barbarous Designs as this, will lay their Designs open. To be sure, whoever it was did this Fact upon Mr. *Arnold*, they would do it so as to make themselves appear as innocent as could be. It is not a matter to be relied on, that because this Man was innocent in *St. Martin's-Lane*, therefore he did not do this Thing in *Bell-Yard*.

There is another Circumstance against the Prisoner at the Bar; that he should imagine, notwithstanding all this, that Mr. *Arnold* had wounded himself: But when he found that that was not very probable, that a Man could wound himself so, by reason of several Places that he received his Wounds in; he would have it, that though he did not do it himself, yet some of his Friends might. Indeed if he be guilty, some of his Relations might do it, but certainly he was no Friend that did it. It is against Nature for any Man to believe that any Person should put himself to so much Trouble; if he had a Mind to dispatch himself, he might have done it with much more ease, and not have put himself to that trouble; for Men, when they have a mind to do the Business, they do not use to take such a deal of Pains to stab themselves here and there.

Thus, Gentlemen, the Evidence being very long, and the Circumstances very many, Things may occur to you that do not at present to me. Yet I must tell you again, in a matter of publick Example, the Proof ought to be very great, to convict a Man of such an Offence; but you must not expect it should be so clear, as in a matter of Right between Man and Man, and of Things that are done in the Face of the Sun. It was done in the Dark: The Devil that set 'em a-work, does fill them with Cunning enough to keep this Attempt as concealed as may be: And therefore Circumstances of this Nature must be wonderfully considered; an Account of which Mr. *Arnold* himself gives you, and he does believe in his Conscience the Prisoner at the Bar to be the Man.

The Jury withdrew, and having debated together about half an Hour, returned, and brought the Prisoner in Guilty. Which done, the Court adjourned till the Saturday following, the 17th of July: At which time the Court being sat, John *Giles* was brought to the Bar; to whom the Right Worshipful Sir *George Jeffries* delivered himself to this Effect:

Mr. Recorder. You the Prisoner at the Bar, you have been indicted for a very vile Offence; an Offence in its Nature that deserves a greater Punishment than the Law can inflict upon any such Offences. There is a Jury has convicted you of this Crime, against whom, had you had any Objection, you might have made your Challenge. And now you stand convicted here, it is only the Duty of the Court to pronounce that Judgment against you, which they think may be reasonable to inflict upon such an Offender. For I must needs say, it was one of the basest and most barbarous Actions that Mankind could possibly be guilty of: An Action of so much Filth and Baseness, that the Law could not foresee any Man could be guilty of, and therefore hath not made Provision for a Punishment proportionable to it. But inasmuch as we understand by Mr. *Arnold* you have a Charge of Children, therefore the Court takes some Consideration: Not that they think to extend any Mercy to you for your own Sake, but a Regard they think they are bound to have for those that have not offended. But we ought to have a care to let the World know, we do not intend only a Punishment to the Offender, but by that to terrify all other People from being guilty of such extraordinary Villanies. And because



cause they will have Regard to your Posterity, therefore they do not think fit to put so great a Fine upon you as this Fact does deserve. But on the other Side, they have thought fit you should be made an Example of, and that you should suffer as great a Corporal Punishment as the Law will allow. And therefore in the Name of the Court I do pronounce this to be your Sentence:

*That you be put in the Pillory towards Lincoln's-Inn-Fields, as near the Place where this barbarous Fact was committed as may be: And there you are to stand from the Hour of twelve till one, one Day, at Noon-day. And on another Day, from the Hour of twelve till one, over-against Gray's-Inn in Holbourn. And another Day, between the same Hours, just by the May-Pole in the Strand. These three several Days you are to stand in the Pillory, and to have a Paper put upon your Hat, whereby it shall be signified, the Offence of which you stand convicted. And next, to deter all others from committing the like, the Court does think fit likewise to award, That you should pay to the King the Sum of five hundred Pounds; and that you be committed in Execution, till such Time as you pay that Money. And because it is both to be a Punishment to you, and a Terror to all other such Villains, you are to find Sureties for your good Behaviour during Life.*

Sentence being pronounced, and the Prisoner removed from the Bar, Richard Cavenaugh was brought to the Bar, and prayed to be discharged: But was by Mr. Arnold charged with threatening one Philip Staneright, one of the King's Witnesses: For which Reason, and for that also a new Evidence was come in against the said Cavenaugh, with some farther Charge relating to Mr. Arnold's Business, the Court thought fit, for want of Bail, to continue him a Prisoner.

Then Mr. Herbert appeared, and prayed to be discharged from his Recognizance to appear at the Old-Bailey: But being accused by a Woman for calling her Whore, Jade, and very ill Names, and holding up his Staff at her, and threatening to beat her for being a Witness against his Friend

Giles; as also for taking away her Horse as she was going to the Mill; and the Reason was, because she was to be a Witness in London against Giles. But she being a married Woman, and none appearing that would be bound to prosecute him for it, he was not bound over to answer it, till another Complaint came in against him, which was immediately made by Mr. Ballard, and another Gentleman; who charged Mr. Herbert, that in Whitsun Week last, upon a Discourse for chusing Knights of the Shire for Monmouth, and the saying of one in the Company, that it was thought Mr. Arnold would stand for it; Mr. Herbert should make Answer, I will circumsise the other Side of his Cheek first; or, he must have the other Side of his Cheek circumsised first. Upon which the Court ordered he should not be discharged, but remain bound upon the former Recognizance to appear there next Sessions. And the Recorder gave him several sharp Reprehensions for his malicious and unmanly Words and Proceedings: This being the second of the King's Witnesses, and a Woman that he had barbarously treated; still passionately giving the Reason, that they were Witnesses against his Friend John Giles, as it was proved on Oath before the Court by several Witnesses.

Then Sir Thomas Allen acquainted the Court, that a Gentleman had informed him the Day before, that Mr. Herbert told him, that Mr. Arnold wounded himself and cut his own Throat; which the Court looked upon as an high Effect of a malicious Ingratitude; Mr. Arnold having befought his Majesty, when Mr. Herbert was in Newgate to have his Release. Mr. Arnold replied, that Mr. Herbert had been more ungrateful to his Majesty, who had graciously pardoned him greater Offences, and lately; for he had spoken worse of his Majesty's Person and Government, than he had done of him, as it had been proved before his Majesty, and of which he believed his Majesty was well satisfied. The Court told Mr. Herbert, he was a Shame to all Englishmen; and bound him by Recognizance to appear and answer this Offence at the King's-Bench Bar the first Day of the next Term.

### C. *The Trial of THOMAS THWING and MARY PRESSICKS, at York Assizes for High-Treason, July 24. 1680, 32 Car. II.*

*Cl. of Assize.* **T**homas Thwing, late of Heworth, in the County of York, Clerk, and Mary Pressicks, Wife of Thomas Pressicks, late of the Parish of Barwick in Elmet, Gent. stand indicted; for that they, as false Traitors against the most illustrious and most excellent Prince, King Charles the Second, that now is, their Natural Lord; God before their Eyes not having, nor their due Allegiance weighing, but by the Instigation of the Devil being seduced and moved, the cordial Love, and true and natural Obedience, which true and faithful Subjects of our said Sovereign Lord the King towards his said Majesty ought to bear, altogether withdrawing; and imagining, and with all their Strengths intending the Peace and common Tranquility of his Kingdom of England to disturb, and his said Majesty that now is to Death and final Destruction to bring and put, and the true Worship of God in this Kingdom of England established and used, to alter to the Superstition of the Church of Rome, and War against his said Majesty in this Kingdom of England to move and raise, and the Government of this Kingdom of England to subvert; the 30th Day of May, in the 31st Year of his Majesty's Reign that now is, at the Parish of Barwick in Elmet aforesaid, in the County aforesaid, with divers other false Traitors to the Jurors unknown, did traiterously compass, imagine and intend, and every of them did compass, imagine and intend the Death and final Destruction of his said Majesty, and the ancient Government of this Realm of England to change, alter, and utterly subvert, and his said Majesty of the Crown and Rule of this Kingdom to depose and wholly to deprive, and the true Protestant Religion to extirpate: And to effect and accomplish their said wicked Treasons, and traiterous Imaginations and Purposes aforesaid, the said Thomas Thwing and Mary Pressicks, and other false Traitors to the Jurors unknown, the said 30th Day of May, in the 31st Year aforesaid, with Force and Arms at the Parish of Barwick in Elmet aforesaid, advisedly, devilishly, maliciously and traiterously did assemble and gather themselves together, and then and there did devilishly, advisedly, maliciously, subtilly, and traiterously consult and agree, and every of them did then and there traiterously consult and agree to bring to Death and final Destruction our said Sovereign Lord the King, and to depose and deprive him of his Crown and Rule aforesaid, and the Religion of the Church of Rome into this Kingdom to introduce and establish: And the sooner to fulfill and effect the said wicked Treasons and traiterous Imaginations and Purposes aforesaid, the said Thomas Thwing and Mary Pressicks, and other false Traitors to the Jurors unknown, did then and there pay and expend, and every of them did then and there pay and expend divers Sums of Money of divers other Traitors to the Jurors unknown, to carry on the Treasons aforesaid; and then and there the said Thomas Thwing and Mary Pressicks did subscribe, and either of them did subscribe a certain Note in writing for the Payment of divers Sums of Money for making a Contribution for compleating their traiterous Purposes aforesaid, against the Duty of their Allegiance, and against the King's Peace, his Crown and Dignity, and also against the Statute in that Case made and provided.

To this Indictment having pleaded Not Guilty, and put themselves upon their Country for Trial,

*Upon the 29th of July, Sir Thomas Daniel, High Sheriff of the County, having returned many Gentlemen for Jurors; the Trial proceeded thus: After the Jury called, Thomas Thwing and Mary Pressicks being brought to the Bar,*

*Cl. of Assize.* Thomas Thwing, hold up thy Hand. Mary Pressicks, hold up thy Hand. [Which being done.]

*Cl. of Assize.* This understand ye, that these Gentlemen that are now to be sworn, are returned by the Sheriff of this County, to pass between our Sovereign Lord the King and you for your Lives: therefore if you will challenge any of them, you are to challenge them as they come to be sworn, and before they be sworn.

*Cl. of Assize.* Sir David Fowles, Bart. Thwing. I challenge him.

*And so as they were called challenged these twenty-five Gentlemen following, viz.*

John Eastoft, Esq;	Roger Fretwel, Gent.	Nathan. Harrison, Gent.
William Bethel, Esq;	Simon Warrenner, Gent.	John Tomlinson, Gent.
Townes Drisfield, Esq;	Edward Carvil, Gent.	Thomas Riccaby, Gent.
Will. Oshaldeston, Esq;	John Coates, Gent.	John Ullishorne, Gent.
Marm. Trueman, Gent.	Hugh Savil, Gent.	Thomas Hincks, Gent.
Robert Bell, Gent.	Nivian Collins, Gent.	William Mastin, Gent.
Thomas Fletcher, Gent.	Thomas Green, Gent.	George Ellis, Gent.
Thomas Wood, Gent.	Nathaniel Elliotson, Gent.	Thomas Whaley, Gent.
Thomas Fairfside, Gent.		

*In the calling of the Jury, after several Challenges made, and some of the Jury sworn, Thwing spoke thus:*

Thwing. My Lord, I shall willingly stand to the other Jury.

Mr. Just. Dolben. What Jury?

Thwing. My Lady Tempest's Jury.

Mr. Just. Dolben. Oh, your Servant; you either are very foolish, or take me to be so.

*The Jury being Sworn.*

*Cl. of Assize.* Cryer, count these.

Sir George Cook, Bar.	} Jur'	Hen. Pinckney, Gent.
Thomas Worsley, Esq;		John. Blackston, Gent.
William Caky, Esq;		Will. Harcastle, Gent.
Roger Lee, Gent.		Nicholas Stone, Gent.
John Dixon, Gent.		Geo. Westorby, Gent.
George Wray, Gent.		Charles Tucker, Gent.

Cryer. Twelve good Men and true, stand together and hear your Evidence.

*Cl. of Assize.* Thomas Thwing, hold up thy Hand, [which he did] Mary Pressicks, hold up thy Hand [which she did]. Gentlemen, you of the Jury that are sworn, look upon the Prisoners, and hearken to their Charge: You shall understand that they stand indicted by the Names of Thomas Thwing, &c. and Mary Pressicks, &c. Prout in the Indictment. Upon this Indictment they have been arraigned, and thereunto pleaded Not Guilty; and for their Trial have put themselves upon the Country, which Country you are, &c.

*Then Proclamation was made for Evidence, and the Indictment being opened, and the Treasons therein aggravated by the King's Council; Mr. Baron Atkyns came into the Court to assist in the Trial.*

*The Witnesses were called; Robert Bolron was first sworn.*

Bolron. My Lord, in the Year 1674, I came to live with Sir Thomas Gascoigne, and was Steward of his Coal-pits; and in 1675 I turned Papist; and about January, 1676, Mr. Thwing, Father Rushton, and several others came to my House at Shippon, and did there examine me how I stood affected to the Roman Catholick Religion, and whether I was resolved to venture my Life and Estate in it, if there were any Occasion; to which I agreed, and was resolved to obey my Ghostly Father in all Things.



Mr. Justice Dolben taking Notice of a Gentleman near the Prisoners, demanded, What is that Gentleman? We are all beset; he was one of the Jury Yesterday: He being removed, Bolron proceeded.

Bolron. Father Rushton my Confessor gave me the Oath of Secrecy; and in the Year 1677, Sir Thomas Gascoigne, Sir Miles Stapleton, Mr. Thwing the Prisoner, and several other Persons, met at Barmbow-Hall, Sir Thomas Gascoigne's House; and there they agreed, That in hopes the Plot of killing the King would take Effect, they would erect a Nunnery at Dolebank; but the real Intention was to have it at Heworth, within a Mile of York, after the King was killed; and to avoid Suspicion, my Lady Tempest told them she would let them have Broughton for the present.

It was there agreed, that the King should be killed: And Mr. Thwing said, that if they missed this Opportunity, they should never have the like again, and the effecting of it would be very beneficial to the Church of Rome.

Mr. Bar. Atkins. Repeat it in the same Words.

Bolron. He said, if we miss this Opportunity of killing the King, we shall never have the like again; and Mr. Thwing was to be the Confessor of the Nunnery for the present.

Mr. Bar. Atkins. Where were these Words spoken?

Mr. Bolron. In the old Dining-Room.

Mr. Just. Dolben. Who were present?

Mr. Bolron. Sir Miles Stapleton, Sir Thomas Gascoigne, my Lady Tempest, Mr. Thwing, Mr. Rushton, and some others.

Mr. Just. Dolben. Was it agreed that the King should be killed?

Mr. Bolron. It was, my Lord.

Mr. Bar. Atkins. Consider seriously, you speak in the Presence of God, and of a great Assembly; and that a Person's Life is at Stake: Tell it again, what were the Words?

Mr. Bolron. It was agreed that the King should be killed, and that it was for the Good of the Catholick Religion; and I paid 10*l.* to Mr. Rushton in Mr. Thwing's Presence, towards killing the King, and saw a List in Mr. Rushton's and Mr. Thwing's Hands, of the Names of several that engaged for promoting the Roman Catholick Religion; which was to be by killing the King.

Mr. Bar. Atkins. Was it a List of those that were to kill the King?

Mr. Bolron. The List I saw was of Money raised to kill the King.

Mr. Bar. Atkins. What was the Title of that List?

Mr. Bolron. A List of the Names of the Actors and Contributors, engaged in the Design of promoting the Roman Catholick Religion, and also of establishing a Nunnery; which was raising Money for the killing of the King. And besides the 10*l.* I paid towards it, I paid 5*l.* to have my Soul prayed for. Thwing told me afterwards at my House, that in York-shire, Lancashire, and Derbyshire, 30,000*l.* was raised for the killing of the King; and that the List was sent beyond Sea.

Mr. Just. Dolben. What can you say against the Woman?

Mr. Bolron. Mrs. Preficks told me, That in 1678, presently after the Plot was discovered, she being in London, did hear a Woman cry after her, Stop the Papist; stop the Plotter; but she got away, and afterwards durst not appear publicly in London. I had Discourse with her at my House about the Plot; and she told me, that Father Harcourt was her Confessor, and first engaged her in it; and that Pickering told her, that he was to have killed the King, and she said she was sorry he did not do it; and that Oates and Bedloe were two Rogues, and the Plot had not been discovered but for them, who were the Cause of so much Mischief. And she further told me, that the Gun wherewith he was to have killed the King, was found with Pickering, and she did believe that was the Cause of his losing his Life: And she said, The King was an A*s.*, and not fit to govern; that what Money the Parliament gave him he spent upon Whores and Concubines.

Mr. Just. Dolben. Well, is this all you have against her?

Mr. Bolron. Yes, my Lord.

Mr. Just. Dolben. He hath done; you may cross-examine him, if you will.

Thwing. Who was at your House when I was there?

Mr. Bolron. Father Rushton.

Thwing. How often was I there?

Mr. Bolron. Several Times, I know not how often.

Thwing. When was it you accused me first of the Plot?

Mr. Bolron. When I went to the Council I accused him.

Thwing. He did not accuse me of the Plot in several Months.

Sir Tho. Stringer. Come, Mr. Mowbray, tell your Knowledge.

Mr. Mowbray was sworn.

Mr. Mowbray. My Lord, what I have to say is only against Mr. Thwing. At an Assembly of divers Priests at Barmbow-Hall, amongst the rest, there were Father Rushton and Mr. Thwing; and there they determined to kill the King.

Mr. Bar. Atkins. When was this?

Mr. Mowbray. This was near Michaelmas 1676, and they declared it was not only lawful, but meritorious to do it: They also declared, That London and York were to be fired; and that Force was to be made use of against the King, and all other Hereticks that should oppose the Advancement of their Religion: And Mr. Thwing and Rushton declared, the King was an Heretick, and excommunicated by the Pope, and hadn't kept his Promise with the Jesuits to bring in their Religion, and therefore deserved to be killed, and it was not only lawful but meritorious so to do.

Mr. Belwood, of Council for the King. Was there not a List?

Mr. Mowbray. Yes, a List of those engaged in the Design of killing the King, and of promoting the Catholick Religion: And it was declared the King should be killed, because he hadn't kept his Promise made to the Jesuits when he was beyond Sea.

Mr. Just. Dolben. Did the Prisoner declare it?

Mr. Mowbray. Mr. Thwing declared it, and Rushton and he managed it.

Thwing. Who was there?

Mr. Mowbray. It was at Father Rushton's Chamber that I saw you, and there was another Thwing there; and also Addison a Priest.

Thwing. I went once or twice a Year to Sir Thomas Gascoigne's, and thought it my Duty to wait on him; and that I might without Offence do it, he being my Uncle.

Mr. Just. Dolben. No, the Offence is Plotting.

Sir Thomas Stringer. Mr. Thwing, do you know Rushton?

Thwing. Yes; but I had no great Acquaintance with him.

Sir Tho. Stringer. Mr. Mowbray, how came you to be intrusted in so great a Business?

Mr. Mowbray. I assisted Father Rushton at the Altar at Maf*s.*; and so came into great Favour with him, and was permitted to be in his Chamber when the Priests were in private with him.

Sir Tho. Stringer. Mr. Mowbray, did you take an Oath of Secrecy?

Mr. Mowbray. Yes, I took it from Father Rushton.

Thwing. How long since did you change your Religion?

Mr. Mowbray. Presently after the Plot broke out.

Thwing. Who were you examined before first of all?

Mr. Mowbray. Before Mr. Lowther, and Mr. Tindal.

Mr. Just. Dolben. Did you at the first accuse him?

Mr. Mowbray. I only charged Sir Thomas Gascoigne, Esq; Gascoigne, my Lady Tempest, Sir Miles Stapleton, and Father Rushton in my first; and in my second Deposition I accused Mr. Thwing; and that was before Justice Warcup.

Mr. Bar. Atkins. Did Thwing abscond at the first?

Mr. Mowbray. He was apprehended at the same Time Sir Thomas Gascoigne was apprehended, and at his House.

Mr. Just. Dolben. Well, what say you to Mary Preficks?

Mr. Mowbray. My Lord, I have nothing to say against her.

Mr. Just. Dolben. Mr. Thwing, you have heard the Evidence, what do you say for yourself?

Thwing. I shall produce Witnesses I was never with him at Barmbow: First, I shall shew he never mentioned me when he first mentioned the Plot; and he never said any Thing against me, when he accused Sir Thomas Gascoigne before Mr. Lowther and Mr. Tindal.

But Mr. Bonithen, of Counsel for the King, offering other Witnesses for the King against Mrs. Preficks, they were called, viz. Mrs. Bolron sen. Mrs. Bolron jun. and John Hutchinson.

Mrs. Bolron sen. sworn.

Mr. Just. Dolben. What do you know of Preficks, the Prisoner at the Bar?

Mrs. Bolron sen. My Lord, she said she knew of the Plot, and that Pickering was to have killed the King.

Mr. Bonithen. Do you mean shoot the King?

Mrs. Bolron sen. Yes, I do.

Mr. Just. Dolben. Where did she tell you this?

Mrs. Bolron sen. At Shippon, my Lord.

Mr. Just. Dolben. At his House?

[pointing to Mr. Bolron.

Mrs. Bolron sen. Yes, and she said that she was very sorry that Pickering did not do it, and that he had done it if it had not been for Oates, and Bedloe.

Mr. Just. Dolben. Was this the very same Time that Mr. Bolron speaks of?

Mrs. Bolron sen. Yes, my Lord; and she said there would never be Quiet in England until the Roman Catholics had got the upper Hand, and there was not a Protestant left in England: And she said, The King spent his Money amongst his Concubines, and his other Women, so that he was not worthy to be King, and she hoped an Army of Catholics would be raised to set up Popery.

Mr. Just. Dolben. That is, indeed, the Principle of the Papists, and according to it; within forty Years past they murdered 20,000 innocent Protestants in Ireland. Did she say it often?

Mrs. Bolron sen. Yes, several Times, more than once or twice.

Mrs. Bolron jun. was then sworn and examined.

Mrs. Bolron jun. I heard her say, There was a Conspiracy carrying on about altering the Government, and establishing the Roman Catholick Religion.

Mr. Just. Dolben. Where heard you this?

Mrs. Bolron jun. In my Husband's House.

Mr. Bar. Atkins. And what were her Hopes in the Conspiracy?

Mrs. Bolron jun. My Lord, I cannot tell.

Mrs. Preficks. I ask Mr. Bolron when we had this Discourse?

Mr. Bolron. At several Times; about Candlemas 1678, and at Easter and Whitsuntide, and several Times after the Plot was discovered, we discoursed it several Times at the Porch at my House.

Mr. Just. Dolben. Who was present?

Mr. Bolron. My Grandmother.

Mr. Just. Dolben. Where was it, old Woman, that you heard these Words?

Mrs. Bolron sen. At Shippon, in the Hall-porch, my Lord.

Mrs. Preficks. Had we any Discourse about Sir Thomas?

Mrs. Bolron sen. None.

John Hutchinson was then sworn.

Mr. Just. Dolben. Do you know any Thing concerning Mrs. Preficks? Hutchinson. May it please you, my Lord, I came to Mr. Bolron's House, and Mrs. Preficks asked me what News in our Country, and what became of the Papists? I told her some had given Bond, and some were gone to Prison: Then she said, We shall never be at Peace until we're all of the Roman Catholick Religion; for the King is an Heretick, and spends more Money upon his Whores than upon his Queen, and we shall never be at Quiet until the Duke of York is King.

Mr. Just. Dolben. What say you to this? You have seen him?

Mrs. Preficks. I never saw him but twice there.

† Note, That upon Sir Thomas Gascoigne's Trial it appeared in his Almanack, that he had made this Memorial there with his own Hand (viz.) The 15th of Apr. 1676, Memorand. acquaint Mr. T. Thwing with the whole Design.



Mr. Just. Dolben. Where was she when she said this?  
*Hutchinson.* She first talked with me in the Kitchen, and at the Hall-door, as she was just going into the Parlour: she told me, That we should never be at quiet until the Duke of York was made King.  
 Mr. Just. Dolben. Mr. Bolron, when came she to your House?  
 Mr. Bolron. She came to our House about Christmas, and staid about six Months there.  
 Mr. Just. Dolben. Six Months in your House! Then you are well enough acquainted with her?  
 Mr. Bolron. Yes, my Lord.  
 Mr. Just. Dolben. Did you charge Mr. Thwing before the Justice?  
 Mr. Bolron. My Lord, I gave Justice Tindal only a short Note, that Sir Tho. Gascoigne promised me 1000*l.* to kill the King: But what I had to say against Thwing, I gave to the King and Council.  
 Thwing. My Lord, this is Malice to Sir Tho. Gascoigne's Family, to which I am related, it is out of Revenge.  
 Mr. Just. Dolben. It was a Family-Quarrel, then?  
 Thwing. Yes, my Lord, this I can prove by several Witnesses.  
 Mr. Just. Dolben. Call your Witnesses then.  
 Thwing. Nathaniel Wilson.  
 Mr. Just. Dolben. Mr. Babington, why don't you appear? We know well enough that you are Solicitor in the Cause; call your Witnesses.

*Then Nathaniel Wilson was examined.*

Mr. Just. Dolben. Come, what is it you have to say?  
 Wilson. I went to Bolron to look on a Cow that he had gifted for his Cousin Bargues, and desired to have the Cow away, but he would not let me have her without paying for her Gift; so I tender'd him his Money, and we went to talk in the House, and Bolron sent for a Groat's-worth of Ale, and asked me if I could tell any thing of Father Rashton, and I told him I could not; and he bid me keep his Secrets, and he would give me more than I could addle (*that is*, earn) in seven Years: And he said, unless he could shed the Blood of some of them, he should get nothing.  
 Mr. Just. Dolben. When was this?  
 Wilson. This was about next Michaelmas a twelve-month.  
 Mr. Just. Dolben. This is quite other than you told yesterday.  
 [Wilson was a Witness the Day before for the Lady Tempest.]  
 Wilson. I had not Time.  
 Thwing. I desire to know, Whether Bolron named me to Mr. Lowther as a Plotter.

*Then Mr. Lowther was called.*

Mr. Lowther. I do not remember that Mr. Bolron named Mr. Thwing to me when he was before me.  
 Mr. Just. Dolben. When did he come to make the Discovery to you? Give an Account of it.  
 Mr. Lowther. I think it was the 24th or 25th of June 1679, that he came to me; and he told me he had some Secrets to impart to me: And he began to tell me a Story of the Jesuits and Priests, what they design'd against the Government, because the King did not keep his Word with them when he was beyond Sea: And then I called for my Man and a Bible to take his Examination, and said, Pray, Friend, be very careful what you do, for here your own Concern is at stake, as well as the Lives and Fortunes of the Gentlemen you speak against; and upon that he began to be very fearful and timorous, and looked pale: Whereupon I asked him, What that Fear was for? It is, said he, because I have concealed it so long; and if that were upon you, it may be you would be as fearful as I am. Then I was going to take his Information, and he said, I have done it before to Mr. Tindal. Why came you to me, then? said I. He said, Mr. Tindal desired it: Well, said I, Mr. Tindal and I are to meet to-morrow, and we will do it jointly.  
 Mr. Just. Dolben. Did he say he told you all he knew?  
 Mr. Lowther. He did not name Thwing, but said he would recollect more, and would go to London and give it in to the King and Council: And then I said, Why may not we take it here as well as trouble them at London?  
 Mr. Just. Dolben. It may be, he thought it better to do it there.  
 Mrs. Preficks. He did not accuse me before Mr. Lowther.  
 Mr. Bolron. Yes, my Lord, I did, and had a Warrant to take her.  
 Mr. Lowther. She was taken the same Day Sir Tho. Gascoigne was taken.  
 Mr. Just. Dolben. We will be just between you.

*Then the Prisoner called Obadiah Moor.*

Mr. Just. Dolben. Come, tell your Knowledge in this Business.  
 Moor. I say, that Mr. Bolron said, That Sir Tho. Gascoigne was not concerned in the Plot, nor none of his Family; and that he believed there was no Plot.  
 Mr. Just. Dolben. When was this?  
 Moor. This was about Candlemas was twelve months.  
 Mr. Just. Dolben. He was then a Papist: But did he not tell you otherwise afterwards?  
 Moor. In August after he told me he had but equivocated with me in what he said before, and that there was a real Plot; and if he had sworn a thousand Lies, he could have been forgiven them.

*Then Stephen Thompson was called and examined.*

Thompson. Mr. Bolron was Servant to Sir Tho. Gascoigne, and being in his Debt, Sir Thomas did arrest him, and he agreed with Sir Thomas to give him 60*l.* and got me to be bound with him: And when the Plot came out, I thought Bolron being his Servant, might know whether Sir Thomas had any hand in it; and if so, that we were in no danger of being sued; and I enquired of Bolron, and he said, Sir Thomas was as *sinless* of it as the Child that was unborn. And on Holy Thursday I went to him, and got him out on the backside to Sir Thomas's, and all along he told me, if he sued him he would do him a greater Mischief: And I pleaded earnestly with Sir Thomas not to sue the Bond, and he said he would have his Money, but would stay a Fortnight; and I prevailed with him to give three Weeks time, that Bolron might go to sell his House at Newcastle, and in that Time he went to London and accused him of Treason: And as to Mrs. Preficks, I ask'd his Grandmother what she could say against

her, and she said, Alas, alas, I can say nothing to it, but Bolron said she must say so and so.

Mr. Just. Dolben. What mean you, Friend, by *so* and *so*?  
 Thompson. It was about Sir Edmundbury Godfrey, and that the King was an Whoremaster, and such Things.

*Then Zachary Thorpe was called and examined.*

Thorpe. I met with Mr. Bolron in Long-Acre before the last Assizes, and asked him concerning Sir Tho. Gascoigne my Countryman, and he said he was cleared, but, God damn the Jury, they were Rogues. Then he asked me if I had read Harris's Intelligence of that Day, and I told him Yes; and he then asked me if I had seen his Wife's Name in it? He then told me, that he was going down to the Affizes at York against my Lady Tempest, and said, God damn me, I will ruin 'em; if one thing will not do it, another shall.

Mr. Just. Dolben. What are you? God damn me comes very nimbly out of your Mouth.

Thorpe. I live at the White-Hart in Charterhouse-Lane, with the Gentleman of the House; I married his Daughter.

Mr. Just. Dolben. And draw Pots of Ale, that's your Trade? How comes Bolron to talk thus to you? Is he so mad a Fellow to talk thus to every one? This is not likely that he should thus accuse himself to you: Your Father-in-law is a poor Ale-housekeeper?

Mr. Bar. Atkyns. Are not you a Papist?

Thorpe. No, my Lord, a Protestant of the Church of England.

Mr. Just. Dolben. Have you never been in Newgate? Your Lane is full of such People, and your House suspected.

Thorpe. No, my Lord.

Mr. Just. Dolben. Come, have you done?

Thorpe. Bolron came to my Lodgings at the Plough on Holbourn-Hill before the last Assizes, and told me, if I would swear that Peter Shipton knew no harm by Bolron, he would do any thing for me.

Mr. Just. Dolben. This is a Fable, for Bolron bound Shipton over at the Sessions before the last Assizes.

Bolron. Yes, my Lord, it was for scandalous Words against his Majesty.

Thorpe. He asked me what Shipton was. I answered, he is an honest Man for aught that I know: I have taken his own Bond, said Bolron, but I will have him from Court to Court, I will teach him to meddle with me.

Mr. Just. Dolben. How came he to speak to thee?

Thorpe. I know not why, but it was his Discourse to me.

Mr. Bar. Atkyns. What Acquaintance was there between you?

Thorpe. I have seen him several times in Yorkshire.

Mr. Just. Dolben. You live in Charterhouse-Lane, How came you together in Long-Acre?

Thorpe. I met him accidentally in the Street.

Mr. Just. Dolben. It is a wonderful thing, that he should meet one in the Street with whom he had very small Acquaintance, and discover such things to him, as he did to you.

*Then William Hardwick was examined.*

Hardwick. I was to carry Mrs. Preficks before Justice Lowther, and Bolron's Wife said she was sorry for it, for she believed her to be an honest Woman, and had been a good Neighbour amongst them.

Mr. Bar. Atkyns. Who was sorry?

Hardwick. Mrs. Bolron.

Mr. Bar. Atkyns. What did Bolron himself say?

Hardwick. He said nothing to me, he was in another Room with his Grandmother.

Mr. Justice Dolben taking Notice of Thwing's speaking to Mr. Hobart, demanded what he said.

Hobart. My Lord, he ask'd me, whether Bolron did not say that Sir Tho. Gascoigne offer'd him 1000*l.* I only say that he swore at Sir Thomas Gascoigne's Trial.

Mr. Just. Dolben. How doth it appear what he swore there?

Bolron. I acquainted Mr. Lowther and Mr. Tindal with it.

*Mary Walker was called.*

Mr. Just. Dolben. Mary Walker, what do you say?

Mary Walker. Robert Bolron came after Mr. Thwing was taken Prisoner, to my Mistress's.

Mr. Just. Dolben. Who is your Mistress?

Mary Walker. Mrs. Laffell; and he ask'd me if I knew Mr. Thwing to be a Priest, and I told him, No, my Lord; he told me that if I would swear that he was a Priest, he would give me 10*l.* for he would be reveng'd of him for Sir Thomas Gascoigne's Cause; for he was near of kin to him, and he proffer'd me 10*l.* again.

Bolron. Where were you, you were not here yesterday?

Mary Walker. I was in the Court yesterday.

Mr. Just. Dolben. Where spoke he this?

Mary Walker. At Mrs. Laffell's.

Sir Tho. Stringer. My Lord, he was then searching for Priests at that House, and it is improbable that he should endeavour at that Time to suborn Thwing's Sister's Servant.

Mr. Bar. Atkyns. Is Mrs. Laffell of kin to Mr. Thwing?

Walker. Yes, my Lord.

Mr. Just. Dolben. Who can believe he would come to Thwing's Sister's House, to suborn her Servant to be a Witness against Mr. Thwing?

Walker. Yes, my Lord, I have Witness of it, both a Man and a Woman.

Mr. Just. Dolben. Where are they?

Walker. In Town.

Mr. Just. Dolben. That makes it more improbable that he would offer you 10*l.* in the Presence of two Witnesses to swear that Mr. Thwing was a Priest.

Sir Tho. Stringer. Let us ask her a Question: Whether are you a Papist or no?

Walker. Yes, I am a Catholick.

Sir Tho.



Sir Thomas Stringer. Since it must be probable, that he would ask you such a Thing, and knew you to be a Papist; is Thwing a Priest or no?

Walker. No, marry, is he not.

Sir Thomas Stringer. Have you not heard him say Mass?

Walker. No, if I were to die.

Mr. Just. Dolben. Indeed you are an excellent Witness.

Mr. Legget, one of the King's Messengers, produced as a Witness by the Prisoners, was next examined.

Mr. Legget. In August last, Mr. Bolron told me, he would call his Grandmother in, and examine her before me; and he then asked her, if she did not say, that she knew such and such Things? And she said she could not tell, but if she did, 'twas true.

Mr. Bar. Atkyns. What was it he asked her?

Legget. About Harcourt, and I know not what; I took little Notice of it, it seemed to be a Thing so idle, that I went away: And meeting me afterwards, said, You thought my Grandmother knew nothing, but at the Bar, when Sir Thomas Gascoigne was tried, they said they never heard one swear a Thing more plainly.

Mr. Just. Dolben. Legget, did not you desire Money Yesterday of the Clerk of the Assizes as a Witness for the King?

Legget. Yes, my Lord.

Mr. Just. Dolben. Did you so? You are a fine Fellow.

Then one William Bacchus was examined.

Bacchus. All that I can say, is, That I served a Warrant upon Mrs. Bolron to go before Squire Lowther, and Bolron's Wife and Grandmother said, they could say nothing against Sir Thomas Gascoigne, nor any of the Family.

Mr. Just. Dolben. Well, they say nothing against them now, but what did she say against Mrs. Preficks?

Bacchus. She said that Mary Preficks should say that the King was an Whoremaster, and maintained his Whores better than he did the Queen.

Cuthbert Hamsworth was then called.

Hamsworth being produced as a Witness for Sir Thomas Gascoigne, owned that he had been a Papist.

Hamsworth. My Lord, Robert Bolron did swear Revenge against my Lady Tempest, for prosecuting a Suit against him.

Mr. Just. Dolben. What is that to the Matter in Hand? Do you know that he swore Revenge against Thwing and Preficks?

Hamsworth. No, my Lord.

Mr. Bar. Atkyns (to the Prisoners). What have you more to say?

Thwing. My Lord, he saith, I was at Barmbow-Hall, 1677, I have Witnesses to prove otherwise.

Mr. Bar. Atkyns. Call them then.

George Twisley, Groom to Sir Thomas Gascoigne.

Twisley. Mr. Thwing was never at our House above a Night or two in the Year.

Mr. Just. Dolben. Whose House is yours?

Twisley. Sir Thomas Gascoigne's.

Mr. Just. Dolben. He was there but a Night or two at a Time?

Twisley. No, and please your Lordship.

Mr. Just. Dolben. But was he there in 1677?

Twisley. About a Year or two since, I saw him there.

Mr. Just. Dolben. But how often in a Twelve-month's Time?

Twisley. Not above once or twice.

Mr. Bar. Atkyns. Did you never go out of your Master's House in 1677?

Twisley. I have, my Lord, but I was there both Night and Morning.

Mr. Bar. Atkyns. How do you know but he might be there in the time that you were not there?

Bolron. And please your Lordship, this Man was but the Groom.

Twisley. I was the Groom, my Lord, and took the Horses.

Mr. Just. Dolben. But were you never absent?

Twisley. No, my Lord, and he was not there above once or twice in the Year.

Thwing. Ask him what Company was then there?

Twisley. No Company at all, my Lord, when he was there.

Mr. Just. Dolben. Was not he there about Easter?

Twisley. No, not that I know of.

Mr. Just. Dolben. What time of the Year was he there?

Twisley. About Michaelmas, not Easter.

Mr. Bar. Atkyns. How came you to take such particular Notice at what time Men come? Did you take an Account of all the Gentlemen that came to Sir Thomas's House, how often there, and when they came?

Twisley. There were none that stayed any time when they came thither.

Mr. Bar. Atkyns. What Time of the Year was he there?

Twisley. It was a Month before Michaelmas.

Mr. Just. Dolben. You bring Witnesses to stretch Things even to Impossibilities.

Bolron. He was Drunk, my Lord, at Leeds the same Night the Conflict was.

Sir Thomas Stringer. Will you speak Truth before Almighty God?

Twisley. Yes.

Sir Thomas Stringer. Pray, then, are you a Papist?

Twisley. No.

Sir Thomas Stringer. Were you never a Papist?

Twisley. Yes.

Sir Thomas Stringer. Have you heard Mass at Sir Thomas Gascoigne's when you were a Papist?

Twisley. No.

Sir Thomas Stringer. That's very strange, that you lived there and never heard Mass, and yet were a Papist.

Twisley. Yes; I heard Mass in his House, but not by this Man.

Sir Thomas Stringer. How long have you been turned Protestant?

Twisley. About two Years.

Thwing. Thomas Areton. Did you ever see me at Barmbow-Hall?

Areton. I have nothing for nor against him, I never saw him before in my Life.

Thwing. Mr. Mowbray hath declared he never knew any Thing of the Plot.

Mr. Just. Dolben. To whom did he declare it?

Thwing. There is Witness of it, my Lord.

Mr. Just. Dolben. Call them.

Thwing. He accused not me of the Plot.

Mr. Just. Dolben. He was no Protestant then.

Thwing. I never knew any Thing of the Plot till I came from London.

Mr. Just. Dolben. Well, if you have any more Witnesses, call them.

Thwing. Mr. Cooper.

Joseph Cooper. I have nothing to say in this Business about this Gentleman, it is concerning Sir Thomas Gascoigne.

Thwing. Yes, he declared before these Witnesses he knew nothing of the Plot.

Cooper. We were coming from Atherton Fair, and my Father began to discourse with Mr. Mowbray, and asked him if he knew any thing of the Plot that Sir Thomas was called to London for; he said, he knew nothing of the Plot, and he thought Sir Thomas was guilty of no such thing; for, if he had, he should have known it as soon as Bolron, and he was a Rogue and a Knave for saying any such thing.

Mr. Just. Dolben. When was this?

Cooper. It was about this Time Twelve-month.

Mr. Just. Dolben. Were you upon the Road then?

Cooper. Yes.

Sir Thomas Stringer. Had Mowbray then made any Discovery of the Plot?

Cooper. Yes, that was the Reason we asked him about it.

Mr. Just. Dolben. Yesterday (upon Lady Tempest's Trial) you said, that Mowbray had not then made any Discovery.

Cooper. Yes, my Lord, I mean Bolron.

Mr. Just. Dolben. Really, methinks, you that are Priests should be more dextrous; my Lady Tempest managed her Business much better, and had her Witnesses in more readiness.

Thwing. My Lord, I call upon the Witnesses, and they will not come in, I cannot help it.

Edward Cooper, Senior, was then called.

Edward Cooper. I know nothing; I met Mr. Mowbray coming from Atherton Fair, and he said, he thought Sir Thomas was not guilty of the Plot.

Thwing. Mr. Mowbray declared for eight or ten Months together in 77, he knew nothing of the Plot. Call Mr. Hobart.

Hobart. I know nothing of it.

Thwing. I am innocent, I know nothing, as I hope for Salvation.

Then Isabel Heyward, a Girl that lived with Bolron as a Servant, was called.

Isabel Heyward. My Master and Mistress fell out about going to London, and she said, she would not go, and he said he would make her go; and she said, if he did, she would swear that what he had sworn against Mrs. Preficks was out of Malice.

Alice Dawson was next examined.

Alice Dawson. The Day after New Year's-Day was twelve Months, Mrs. Bolron said, she was sorry for nothing, but that her Husband had meddled with Mrs. Preficks.

Then Mrs. Preficks called for John Pepper.

Mr. Just. Dolben. What do you say to him, Mistress?

Preficks. I ask about my going to Parlinton at Whitsonide.

Mr. Just. Dolben. No, it was at Candlemas, and they said it was cold Weather to fit in the Hall-Porch.

Preficks. It was also said at Whitsonide.

John Pepper. About Whitson Monday (my Lord) I went to Barmbow, and met there with Mr. Preficks and Mrs. Preficks; and he desired me to tarry and carry his Wife to Mrs. Harrison's, at Parlinton, and she and I went down to Shipton, and carried her from Bolron's on Whitson-Monday, and staid till Thursday.

Mr. Just. Dolben. And what is all this to the Purpose? She was, however, as it was sworn against her, at Shipton at Whitsonide.

Pepper. This is all I can say, my Lord.

Zachary Thorpe was again called by Thwing.

Thorpe. Bolron said, he was going to swear against my Lady Tempest, and if one thing would not do, another should, and would have had me to give Evidence against Shipton.

Mrs. Baynes (Mother to Mr. Bolron) called.

Mr. Bar. Atkyns. What do you say, Mrs. Baynes?

Mrs. Baynes. Indeed, my Lord, I know nothing of this, I know not Thorpe, Shipton I know, and he told me; that if he had not fallen into my Lord of Shrewsbury's Service, he and Thorpe would have turned Highwaymen.

Mr. Babbington called by Preficks.

Mr. Just. Dolben. Can you say any thing for Mrs. Preficks?

Babbington. I can say nothing, but what I said Yesterday concerning Sir Thomas Gascoigne.

Mr. Just. Dolben. Can you say any thing for Preficks?

Babbington. No, my Lord, I can say nothing for Mrs. Preficks; yes, thus much I must say, that when I came to have the Writings sealed by Bolron, his Wife refused to seal them without delivering up of the Bonds. I told her, it would be an additional Security to Sir Thomas Gascoigne; he said he did believe, that Mr. Preficks and his Wife were his Enemies, and that they did instigate Sir Thomas to sue him.

Mr. Just. Dolben (to Thwing). Come, what have you more to say?

Thwing. I have no Witnesses to call, but I hope it will be considered what Kind of Witnesses these are, what Lives they have led; they bring me in amongst the rest, we are all of a Family; I hope, my Lord, you will consider that those ill Men that will, may take away an honest Man's Life unjustly.

Mr. Just. Dolben. I hear no Body speak against their Lives; and this I must tell you, till Men be convicted of some Crime that may disable them, you cannot take away their Testimony.

Thwing.



*Thwing.* My Lord, Witnesses should be Men of Credit and Reputation.

*Mr. Just. Dolben.* The Jury is to consider of that.

Look you, Gentlemen, these two Prisoners stand indicted of High-Treason, and it is for conspiring the Death of the King, and other heinous Crimes; as designing the subverting the Government, and bringing in the Popish Religion.

Now the Witnesses that have been produced against Mr. Thwing, are *Bolron* and *Mowbray*; and against *Preflicks*, Mr. *Bolron*, Mrs. *Bolron* sen. and jun. and one *Hutchinson*; and the Evidence against *Thwing* is one Thing, and against the Woman quite another; there is no Evidence against her but what they heard her say others were to do; there is no Evidence of any Action of hers, or that she was present at any Consultation, nor acting any thing there, but that she said so and so. Now Mr. *Bolron* and his Grandmother do both say, that she said *Pickering* was to have killed the King, and that she was sorry that he did not do it. That the Gun with which he should have done it was found, and she was afraid that was the Cause of his Death; and they all say she said, that it would never be well with *England*, till the Catholics had got the upper Hand, and the Duke of *York* were King. Now I must tell you, that my Opinion is, that a bare saying of this doth not amount to High-Treason, unless you do believe from these words, that she knew otherwise than by Hearsay, that *Pickering* was to have killed the King, and that she was privy and consenting to the Design of killing the King, then she is guilty of Treason; but if she only knew it by Hearsay, the bare Knowledge and concealing of it will make her guilty of Misprision of Treason; but knowing of it barely by Report doth not make her guilty of High-Treason: My Brother will tell you his Opinion herein. Now for Mr. *Thwing*, the Evidence against him is very home, for they both swear against him, one to one Meeting, and the other to another, that he was present at their Consultation to kill the King, subvert the Government, and to bring in the Popish Religion; that he did agree at the Meeting to the killing of the King, they do both swear, and this they say was at Sir *Thomas Gascoigne's*, and that at the several Meetings there was a List produced; but *Bolron* saith, that the List when he was present was a List of those that were engaged towards the carrying on of the Nunnery; that which the other speaks of, was a List of those that were engaged about the killing the King, about the whole Design which was to be effected by killing the King, this he swears, that *Thwing* did produce this List; and *Mowbray* saith, that three or four Priests were present at that Time, and that *Thwing* said the King was an Heretick, and excommunicated by the Pope, and that it was not only lawful but meritorious to kill him. So that admitting this Evidence be true, it is a full Evidence of High-Treason against him; here is an imagining the Death of the King, and here is an Overt-Act, here is a setting Hands to it; so that if this be true, *Thwing* is guilty of High-Treason. Now against this they have produced many Witnesses, and none of them doth go about to prove this impossible, but only improbable; but one that is a Groom of Sir *Thomas Gascoigne's*, who saith, he was but once or twice that Year there, and not at *Easter*, but about *Michaelmas*: Is that enough to answer the Testimony of these two Men, Gentlemen? For a Groom to take upon him to say two Years after, who was at his Master's House, and how often, and what Time of the Year, is to me a very strange Thing; unless it were one that never used to come there: But this Man, he saith, did use to come there—but that I must leave to you. The rest of the Witnesses were the same that were examined yesterday. First, they insist concerning Mr. *Lowther*, they say, that when Mr. *Bolron* first went to Mr. *Lowther*, he said nothing of Mr. *Thwing*, but it appears, he said then, that afterwards he might remember more; then the Man was under a great Consternation, and told him the great and dangerous Consequences of having so long concealed it, was the occasion of that Disorder upon him; but he said he should remember more afterwards, and so he did: The rest of the Witnesses do all go to this Purpose, that either *Bolron* or *Mowbray* should tell them at one time or other, they did know nothing of the Plot, nor against Sir *Thomas Gascoigne*; and some of them say, that it is out of Malice to Sir *Thomas's* Family; for so *Thwing* would have it, he being his Nephew, that the Malice should reach to Mr. *Thwing*, that they would have it; and something to the same Purpose they do offer against Mr. *Mowbray*. Now here is one *Walker*, that swears, that *Bolron* asked her if she knew *Thwing* to be a Priest, and offer'd her 10*l.* to swear him a Priest; she is a Servant of one Mrs. *Lassell*, Mr. *Thwing's* Sister, he came to Mrs. *Lassell's*, to search for Priests; it is something strange, that he should offer to persuade her to swear against *Thwing*, who was Servant to his own Sister, and at the Time when he came to search for Priests; the Truth of it is, the thing doth depend purely upon the Credit of Witnesses. The King's Witnesses are upon their Oaths; but, on the other Hand, the others are not on their Oaths; but Credit is to be given to what they say, if you consider their Evidence, and do find a Clearness in their Testimony, which you must weigh; for certainly he that solemnly, in the Presence of God, will say a false Thing, will also dare to swear it; how far their Principles will carry them I know not, I can see nothing but *Bolron* and *Mowbray* are good Witnesses; I do not see but what they say is coherent, and that they speak the Truth; and if you believe what they say to be true, then *Thwing* is guilty of High-Treason: But if you do not believe what they say is true, but out of Malice, you must acquit him. They do object the other Juries did not believe *Bolron* and *Mowbray*; the Case with the Prisoners at the Bar is not the same with theirs; but you are to give your Verdict according to the Evidence that you have heard, and according to your Consciences.

Mr. Bar. *Atkins.* Gentlemen of the Jury, I shall be very short. The Crimes that are laid in this Indictment, and charged upon these Persons, are, the designing to take away the King's Life, subverting the Government, and introducing Popery; you observe the Nature of the Evidence which hath been given against the Prisoners. And first, I shall speak but one word concerning *Mary Preflicks*: I do fully agree with what my Brother hath said; you do take Notice, that the Evidence that hath been given against her, hath been what came out of her own Mouth; the Witnesses are Mr. *Bolron* and his Grandmother, and likewise one *Hutchinson*:

Mr. *Bolron* saith she did tell him, that *Harbours* was her Confessor, and that he had engaged her in the Plot; she likewise told him, that *Pickering* was to kill the King, that the Gun was found with him, and was the Cause of his Death: This is some Evidence of High-Treason, I must leave it to you of what Weight it is, and how far by this you will conclude her privy to the Plot; it is true, were she an Actor in it, it is plain she is guilty of High-Treason. As to what *Hutchinson* said, that she told him we should never be at Peace till we were all of the Roman Catholic Religion, and the Duke of *York* was made King, that will not amount to High-Treason: This I take to be the Sum of the Evidence against her. Then as to Mr. *Thwing*, there are two Witnesses that have sworn against him, that is Mr. *Bolron* and Mr. *Mowbray*: *Bolron* tells you, that in 1677, there came to him several Priests; to his House at *Shipton*; and amongst the rest *Thwing* the Prisoner, who asked him, how he stood affected to the Roman Catholic Religion? And he then express'd his Zeal for it, and they thought him a Person fit to impart their Secrets to: Then he saith, that in 1677, there was a Meeting at *Barmbow-Hall*, which is Sir *Thomas Gascoigne's* House, and at that Meeting there were Sir *Thomas Gascoigne*, Esq. *Gascoigne*, Sir *Miles Stapleton*, and amongst the rest this Prisoner *Thwing*; and that there was a Consult held at that Time, and Design of killing the King; and that this Person did agree to it, and declared that if they should miss that Opportunity, they should never have such another; and that it was for the Good of the Roman Catholic Religion. The next was *Mowbray*; and he saith to the same Effect: That in 1676, *Thwing* and others declared they did design to kill the King, for he was a Heretick, and excommunicated, and had not kept his Word with the Jesuits, and therefore they thought it not only lawful, but a meritorious Act: And this is what both *Bolron* and *Mowbray* do testify, this they swear positively against the Prisoner; if you believe what they have sworn to be true, I must declare that it will amount to High-Treason. You are likewise to consider the Evidence he hath produced for himself: The Law, 'tis true, does not allow us to give them an Oath; yet if they be Persons of Credit and Honesty, it is Evidence which you are to consider of. The Prisoner hath call'd several Witnesses: The first was *Nat. Wilson*; I shall not repeat what he saith, being of no Import. *Thwing* saith, Mr. *Bolron* was before Mr. *Lowther* and Mr. *Tindal*, two Justices of Peace, who did take his Oath; and then he said he did not accuse him of the Plot at that Time, and by that would infer, that he would have said what he had against him, as well then as now, if he had any thing whereof to accuse him: But *Bolron* answers, he did declare to these two Gentlemen, he was not able at that time to recollect his whole Knowledge, but gave it in afterwards to the King and Council. The next are *Moor* and *Thorpe*: The Effect of their Evidence is to strike at the Reputation of *Bolron*, that it was an Act of Malice and Revenge: For they say, that *Bolron* told them, that Sir *Thomas* was innocent, and knew nothing of the Plot. *Thorpe* saith, he met with *Bolron* in *Long-Acre*, and that he told him, that though Sir *Thomas* were acquitted, he would ruin some of them. I say, these Things, if true, are some Evidence of a malicious Prosecution: But it seems something improbable, that *Bolron* should so openly make a Discovery of himself, when it appears he was not greatly acquainted with them, especially with *Thorpe*. There are several other Witnesses that speak much to the same Purpose. Gentlemen, in Matters of Fact, which depend upon the Testimony of Witnesses, the Credit of the Witnesses is greatly to be considered; if you believe what *Bolron* and *Mowbray* have both positively sworn, the Treason is plain; you must take all the Parts of your Evidence together, you must weigh all the Circumstances, you must, as I said before, consider the Credit of the Witnesses of the one Side and of the other, and by these Steps you will be the better guided in giving of your Verdict. I must leave it to you, and I pray God direct you therein.

The Jury having withdrawn, after some Consultation together, brought in their Verdict, that Thomas Thwing was Guilty, and Mary Preflicks Not Guilty.

August the 2d, 1680, Thomas Thwing being brought to the Bar, the Clerk spoke thus:

Clerk. *Thomas Thwing*, hold up thy Hand: Thou hast been indicted, that thou as a false Traitor didst conspire the Death of the King, &c. and thereof hast been found guilty: What canst thou say wherefore Judgment of Death should not be pronounced against thee?

*Thwing.* My Lord, as I am now upon my Life, I know nothing of these Things, in the least, that these Men have sworn against me: And on the other Side, I say, that before Sir *Thomas Gascoigne* had his Trial, these Men said nothing against me; so I hope your Lordship will take it into Consideration.

Mr. Just. *Dolben.* For your Innocency, the Gentlemen of the Jury are Judges of that, and they have found you guilty, so that it is not in my Power either to acquit or condemn you; I am only to pass Sentence according to that Conviction. If you have any thing to say wherefore Judgment should not be pronounced, I am ready to hear you.

*Thwing.* All that I can say is to declare my Innocency, and that these Men are of no Credit and Reputation. It is very hard I only should be guilty, and none of the rest, who were arraigned for the same Crimes.

Mr. Just. *Dolben.* No, it is not impossible; it is possible you may be guilty, and the rest innocent.

*Thwing.* For my part, I told your Lordship that I was but once or twice in a Year at Sir *Thomas Gascoigne's*, being my Uncle, and I do protest I know nothing of the Consult these Men do charge me with.

Mr. Just. *Dolben.* You say one Thing, they swear another, and for aught I know they are honest Men; they are lawful Men, and not convicted in the main; for I do believe there were many great and dangerous Consults held at Sir *Thomas Gascoigne's* by several Persons, and that there have been many horrid and treasonable Things acted there. You have been indicted for High-Treason, the highest Treason that ever any Subject was guilty of, for attempting to kill the King, for resolving so to do upon deliberate Advice and Consultation; and this for no other End



or Purpose, but that you might have your Religion set up, for that was your Design, to change this Religion here, and to settle Popery in England; and the better to bring that to pass, you thought to take away the King's Life, knowing you could not otherwise accomplish it. You are, I am satisfied, a Priest of the Romish Church; therefore all that I can say to you in reference to your future State you will not value; for you account me an Heretick as you do the King, and I am content to be so esteemed in so good Company, therefore I shall wave it. As you are a Gentleman, I will give some Respect to you, and will not pass Sentence on you among the rest of the Prisoners that are found guilty of Felony and Murder, but will do it by your self.

The Law doth command the Court, and the Court doth award, That you be carried from hence to the Place from whence you came, that is, the Prison, and from thence you are to be drawn to the Place of Execution: you are there to be hanged by the Neck, you are to be cut down before you are

dead, and your Entrails are to be taken out of your Body, and thrown into the Fire before your Face, and your Head is to be parted from your Body, and your Body separated in four Quarters, and your Head and your Quarters are to be disposed according to the King's Pleasure. And the Lord have Mercy on your Soul.

Thwing. *Innocens ego sum.*

A Reprieve being obtained for him, he remained Condemned in the Castle of York till the 23d of October, when, according to the Sentence, he was drawn, hanged and quartered at York, having first protested his Innocence of all that was sworn against him, but gloried that he was a Priest, and had performed the priestly Function about fifteen Years; and desiring all true Catholics, if any such were there, to pray for him; and begging God to bless and preserve the King, his Queen, the Duke of York, and all other good Christians, he yielded himself to the Executioner \*.

## CI. The Trial of ELIZABETH CELLIER at the Old-Bailey, for writing and publishing a Libel, September, 1680. 32 Car. II.

Cl. of Cr. **M**R S. Cellier, look to your Challenges; for the Jury that is to be sworn is to pass upon you.

Cellier. Am I for my Life?

Cl. of Cr. No, but look to your Challenges.

Lord Mayor. But if you Challenge, you must give a Reason for it, Mrs. Cellier.

Cl. of Cr. Swear John Ainger.

[Which was done.]

Cl. of Cr. Swear Richard Boys.

Cellier. I Challenge him.

Lord Mayor. Mrs. Cellier, you must shew a Cause for your Challenge.

Cellier. I did not know that, my Lord.

Mr. Bar. Weston. You can Challenge none in this Case without a Cause.

Cellier. My Lord, I did not know that: Then I agree he shall be sworn.

[Which was done.]

Then the rest of the Jury, without any more Challenges, were sworn; and they were all as follows:

John Ainger,	} Jur.	Richard Liveing,
Richard Boys,		John Coggs,
John Stephens,		Henry Hodsden,
Thomas Phelps,		John Barnard,
Gilbert Urwin,		Edward Low,
Edward Allanson,		James Southern.

Then Proclamation was made in common Form for Information; and the Clerk charged the Jury thus:

Cl. of Cr. You Gentlemen that are sworn, Elizabeth Cellier stands indicted by the Name of Elizabeth Cellier, Wife of Peter Cellier, of the Parish of St. Clement-Danes, in the County of Middlesex, Gent. For that she being of the Popish Religion, not having the Fear of God before her Eyes, but being moved and seduced by the Instigation of the Devil, falsely and maliciously endeavouring and intending our Sovereign Lord King Charles the Second that now is, and the Government of this Kingdom of England, as also the true Protestant Religion, within this Kingdom of England by Law established, to bring to Hatred and Contempt; and also to bring Scandal and Infamy upon divers Persons produced as Witnesses, that gave Evidence on the Part and Behalf of our Sovereign Lord the King, against her the said Elizabeth Cellier, and other Persons indicted of High-Treason; the first of September, in the Thirty Second Year of our Sovereign Lord King Charles the Second that now is, at the Parish of St. Clement-Danes, in the County of Middlesex aforesaid, falsely, maliciously and seditiously did write and publish, and did cause to be writ, imprinted and published a scandalous Libel, entitled, *Malice Defeated: Or, a brief Relation of the Accusation and Deliverance of Elizabeth Cellier: Wherein her Proceedings, both before and during her Confinement, are particularly related, and the Mystery of the Meal-Tub fully discovered: Together with an Abstract of her Arraignment and Trial: Written by her self for the Satisfaction of all Lovers of undisguised Truth.* In which said Libel are contained these false, feigned, scandalous Words and Figures following, to wit: 'I hope it will not seem strange to any honest and loyal Person of what Way or Religion soever, that I being born and bred up under Protestant Parents, should now openly profess my self of another Church (meaning the Church of Rome); for my Education being in those Times, when my own Parents and Relations, for their constant and faithful Affection to the King and Royal Family, were persecuted, the King himself murdered, the Bishops and Church destroyed, the whole loyal Party, merely for being so, oppressed and ruined; and all, as was pretended by the Authors of these Villainies, for their being Papists and Idolaters, the constant Character given by them to the King and his Friends to make them odious, they assuming to themselves only the Name of Protestants, and making that the glorious Title by which they pretended Right to all Things: These sorts of proceeding, as I grew in Understanding, produced in me more and more Horror of the Party that committed them, and put me on enquiry into that Religion to which they pretended the greatest Antipathy; wherein, I thank God, my innate Loyalty not only confirmed, but encouraged me. And let Calumny say what it will, I never heard from any Papists, as they call them, Priest nor Layman, but that they and I, and all true Catholics owe our Lives to the Defence of our lawful King, which our present Sovereign Charles II. is, whom God long and happily preserve so. These sorts of Doctrines agreeing to my publick Morals, and no way, as ever I was taught, contradicting my private ones, commending at the same time to me Charity and Devotion; I without any Scruple have hitherto followed, glorying to my self to be in

Communion with those who were the humble Instruments of his Majesty's happy Preservation from the fatal Battle at Worcester; and who, though poor, no Temptation could invite to betray him to those who by a pretended Protestant Principle sought his innocent Blood. These Truths, I hope, may satisfy an indifferent Person in my first Change; nor can they wonder at my Continuance therein, that notwithstanding the horrid Crimes of Treason and Murder laid to the Charge of some Persons, considerable for their Quality and Fortunes in that Party: For, when I reflected who were the Witnesses, and what unlikely Things they deposed, and observed that many of the chiefest Sticklers for the Plot were those, or the Sons of those, that acted the principal Parts in the last Tragedy, which History told me too had the Prologue of a pretended Popish Plot; I say, these Things made me doubtful of the whole; and the more I searched for Truth, the more I doubted that the old Enemies of the Crown were again at work for it's Destruction. I being fully confirmed in this, thought it my Duty through all sorts of Hazards, to relieve the poor imprisoned Catholics, who in great Numbers were lock'd up in Goals, starving for want of Bread: And this I did some Months before I ever saw the Countess of Powis, or any of those honourable Persons that were accused, or receiving of one Penny of their Money directly or indirectly, till about the latter end of January (78.) And in another Part of the said Libel are contained these false, feigned and scandalous Words and Figures following; to wit, 'About this time I went daily to the Prisons to perform those Offices of Charity I was obliged to; and on Thursday, January the 9th (78.) I dined in Newgate in the Room call'd the Castle, on the Master's Side Debtors, and about four in the Afternoon I came down into the Lodge with Five Women, of which three were Protestants, and we all heard terrible Groans and Squeaks, which came out of the Dungeon call'd the Condemn'd Hole. I ask'd Harris the Turnkey what doleful Cry it was; he said it was a Woman in Labour. I bid him put us into the Room to her, and we would help her. But he drove us away very rudely, both out of the Lodge and from the Door. We went behind the Gate and there listened, and soon found that it was the Voice of a strong Man in Torture, and heard as we thought between his Groans the winding up of some Engine. These Cries stopp'd the Passengers under the Gate, and we fix went to the Turner's Shop without the Gate, and stood there amazed with the Horror and Dread of what we heard; when one of the Officers of the Prison came out in great Haste, seeming to run from the Noise. One of us catch'd hold of him, saying, Oh! What are they doing in the Prison? Officer. I dare not tell you, Mistress. 'Tis a Man upon the Rack: I'll lay my Life on't. Officer. It is something like it. Cellier. Who is it, Prance? Officer. Pray, Madam, do not ask me, for I dare not tell you. But it is that I am not able to hear any longer. Pray let me go. With that he ran away towards Holbourn as fast as he could. We heard these Groans perfectly to the end of the Old-Bailey. They continued till near seven of the Clock, and then a Person in the Habit of a Minister, of middle Stature, Grey-hair'd, accompanied with two other Men, went into the Lodge. The Prisoners were lock'd up, and the outward Door of the Lodge also, at which I set a Person to stand, and observe what she could, and a Prisoner loaded with Irons was brought into the Lodge, and examined a long time. And the Prisoners, that came down as low as they could, heard the Person examined with great Vehemency say often, I know nothing of it, I am innocent, he forced me to bely my self. What would you have me say? Will you murder me because I will not bely my self and others? Several other such like Expressions they heard spoken as by one in great Agony. About four of the Clock next Morning, the Prisoners that lay in a Place above the Hole heard the same Cry again two Hours, and on Saturday Morning again; and about eight o'Clock that Morning a Person I employ'd to spy out the Truth of that Affair, did see the Turnkeys carrying a Bed into the Hole. She asked who it was for; they told her it was for Prance who was gone mad, and had tore his Bed in Pieces. That Night the Examiners came again, and after an Hour's Conference Prance was led away to the Press-Yard. This, and many Things of the like Nature, made me very inquisitive to know what pass'd in the Prison. Soon after this Francis Corral a Coachman, that had been put in Newgate upon Suspicion of carrying away Sir Edmundbury Godfrey's Body, and lay there thirteen Weeks and three Days in great Misery, got out. I went to see him, and found him a sad Spectacle, having the Flesh worn away, and great Holes in both his Legs by the Weight of his Irons, and having been chained so long double, that he could not stand upright; he told me much of his hard and cruel Usage, as



that he had been squeez'd and hasped into a thing like a Trough, in a Dungeon under Ground; which put him to inexpressible Torment, inasmuch that he swooned, and that a Person in the Habit of a Minister stood by all the while. That a Duke beat him, pull'd him by the Hair, and set his drawn Sword to his Breast three times, and swore he would run him through; and another great Lord laid down a heap of Gold, and told him it was Five hundred Pounds, and that he should have it all, and be taken into the aforesaid Duke's House, if he would confess what they would have him; and one F. a Vintner, that lives at the Sign of the *Half-Moon* in *Ch-fi* by whose Contrivance he was accused, took him aside, and bid him name some Person, and say, they employed him to take up the dead Body in *Somerset-Yard*, and gave him Money for so doing; that if he would do this, both F. and he should have Money enough. He also told me, that he was kept from *Thursday* till *Sunday* without Victuals or Drink, having his Hands every Night chain'd behind him, and being all this time lock'd to a Staple which was driven into the Floor, with a Chain not above a Yard long: That in this great Extremity he was forced to drink his own Water; and that the Jailor beat his Wife because she brought Victuals, and prayed that he might have it, and threw Milk on the Ground, and bid her be gone, and not look at him. And in another Part of the said Libel is contained (amongst other Things) these false, feigned, and scandalous Words and Figures following, to wit, My Arraignment (which in Confidence of my own Innocency, I continually press'd for) not but that I knew the Danger, as to this Life, of encountering the Devil in the worst of his Instruments, which are Perjurors encouraged to that Degree as that profligate Wretch (meaning *Thomas Dangerfield* produced as a Witness against her for High-Treason) was, and hath been since his being expos'd to the World in his true Colour, both at mine and another's Trial. And in another part of the said Libel are contained these false, feigned and scandalous Words and Figures following. Nor have I since received any thing towards my Losses, or the least Civility from any of them, whilst *Dangerfield* (meaning the said *Thomas Dangerfield*) when made a Prisoner for apparent recorded Rogueries, was visited by, and from Persons of considerable Quality, with great Sums of Gold and Silver, to encourage him in the new Villainies he had undertaken, not against me alone, but Persons in whose Safety all good Men, as well Protestants as others in the three Kingdoms, are concerned. And in another part of the said Libel called, 'A Postscript to the impartial Readers,' are contained these false, feigned, and scandalous Words following, to wit, And whensoever his Majesty pleases to make it as safe and honourable, as it is apparent it hath been gainful and meritorious to do the contrary; there will not want Witnesses to testify the Truth of more than I have written, and Persons that are above being made the Hangman's Hounds for weekly Pensions, or any other Considerations whatsoever; to the evil and dangerous Example of all others in the like Case offending, and against the Peace of our Sovereign Lord the King, his Crown and Dignity. Upon this Indictment she hath been Arraigned, and thereunto hath pleaded, Not Guilty, and for her Trial hath put her self upon the Country, which Country you are; so your Issue is to try whether she be guilty of this Offence in Manner and Form wherein she stands indicted, or Not Guilty. If you find her Guilty, you are to say so; and if you find her Not Guilty, you are to say so, and no more, and hear your Evidence.

Then Robert Dormer, Esq; of Lincoln's-Inn, opened the Indictment thus:

Mr. Dormer. May it please your Lordship, and you Gentlemen of the Jury: *Elizabeth Cellier*, the Gentlewoman at the Bar, the Wife of *Peter Cellier* of the Parish of *St. Clement-Danes* in the County of *Middlesex*, Gentleman, stands indicted of being the Author and Publisher of a Libel, entituled, *Malice defeated, or a brief Relation of the Accusation and Deliverance of Elizabeth Cellier*. You have heard the Indictment read, wherein some Clauses of this Libel are recited in the Words they were written, and in Mrs. Cellier's own Words, and in other Words I will not undertake to repeat them to you.

Gentlemen, this is a Libel so complicated and general, that within this Book are contained as many Libels of several Natures, and against different Persons and Orders of Men, as there are Paragraphs; his Majesty, the Protestant Religion, our Laws, Government, Magistrates, Counsellors of State, Courts of Judicature, the King's Evidence, and the public Justice of this Kingdom are all aspersed and defamed, by the Virulency and Malice of this Woman's Pen.

She hath charged upon the Principles of our Religion, the Murder of his late Majesty, and the greatest Impieties that ever were committed.

She accuseth all that have done their Duties, or been active in the Discovery of the present Popish Plot, to be Enemies of the Crown, and to be acting over again the Tragedy of our late Civil War.

She chargeth our Laws with Cruelties, as inhuman as they are false, in permitting Prisoners to starve under their Confinement, in admitting of Racks and Tortures to be used, and that for the worst Purposes, thereby to extort Perjuries and false Evidences against the Innocent; to which she would make Persons of the best Quality of our Nobility, Magistracy, and Clergy, Privies and Parties.

She libels the King's Evidences under the Characters of the Devil's Instruments, and the Hangman's Hounds; and defames his Majesty's Government, in saying, it is not safe to speak Truth, but meritorious and gainful to do the contrary.

She will appear to you to be so criminal, that nothing can aggravate her Offences, unless the Impudence of the Delinquent, who hath set her Name to almost every Page of this scandalous Libel; and since the Indictment hath been depending, owned, published, and put a Value on her self for being the Author of so excellent a Book.

To the Indictment she hath pleaded Not Guilty; if the King's Evidence prove the Charge, you are to find her Guilty.

Mr. Bar. Weston. Gentlemen, the Charge is but this: First, She is charged with the setting forth this Book; in the next Place, there are several Clauses in that Book which she is particularly charged with. Now that which the Evidence will prove, must be, first, that the Book was owned

by her, and published by her; and then, that these Particulars charged in the Indictment were in the Book; and then you will receive the Directions of the Court, of what Nature the Proofs are. Go on to the Evidence, that is your Work, fall to your Proof.

Mr. Dormer. My Lord, we will call our Witnesses. *William Downing, John Penny, and Robert Stevens.* [Who appeared and were Sworn.]

Mr. Dormer. Will. Downing, Do you tell my Lord and the Jury what you know of the Printing of this Libel (show him the Libel), and who brought the Sheets to the Press.

Mr. Downing. My Lord, about the 22d or 23d of August—

Mr. Bar. Weston. Begin with Penny first. Pray what say you to that Book?

Mr. Penny. My Lord, I was bid to buy a Book of that Gentlewoman, and I did so. I asked for her by her Name.

Mr. Bar. Weston. By what Name?

Mr. Penny. Mrs. Cellier.

Mr. Bar. Weston. Is that the Gentlewoman?

Mr. Penny. Yes, that is the Gentlewoman. And she came out to me, and asked what my Errand was? I told her it was to have a Book: That you may have, said she, if you please. Madam, said I, What is the Price? Two Shillings, said she. Cannot I have them cheaper, said I? No, said she, I sell them to Shopkeepers for 18 Shillings a Dozen, and I must not sell them under here. With that she fetched me a Book, and I gave her two Shillings, and when she had done, she gave me another little Paper.

Mr. Bar. Weston. That is not in Issue, nor your Question now. Did you ask her for the Book she published and set out?

Mr. Penny. Yes; and she did acknowledge that was her Book.

Mr. Bar. Weston. What! She did own the Book she sold to you to be hers?

Mr. Penny. This is the Book I have in my Hand, and I marked every Sheet of it; and she told me there was another little Sheet to be added to it; and if any Gentleman pleased to send it into the Country, that might be put up in a Letter to send by the Post.

Cellier. May I ask him a Question?

Mr. Bar. Weston. Tell me your Question, and I'll ask it.

Cellier. I desire to know if I said any more, than you may have a Book, or there is a Book. And who asked for a Book?

Mr. Bar. Weston. Did she say any more than, You may have a Book, or, This is the Book that I have published?

Mr. Penny. When I got the Book and paid for it, I turned about again and asked her if it was her own? She told me it was; and more than that, if occasion were, she could have put more in it.

Mr. Bar. Weston. Why, Mrs. Cellier, you did not deny this Book yesterday; for you may remember when you did say you wanted your Witnesses, and if you could but have time to bring them, you would prove the Truth of it: We told you you had nothing to prove on this Issue of Not Guilty, but that somebody else did publish the Book, and you did not. You owned you writ it your self every Word with your own Hand.

Cellier. My Lord, if I was a foolish vain Woman, and did seem to speak some vain Words about my self which I did not understand the Consequence of, I hope a Word vainly spoke by me shall not be brought against me to convict me of a Crime.

Mr. Bar. Weston. Mrs. Cellier, you do not seem so negligent about your self, that we may not believe what you say of your self.

Cellier. But vain foolish Words spoke in that Nature, I hope shall be no Evidence against me.

Mr. Bar. Weston. But, however, it is proved against you.

Cellier. Did I say I writ it?

Mr. Penny. You told me that was your Book.

Cellier. I told you? Pray, my Lord, put one Question to him upon the Oath he hath taken: Did I say any more, than it was mine and I sold it? not that I writ it, or was the Author of it?

Mr. Bar. Weston. Mrs. Cellier, this is a Book that is intitled with your Name, and sold by your self. Now in any one's Judgment, this is both an owning of the Book, and publishing of the Book. When you sold it, you gave it out as your Book, and it hath in the Title Page your Name as the Author of it.

Cellier. My Lord, if I could have produced my Witnesses, I could have made my Defence; they have been at several Places for them, they have been all about Town, and several ways, at Sir *Joseph Sheldons*, and a great many other Places, and can find none of them.

Mr. Bar. Weston. To what Purpose should your Witnesses come?

Cellier. I should wish them have made my Defence.

Mr. Bar. Weston. If you would have said to us yesterday, that you had Witnesses to prove that any one else writ the Book, we would have put off the Trial. But you said you writ it every Word of it your self, and so owned the Issue: But now you pretend you want Witnesses; to what Purpose would you have them come?

Cellier. 'Tis not the Honour of the Bench, my Lord, to give Evidence; and I hope you won't take that Advantage of my vain Words.

Mr. Bar. Weston. 'Tis the Honour of the Bench to repeat what you say; when you ask Time to put off your Trial, and the Court gives you Direction to what Purpose Witnesses may be used, and you renounce that, and take the Fact upon your self.

Cellier. But I hope that is no Evidence.

Mr. Bar. Weston. It was spoke openly in the Court, every body heard it.

Cellier. I am surprized, and have no Witnesses.

Mr. Bar. Weston. 'Tis easy to pretend that you want Witnesses; but to what Purpose would you have them?

Cellier. My Lord, I hope you will please to remember he swears, I only said it was mine, not that I was the Author.

Mr. Att. Gen. If you sold it, that is a publishing in Law, and is within the Indictment.

Cellier. But he did not say I writ it.

Mr. Bar. Weston. Pray, Mrs. Cellier, don't trust your self upon that: For he said, after he had it, he asked you, Is this your Book? You said, Yes, it is my Book; and if I had been aware, I could have put a great deal more in it than I have done.

Cellier. But I did not say I writ it.

Mr. Penny. You said, if it were to be writ again, you could put more in it.

Cellier.



*Cellier.* I said it was my Book; and so it was, because it was in my Possession; but not that I writ it. This is my Fan, but it does not follow that I made it.

*Mr. Bar. Weston.* But the Question was concerning the Author of the Book.

*Cellier.* He did ask me no such Question. Did you ask me if I was the Authro?

*Mr. Penny.* No, I did not.

*Mr. Bar. Weston.* But what did you ask her?

*Mr. Penny.* I asked her, Whether it were her Book?

*Mr. Bar. Weston.* And did she own it?

*Mr. Penny.* Yes, she did.

*Cellier.* So it was mine in possession.

*Mr. Bar. Weston.* Did you mean by your Question, Whether that Book was her's in Property, or she were the Author and Publisher of it?

*Mr. Penny.* I would know whether it was her's or no.

*Mr. Bar. Weston.* But what was your Intention in asking? Was it whether she, or any other Person made it?

*Mr. Penny.* I don't know who made it, she told me it was her's.

*Mr. Bar. Weston.* But what was your Meaning in it?

*Mr. Penny.* My intention was, for fear she should have given me some other Book, to know whether it was writ by her or no.

*Cellier.* My Lord, I am not to be judged by his Meaning; but by his Question and my Answer.

*Mr. Att. Gen.* Did she tell you she sold more of them?

*Mr. Penny.* I turned about when I had the Book, and said I, Can I have, if Occasion be, any more? She said she had but four or five hundred left, and in a few Days she should have more.

*Mr. Att. Gen.* You told us, she told you what she sold them for by the Dozen.

*Mr. Penny.* Yes, eighteen Shillings the Dozen to the Shopkeepers.

*Mr. Bar. Weston.* Then set up *Downing*. [Which was done.]

Pray look upon that Book and the Title of it. [Which he did.]

Have you examined that Book?

*Mr. Downing.* Sir, I printed part of it.

*Mr. Bar. Weston.* But have you examined that very Pamphlet?

*Mr. Downing.* Yes, I know it very well.

*Mr. Bar. Weston.* Did you print part of it?

*Mr. Downing.* Yes, I did.

*Mr. Bar. Weston.* Who brought it to you to be printed?

*Mr. Downing.* Mrs. *Cellier*.

*Mr. Bar. Weston.* She her self?

*Mr. Downing.* My Lord, about the 22d of August, a Messenger came to me from Mrs. *Cellier*, to tell me she had something to be printed; and she sent for me to her House, and I went to her House in *Arundel Buildings*. She told me she had a Book to print, and it was her own Case. I told her I was a Stranger to her Concerns; if there was nothing in it that was offensive, I would print it. She told me there was nothing but the Truth, and I might safely do it. She said, she had been publicly and wrongfully abused, and was resolved to publish her Case, and would make the World sensible of the Wrong she had sustained. I was apt, upon the Plausibleness of her Discourse, to believe her; and so I agreed with her to have ten Shillings a Ream for printing, and I was to print four Ream of every Sheet. And having printed half the Book, the Messenger found it a-printing at my House; and having thus found out the Press, he carried it before the Secretary Sir *Leoline Jenkins*, who granted a Warrant to bring us both before him; and having taken our Examinations, we were bound to appear before the Privy Council as soon as Notice should be given us of it: And being discharged by the Council, we were bound to appear the first Day of next Term in the *King's-Bench*: Since which Time she hath printed t'other half of her Book at some other Place. And whereas she promised to indemnify me from all Trouble and Charge, when I came to pay the Clerk of the Council his Fees, she refused to pay them for me, and told me I had betray'd her; and so notwithstanding her Promise, I was obliged to pay the Fees my self at the Council.

*Mr. Dormer.* Pray, Sir, who was it corrected the Sheets?

*Mr. Downing.* Sir, they were brought to her.

*Mr. Dormer.* Did she read them and correct them?

*Mr. Downing.* Yes, she looked over them.

*Mr. Bar. Weston.* Pray tell me how far it was you printed of the Book?

*Mr. Downing.* It was to Folio 22.

*Mr. Bar. Weston.* All the Clauses in the Indictment are contained in those Pages.

*Mr. Clare.* All but the last in the Postscript.

*Mr. Bar. Weston.* Have you read it over since?

*Mr. Downing.* So far, my Lord, I did print.

*Mr. Bar. Weston.* You take it upon your Oath, That to the 22d Folio of that Book that was given in Evidence, was printed by you by her Direction.

*Mr. Downing.* Yes, I do.

*Mr. Bar. Weston.* Then set up *Stevens*. [Which was done.]

*Mr. Stevens.* May it please your Lordship, I saw this Book a Printing at Mr. *Downing's*, and reading some Passages in it, I asked him, Mr. *Downing*, do you know what you do? He said, It is a Truth: Then I asked him who he did it for; he said he did it for Mrs. *Cellier*. I bid him have a Care that he did no more than what he could justify: He desired me that I would not hurt him, and I was loth to do a poor Man wrong, but away I went to the Secretary; but I asked him before, what was become of the Sheets? He said he carried them to Mrs. *Cellier*; said I, Did she bring you the Copy? Said he, She sent it sometimes by one Messenger, sometimes by another, for she sent several: And when I came to her, she did tell me it was her Book, and that she kept a Man to write it, and she dictated it to another that sat by her; and she often owned it was her Book, and she the Author of it.

*Cellier.* I never said so in my Life.

*Mr. Stevens.* Mrs. *Cellier*, by the same Token, when you sent for Bail you had occasion to write a Note, and I saw you write it, and said, I now find 'tis none of your Hand-writing; by the Difference between the Note and the Copy: Said she, I know that well enough; but I keep a Man in the House to write it, and I dictated to him, and he wrote. And I have seen there one *Grange* and one *Sing*; but *Grange* hath come to me several

times about her's and other Business, and she did tell me, she did dictate the Book to that Man, and paid him for writing it. Says she, I am up very early every Morning, and preparing and dictating Things for the Press. She hath put out two Sheets since, and this Day at one o'clock she hath invited the *Mercuries* and the *Hawkers* to come and receive a New Pamphlet.

*Mr. Bar. Weston.* Do you know her Hand-writing?

*Mr. Stevens.* I have not that Note by me.

*Mr. Bar. Weston.* Did you see the Copy?

*Mr. Stevens.* Some part of it I did see.

*Mr. Bar. Weston.* Was any part of it her Hand-writing?

*Mr. Stevens.* No, I believe it was none of her Hand.

*Mr. Bar. Weston.* Was it several Hands?

*Mr. Stevens.* I saw but one part of the Copy, and that was all of one Hand, but not her's, I believe. She said she kept a Man to write it, and she had several other Things to write to be printed.

*Mr. Bar. Weston.* Did she ever before affirm her self to be the Author of the Book?

*Mr. Stevens.* She did (if it please you) before the Secretary, and before the Council; and said she would answer it. And I have seen her likewise sell several of them several Days.

*Mr. Dormer.* Did she deliver any of these Books that you know of?

*Mr. Stevens.* I have seen her deliver them out several times before me my self, she can't deny it.

*Mr. Bar. Weston.* Compare the Book with the Indictment.

*Mr. Dormer.* Swear Mr. *Fowler*. [Which was done.]

*Mr. Bar. Weston.* What is that *Fowler*?

*Mr. Dormer.* Shew him the Book, if you please. [Which was done.]

Did you buy any of those Books of Mrs. *Cellier*?

*Mr. Fowler.* I bought two of them. I went to her House, and told her I had a Letter from a Friend out of *Oxfordshire*, that desired me to buy two of her Books.

*Mr. Dormer.* Is that the same in your Hand?

*Mr. Fowler.* 'Tis the same, as I believe. Some Friends came to my House, and told me they had seen me notoriously in Print; so I came to her, and told her I had a Letter out of *Oxfordshire* for a Book or two of her's. Sir, says she, I'll fetch you one presently; she comes again with them. Madam, says I, I believe you have forgotten me.

*Cellier.* I know you not; I never saw you in my Life before.

*Mr. Fowler.* No, I believe not; but yet you could put me in your Book.

*Mr. Bar. Weston.* Why, What is your Name?

*Mr. Fowler.* My Name is *Fowler*.

*Mr. Bar. Weston.* Where do you live?

*Mr. Fowler.* At the *Half-Moon Tavern* in *Cheapside*, when I am at Home.

*Cellier.* Your Name is not in the Book.

*Mr. Clare.* There is one *F.* that keeps the *Half-Moon Tavern* in *Cheapside*.

*Mr. Bar. Weston.* You swear you had two Books of her?

*Mr. Fowler.* Yes. Madam, says I, I see you are full of Business; so I paid her Four Shillings for them, and away I came.

*Mr. Dormer.* Then you had no Discourse with her farther who was the Author, had you?

*Mr. Fowler.* No, not a Syllable farther. I had only occasion to get a Couple of Books; for some Persons of Quality had been at my House, and told me my Name was in it, and were pleased to joke with me about it, as particularly Mr. *Henry Killigrew* came one Day to my House, and called me into the Room, says he, you are notoriously in Print, and known to be Company for a great Duke, and great Lords; you shall drink a Glass of Wine now with me, and so tell me the Story; and thereupon I went to her House to buy a couple of Books.

*Mr. Att. Gen.* You are the Man meant by the (*F.*)

*Mr. Fowler.* I keep the *Half-Moon* in *Cheapside*.

*Mr. Att. Gen.* There is something supposed in this Book to be done by you at your going to a Man in Prison, is that true?

*Mr. Fowler.* That I suppose is cleared by an Oath from *Corral* the Coachman; but withal, I gave my Oath for it before my Lord-Mayor my self.

*Mr. Att. Gen.* Pray, for the Satisfaction of People, tell us what you know of the Matter.

*Mr. Fowler.* The Substance of my Oath before my Lord-Mayor was this: That I never was with any great People, as they tax me, in my Life, with any great Duke or Lord: That I never did see any of the Things that they say there, that the Duke should draw his Sword, and a Lord proffer 500*l.* or I whisper to the Coachman, That he should Name some great Persons, and then he and I should have Money enough.

*Mr. Bar. Weston.* But I come nearer to you with a Question, Mr. *Fowler*.

*Mr. Fowler.* Yes, my Lord, if you please.

*Mr. Bar. Weston.* Was one *Corral* a Coachman apprehended for carrying away the dead Body of Sir *Edmundbury Godfrey*, at your Motion and Accusation?

*Mr. Fowler.* As to that, I will tell you the occasion of all our Discourse, if it may not be too tedious. Upon the Death of Sir *Edmundbury Godfrey*, a Coachman was one day called to carry some Gentlemen that were in my House; but they staying a little longer than ordinary, he went away, and, as they say, dropp'd them; thereupon another Coachman was called, which was this *Corral* mentioned in this Libel, and he went up to the Gentlemen into the Room, and they, to engage him to stay, secured his Whip; he comes down and begs a Pipe of Tobacco of my Wife in the Bar: Ay, said she, thou lookest like a good honest Fellow, and I believe thou hast no hand in the Plot (a casual Word that was passant at that time); whereupon he begins to tell her, it was very well for him, for he had escaped that Danger: Four of them meeting him against St. *Clement's Church-Wall*, and swearing damn them he should stand, and do as they would have him; and he saw four, and he saw Sir *Edmundbury Godfrey's* Body in a Sedan, and he sham'd upon them that he could not carry him, for that the Axletree of his Coach was broke. I was in a Room by the Bar, and I overheard the Fellow talk after this rate. I came out, and asked him, said I, are you sure of this? Then he tells me the same Story over again; wherefore I began to ask him, if he were Master for himself, or drove for another; the Fellow being sensible he had been too lavish in his Discourse, pretends to light his Pipe in haste, and to run out to see whether the Seats of his Coach were not stolen out, and I took a Candle



Candle with me, and went after him to take the Number of his Coach: By that time I got to the Door, he was driving away, tho' he had left his Whip with the Gentleman as Security for his Stay. I came in, set down the Number of his Coach in my Book, and drew up the Substance of their Discourse that happen'd between my Wife and him; and I was saying to my Wife, I had a mind to stop this Fellow at the Gate; but it rained, and so I did not, only kept the Number of his Coach. The next Day Captain *Richardson* and the *Secondary* of the *Compter* were drinking a Glass of Wine at my House, where I told them the Story, and they blamed me that I had not stopped him. Whereupon Captain *Richardson* took the Number of his Coach, and the next Day sent his Janizaries abroad, and secured him, and kept him in Custody for two or three Days.

Mr. Bar. *Weston*. When was this?

Mr. *Fowler*. Two or three Days after the Murder was publickly known of: I think it was *Tuesday* Night that this Fellow told me the Story, to the best of my Remembrance; and the next Day I told the Captain and the *Secondary*.

Mr. Bar. *Weston*. Was that the next *Tuesday* after the Murder, or the *Tuesday* seven-night?

Mr. *Fowler*. It was the *Tuesday* seven-night after. They blamed me very much that I did not stop the Fellow: I told them how the thing was, and the Captain sent his People abroad, and took the Coachman up by what Marks I gave of him. The next Day I was ordered to wait upon the Lords at *Wallingford-House*, where was the Duke of *Buckingham*, my Lord *Shaftesbury*, the Marquis of *Winchester*, two other Lords, and Major *Wildman* the Secretary; where they examined me upon this thing, and what I have declared to your Lordships, I declared then. And they brought the Fellow in face to face; and there he does confess the whole Matter, and made a great Whining and Clutter, that *John* Such-a-one, a Coachman, and Mrs. Such-a-one, a Strong-water Woman, told him this, and that, and t'other. The Lords sent for two of the Persons he named, and both of them being brought before them, the Lords were very well satisfied, in that one of them keeps a Victualling-House, and they were both of good Reputation, they were satisfied it was only a Sham, and that he only named them as the first Persons that came into his Mind. Getting nothing out of him, my Lord Duke of *Buckingham* told him, Sirrah, if you will confess, there shall be nothing of what the King hath promised but it shall be made good to you; you shall be sure of it, and you shall be protected. My Lord *Shaftesbury* told him the same; but withal, if he would not confess, and tell him who set him on Work, then nothing should be severe enough for him; or Words to that effect.

Mr. Bar. *Weston*. Upon this Accusation was he sent to Prison?

Mr. *Fowler*. He was re-ordered to Prison, and there continued several Months.

Mr. Bar. *Weston*. Where? To what Prison?

Mr. *Fowler*. To *Newgate*.

Mr. Bar. *Weston*. Were you ever in *Newgate*, and saw him?

Mr. *Fowler*. Never, not I.

Mr. Bar. *Weston*. Did you never see him but at this Chamber with the Lords, and at your own Tavern?

Mr. *Fowler*. Never.

Mr. Bar. *Weston*. And you never were in *Newgate* in your Life with him?

Mr. *Fowler*. No, not I.

Mr. Bar. *Weston*. Were you ever in *Newgate* with him with my Lord Duke of *Buckingham*, or my Lord *Shaftesbury*, or any other Lord?

Mr. *Fowler*. No.

Mr. Bar. *Weston*. Or any other Duke whatsoever?

Mr. *Fowler*. No.

Mr. Bar. *Weston*. Or any Lord or Nobleman whatsoever?

Mr. *Fowler*. No, except four Years ago with my Lord *Petre*.

Mr. Bar. *Weston*. There is no Danger of him. But as to this Affair, Were you ever with any?

Mr. *Fowler*. No.

Mr. Bar. *Weston*. Did you see any Sword drawn, or Money offered?

Mr. *Fowler*. There was never a Sword drawn, nor Money offered.

Mr. *Att. Gen.* Did you ever see 500*l.* laid down upon a Table?

Mr. *Fowler*. There was never any Sword drawn, nor Money laid down.

Mr. Bar. *Weston*. He answers that very fully; for he says he was never in *Newgate* with any Nobleman, but once with my Lord *Petre* four Years ago; and if he was with any Nobleman, he is accused to be there in the Presence of a Duke, and another great Earl; and that the Duke drew his Sword, and the other Nobleman laid down a great deal of Gold, which he said did amount to 500*l.* and told him it should be his, and that if he would accuse some other Persons, they would maintain him; and then he did draw the Fellow aside and tell him, Can't you name somebody? Then you and I may have Money enough. This is the Accusation of the Book: But now 'tis denied that ever he was in *Newgate* with any such Persons, which is consequently a Denial of the whole Charge.

*Cellier*. I did not write that this was true, but I writ that the Fellow told me so.

Mr. Bar. *Weston*. We will see that in the Book in the first Place. We have examined this thing by the by, and tho' 'tis a little out of the way, yet it may be satisfactory: Read the Book.

*Cl. of Cr. Malice defeated, &c.*

Mr. Bar. *Weston*. Compare it with the Record, for she shall have a fair Trial, by the Grace of God.

Then the several Clauses recited in the Indictment were read over again by the Clerk out of the Book, and compared by the Judge with the Record.

Mr. Bar. *Weston*. These are the Clauses in the Book that are proved exactly upon you. Now I must tell you, because this Book doth cast a very great Infamy upon our Religion, and on the whole Government, it ought to be taken Notice of: For in the first Place, to contrive to get a Man into Prison, and by Tortures to compel him even to commit Perjury: Then to hale another Man to Prison, and have him thus barbarously used, as to have Nobles to come to him, one with a Sword drawn, another with Money in his Hand laying it down as a Temptation, and to force him to discover what he was not willing to confess; and then to lay Accusation

upon the King that he makes it a Thing of Safety to be the Hangman's Hounds, and to be Accusers for Pensions; and shall aver, that when it is as free for her to speak Truth, as it is meritorious for them to do otherwise, she will discover such and such Things; is a Slander that ought to receive a publick Rebuke: And to satisfy the World of the Untruth of it, I would have you prove, if *Prance* be here and the Coachman, what Usage they received, to avert that publick Calumny that it cast upon the Nation. For let Mrs. *Cellier* know, she hath insinuated, as tho' the Murder of the late King was a sufficient Ground to pervert her from Protestantism, which avowed such Practices: When all the World knows, that at that time there were Protestants that were far better Subjects, and more loyal, than ever any Papist was in the World, and as great Sufferers for their Opposition to that dreadful Villainy, nay; far more than the Papists can boast of for their Loyalty; whereas 'tis known there were Villains under-hand all the while, and those that did encourage all that Roguery, and set that Faction on foot which brought Things to that ill Period they came to. Therefore you have set a fair Outside upon a damnable Lie. And that the arrantest rebellious Rogues that ever lived under Heaven, are great Saints in comparison of Protestants, no honest Man will believe.

*Cellier*. I say, they called themselves Protestants. I know the Protestants were great Sufferers for the King, and I myself felt it; our Family, which were Protestants, were several times stript and plundered for their Loyalty. I grant all this.

Mr. Bar. *Weston*. Do you? Then you are an impudent lying Woman; or you had a villainous lying Priest that instructed you to begin your Book with such a base Insinuation against the best of Religions. But I have no more to say to that, for that is such a visible notorious Falsity to the Knowledge of all Englishmen, and People of Understanding, that it needs no greater Conviction than the particular Knowledge of those Men that lived in that time. Therefore for that Lie, let it go upon the publick Infamy that attends on your Party, who are notorious Liars, and among whom Falshood does so much abound.

Call Corral and *Prance*.

Mr. *Att. Gen.* We will give that Satisfaction to the People: But the Jury are to know, that it does not at all concern the Matter in Issue: For when all that can be said by them is declared, I must say, in point of Law, the publishing of a Libel, tho' it be true, yet is a Crime, and deserves Punishment.

Mr. Bar. *Weston*. I told you so. But, Mr. *Attorney*, we are to set a Fine; and to instruct us for the setting of the Fine, it will be a Satisfaction to the Court to disprove the Things she alledges, if you have the Witnesses ready; but if you are not ready with your Proof, let it alone.

Mr. *Att. Gen.* They are ordered to be here. I only speak that by the way. Swear Mr. *Prance*. [Which was done.]

Mr. Bar. *Weston*. Mr. *Prance*, Pray, were you tortured in Prison?

Mr. *Prance*. No, I never saw any such thing there in my Life.

Mr. Bar. *Weston*. How were you used?

Mr. *Prance*. Very well; I had every thing that was fitting, Captain *Richardson* did take great care of me.

Mr. Bar. *Weston*. The Truth is, the very Book itself implies a Contradiction. It says, there was one tortured in the Prison, and the Roarings that they heard were like the Roarings of a strong Man in Torture: And yet presently after it says, that the Prisoner comes up in Irons and is examined. Now could any one having been so lately on the Rack, be able to walk and come to be examined? Any Man that knows what the Nature of a Rack is, knows also, that one that has been tortured there, would not be able to heave the Irons upon his Legs, nor be able to stir or walk; But that is a Thing not used amongst us, it was some impudent lying Priest that durst venture to broach such a Calumny.

*Cellier*. I don't say it was, but it was reported.

Mr. *Prance*. Dr. *Lloyd* was with me many times for half an Hour together, and if any such thing had been, he would have seen it.

Then Francis Corral was called, but he did not appear.

Capt. *Richardson*. Corral they have got away; for I had him last Night, and he was ordered to be here to Day, but here is his Wife.

[Who was sworn.]

Mr. Bar. *Weston*. Good Woman, were you ever with your Husband in Prison?

Mrs. Corral. I was not suffered to come near him when he was of the Master's-side.

Mr. Bar. *Weston*. But when he was out of Prison, How did he tell you he was used? Did he tell you he was compelled to drink his own Piss?

Mrs. Corral. Sunday Morning it was before I saw him; nay, I did not see him then, but I was called to bring him Victuals, or he would have starved; nay, they say he would be dead before I brought him. So I carried him Bread and Things, and I did not see him then till almost a Fortnight after; and when I saw him he had great Fetters on, and I was amazed at them. They put in some Charcoal there to warm him, it being very cold; and, said I, Lord, what have you done? You have murdered somebody, sure? But they said, they put on those Things to keep his Legs warm.

*Cellier*. Were you ever beaten at any time for bringing your Husband Victuals?

Mrs. Corral. No, indeed, I was never beaten, but they would not suffer me to see him on the Master's-side.

Lord-Mayor. Her Husband hath deny'd all upon Oath before me.

Mr. Bar. *Weston*. Was he ever hurt with Screws, or any such Thing?

*Cellier*. Had he not Holes in his Legs?

Mrs. Corral. Yes, he had a great many; I did see Holes in his Legs.

Mr. Bar. *Weston*. Did you?

Mrs. Corral. I did see one, and I can bring them that brought Salve to heal it.

Captain *Richardson*. There is never an Iron in the House that I keep, that weighs twelve Pound.

Mr. Bar. *Weston*. They say you have Irons called Sheers, that weigh forty Pound.

Captain *Richardson*. If there be one, I'll be hang'd for it before I go hence.

*Cellier*.



*Cellier.* I hope I shall be allow'd to make my Defence, and call my Witnesses.

*Mr. Bar. Weston.* Yes, to be sure.

*Cellier.* Did not you hear your Husband tell me how heavily he was fettered and used? That he was chained to the Floor with a Chain not above a Yard long? and was forced to drink his own Water?

*Mrs. Corral.* Madam, he is not sensible many Times what he does say.

*Cellier.* But did not you hear him tell me so?

*Mrs. Corral.* I can't remember.

*Cellier.* Did not you tell me, that Captain *Richardson* drove you away, and would not let you give Victuals to your Husband?

*Mr. Bar. Weston.* All this is but over and above; for the great Matter that sticks upon your Part is, the Death of Sir *Edmundbury Godfrey*, and you are pinch'd there with *Prance's* Evidence; and so you would make the World believe that he was tortur'd into his Confession, and was mad when he did it, that you may the better turn it off from your own Party, on somebody else, on whom I don't know.

*Cellier.* Pray, my Lord, hear me one Word: As to your saying, I do it to defend a Party, I profess I stand singly and alone; I have been so barbarously used by those you call that Party, that the Protestants have been abundantly more kind to me than they. And I would not tell the least Lye to do them any good Turn.

*Mr. Bar. Weston.* Then you are an happy Woman indeed, that are belov'd by both Parties; you have not been serviceable alike to both, I am sure, but that is no great Matter; if so be the Protestants were so kind, you have requited them ill by such a base Libel.

*Cellier.* I say nothing against them.

*Mr. Bar. Weston.* Can you say any Thing that you did not make this Pamphlet?

*Cellier.* My Lord, I ben't bound to accuse myself, I desire it may be prov'd.

*Mr. Bar. Weston.* I think it is fully prov'd.

*Cellier.* I cannot say any thing without my Witnesses, I desire I may call them.

*Mr. Bar. Weston.* Call whom you will.

*Cellier.* I desire *George Grange* may be call'd.

[Who was sworn.

*Mr. Bar. Weston.* What can you say for Mrs. *Cellier*? Tell me what Questions you will ask him.

*Cellier.* I desire to know whether I did not send him to find Witnesses? Who he went for? What Answers they return'd? And where they be?

*Mr. Bar. Weston.* Well, what Witnesses were you sent to look for?

*Grange.* I went to look for one Mrs. *Sheldon*, that lives in Sir *Joseph Sheldon's* House, and they told me she was in *Essex*. I went to the Coach to send for her.

*Mr. Bar. Weston.* Why, *Scoggin* looked for his Knife on the House-top.

*Mr. Stevens.* This Man did see her sell these Books.

*Mr. Bar. Weston.* Who did you look for besides?

*Grange.* One Mr. *Curtis*. And his Wife said, she had not seen him since yesterday Morning.

*Mr. Bar. Weston.* What were they to prove?

*Grange.* Truly, my Lord, I don't know.

*Mr. Dormer.* By the Oath you have taken, Do you know she hath sold any of these Books?

*Grange.* Yes, I do know that she hath sold some of them.

*Lord-Mayor.* There your own Witness, Mrs. *Cellier*, proves it against you.

*Mr. Bar. Weston.* Who would you have else?

*Cellier.* I desire that *Mary Smith* may be called (Which was done, but she appeared not then). I desire *John Clarke* may be sent for from the Goal.

*Captain Richardson.* He is in Execution.

*Mr. Bar. Weston.* For what?

*Captain Richardson.* For Debt.

*Mr. Bar. Weston.* 'Tis not out of the Rules of the Prison; you may bring him hither, and 'tis no Escape.

*Captain Richardson.* If your Lordship orders it so, I will bring him.

*Lord Mayor.* She should have brought an *Habeas Corpus*, if she would have had him.

*Mr. Att. Gen.* He must bring him through some Part, I suppose, that is not within the Rules, and then it will be an Escape.

*Cellier.* I pray an *Habeas Corpus* to fetch him.

*Mr. Bar. Weston.* You might have had one before.

*Cellier.* This is all because I had no Time to prepare for my Defence.

*Mr. Bar. Weston.* You might have moved the Court for it; they granted you a Copy of your Indictment.

*Cellier.* I had it not till Nine o'Clock to Day, and my Council could not inspect it, nor speak a Word with me about it.

*Lord-Mayor.* At what Time shall we have done, if we dally after this Rate?

*Mr. Bar. Weston.* Have you any blank *Habeas Corpus*?

*Cl. of Peace.* It could not be seal'd, and besides, they should fetch it out of the Crown-Office.

*Cellier.* I desire to have him come, in order to the Defence of something in my Book.

*Mr. Bar. Weston.* What would he prove?

*Cellier.* That I have not belied the Government.

*Mr. Bar. Weston.* In what?

*Cellier.* That he was shear'd with long Sheers, and unreasonable Irons.

*Mr. Collins.* You cannot do yourself greater Wrong than by such Talk as this.

*Lord-Mayor.* You are not indicted for your whole Book, but for some part of it.

*Crier.* Here is Mrs. *Smith* now. [Who was sworn.

*Cellier.* What have you heard *Corral* the Coachman say, about his Usage in Prison?

*Mr. Dormer.* I think that Question is not to be admitted.

*Mr. Bar. Weston.* What is it you would have her asked?

VOL. III.

*Cellier.* What she heard the Coachman say, for I only say he told me so.

*Mr. Dormer.* I am in your Lordship's Judgment, I think it is not Evidence.

*Mr. Att. Gen.* She keeps the Coachman away, and now will tell you what he said.

*Mr. Bar. Weston.* That is no Evidence, for the Coachman might have been here, if you had not sent him away.

*Cellier.* Let his Wife speak that, because she can testify I did not send him away.

*Captain Richardson.* She gave them Money before, and told them she would maintain them.

*Cellier.* You are not an Evidence against me, you are not sworn.

*Captain Richardson.* But this that I say is sworn.

*Mr. Bar. Weston.* Call her.

*Mr. Att. Gen.* Ask her a proper Question to the Issue.

*Cellier.* I would know of her, whether I kept her Husband away?

*Mr. Att. Gen.* It may be, you did it without her Knowledge?

*Cellier.* Have I seen her Husband without her Knowledge?

*Mr. Bar. Weston.* Go on with your Witnesses.

*Cellier.* I desire *Mary Johnson* may be call'd.

*Mr. Bar. Weston.* For what? What will she prove?

*Cellier.* That she was to see for Witnesses in order to my Defence.

*Mr. Bar. Weston.* But if they are not come, what signifies that?

*Cellier.* I have done then, my Lord; for not having Time to get my Witnesses, I cannot make my Defence so fully, as else I should have done: Only I desire you to consider I am a poor ignorant Woman, and have erred out of Ignorance: I thought nothing, but that I might publish what others had said and told me; and so I have offended in Ignorance, if I have offended.

*Mr. Bar. Weston.* I do verily believe there are more Wits than yours concerned in this Book; though you bear the Name, yet the Book is not the Effect of your Wit only, but you acknowledge enough. And you are to take Notice, that the King hath set out a Proclamation, that no Books shall be printed without a License.

*Cellier.* I never heard it. I was under close Confinement when the King set it out.

*Mr. Bar. Weston.* No, I deny that; for you were enlarged the first Day of *Trinity-Term*, and the Proclamation came out towards the End.

*Mr. Att. Gen.* She now does confess she knows of it, because she speaks of the Time, and that was before her Book was written.

*Cellier.* May not my Council speak for me? I desire you would hear him.

*Mr. Collins.* I have nothing to say for her.

*Mr. Bar. Weston.* He says, he hath nothing to say for you.

*Mr. Collins.* And if you had said less for yourself, it had been better.

*Mr. Bar. Weston.* The Question is but Guilty or Not Guilty? Whether you published this Libel or not? And if the Matter of the Indictment be proved, what can Council say, except you can disprove the Witnesses, that you did not the Fact?

*Cellier.* Well, my Lord, then I beseech you consider me, I am a Woman, and deal with me in Mercy, as well as Justice.

*Mr. Bar. Weston.* Mrs. *Cellier*, I have not been noted to be a Person that use any great Severity towards any body, no not towards any of your Party; but when I see so much Malice as is comprized in your Book, and have reason to suspect that this is not acted only by you, though you bear the Name of it, but some of your wicked Priests are the Authors of it, as I am sure they are; then I think it is not severe, that you, who stand at the Stake for all, must bear the Blame of all. If you will tell us who it was that set you on Work, and assisted you in this wicked Business, that will be something towards the Mitigation of your Fine; but if you will take it on yourself, you must suffer the Consequence.

*Cellier.* I beseech you, my Lord, have some Compassion; His Majesty acknowledged before the Council, that I had suffered for him; I ventured my Life through a Sea and an Army to serve him; I lost my Father and my Brother both in a Day for him; and if you have no Compassion for me, have some Commiseration for my Loyal Parents that lost their Estates for him.

*Mr. Bar. Weston.* If you have done Service for his Majesty, and thereby deserved any Thing of him, His Majesty hath been so bountiful in the Dispensation of his Favour, that he would not fail to recompense you for it; but we are to proceed according to the Rules of Law.

*Cellier.* But pray have some Mercy in your Justice.

*Mr. Bar. Weston.* Gentlemen of the Jury, This Gentlewoman the Prisoner stands Indicted—

*Jury.* We have not heard one Word that hath been said.

*Mr. Bar. Weston.* No! That is strange; I will acquaint you with as much of the Evidence as falls under my Information: It had been well if you had told us this before: The Business is this, She stands indicted here for Writing and Publishing of a very scandalous Libel. But pray did not you hear *Penny* prove that she sold it?

*Jury.* We heard the three first Witnesses.

*Mr. Att. Gen.* There was the Proof of the Fact.

*Mr. Bar. Weston.* The rest of the Evidence was but a Comparison of the Clauses in the Book with those in the Indictment, which you are to have Direction from the Court in, that they do: She stands indicted for publishing a Libel, and the Title of the Libel is, *Malice Defeated, or, a brief Relation of the Accusation and deliverance of Elizabeth Cellier*. Now this Libel branches it self out into several Parts; the first whereof is a very fine Insinuation, as though her leaving the Protestant Religion was, because those that murdered the King, and made that very great Subversion that was made in the Government by the late Long Parliament, and the Army that succeeded them, were Protestants—

*Cellier.* Pray, my Lord, I say, called Protestants.

*Mr. Bar. Weston.* By your Favour, she pretends it was by those that were called Protestants; but if they were only those that were called Protestants, and not Protestants, what Reason had she to go off from the Protestant Religion, to turn Papist, when there was such a Body

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of



of loyal Protestants that did adhere to the loyal Party? Therefore that was as villainous an Insinuation as could be; as though the Protestant Religion did nourish and teach seditious Principles, which in the Consequence of them tended towards the Subversion of the Government and Order, which certainly it does cherish in the highest Degree of any Religion in the World, and hath the most peaceable Principles in Matters of Duty, both in Subjection to our Superiors, and of a charitable Deportment of Men one towards another: And the Practice of those Principles hath been seen amongst Protestants, especially amongst the English Protestants, as much as in any Nation in the World; this may be said of it to this Day, for the Reputation of the English Nation, that there is more Fidelity, Honesty, and generous Trust amongst them, than among all the Nations of the World besides; so that if a Man were to go out of England to any other Part of the World, he might well use the Words of Demosthenes, upon his going out of Athens, at his Banishment; *Farewel, beloved City, I am going into a World where I shall not find such Friends as I have had Enemies here.* Friends in other Places will be no better than our Enemies here; the Carriage of English Men is so much beyond all others, except the Germans, who, I must confess, are famed for their Honesty and Integrity one to another; but if you take the French, the Italian, the Spaniards, or any Sort of the Levantine People, they live like so many Wolves, especially in those Places where the Popish Religion is professed. Now after this Insinuation, there is another Part of the Book recited in the Indictment, There was an horrid barbarous Murder that was committed here, and which certainly did fix the Accusation of the Plot fuller upon them, than all the Evidence that was given besides, the Murder of Sir Edmundbury Godfrey: A Magistrate in doing his Duty was most barbarously murdered, and by whom is evidenced by one Prance: It hath been the whole Labour of the Party, to cast this Murder upon other Persons, and take it off themselves; for they find if that Accusation sticks upon them, it is a Thing of so heinous a Nature, that it will make the Popish Party odious to all Mankind. And therefore this they labour at mightily, and this Task she hath taken on herself; for knowing Prance to be a principal Witness, she undertakes to let the World know, that Prance was tortured in Prison, to insinuate, that the Evidence he gave against those Persons that were executed for this Murder, was extorted from him by ill and cruel Usage. But you must first know, the Laws of the Land do not admit a Torture, and since Queen Elizabeth's Time there hath been nothing of that Kind ever done. The Truth is, indeed, in the twentieth Year of her Reign, Campion was just stretched upon the Rack, but yet not so but that he could walk; but when she was told it was against the Law of the Land to have any of her Subjects racked (tho' that was an extraordinary Case, a World of Seminaries being sent over to contrive her Death, and she lived in continual Danger), yet it was never done after to any one, neither in her Reign, who reigned twenty-five Years after, nor in King James's Reign, who reigned twenty-two Years after; nor in King Charles the First's Reign, who reigned twenty-four Years after; and God in Heaven knows there hath been no such Thing offered in this King's Reign; for I think we may say, we have lived under as lawful and merciful a Government as any People whatsoever, and have had as little Blood shed, and sanguinary Executions as in any Nation under Heaven. Well, but (contrary to the Law in this Case), she does suppose extraordinary Ways were used to make Prance give this Evidence. She says, she thought what she first heard was the Noise of a Woman with Child, and that Harris the Turnkey did tell her it was a Woman in Labour; but when she desired to be let in to help her, he turned her away rudely; but listening, she perceived it was the Groans of a strong Man that must be in Torture: She asked some of the Goalers what was the Matter? They told her, They durst not tell her, but it was something they could not endure; and they heard him cry, What would you have me confess? Would you have me belye myself? I know nothing of it; and such Words as these. Whereupon we have called Prance, and here, upon his Oath, he tells you there was no such Matter: That he was used very kindly, had all things fitting, and under no Compulsion; so that this is an high Libel against the Government. She says furthermore, there was one Corral a Coachman that was imprisoned by the Means of one Fowler for the Murder of Sir Edmundbury Godfrey; that there was a Nobleman, a Duke, came to him in Prison, and drew his Sword at him, and would have him confess, that another Nobleman laid down a Sum of Money, and said it was Five Hundred Pound, and told him, if he would confess, he should have it; and that Fowler took him aside, and bid him lay it upon somebody else, and then he and Fowler should have Money enough. Fowler being examined, and upon his Oath, tells you upon what Account he did charge Corral; he tells you, he was never with Corral in the Goal in his Life, and never was with him in the Presence of any Duke or Nobleman but once in a Room, where Corral was brought to be examined; and then there was the Duke of Buckingham, the Marquis of Winchester (who I never heard was a Man of Cruelty, or harsh Nature), my Lord Shaftesbury, and Major Wildman, who was Secretary; but there was no such cruel Usage there; and he never was in the Prison with such Noblemen; and then the Consequence is, that the whole Story is false. Corral, it seems, my Lord Mayor says, hath been examined to this Point, and denies it all, and is kept out of the way, that he should not give it in Evidence here: But if we had him here, it were no great Matter; for if there were any thing of this Nature true, they are to proceed in a legal Way against them that make these Transgressions of the Law; she ought to have indicted the Persons, for they are highly punishable for such Extravagances as these are. But there is nothing done in that Kind; but instead of that, she hath defamed them all in a Libel; and she is not contented to have done that neither, for she hath defamed the King highly in his Government, and said, she could have written more. I pass over the Business that concerns Dangerfield, wherein she complains, that Dangerfield had more Friends, and was visited more by Persons of Quality, when she had none came to her; every one is visited according to the Interest they have in the World, and the Friends they make: I have nothing to say to that, there is not so much in it; but come to that Part wherein she scandalizes the King, which is this; she says, *Whenever his Majesty shall please to make it as safe and honourable to speak the Truth, as it*

*is apparent it hath been gainful and meritorious to do the contrary, their Villainy will not want Witnesses to testify the Truth of more than she had written.*

So that she supposes, that the King, by the Countenancing of Lies, and giving Pensions to Liars, choaks the Truth, and makes it dangerous for those that know the Truth, to divulge it to the World; which is a very vile Scandal upon the King and the Government. These are the Matters of the Libel, and the Things in Proof have been sworn by three Witnesses; one proves, that he went to her to buy one of her Books, and he asked her for one, and she gave him a Book which bears that Title-page that you hear in the Indictment, superscribed with her Name, and she gives it as her Book. Now she would evade it thus, that she gave it as her's, not as though she were the Author, but as if it were her's only in Property: But can any such thing be thought the Meaning of her Words? Or can there be any greater Evidence that she is the Author of the Book, than her publishing of it with her Name to it? But the Fellow goes further, and tells you, when he had the Book, he turned about, and asked her, if it were her Book? Yes, she said, it was: And, said she, I could have writ a great deal more, if I would; so that her saying she could have writ more, implies, that she writ that; and (more) is a Word of Comparison which always supposes the positive Proposition. The next is the Printer, who tells you, that he printed the first twenty-two Folios, within which the greatest Part of this Charge, except only that last about the King, is contained. He tells you, that she sent for him, and employed him to print it as her's; agreed with him for ten Shillings a Ream for the Printing, and that he did print the first twenty-two Leaves at her Request, and as employed by her: Fowler tells you, he bought two of the Books of her; and these are the Witnesses of the Publication of this Book. I must tell you this, the Clauses in the Libel are truly set down in the Indictment, for I did examine them one by one. Now whether or no you can doubt she was the Author of the Book, when in a Manner she did own it at the Publication, by selling it as her's, I leave to you; though I must tell you plainly, I leave it as that which is to me under the Notion of express Evidence; but I must leave it to you as Judges of the Fact, and expect your Verdict in the Case.

Mr. Att. Gen. There are three Things in the Indictment; first, That she writ it; secondly, That she caused it to be printed; and thirdly, That she caused it to be published. Now if you find any one of these, she is guilty of so much at least, though I think you have heard Evidence enough for all. She told me it was her's, and said, she could have put more in; and the selling the Book is a Publication. So that if you be not satisfied she was the Author, yet if you are satisfied she caused it to be printed; or if you are not satisfied in that, yet if you are satisfied she caused it to be published, you are to find her guilty of so much.

Cellier. The Printer does not say I writ it.

Mr. Att. Gen. But he does say you gave it him as your's, and to you the Sheets were sent to be corrected.

Then the Jury desired they might have the Book with them.

Mr. Clare. My Lord, the Jury wants the Book that was sworn to.

Mr. Bar. Weston. They can have no Papers without Agreement, neither the Books, nor any Paper else.

Mr. Att. Gen. Not unless she will consent to it. Mrs. Cellier, Will you consent that they shall have the Book out with them?

[To which, after some Pause, she answered, No.

Mr. Bar. Weston. Then they cannot have it by Law.

Then the Jury withdrew for a little, and returned.

Cl. of Cr. How say you, is Elizabeth Cellier Guilty of the writing, printing, and publishing of the Libel for which she stands indicted, or Not Guilty?

Foreman. Guilty. (At which there was a great Shout.) And the Verdict was recorded.

Mr. Bar. Weston. She must stand committed to receive the Judgment of the Court.

Cellier. Will you give me Leave to speak a Word now?

Mr. Bar. Weston. I cannot give you any Judgment, for by the Custom of the City, that is to be done by the Recorder or his Deputy; and so, what you will say to the Court, you must say to them; that will be on Monday when the Sessions is done.

Cellier. What I would say is only this, That I am a Woman, and wherein I offended, I offended out of Ignorance, and did not know it was an Offence; and if the Offence be mine, let not others suffer for me. Have Mercy in Judgment; and consider my loyal Parents and Relations, and the Services they did his Majesty; and let this Fault be wiped out by that Service and Duty I and they paid him; or at least-wife, let the Punishment of this Offence be mitigated, in Consideration that all my Life, ever since I had the first Use of Reason, I have been a loyal Subject.

Mr. Bar. Weston. These are Things that will be considered on Monday, but we can't take Consideration of it now.

Cellier. I will go away then, and come again on Monday.

Mr. Bar. Weston. No, you are to be committed till then.

And so the Keeper carried her back to Newgate; from whence on Monday the thirteenth of September, she was brought to the Bar to receive her Judgment, which Mr. Recorder gave thus:

Mr. Recorder \*. Mrs. Cellier, the Court doth think fit, \* Sir George for Example Sake, that a Fine of One Thousand Pounds be <sup>Jefferies.</sup> put upon you; that you be committed in Execution till that Thousand Pounds be paid: And because a pecuniary Mulct is not a sufficient Recompence to Justice, which you have offended, the Court doth likewise pronounce against you, That you be put on the Pillory three several Days, in three several publick Places: In the first place, in regard her braided Ware received its first Impression and Vent at her own House, it is thought fit that she stand (as near her own House as conveniently can be) between the Hours of Twelve and One, for an Hour's Space, at the May-pole in the Strand, on the most notorious Day; I think there is a Market near that Place, let it be on that Day. At another Time,



that she stand in *Covent-Garden* on a publick Day the like Space of Time; a third Time, that she stand at *Charing-Cross* on the most publick Day, for the Space of an Hour. And in the next Place, that she find Sureties for her good Behaviour during her Life; and in every Place where she shall stand on the Pillory, some Parcels of her Books shall, in her own

View, be burnt by the Hands of the common Hangman, and a Paper of the Cause to be put upon the Pillory.

Then the Court charged the Sheriff, That he take Care in every Place for a sufficient Guard, that the Peace may be kept; and she was returned to the Goal.

## CII. The Trial of WILLIAM Viscount STAFFORD \*, before the Lords at Westminster, upon an Impeachment for High-Treason, November 30, 1680, 32 Car. II.

### THE FIRST DAY.

**W**ILLIAM Earl of Powis, William Viscount Stafford, Henry Lord Arundel of Wardour, William Lord Petre, and John Lord Bellasis, having been formerly impeached in the House of Lords, of High-Treason, and other high Crimes and Offences, by the House of Commons, in the Name of themselves, and of all the Commons of England:

And the House of Commons having sent a Message to the Lords, to acquaint them with the Resolution of that House, to proceed to the Trial of those Lords, then in the Tower, and forthwith to begin with the said Viscount Stafford, and to desire their Lordships to appoint a convenient Day for the Trial of the said Viscount Stafford: Their Lordships did thereupon appoint the 30th Day of November 1680, for his Trial. And a Place in Westminster-Hall having been for that Purpose erected, the same was as followeth: viz. Therein were both Seats and Wool-packs, correspondent in all Points to those in the House of Lords; as also a State placed at the upper End thereof, with a Cabinet for the King, and whom his Majesty should think fit to attend him there, on the right Hand the State; and the like on the left Hand, for the Queen and her Followers; as also Galleries over Head for Ambassadors and others.

And to the End that the Commons might be fitted with Seats upon this great Occasion, there were erected for them on each Side, divers Benches, on several Degrees, extending to the utmost Walls of the Hall.

At the lower End, the Bar whereunto the Prisoners were to be brought being placed, on the right Hand thereof was a Place raised about five Foot, wherein the Witnesses were to stand; and on the left Hand a convenient Room for those particular Members of the House of Commons who were to manage the Evidence.

And the Right Honourable Heneage Lord Finch, Baron of Daventry, Lord High Chancellor of England, being by his Majesty's special Letters Patent, bearing Date the 30th of November 1680, constituted Lord High Steward for that present Occasion; upon Tuesday the said 30th of November, the Lord High Steward was honourably attended from his House in Queen-Street by all the Judges of his Majesty's Courts in Westminster-Hall, in their Robes; as also by Garter Principal King of Arms, in his Majesty's Coat of Arms, and the Gentleman-Usher of the Black-Rod, unto whom his Majesty had before delivered the White Wand, to be carried before his Lordship: and about nine of the Clock in the Morning set forward in his Coach towards Westminster, sitting at the hinder End thereof, Garter and the Gentleman who bore the Great Seal sitting both uncovered at the other End; one of the Serjeants at Arms, with his Mace, being placed on the right Side the Coach, and the Usher of the Black Rod, carrying the White Wand, on the left Side; the Judges and his Lordship's Gentlemen in several Coaches following after.

Being thus come to the Stairs-foot, ascending to the House of Peers, the Judges went up two and two together (the Juniors first); next the Lord High Steward's Gentlemen; after them the Serjeant at Arms with his Mace, and the Seal-Bearer; and lastly, the Gentleman-Usher of the Black Rod, bearing the White Wand; Garter Principal King of Arms going on his Right Hand.

Then his Lordship alone, his Train borne by one of his Gentlemen. In this Manner entering the House of Peers, he found all the Lords in their scarlet Robes, also the Bishops in their Rochets, and took his Place upon the uppermost Wool-Sack.

This done, and Prayers ended, his Commission for Lord High Steward was read; and then the Bishops receded, and the Lords adjourned themselves into the new erected Court in Westminster-Hall.

All Things being thus in readiness, and a large Door-place broken through the upper End of Westminster-Hall, into that Room which was heretofore The Court of Wards:

Their Lordships passed from their House first into the Painted Chamber, then through that called The Court of Requests; thence, turning on the left Hand, into that called The Court of Wards; then entered at the Door, so broke down as aforesaid, into Westminster-Hall, and passed through a long Gallery, placed between the King's-Bench and Chancery Courts, into this new erected Court in Westminster-Hall, and proceeded after this Manner, viz.

First, the Assistants to the Clerk of the Parliament.

Then the Clerk of the Crown in Chancery, and Clerk of the Parliament; after them the Masters in Chancery two and two, and the King's Attorney-General alone.

Then the Judges of all the Courts in Westminster-Hall, by two and two.

Next to them the Noblemen's eldest Sons.

After them four Serjeants at Arms, bearing their Maces.

Next the Gentleman-Usher of the Black-Rod.

Then all the Noblemen, according to their respective Degrees, the Juniors first, viz. Barons, Viscounts, Earls.

Great Officer, viz. Lord Chamberlain of the Household.

Marquisses, Dukes.

Great Officers, Lord Privy Seal, Lord President of the Council.

Then four more Serjeants at Arms, bearing their Maces.

After them, the Gentleman carrying the Great Seal.

Then one of his Majesty's Gentlemen Ushers, daily Waiters, carrying the White Wand; Garter Principal King of Arms, going on his right Hand.

Then the Lord High Steward alone, having his Train borne; and after him his Highness Rupert Duke of Cumberland, a Prince of the Blood.

This done, and the whole House of Peers having taken their Places according to their Degrees, the Commons being also seated on each Side, and the Managers in the Rooms appointed for them; the Commons being all bare, the Lord High Steward, after Obeisance made towards the State, took his Place upon the uppermost Wool-sack, and thereupon receiving the White Wand from Garter and the Gentleman Usher upon their Knees, delivered it to the Usher of the Black Rod, who held it during the Time of sitting there. Having so done, his Lordship said, Cryer, make Proclamation of Silence. Then the Cryer, a Serjeant at Arms, made Proclamation thus: All Manner of Persons are straitly commanded to keep Silence upon Pain of Imprisonment. God save the King.

Lord High Steward. Make Proclamation for the Lieutenant of the Tower to bring the Prisoner to the Bar.

Cryer. Oyes! O yes! O yes! Lieutenant of the Tower of London, bring forth thy Prisoner William Viscount Stafford, upon Pain and Peril shall fall thereon. God save the King.

Whereupon the Lieutenant of the Tower brought the Prisoner to the Bar.

Usher of the Black Rod. My Lord Stafford must kneel; which he did.

L. H. S. Rise, my Lord.

Then he arose and stood at the Bar, and the Lord High Steward spake to him as followeth:

My Lord Viscount Stafford,

THE Commons of England assembled in Parliament have impeached your Lordship of High-Treason; and you are brought this Day to the Bar to be tried upon that Impeachment: You are not tried upon the Indictment of Treason found by the Grand Jury, though there be that too in the Case; but you are prosecuted and pursued by the loud and dreadful Complaints of the Commons; and are to be tried upon the Presentment which hath been made by the Grand Inquest of the whole Nation.

In this so great and weighty Cause, you are to be judged by the whole Body of the House of Peers, the highest and the noblest Court in this, or perhaps in any other part of the Christian World.

Here you may be sure no false Weights or Measures ever will or can be found: Here the Balance will be exactly kept, and all the Grains of Allowance, which your Case will bear, will certainly be put into the Scales.

But as it is impossible for my Lords to condemn the Innocent, so it is equally impossible that they should clear the Guilty.

If therefore you have been agitated by a restless Zeal, to promote that which you call the Catholic Cause; if this Zeal have engaged you in such deep and black Designs as you are charged with, and this Charge shall be fully proved, then you must expect to reap what you have sown; for every Work must and ought to receive the Wages that are due to it.

Hear therefore with Patience what shall be said against you, for you shall have full Time and Scope to answer it; and when you come to make your Defence, you shall have a very fair and equal Hearing.

In the mean Time the best Entrance upon this Service will be to begin with the reading of the Charge.

L. H. S. My Lord, if your Lordship find yourself infirm and unable to stand, your Lordship may have a Chair to ease yourself whilst your Charge is reading. And a Chair was brought accordingly, and his Lordship sat thereon. Clerk of the Parliament read the Charge.

**ARTICLES of Impeachment of High Treason, and other High Crimes and Offences, against William Earl of Powis, William Viscount Stafford, and Henry Lord Arundel of Wardour, William Lord Petre, and John Lord Bellasis, now Prisoners in the Tower of London.**

1. THAT for many Years now last past, there hath been contrived and carried on by Papists, a traitorous and execrable Conspiracy and Plot within this Kingdom of England, and other Places, to alter, change, and subvert the ancient Government of the Laws of this Kingdom and Nation, and to suppress the true Religion therein established, and to extirpate and destroy the Professors thereof; which said Plot and Conspiracy was contrived and carried on in divers Places, and by several Ways and Means, and by a great Number of Persons of several Qualities and Degrees who acted therein, and intended thereby to execute and accomplish the aforesaid wicked and traitorous Designs and Purposes.

2. That the said William Earl of Powis, William Viscount Stafford, Henry Lord Arundel of Wardour, William Lord Petre, and John Lord Bellasis, together with Philip Howard, commonly called Cardinal of Norfolk; Thomas White, alias Whitebread, commonly called Provincial of the Jesuits in England; Richard Strange, lately called Provincial of the Jesuits in England; ——— Vincent, commonly called Provincial of



the Dominicans in England; *James Carter*, commonly called President of the *Benedictines*; *Sir John Warner*, alias *Clare*, Baronet; *William Harcourt*, *John Kenis*, *Nicholas Blundell*, — *Edward Mico*, *Thomas Bedingfield*, alias *Benefield*, *Basil Lanworth*, *Charles Peters*, *Richard Peters*, *John Conyers*, *Sir George Wakeman*, *Thomas Fenwick*, *Dominick Kelly*, *Fitz-gerald*, *Evers*, *Sir Thomas Preston*, *William Lovel*, Jesuits; *Lord Baltimore*, *John Carrel*, *John Townley*, *Richard Langhorn*, *William Fogarty*, *Thomas Penny*, *Matthew Medbourn*, *Edward Coleman*, *William Ireland*, *John Grove*, *Thomas Pickering*, *John Smith*, and divers other Jesuits, Priests, Friars, and other Persons, as false Traitors to his Majesty and this Kingdom, within the time aforesaid, have traiterously consulted, contrived, and acted to and for the accomplishing of the said wicked, pernicious, and traiterous Designs; and for that end did most wickedly and traiterously agree, conspire, and resolve to imprison, depose, and murder his sacred Majesty, and to deprive him of his Royal State, Crown and Dignity; and by malicious and advised Speaking, Writing, and otherwise, declared such their Purposes and Intentions.

And also to subject this Kingdom and Nation to the Pope, and to his tyrannical Government.

And to seize and share among themselves the Estates and Inheritances of his Majesty's Protestant Subjects.

And to erect and restore Abbeyes, Monasteries, and other Convents and Societies, which have been long since, by the Laws of this Kingdom, suppressed for their Superstition and Idolatry; and to deliver up and restore to them the Lands and Possessions now vested in his Majesty and his Subjects by the Laws and Statutes of this Realm: And also to found and erect new Monasteries and Convents, and to remove and deprive all Protestant Bishops, and other Ecclesiastical Persons from their Offices, Benefices, and Preferment.

And by this means to destroy his Majesty's Person, extirpate the Protestant Religion, overthrow the Rights, Liberties, and Properties of all his Majesty's good Subjects, subvert the lawful Government of this Kingdom, and subject the same to the Tyranny of the See of Rome.

3. That the said Conspirators, and their Complices and Confederates, traiterously had and held several Meetings, Assemblies, and Consultations, wherein it was contrived and designed among them, what Means should be used, and what Persons and Instruments should be employed, to murder his Majesty; and did then and there resolve to effect it by poisoning, shooting, stabbing, or some such-like Ways and Means; and offered Rewards and Promises of Advantage to several Persons to execute the same, and hired and employed several wicked Persons to go to *Windsor*, and other Places where his Majesty did reside, to murder and destroy his Majesty; which said Persons or some of them accepted such Rewards, and undertook the perpetrating thereof, and did actually go to the said Places for that End and Purpose.

4. That the said Conspirators, the better to compass their traiterous Designs, have consulted to raise, and have procured and raised Men, Money, Horses, Arms and Ammunition; and also have made Application to, and treated and corresponded with the Pope, his Cardinals, Nuncios, and Agents, and with other Foreign Ministers and Persons, to raise and obtain Supplies of Men, Money, Arms, and Ammunition, therewith to make, levy, and raise War, Rebellion, and Tumults within this Kingdom, and to invade the same with foreign Forces, and to surprize, seize and destroy his Majesty's Navy, Forts, Magazines, and Places of Strength within this Kingdom; whereupon the Calamities of War, Murders of innocent Subjects, Men, Women and Children, Burnings, Rapines, Devastations, and other dreadful Miseries and Mischiefs must inevitably have ensued, to the Ruin and Destruction of this Nation.

5. And the said Conspirators have procured and accepted, and delivered out certain Instruments, Commissions and Powers, made and granted by or under the Pope, or other unlawful and usurped Authority, to raise and dispose of Men, Monies, Arms, and other Things necessary for their wicked and traiterous Designs; and namely, a Commission for the said *Henry Lord Arundel of Wardour*, to be Lord-Chancellor of England; and another Commission to the said *William Earl of Powis*, to be Lord-Treasurer of England; another Commission to the said *John Lord Bellasis*, to be General of the Army to be raised; another Commission to the said *William Lord Petre*, to be Lieutenant-General of the said Army; and a Power for the said *William Viscount Stafford*, to be Paymaster of the Army.

6. That in order to encourage themselves in prosecuting their said wicked Plots, Conspiracies and Treasons, and to hide and hinder the Discovery of the same, and to secure themselves from Justice and Punishment, the Conspirators aforesaid, their Complices and Confederates, have used many wicked and diabolical Practices; viz. They did cause their Priests to administer to the said Conspirators an Oath of Secrecy, together with their Sacrament; and also did cause their said Priests, upon Confessions, to give their Absolutions, upon condition that they should conceal the said Conspiracy.

And when about the Month of September last, *Sir Edmundbury Godfrey*, a Justice of Peace, had, according to the Duty of his Oath and Office, taken several Examinations and Informations concerning the said Conspiracy and Plot; the said Conspirators, or some of them, by Advice, Assent, Counsel, and Instigation of the rest, did incite and procure divers Persons to lie in wait and pursue the said *Sir Edmundbury Godfrey* divers Days, with an Intent to murder him; which at last was perpetrated and effected by them: (for which said horrid Crimes and Offences, *Robert Green*, *Henry Berry*, and *Lawrence Hill* have since been attainted; and *Dominick Kelly*, and — *Girald*, and others are fled for the same.) After which Murder, and before the Body was found, or the Murder known to any but the Complices therein, the said Persons falsely gave out, that he was alive and privately married; and after the Body was found, dispersed a false and malicious Report that he had murdered himself.

Which said Murder was committed with Design to stifle and suppress the Evidence he had taken and had Knowledge of, and discourage and deter Magistrates and others from acting in further Discovery of the said Conspiracy and Plot: For which End also the said *Sir Edmundbury Godfrey*, while he was alive, was by them, their Complices and

Favourers, threatened and discouraged in his Proceedings about the same.

7. And of their further Malice, they have wickedly contrived, by many false Suggestions, to lay the Imputation and Guilt of the aforesaid horrid and detestable Crime upon the Protestants; that so thereby they might escape the Punishments they have justly deserved, and expose the Protestants to great Scandal, and subject them to Persecution and Oppression, in all Kingdoms and Countries where the *Romish Religion* is received and professed.

All which Treasons, Crimes, and Offences above-mentioned, were contrived, committed, perpetrated, acted and done by the said *William Earl of Powis*, *William Viscount Stafford*, *William Lord Petre*, *Henry Lord Arundel of Wardour*, and *John Lord Bellasis*, and other the Conspirators aforesaid, against our Sovereign Lord the King, his Crown and Dignity, and against the Laws and Statutes of this Kingdom.

Of all which Treasons, Crimes, and Offences, the Knights, Citizens and Burgesses, in Parliament assembled, do, in the Name of themselves, and of all the Commons of England, impeach the said *William Earl of Powis*, *William Viscount Stafford*, *William Lord Petre*, *Henry Lord Arundel of Wardour*, and *John Lord Bellasis*, and every of them.

And the said Commons by Protestation, saving to themselves the Liberty of exhibiting at any Time hereafter, any other Accusations or Impeachments against the said *William Earl of Powis*, *William Viscount Stafford*, *William Lord Petre*, *Henry Lord Arundel of Wardour*, and *John Lord Bellasis*, and every of them: And also of replying to the Answers which they, and every of them, shall make to the Premises, or any of them; or to any other Accusation or Impeachment which shall be by them exhibited, (as the Cause, according to Course and Proceedings of Parliament, shall require) do pray, that the said *William Earl of Powis*, *William Visc. Stafford*, *William Lord Petre*, *Henry Lord Arundel of Wardour*, and *John Lord Bellasis*, and every of them, be put to answer all and every the Premises: And that such Proceedings, Examinations, Trials and Judgments, may be upon them, and every of them, had and used, as shall be agreeable to Law and Justice; and Course of Parliament.

*The Humble Answer of William Viscount of Stafford, now Prisoner in his Majesty's Tower of London, to the Impeachment of High-Treason and other High Crimes and Misdemeanors exhibited against him and others, to the Right Honourable the Lords Spiritual and Temporal in Parliament, by the Knights, Citizens, and Burgesses, in Parliament assembled, in the Name of themselves, and of the Commons of England.*

THE said Viscount, saving to himself all Advantage and Benefit of Exceptions to the Generality, Incertainty, and Insufficiency of the said Impeachment, most humbly beseeching their Lordships thereof to take due Notice, and thereunto at all Times to have a just Regard: He answereth and saith, That he is Not Guilty of all, or any of the Offences charged against him by the said Impeachment; and for his Trial humbly and willingly putteth himself upon his Peers; no ways doubting, but that by the Grace of God, and their Lordships impartial Justice, he shall make his Innocence appear. All which he most humbly submitteth unto their Lordships further Consideration.

STAFFORD.

L. H. S. Gentlemen of the House of Commons, be pleased to proceed. Then Mr. Serjeant Maynard, one of the Committee appointed to manage the Evidence, began as followeth:

My Lords,

MAY it please your Lordships; by the Command of the House of Commons, who have imposed upon us this Task, we are here to prosecute this great Charge against the Prisoner, the Lord at the Bar. My Lords, there are two Parts that are in this great Charge; there is a General, which is the Subversion of the whole Nation, the King himself to be murdered, the Protestant Religion to be suppressed, War to be introduced, and those other Things that are expressed in the Articles. This General is charged in particular upon this Lord; and, my Lords, it was in Consideration, how far it was fit to meddle with this General at this particular Trial: For if this Lord be guilty of such Crimes, it will prove well enough that there was such a Plot. But, my Lords, withal we did consider when the first Discovery of this Plot was made, how afterwards it took cold, how Rumours were raised against it, how there were Endeavours to suppress the Belief of it; and therefore, my Lords, we do conceive that it is fit we should first settle that, that there was a General Plot, a Plot of such a Nature as the Articles express.

Some Objections we thought there might be raised, because it hath been so long in the World, some Years now since the Discovery of it, some Persons, that is, some ten or eleven, prosecuted and attainted for it, and therefore that might have been Satisfaction enough that such a Plot there was; besides, that there have been public Declarations of the Particulars of it to the World. But being now to proceed before your Lordships in a judicial Way, we did think fit, and we hope your Lordships will approve of it, to spend some Time in the Proof of the General Plot, which we hope will be to the Satisfaction of your Lordships and the whole World; for we do not think that England only looks into this Day's Trial, but the whole World one Way or other, the whole *Christian World* is concerned in it. My Lords, after the Publication of these Things (which were not judicial), how far your Lordships will believe them, as Judges, we know not; we will prove it now, that their Policies and Contrivances may be laid open to the World. And first we offer it to your Lordships, because we have made it Part of the Charge. And secondly, we shall do it, because we think your Lordships are not obliged to believe Things that are in Print, till we prove them by Witnesses judicially before you. But the main Reason why we do it, is, because we would touch upon those Endeavours that have been used to make this seem as if it were a kind of State-Plot, I know not what to call it, *Chimæra*, an Imagination, and not a real Thing. This they laboured many Ways to effect, but we shall prove that it is a very real and a very true one.



When that *Oates* first made a Discovery, it seems it had not that weight that we think now it will clearly have with your Lordships; and had not the Murder of Sir *Edmundbury Godfrey* followed in the neck of it; the World, as it was asleep, would have lain so; but that awaked us.

My Lords, it fell out in this Case, as it did in another: When *Catiline* the traitor was a great way off *Rome*, and four other Lords with him, *Cicero*, *Cethegus*, and others, five in all; it came to pass, that, as the great Orator that was at that time said, *Many were so ignorant that they would not think it; many were so unwise they would not believe it; some so ill that they would not favour it; and some so much worse that they did foster it; but all of them in not believing it, gave strength to the Conspiracy and the Treason.* And so it did here, for we look not upon ourselves as discharged from the Treason when discover'd, but when prevented.

My Lords, another Reason to induce us into the Plot of the Main Plot is this: We do not look upon it as a particular Offence, if one Lord was only to be question'd, and appear before your Lordships judicially for it; he is indeed only before you at this time to receive a Trial, and your Judgment: But, my Lords, This is a Treason of a Faction, and of a general Party in the Nation; 'tis not this or that Lord, but a great Number: 'tis not this or that Lord that is mention'd in the Articles, but the Conspiracy is of a great Faction. This do we think, and this makes us so earnest to press the General before your Lordships, that we may give Satisfaction to your Lordships and the World what this Plot hath been, and how carried on every where.

My Lords, the Consequence of that is very great: For, my Lords, if there were a general Design, and a general Plot, as clearly there was; some were to act in *Spain*, and some in *France*, some in other Places, some in *Ireland*, *Scotland*, and *England*, and a great Number of Jesuits (we have a matter of Thirty in chase about this Business); I say, my Lords, if it be so, if one Action be in one Place, and another in another; yet if there be a common Consent to accomplish this Plot, then what the one does is the Act of all, and the Act of all is the Act of every one.

My Lords, the Persons were many, and the Places and Times many they acted in, and the Designs which they were to accomplish, and the Means wherewith they were to accomplish them, were many too. Great and wicked were their Designs, to destroy our King, to take him out of the World; and why? Upon hopes of better Times to them under him that should succeed him. Another part of the Design was, to destroy, not that Man that stood in their Way, but the whole Body of the Protestants here in *England*; not a Murder, but a Massacre and a Slaughter of all, wherever they were that came near them, and none were to escape; for many meant to flee, they would be sure to cut them off: nay, not only to destroy our King, though that be the greatest Offence that our Law can take hold of, but to destroy our Religion, and to destroy us because our Religion.

To accomplish this, that we may open the Generals of it, Arms were to be provided, Men to be raised, an Army was formed in effect; and who to lead, and who to command, and who to pay. But, my Lords, not only were Arms to be had here among ourselves, but a *French* Aid must be fetched in; Assistance from *France* must be too: Intelligences and Letters are written, and Correspondencies had, and Aids promised by the Ministers from thence.

My Lords, 'Tis a strange Thing that *Englishmen* should contrive to have an Invasion of Strangers upon their own Country; and surely they are the worst Rogues in the World that were so zealous to destroy their own Nation: and they were not wise sure to think, that if the *French* did come in, they should continue great Lords or great Men; and yet thus it was in general. It is very strange that it should enter into the Heart of any Man to destroy so many Persons. But, my Lords, if we look upon what did encourage them, and what confirmed them in this Design, and what they have published to the World about their Religion, we shall not wonder at it; since they tell us 'tis lawful to kill a Heretick King, and the King of *England* is an Heretick, they say, and so declared, so that whoever would kill him did a lawful and pious piece of Service to God: nay, not only so, but a meritorious and glorious one too, for which they may be canoniz'd for Saints.

My Lords, We find it is no new thing: Look into all the Nations where the Pope hath any Power, or a possibility of hope to gain a Power, nothing hath been able to stand in their way, but they have broken thro' all the Bonds of Nature, and other Obligations to attain their Ends. Look into *Spain*, King *Philip* there removed his own Son, by what Means the Story tells us; he was Heir apparent, but he was a Protestant; and there also the Father puts fire to his own Daughter, because she was a Protestant; there a *Spaniard* goes from *Spain* into *Germany* to murder, and did murder his Brother for no other cause but because he was a Protestant. Leave *Spain*, and go into *France*; what Massacres have been committed here under the Colour of a Marriage in Queen *Elizabeth's* time! And before that, how many hundred *Albigenses* and *Waldenses* have been put to the Sword for Religion! Consider your own Country, and look into *England*, what hath been done here, when Queen *Elizabeth* had a Successor of another Religion, how many Attempts were there made upon her Person to bring that Successor in! When King *James* came to the Crown, let us remember the *Gunpowder-Treason*, wherein all the Nation was to be destroy'd; King, Lords, and Commons together; and in Parliament assembled, were then to be a Sacrifice, a Burnt-Offering, though they might all be a Peace Offering; for these Gentlemen are for Sacrifices of Blood to Peace Offerings, to reconcile us to the Pope. If this be made out, we think their Principles having produced these Fruits in other Ages, we may believe they would do so now.

What has been said as History of former Times, is not offered as Evidence of Fact to the present Case, but induces a Probability that what hath been done by such Persons may be done by them again. But, my Lords, we shall make it clear, and bring it home to this Lord, that he hath had a Head, his Tongue, his Hand, his Heart and his Purse in this damnable and horrible Contrivance and Treason for the destroying of the King, the Government, our Religion and our Nation. We shall bring it home to him; but my part is only to open the general Conspiracy: And indeed, my Lords, it is an heavy Burden on my aged Shoulders, considering that the Winter of Infirmary and Age is growing so fast upon me.

VOL. III.

My Lords, The Particulars concerning this noble Lord, because the Credit of it rests on the Testimony of one Man, viz. Mr. *Oates*, whose Testimony being taken by Sir *Edmundbury Godfrey*, Justice of Peace, and kept in Writing by him, when Sir *Edmundbury Godfrey* was way-laid, and murder'd by Men of the Popish Religion, thereby to suppress the Examination that he had taken.

This startled and opened the Eyes of the World to look about us for farther Discovery, lest we should be led as *Oxen* to the Slaughter, not knowing whither we went.

Afterward it pleased God to bring some of their Religion and Party to make further Discovery: whereupon several Jesuits, guilty of the Plot, were therefore prosecuted and brought to Judgment and Death.

After the Murder of *Godfrey*, several Fables were spread abroad, as if he were alive and married; as was declared to several Lords: others of the Party reported he had murder'd himself; but his Body being found; it was hard for the Party to invent or tell, whether he first strangled himself, and then run himself through, or first run himself through, and then strangled himself: That was a Dilemma to disprove their Fables touching *Godfrey's* Murder.

It then fell out, that Mr. *Bedlow* came as a second Discoverer, whose Testimony concurred with *Oates*; and then there being two Witnesses, as is necessary in Case of Treason, the Design was to take off *Bedlow*, that there should remain but one, a single Witness: In order to which, *Reading* tempts *Bedlow* with Rewards to lessen his former Testimony, and qualifies that which he had deposed positively was but Matter of Hearing; for which *Reading*, the Instrument in that Design and Attempt, was indicted and convicted by Three Witnesses, and suffered accordingly.

But then this Attempt upon *Bedlow* failing, the next Attempt was to take off *Oates's* Testimony, by charging him with an infamous Offence: for which purpose one *Knox* is employ'd, who suborns *Lane* and *Osborn*, and they swore it against *Oates*; but on Re-examination confesses the Subornation and Falshood of their Design, and *Knox* and *Lane* are therefore indicted and found guilty.

Thus when the Treason was discover'd, the Murder of an Officer of Justice is made the Means to hide it; and then false and infamous Stories set on Foot of that Officer to hide that Murder, and Perjury and Subornation the Means to blast the Discoverers.

These wicked and ill Practices we take to be a second Proof of the Plot, both in general and particular, the Records of which Convictions are here before your Lordships ready to be proved: For, *cui bono*, none would do such wicked Practices, but to hide a greater Sin; and worse Designs if possible will be opened, and proved by one to whom that is particularly appointed.

My Lords, We speak this that the World may receive Satisfaction; we will let our Evidence be all open and publick in the Face of the Sun, and shew, we go not about by private Subornations, though there are Endeavours to encounter us by such.

My Lords, if we make out these things, here is matter enough for the Satisfaction of the World, as to the general Contrivance. But, my Lords, as you sit here as Judges of this Lord, the Prisoner at the Bar, we must bring it down to particular Persons, and we shall do it even to him, that those things which were mention'd in general were his Contrivance at least-wise, as a Man highly, deeply guilty of conspiring the King's Death; and in order to that, of raising an Army, and the other Things that have been open'd.

My Lords, I beseech you to pardon me, if I have troubled you too long: The Particulars are many, I have had little help to prepare it from any body but my self; but I submit my self to your Lordships, and hope that what is wanting in me, will be supply'd by others that follow: and I also hope you will find no defect in our Evidence at all, whatsoever may have been in the opening of it.

Then Sir Francis Winnington, another of the Committee appointed for the Management of the Evidence, spoke as followeth.

My Lords,

I SHALL begin where Mr. Serjeant *Maynard* ended, and confine myself to this Case, as it stands before you, and to open the particular Evidence relating to the Lord, the now Prisoner at the Bar.

My Lords, I look upon the Cause of this Day to be the Cause of the Protestant Religion; and I doubt not but that Plot, which has alarmed all *Christendom*, will be so clearly made out in this Trial, that the most malicious of our Enemies will henceforth want Confidence to deny it.

That the Religion of the Papists does countenance and encourage the murdering of Princes, the massacring of such as they mis-call Hereticks, and the committing of all sorts of Impiety, in order to promote their Superstitions and Idolatries, has been mention'd by the Gentleman who spoke before me; and I should mispend time to say more of a Truth so well known, in so great and so learned a Presence: I will therefore directly apply myself to the Business of the Day, to represent to your Lordships our Evidence of the Plot in general, and of the Guilt of this Lord at the Bar in particular.

In order to which, I shall crave your Lordships leave that I may use this Method.

First, to shew what advantageous Opportunities the Papists had to enter into, and undertake this great and detestable Conspiracy.

Secondly, to prove the Reality of the Plot in general, which I look upon as a very easy Undertaking.

Thirdly, to state the particular Evidence against the Prisoner at the Bar, by which he will appear to have been one of the principal Conspirators in this horrid Design to murder our Sovereign, (whom God preserve) to extirpate the Protestant Religion, and to subvert totally the Government and fundamental Laws of this Kingdom.

My Lords, to shew what extraordinary Advantages the Papists had to enter upon this Conspiracy, will very naturally lead us into our Proof of it; and therefore I shall speak somewhat to that in the first place.

It is not unknown to your Lordships, or to any others who have in the least degree enquired into Affairs, that his Majesty has been so unhappy as that (unawares to him) some Ministers, who have been Papists at the bottom, and others that have drove on their Interest, have crept into his Councils, and thereby gave great Opportunities to advance Popery.

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'Tis most true, that as soon as the ill Ministers were detected, and their ill Designs discovered, his Majesty did discharge them: But to the Misfortune of the King and his People, as ill Ministers have been recommended to succeed them, and came into their Places.

In the next Place, my Lords, there did appear in some Men too easy and favourable a Disposition towards the Papists. They were grown strangely moderate towards these old Enemies of our Church and State. New Projects of reconciling us were set on Foot, and Books were written to distinguish the Church of Rome from the Court of Rome. One of those Books, which was printed in the Year before the Discovery of the Plot, pretends, that there ought to be a Difference made between Papists of loyal and disloyal Principles. This Book, as it was written more artificially than the rest, and published in so critical and dangerous a Juncture, deserves, and I doubt not in time will have, a particular Consideration. 'Tis easy to believe how great Encouragement this must give to the Romanists, to see how very willing Men were to meet them, and how freely the Pen was drawn in their Favour.

Another great Encouragement, my Lords, which the Papists had, was, That by the means of those Ministers who were secretly of their Faction, whenever his Majesty was pleased to command the Laws made against them in the Reign of Queen Elizabeth and King James to be put in due Execution, his good Intentions were frustrated, and the Severity of those Laws was turned upon the Protestant Dissenters. This was a Master-piece of Rome, not only to divert from themselves the Edge of those Laws which were designed against them, but to turn them upon the Protestants, and to make them useful to advance the Romish Interest: And when they had thus divided and distracted us, then was the fairest time for them to attempt to destroy us utterly, and to make sharp their Weapons in order to a Massacre.

But, my Lords, that which gave the Papists the greatest Encouragement to enter into this detestable Conspiracy, was, that they had (to the great Unhappiness of this Kingdom, and the Protestant Religion) the Expectation and Hopes of a Popish Successor. This was an Opportunity not to be lost. They had abundant Experience of his Majesty's Firmness in the Protestant Religion, both during his Exile, and since his happy Restoration, and how resolutely he had kept that Promise which he made in his Letter from Breda, That neither the Unkindness of some Protestants, nor the Civilities of some Papists, should in the least Degree startle him, or make him swerve from his Religion.

They therefore could have no Hopes of arriving at their Point, the Re-establishment of their Church, whilst the King lived; and it was too great a Hazard to expect his Majesty's Death by the Course of Nature: And therefore, like true Papists, that would stick at no Wickedness to accomplish their Designs, they threw off all Bonds of Loyalty and Allegiance, and resolved to destroy our Sovereign, whose Life was the only Obstacle in their Way. This was the last and most wicked Part of their Plot, which, though it consisted of very many Parts, yet this was the principal; and our Evidence against the Lord at the Bar will chiefly run to this Part of the Design.

I have only mentioned some of those Encouragements which the World plainly saw the Papists had, before the Plot was detected: But since the Discovery, it has been abundantly proved, that it had been carrying on for many Years, and that so universally, that it is a wonderful thing it appeared no sooner.

My Lords, I come now to our Evidence: And though it may seem unnecessary to prove to your Lordships a general Plot of the Papists, who are so well satisfied of it already, and have more than once declared so to the World; yet because it is the most natural Method for us, first to prove that there was a Conspiracy, before we attempt to prove this Lord to have been one of the Conspirators, we shall beg your Leave as to that particular. And as we shall be careful not to take up too much of your Time, so we well know your Lordships will allow us all the Time necessary to give our Evidence.

We have many Records, Things reduced to Judgment, whereby the Plot is most undoubtedly proved, and which are legal Evidences before your Lordships: The Attainders of several Jesuits and Priests, the Attainder of Langborn and of Coleman, whom I should have named in the first Place. We have also the Conviction of those that were prosecuted for the Murder of Sir Edmundbury Godfrey; and there is a Conviction, though not for the Murder, yet for cutting the Throat of Mr. Arnold. 'Tis true he is not dead, yet as to the Publick, I count him murdered by the Papists, though he be alive in the World. My Lords, we have Convictions not only of Treasons, Murders, and cutting of Throats, but of almost all other Villanies whatsoever: As of Attempts to suborn Witnesses, and to scandalize the King's Evidence; and to that we shall produce the Records concerning Reading's Attempt upon Bedlow; that concerning the suborning of Knox and Lane to swear Buggery against Dr. Oates; and the Conviction of Tashborough and Price to corrupt Dugdale, a principal Witness as to this Plot.

I only mention these Particulars, my Lords; and certainly as you are a great Court of Record, you will take Notice of them. It would be a hard Thing, perhaps, to spend the time in reading all, since all of them are made known to the World already; but we shall in the Course of our Evidence produce them, and you may read such of them as you please. All the Use we make of them, is for the Proof of the general Plot, which is requisite to be done; for it will be hard to believe the Prisoner guilty of the Plot, if there was no such Plot at all.

My Lords, We shall make appear to you things which have not yet been brought into Judgment. In the Year 76, I shall prove by a Witness that was then abroad, and discoursed with Andrew Champion, Green, and several other Priests and Jesuits, that they did acquaint him that there would be great Alteration in England ere long; that the King was a Heretick, and excommunicated, and might be destroyed; and this Doctrine they continually and industriously preached. And they further said, if once the King were removed (who alone stood in the Way), their Religion must needs flourish; for this Reason, as the Witnesses will speak, that the Duke of York was on their Side.

My Lords, We shall prove, that they had in England Men no less industrious amongst them, some whereof have been executed: Gavan by Name, who made this Business to go up and down in several Counties

of this Kingdom, to prove by Scripture, Councils, and Examples, That it was a lawful Undertaking to kill his Majesty. These things I name, as necessary in order to introduce our particular Evidence; I am unwilling to dwell longer upon this Point of the general Plot. I shall produce the Records, and produce our several Witnesses, Mr. Oates and others, that will give you a full and plain Account of it.

My Lords, Having done with the general Plot, I come now to open the particular Evidence against my Lord the Prisoner at the Bar. As to him, my Lords, our Evidence stands not upon Conjectures, or upon mere Probability, because this Lord is (as we well know) a zealous Papist, and hath owned himself so; but we have express particular Proofs against his Person. My Lords, we have one Witness to produce to your Lordships, who will prove, that in September 78, there was a Consult of some Priests and other Conspirators, at Tixal in Staffordshire, my Lord Aston's House, for killing the King, where my Lord Stafford was present. And by a Discourse in the same Month, we shall prove what Reason this Lord did give, why their Party undertook the murdering of the King; because, he said, that he and many Catholick Families had no Recompence for their Loyalty; but if any thing fell, it was disposed of to Rebels and Traitors. Thus he repented deeply; but above all, the Obligation of his Conscience, and of his Religion, persuaded him to do it, and confirmed him in his Resolution to go on in this horrid Design.

My Lords, We will go further, and prove, that this Lord offered 500*l.* out of his own Purse to carry on the Plot, and particularly this Part of it, for killing the King. We shall produce to your Lordships a Witness to whom he made this Offer, as looking upon him to be a faithful Man, and having received so great a Character of him from one Evers a Priest, that he thought he might safely communicate the Matter to him; and the Argument he urged to persuade the Witness, besides the 500*l.* which he said upon his Application to Harcourt and Ireland they should pay him, was this, That others as well as he were employed in the same Design; that it was the only Way to establish the Roman Religion in England; that he would lay an everlasting Obligation upon all the Persons of that Persuasion, and that he should not only have his Pardon, but be canonized for it.

My Lords, This is the Substance of the Testimony of the first Witness which we shall produce against my Lord Stafford; and that is so express, as I think it can hardly be answered.

My Lords, Our next Witness says thus (for I shall but open the Substance of what they say): In June or July, 1678, there were several Letters from this Lord at the Bar to the Jesuits in London, in which his Lordship did declare his Readiness to serve them in their great Design: And in June (78) the latter End of the Month, my Lord Stafford came to Mr. Fenwick's Chamber in Drury-Lane (he went not then by the Name of my Lord Stafford, but by the Name of Mr. Howard of Effingham), and there he did receive a Commission from Fenwick to be Paymaster-General of the Army which was to be raised for the carrying on the Plot. His Lordship told them he was then going into the Country, but he hoped he should soon hear from them, that they had done the Business, at least that it would be done before his Lordship did return. To which Fenwick made answer, that his Lordship must look after the Business as well as other Persons; and there will be need of some to countenance it in Town: Thereupon the Lord, the Prisoner at the Bar, said, That they had been often deceived by this Prince, and been patient with him, but they would bear no longer, but were now resolved to do the Work without Delay, for their Patience was worn out. Several other particular Circumstances the Witness will acquaint your Lordships withal, which I shall not take up your time with.

My Lords, We have a third Witness as considerable and particular as any of the rest, one that lived three Years in the Lady Powis's House, had his Education there, and was persuaded by that Lady, and by one Morgan a Jesuit, to become a Friar, and to that End was sent to Doway; but not liking to continue at Doway (he will tell you the Reason why) he escaped to France, and at Paris came to his Brother, a Benedictine Monk there, who advised him to go for England. But whilst he staid at Paris, this Gentleman, by the means of his Brother and other Priests, grew into a great Familiarity with my Lord Stafford, who was then in France, and who at last came to have such a great Confidence in him, that his Lordship could not hold, but told him, that though he had obliged all his Friends by going away from Doway, yet he had something to propose to him, which would be a means to reconcile him to his Friends, and bring him into Preferment, and into the Friendship of all good Catholicks, whom he would oblige by it. The Gentleman was willing to embrace so happy an Opportunity, and desired to know what it was could procure him so great a Good. My Lord Stafford, the Prisoner at the Bar, told him, It was a Thing of very great Importance, and after having required from him all possible Obligations of Secrecy, he told him plainly, that great Benefits should accrue to himself, and what Advantage to the Catholick Cause, if he would make himself and the Nation happy, by undertaking to kill the King of England, who was an Heretick, and consequently a Rebel to God Almighty. My Lord Stafford did believe the Witness did embrace this Proposal warmly, and therefore directed him to prepare to go for England, and to go before-hand from Paris to Diep, where he would meet him, and go over with him. But it seems my Lord Stafford met with some Diversion, for he did not keep his Word with him in coming; and so this Gentleman being disappointed, went over without him: But fearing to be called upon to the French Service, he returned back again suddenly, and went into the French Army.

My Lords, We shall produce these Witnesses against the Lord at the Bar; and when they have proved to your Lordships what I have opened, any one who was not acquainted with the Popish Party, would believe they would be at a Loss how to acquit themselves from this Charge. All manner of foul and indirect Practices have been used by them to terrify to corrupt, and to scandalize our Witnesses, all manner of Objections have been made to our Evidence. If the Witness does not come up and speak directly to every Point, we are told, he says nothing at all, if he speaks directly, they cry, he is not to be believed. Thus they are ready Answer to every Witness that has been or ever shall be produced, either that he says nothing material, or that nothing that he says ought to have any Credit.



But we doubt not by this Trial before your Lordships, if we cannot stop their Mouths, at least to convince all the World besides of the Reality of this Plot.

It will be no wonder if their Confidence goes on still to frame Cavils: They are us'd to scandalize the Government, and they cannot give it over. How often has his Majesty under his Great Seal published and declared this Conspiracy! How often has he press'd his Parliaments to go on to bring the Conspirators to Punishment! And at the Opening of this very Parliament he says plainly, That he does not believe himself safe from their Designs. Your Lordships also have voted the unquestionable Truth of the Plot, and so have the Commons; yet these Men are so hardy as still to deny the plainest Truth, so confirmed as this hath been.

Nay, my Lords, their Malice goes yet farther, for they have been so bold as to whisper up and down, and industriously to spread Reports, before the Trial, as if this Lord at the Bar, and the rest who are impeached, should certainly be acquitted. We do hope to be able to detect the Authors of this great Scandal; and the Commons doubt not of your Lordships Concurrence to assist them in bringing them to their deserved Punishment. This is sure the first time that ever any sort of Men presum'd to reflect upon the Justice of this High and Noble Court. Your Ancestors, my Lords, did by their Honour, Courage and Justice, preserve our Ancestors; the Advantages of which, we, who are descended from them, do now enjoy; and we shall never have occasion to doubt in the least, but that your Lordships will tread in their Steps. You have in your Hands a great Opportunity to make your Zeal for Truth and for the Protestant Religion famous to Posterity. No Artifice or Malice can create the least Jealousy in us, that ever your Lordships should shew any Partiality or Injustice to the Commons of England. To your Judgment this Cause is submitted; and we have your Judgment, we doubt not but we shall drive Popery out of this English World.

My Lords, I shall go on to the Proof of our Cause; and I hope this will be a happy Day to us and the whole Protestant Interest.

Then Mr. Treby, also one of the Committee appointed for the Management of the Evidence, spoke as followeth:

My Lords, THESE two learned Gentlemen have fully discharged their Province. I shall proceed to call our Witnesses to give their Testimony.

But before we produce them your Lordships will be pleas'd to take notice, that our Evidence will consist of two Parts, General and Particular; the General, to shew the Universal Conspiracy; the Particular, to shew what special Part this noble Lord, the Prisoner at the Bar, had in it.

And though in the first Part my Lord Stafford may not be particularly nam'd, yet that Evidence will be pertinent and proper for us to give in this Trial of my Lord Stafford, for we charge him not with the private Treason, wherein he with his immediate Complices only might be concerned, but it is a Treason of the Popish Faction, or at least the principal and active Papists.

We lay it in our Articles of Impeachment, That there was an execrable Plot contriv'd and carried on by Papists, and that the Conspirators acted in divers Parts, and in divers Places, beyond Sea as well as here. It was a Treason that did bestride two Lands: England indeed was the Thing aim'd at; the Destruction of the Religion, Government, and Liberty of England, was the End; but the Means and Instruments were not collected here only, but part of them were to be brought in from Abroad.

This is an Enterprize too extensive to be entirely managed by a single Nobleman: And though we look upon my Lord Stafford as a great Malefactor, yet we cannot think him so great a Man, as to be able within his own Sphere to compass this whole Design.

Should we not take this Course of Evidence, first to prove the general Plot, it might be a great and just Objection in my Lord's Mouth to say, You charge me with a Design of subverting the Kingdom, how is that possible to be undertaken by me, and those I have had opportunity to converse and confederate with? A mighty Part of the Catholic World had need to be engaged for such a Purpose.

My Lords, If this would be a material Objection from this Lord, then will it be requisite for us to obviate and prevent this Objection, by shewing, first, that there was such a grand and universal Design of Papists, in which this Lord was to co-operate for his distinct Share; though perhaps when we defend to our particular Evidence, it will appear, that his Part hath been great, and manag'd with Malice as great as any.

My Lords, We shall begin with a Witness, a Gentleman whose Education has given him the Opportunity of knowing the Inside of their Affairs; and we presume he will give you a satisfactory Account: His Name is Mr. John Smith.

L. H. S. What do you call him to, Gentlemen?

Mr. Treby. To the general Plot, my Lords.

Lord Stafford. May it please your Lordships, I know not who he is, nor his Name; I humbly beseech your Lordships, that this Witness, whoever he be, and all the rest that have any thing to witness against me, may look upon me face to face, according to the Words of the Statute. I humbly beseech your Lordships to grant me this, which I take to be according to Law; and that each may give his Evidence alone, and that both against me, and for me, one may not know what the other says.

L. H. S. My Lord, you shall have all the fair Proceedings that can be.

L. Staff. The Law says, my Accusers must look me face to face. I desire to have the Words read.

L. H. S. Your Lordship may see him where he stands up.

Then Mr. Smith turned, and looked upon my Lord Stafford.

L. Staff. I do see him, but I don't know him.

L. H. S. Swear him.

Clerk. The Evidence that you shall give in the Trial of William Viscount Stafford, shall be the Truth, the whole Truth, and nothing but the Truth; so help you God, and the Contents of this Book.

L. H. S. Your Lordship observes he is not brought as a particular Witness against your Lordship, but to prove the general Design of your Party.

L. Staff. 'Tis still concerning me.

L. H. S. Look upon my Lord Stafford (which he did), and now tell your Evidence.

Mr. Treby. This is Mr. Smith, my Lords. And that which we would

examine this Witness to, is, the general Design of the Plot; what Knowledge he hath had of it here or beyond Sea; the Gentleman is able to understand the general Question.

Mr. Smith. My Lords, I remember very well when I went first into France, I came acquainted with Abbot Montague, Father Gascoigne, and several other Popish Priests and Jesuits, who often discours'd with me, and told me, if I would make myself a Catholic, I should have an Employment amongst them there, and afterwards in England; for they did not doubt but the Popish Religion would come in very soon. Upon which I ask'd this Lordship the Abbot one Day, what reason he had to believe it? He told me two Reasons; first, that they did not doubt but to procure a Toleration of Religion, by which they should bring it in without Noise; and secondly, that the Gentry that went abroad did observe the Novelty of their own Religion, and the Antiquity of theirs, and the Advantages that were to be had by it. These Reasons Abbot Montague gave me. There was one Father Bennet and others that told me, the chief Reason was, their Party was very strong in England, and in a few Years they would bring it in, right or wrong. All this would nor prevail upon me to turn Papist, and I liv'd among them several Years. At last I had a Design to go to Rome; and as I went I had a Design to go to Provence (and so into Italy), where there was one Cardinal Grimaldi coming through the Town, and the Jesuits having a great School there, I was curious to go to the School, and they were very desirous I should tarry for some time in the Town: I did, and they made much of me, and told me much to the same Substance, what Assurances they had of their Religion coming into England. At last they had a desire I should discourse with the Cardinal; which I did; and he made much of me, and he it was that perverted me to the Romish Religion. Upon this, the Cardinal shew'd me a Pair of Hangings that were in his House, which he said did belong to the Queen-Mother, and were bought in Paris; and he told me he was acquainted with many of the Nobility in England, and that he had great Assurance the Popish Religion would prevail; and he told me there was but one in the way, and though that Man was a good-natur'd Man, yet they could not so far prevail upon him, but that to accomplish their Designs they must take him out of the way. But at last I left this Place, and went to Rome, where I liv'd some Years in the English Jesuits College there; and when I had liv'd there five Years, I came to be Prefect of several Rooms there, which are the Scholars Lodgings and Places of Study. I have heard it there often disputed in their own College, both preach'd and privately exhorted, that the King of England was an Heretick, and that there was no King really reigning, and whoever took him out of the way would do a meritorious Action.

L. H. S. Who was that that said so?

Mr. Treby. Name the Person.

Mr. Smith. Father Anderton, Rector of the College, who was a very good Scholar, Father Mumford, and one Father Campion; but chiefly one Father Southwell, one of the chief of the Jesuits. And I doubting of the Truth of that Opinion, they did shew me several of their Books there, and directed me to some Passages of Mariana, Vasquez, and Bellarmine, which I have since publish'd to the World, wherein they did assert it as a true Doctrine, and as Christian Doctrine, what the Fathers told me; and this was never condemn'd at Rome. Besides, my Lords, when I was coming from Rome, with my Faculty and License sign'd by Cardinal Barberino, who generally conducts, or causes to be conducted, all Papists to take their Leave of the Pope; and before we came away (for there were five or six of us together) for a whole Month these Fathers were exhorting of us, That we were not obliged to obey the King of England, and that in all private Confessions we were to instruct all Persons that we thought were capable of any Design, that they should use all their Endeavours for promoting the Popish Religion. I, coming into England, made my Application to Dr. Perrot, who belonged to the Portuguese Ambassador, and was Chief of the Popish Clergy in England. I was kept there some Months to say Mass in his Chapel; and afterwards I was sent into the North, where there were abundance of Jesuits and Friars, to one Mr. Jenison's House; where knowing the Principles of these People, I made it my Business to rout these Jesuits away, especially out of Mr. Jenison's House, who had a Kinsman of his own that was a Jesuit, and us'd to serve him in his House, and great Complaint was made against me: And there was one Mr. Smith, otherwise Serjeant, in the North, who gave me Intimation of it, and to whom I wrote to satisfy him and the Clergy of the Grounds and Reasons why I routed them away; which, if he be in England now, he can justify. Upon this, I received a smart Letter, as a kind of Reprimand for my doing so; and he told me, that tho' they did agree with me in Doctrine, yet they would endeavour that they could bring in the Popish Religion, and tax'd me sharply for appearing against it. I told him how the Jesuits perverted the Duke of York; and that by that means they would be the chief Men in England, though there were none of their Order till Queen Elizabeth's Time. Besides, my Lords, in Rome I saw Coleman's Letters, and read them once a Month, as I believe; wherein he gave us Intelligence of several Passages that happened in Court; how the Duke, and the Queen, and the chief of the Nobility were of their side; how they carried Matters several times; the Ways my Lord Clifford did use, and Sir William Godolphin, to effect the Work; and that they did not question but they should get my Lord-Treasurer Danby on their Side too. This was in Coleman's Letters; and he had so much Allowance for his Intelligence. These Letters of his I read several times in the College. My Lords, afterwards, when I came from Rome, I saw Abbot Montague again, and he said he was very glad to see me, and that I was a Priest. Well, but, said I, what am I the better? Where is the Employment you promis'd me when I should come into England? He told me I should have it very soon, and he was glad that I had not made myself a Jesuit; and he recommended me to Dr. Goffe, Confessor to the Queen-Mother, who said he would do any thing in the World for me, and he did not doubt but he should get a Preferment for me; which Dr. Goffe is now living. Truly when I came into England, I found all the Popish Clergy of England, that I discours'd with, of the same Opinion, that they did not doubt but the Romish Religion would soon come in. And besides, in the North there was gathering of Money, in which I was order'd to be one of the chief Men; but I was against it. I told them I would do nothing in it; I thought it was illegal to send any Money beyond Sea: They told me it was Charity, only to repair the College at Down. I told



told them it was strange that there should be so much Money raised only to repair one College, which would serve three or four Colleges; and I persuaded Mr. Jenison, and all other Persons I had to do with, not to meddle with it. As to this raising of the Money, I conceive it may be inferred, it was for some other private Business, and I believe was for the carrying on the Design. As for the Gentleman at the Bar, my Lord Stafford, I know nothing of my own particular Knowledge, but only this; There was one Thomas Smith, Sir Edward Smith's Brother, that lived at a Place not far off the Place where I lived, who was one that contributed in paying the Money that was then collecting: He was the Man that writ a Letter up to my Lord Stafford, to complain of two or three Justices of the Peace that were active against Popery; upon which there was one that was turn'd out, that I think is now of the Honourable House of Commons—

Mr. Treby. Name him.

Mr. Smith. Sir Henry Calverly. The other was not turn'd out. So I ask'd Smith, when I was lately in the Country, about it; for I heard a Rumour, that there was a Letter of this Mr. Smith's found in my Lord Stafford's Chamber, and I was told by a Parliament-Man, one Colonel Tempest. So, said I to him, now you will be concerned in the Plot. No, said he, I care not for that Letter, it will signify nothing; for my Lord won't keep by him any thing of any Moment. I asked him what he knew about my Lord. He told me he writ another Letter to my Lord, to know whether he would make a Conveyance of his Estate away, and whether apprehended they were in Danger: And he told me his Lordship's Answer was, That several did so, but he would not; for he expected some sudden Change or Alteration. I asked him what Change or Alteration he understood by it. Sir, said he, what can be understood by it, but an Alteration of the Government and Religion? I am sure, said he, my Lord is so wise a Man, that he would not write so without some Ground. This is all I can say to the Gentleman at the Bar; and this is true, by the Oath I have taken.

Mr. Treby. My Lords, I observe Mr. Smith in the beginning of his Testimony (speaking of the Discourse he had at Rome) said, they told him there was one in the way; I presume 'tis not uneasy to conjecture who was that one.

L. H. S. It was surely the King.

Mr. Treby. But we would rather have it explained by himself.

Mr. Smith. Father Anderton and Father Southwell did say that the King was a good Man, but he was not for their turn, and he was the only Man that stood in the way.

Mr. Treby. Did they name the King?

Mr. Smith. Yes, it was the common Discourse over the Country.

Mr. Treby. My Lords, I desire Mr. Smith in the next place may give an account of the Methods they were to use to accomplish the Design, the firing of the City, and the rest.

Mr. Smith. As to the burning of London, I heard nothing beyond what was at all but this; it was discoursed that the Papists did it, and the Protestants, but they denied it, and they said it came accidentally in a Baker's House: But this I have often heard them say, that it was no great Matter if it had been all burnt.

L. H. S. Will you ask him any more Questions yet?

Mr. Treby. No, we have done with him.

L. H. S. Have you concluded your Evidence, Sir?

Mr. Smith. Yes.

L. H. S. My Lord Stafford, will your Lordship ask him any Questions?

L. Stafford. I desire to know how long ago it was, my Lord, since he was made a Priest.

Sir F. Win. My Lords, with your Lordships Leave, no Man is bound to answer a Question whereby he shall accuse himself; therefore under favour the Question is somewhat harsh, and we demand your Judgment in it.

L. H. S. What is the Question your Lordship would have asked him?

L. Staff. I will not ask it, since 'tis an Offence; but did not he say he said Mass? Pray how long ago was that?

L. H. S. I will ask him a Question. Are not you a Protestant?

Mr. Smith. Yes, my Lord.

L. H. S. How long have you been so?

Mr. Smith. I have been a Protestant near upon two Years.

L. H. S. How long ago before were you perverted?

Mr. Smith. Some six or seven Years.

L. H. S. That is nine Years. That was, I suppose, about 71.

Mr. Smith. I was always bred a Protestant, and was so abroad till I went towards Rome.

L. H. S. It is not criminal to have been a Priest, if he have conform'd.

L. Staff. I have no more to say to him.

L. H. S. Have you any more Questions to ask him?

L. Staff. No; I never saw him before; he may be as honest a Gentleman for aught I know as any one here.

Mr. Treby. Then, if your Lordships have no more Questions to ask him, he may withdraw. My Lords, the next Witness we produce is to the General still, and that is Mr. Stephen Dugdale.

L. Staff. Is he only to speak to the General, or to me?

Mr. Treby. To the General; we shall tell your Lordship when we come to the Particular.

Sir F. Win. My Lords, with your Lordships Favour, we have opened our Case, First, that we would go on with the General; while we are upon that Head, we will only call those that speak to the General, but it may happen that one Witness may speak to both; but we shall divide his Testimony when we come to observe upon it.

Mr. Treby. My Lords, I take Leave to acquaint your Lordships, that Mr. Dugdale hath but a low Voice, and your Lordships will not hear him without a Command of Silence: which was done by Proclamation, and Mr. Dugdale sworn.

Mr. Treby. Mr. Dugdale, take Notice, we call you now only to the general part of the Plot, what Discourses you have heard from Priests in general concerning any part of the Plot: And you are not to give your particular Evidence against this noble Lord, my Lord Stafford, till we call you thereunto.

L. H. S. What say you, Sir?

Mr. Dugdale. About fifteen or sixteen Years I have been acquainted, that there was a Design carrying on for the bringing in the Romish Religion.

I have at several times, by the means of my ghostly Father, that was Mr. Evers, been acquainted that there were several Lords and several Priests in several Places in England that were to carry it on; that is, they were to have Money and Arms ready for those that wanted, against the Death of the King. I have seen several Letters which have come from Paris, Rome, and St. Omers, all relating to this, to encourage Mr. Evers, and that he should go on to encourage the rest that were engaged. For that purpose I read some of 'em, and intercepted them, because they were all directed to me. Mr. Evers hath sent me upon Messages, sometimes by Letters, and sometimes by Word of Mouth, and all tended for the introducing of their Religion, and that all should be ready with Money and Arms against the King's Death: For I did hear nothing till of late about the killing of the King. In particular, there came one Letter to Evers from my Lord Stafford, to shew that things went on well beyond Sea, and hoped they did so here. I saw another time some Letters which were also transmitted to my Hands by a Messenger that came from Boscobel, which did come from Paris, and so to St. Omers, from whence they came to Harcourt, and Harcourt had delivered the Letters to have the Opinion of some Lords; all which contained Advice which they had received from Paris, which they counted extraordinary good. The Purport of these Letters were to shew there was no way could be more likely to do their Work, than if any sudden Death should happen to the King, then to throw it upon the Presbyterians, who had killed the old King, and were likeliest to be thought to have done this; and so they might easily get the Protestants, those of the Church of England, to join with the Papists against the Presbyterians, who would by that become odious, and so should weaken the Party, the more easily to accomplish their Design. I have of late several times been in Company with Priests and other Gentlemen in the Country, when they have had Consultations both for the introducing of their own Religion, and taking away the King's Life, which they always intend to be about November, December, or January 78. It is late in the Year; but all that Year (78) this was their Consultation. I have been sent to the Jesuits, some of them, particularly to Mr. Vavasor, Mr. Govan, for some Monies, for there was a general Collection, and there was the Sum of five hundred Pounds at one time, which I received, and gave to Mr. Evers, and he returned it to London, for the carrying on this Design, and for discharging an Account of Arms and Things received from beyond Sea. And it was agreed that my Lord Aston, Sir James Symonds, and others, should go in October 1678, to dispose of the Arms which they had so received, some here, and some beyond Sea, to the Value, I heard say, of 30000*l*. Moreover, I did hear that they were to have Men raised there, as well as here. So I have heard from Mr. Evers, and Mr. Govan and others, and I have been also by when it hath been discoursed that the King of France was acquainted with all these Designs, and that he would furnish us with Men, and should not be wanting with all other Aid and Assistance, if there should be any Alteration, if the King should die or be taken away, or to the Purpose. I have been several times put upon to make Foot-Races to draw People together, that they might the better have Discourses together without Suspicion. I was likewise put in trust by the Jesuits all the while the Plot was carrying on, and particularly, for two Years, all the Letters relating to the Plot came to my Hand, some of which I opened, and some I kept in my own Hands; and particularly I had one that came to my Hands, which was about the Death of Sir Edmundbury Godfrey; for when I carried it to Mr. Evers, he said, There was one of our Enemies taken out of the way: and it was contained in the Letter, *This Night Sir Edmundbury Godfrey is dispatch'd*; which by the Date of it was the 12th of October 1678. I told him that that would prove a Discouragement to us, and would be the Ruin of all the Design: he said, Not so, it would rather prove otherwise; for he was one that was active in punishing lewd and debauched Persons, and it would rather be put upon them than us, as done out of Revenge.

Mr. Treby. Pray, Sir, speak the particular time when that Letter came into Staffordshire.

Mr. Dugd. The 14th of October 1678, which was Monday.

Mr. Treby. The Date of it pray tell us.

Mr. Dugd. The 12th of October 1678.

Mr. Treby. The very Night that it was done.

Mr. Dugd. Likewise when I did hear there was like to be an Alteration in the Government, and having such fair Promises, I was encouraged to it, and was very willing to contribute to the Design; and I did then make over an Estate which I had of four hundred Pound Value for that Purpose, and for the praying for my Soul. And when my Lord Aston and I should come to account, as there was Money over and above due to me, I did likewise promise, because I saw Money would be wanting; I would give them a hundred Pound more. There were several other Gentlemen, as Mr. Hewingham, Sir James Symonds, my Lord Aston, Mr. Draycott, Mr. Howard, and Mr. Gerard, who did to my Knowledge contribute towards the carrying on of this Charge, for defraying of Money and raising Arms, and paying for them. And I have seen Letters from beyond Sea, that have been to Mr. Evers, that all things have been ready as to the Arms, and there only wanted Orders how they should be disposed of; and I have been several times brought to the Oath of Secrecy for fear I should disclose it; and particularly that time that I went away from my Lord Aston's, which was on a Monday Morning, Mr. Evers gave it me, about the 18th or 19th of November 1678. And I did then promise by all the Promises I could make, and upon the Sacrament, in his Chamber, that I would not disclose it; but having others to advise me in it, such as could better do it, that told me such Oaths were better broken than kept: and thereupon I came to discover the thing, which I have done to the best of my Knowledge. I am very loth to charge my Memory in particular, about Times, or how many were in Company, but those that I am sure of; but there hath been in Company at the Consultation several times, Mr. Hewingham, Sir James Symonds, Mr. Vavasor, Mr. Patre, Mr. Howard, and my Lord Aston himself; when there hath been a Speech about the Design, for the introducing of Religion, and for taking Order about Money to buy Arms, and particularly when my Lord Stafford was by about the Death of the King, and that was about September 1678.

Mr. Treby. Mr. Dugdale, you speak of levying Arms, and of the Oath of Secrecy that was given you; were there not other spiritual Weapons used? Was there not an Indulgence, or such a Thing?



Mr. Dugd. There was an Indulgence about 78, or thereabout, which came through Ireland's Hands, transmitted from beyond Sea, and so to Mr. Evers, and Mr. Gowan was put on to publish it, which he did one Time at Boscobel. And it was likewise at all private Chapels, That who-soever was active for the introducing the Romish Religion, or killing the King, should have a free Pardon of all his Sins.

Mr. Foley. Pray declare what Arguments have been used by your Priests, to induce you to this Design?

L. H. S. Raise your Voice, that we may hear what you ask.

Mr. Foley. We would know what Arguments have been used to persuade to this Design?

Mr. Dugd. They have told me in their Meetings, the King was an excommunicated Heretick, and he was out of the Pale of the Church, therefore it was lawful to kill him, and it was no more than the killing of a Dog.

Sir John Trevor. My Lords, I desire to ask him one Question farther, what he hath heard about a Massacre that was intended?

L. H. S. Have you heard of any Massacre that was to be?

Mr. Dugd. I have heard that about the Time the King should be killed, several should be provided with Arms, and such Instruments, and rise all of a sudden at an Hour's Warning, and so come in upon the Protestants, and cut their Throats; that was one Proposal: And if any did escape, there should be an Army to cut them off in their Flight.

Mr. Treby. My Lords, I desire to ask him one Question further, Whether he ever knew or heard of Mr. Oates and Bedloe till the Plot was detected?

Mr. Dugd. I have heard of them from Priests, as Messengers entrusted by them, but no otherwise.

L. H. S. When did you hear that?

Mr. Dugd. I have formerly declared it.

Mr. Treby. Ay, when?

L. H. S. Before the Discovery, or after?

Mr. Dugd. Before the Discovery.

Mr. Treby. My Lords, the Reason of the Question, and the Use we make of it is this; we charge the Papists with the Conspiracy of a Plot, and they charge our Witnesses with a Conspiracy to accuse: Now it appears, that Mr. Dugdale had not any Knowledge of the other Witnesses, and only had heard of them as Persons concerned; so it could not possibly be a joint Contrivance amongst them.

Sir John Trevor. My Lords, I desire to ask this Question, Whether Mr. Dugdale hath seen any Letters from Whitebread to Evers, and what Instructions were in those Letters to Evers about the Persons to be concerned, and what kind of Creatures he was to employ in this great Design of theirs?

Mr. Dugd. I saw a Letter from Whitebread, to give Mr. Evers a Caution who he did employ or trust in the Design; for he told him there had been good Care taken therein hitherto; and it were no Matter whether they were Gentlemen of Quality or not, so they were stout and trusty, or to that Purpose.

L. H. S. What should they be trusty for?

Mr. Dugd. For the killing the King.

L. H. S. Was that said plainly in the Letter?

Mr. Dugd. To the best of my Remembrance, in those very Words.

L. H. S. Was there no Cypher or Character?

Mr. Dugd. There was no Cypher or Character that I know of, nothing but two Letters for his Name.

Mr. Treby. My Lords, I desire Mr. Dugdale may give an Account of those Papers he speaks of; what became of them, and tell us the Reason why they were not produced?

Mr. Dugd. My Lords, when I was by the Instruction of Mr. Evers to take my Flight, I conveyed all my Papers, that either belonged to him or myself, for the carrying on of the Plot, and carried them to an House not far remote from my Lord Aston's, and by the Help of two Maids—

Mr. Treby. Name them.

Mr. Dugd. Elizabeth Eld, and Anne Eld. And they two did prepare a Fire in their Chamber for that Purpose, and they assisted me to burn them: I was in a great Consternation, and great Fear, in regard I must fly and abscond myself, and indeed I did it with Tears in my Eyes. And whilst we were burning of the Papers, one of them spied a little Paper-Book, by Chance, and she asked me, whether that should be burnt; I told her, No; burn not that, for there is no Treason in it. With that one of them asked me, Is there any Treason in the rest? And I put them off, to the best of my Knowledge, and would not give them a direct Answer.

Sir John Trevor. Why did you consent to burn them?

Mr. Dugd. Because I knew they would discover me, and others that were concerned in the Plot.

Sir Fr. Winnington. Your Lordship will be pleased to observe, the burning of the Letters was before he discovered the Plot, or any Thing.

Mr. Sacheverell. My Lords, We desire he may be asked one Question; he told your Lordships of the Letter that came into Staffordshire about the Death of Sir Edmundbury Godfrey, but he hath not told you the Reason why he was to be taken away. We desire he will let your Lordships know what Reasons they gave for it.

Mr. Dugd. My Lords, I was desirous to know how Things went, being concerned as well as Mr. Evers; and I asked what the Reason was they took away his Life? Mr. Evers told me, that there was a Message sent to Mr. Coleman, to desire him that he would not reveal what he knew concerning the Plot, or any Thing of that Nature.

Mr. Sacheverell. From whom was that Message sent?

Mr. Dugd. From the Duke of York. And Coleman did send Word back again, What was it the nearer? for he had been so foolish as to reveal all to Sir Edmundbury Godfrey, who had promised to keep it all as a Secret. But upon the Examination of Oates, before Sir Edmundbury Godfrey, as a Justice of Peace, he was afraid he would come in an Evidence against him; and had shewn himself a little too eager, which made Coleman afraid he would witness against him. And the Duke of York did send Word back again, That if he would take care not to reveal, but conceal it, he should not come in against him, or to that Purpose: And the next News we heard was the Letter that he was dispatched.

Mr. Foley. I desire he may give an Account what Assistance the Pope gave for the carrying on of this Design?

Mr. Dugd. I heard the Pope had out of his Revenue promised several Sums of Money for the carrying on this Plot; and particularly that he

VOL. III.

would assist the poor distressed Irish with both Men and Money; and there should not be any Thing wanting on his Part.

L. H. S. Have you done with him, Gentlemen?

Mr. Treby. Yes, I think we have done with him as to the general.

L. Staff. I desire to ask him, then, what Sums of Money did the Pope contribute to it?

L. H. S. What Sums of Money did the Pope contribute to this Design?

Mr. Dugd. I have heard of several Sums in general that he was to contribute for the carrying on of the Plot.

L. H. S. Did you hear of any Sum certain?

Mr. Dugd. I do not know, but I think I heard sometimes of ten thousand Pound, or some such Sum. I have been told by a Servant that formerly belonged to my Lord Stafford, That the Pope's daily Income was twenty-four thousand Pounds a Day; and that if he would do as he had promised, he was able to do very much.

L. H. S. They told you so, you do not know it otherwise.

Mr. Treby. We have done then with him: We call Mr. Prance next. [Who was sworn.]

Mr. Treby. My Lords, I desire Mr. Prance would give us an Account of what Discourse he had with one Mr. Singleton a Priest, and when.

Mr. Prance. I went to one Mr. Singleton a Priest, at one Hall's, in the Year 78; and he told me, That he did not fear but in a little Time to be a Priest in a Parish-Church; and that he would make no more to stab forty Parliament Men, than to eat his Dinner, which he was at, at that very Time.

L. H. S. Where was that?

Mr. Prance. At one Hall's, a Cook in Ivy-Lane.

L. H. S. Will you ask him any Questions, my Lord?

L. Staff. No, my Lord.

Mr. Treby. Then call Dr. Oates. [Who was sworn.]

L. H. S. Do you examine Mr. Oates upon the general Plot, or the particular?

Mr. Treby. Only to the general now; and we desire him to take Notice he is to speak, and to confine himself to that at present.

Dr. Oates. My Lords, in the Year 76, I was admitted into the Service of the Duke of Norfolk, as Chaplain in his House, and there I came acquainted with one Bing, that was a Priest in the House. And being acquainted with him, there came one Kemish very often to visit him, and one Singleton, who told me, that I should find that the Protestant Religion was upon it's last Legs, and that it would become me, and all Men of my Coat (for then I professed myself a Minister of the Church of England), to hasten betimes Home to the Church of Rome. My Lords, having had strong Suspicions for some Years before, of the great and apparent Growth of Popery; to satisfy my Curiosity, I pretended some Doubts in my Mind. My Lords, after some Time had passed over, and I had had some Conversation with these Men, I found they were not Men for my turn, because being regular Men, they were not Men that had any great Degree of Learning. Afterwards, my Lords, I met with one Hutchinsin; I found him a saint-like Man, or one that was religious for Religion sake; and him I found not for my turn neither: For, my Lords, my Design was to deal with their Casuists; that is, those of the Society. After that I had obtained the Favour from him, to have some Conference with one of the Society, I found they were the Men for my turn, because I found they were the cunning politick Men, and the Men that could satisfy me. After that I had had some Discourse with them, I pretended to be convinced by their Arguments. And, my Lords, after that I had thus acknowledged my Conviction, I desired to be reconciled; and accordingly on Ash-Wednesday, 1677, I was reconciled. And soon after my Reconciliation, Strange, who was then Provincial of the Society, did tell me much after this way: Mr. Oates, you are now reconciled to the Church of Rome, and you must lay down your Ministry, for your Ordination is invalid, and you must look upon yourself as no more than a Layman: Pray, says he, now, what Course do you think to take? I told him, I did desire to be one of their Society, and to be admitted a Novice into their Order. He said, it was a very honest Request, and a very honest Desire; and he said, he would take some Time to consider of it, and he would take till the Saturday following. Saturday following I was sent for by one Fenwick: I lodged then in Barbican, and Fenwick came to me, and told me, the Fathers were met at Wild-house, and would speak with me: And he also told me they had granted my Request, and I should be admitted. After I was admitted, they told me, I had some Years upon me, and I could not undergo those Burdens they put upon younger Men; but what did I think of travelling, and going beyond Sea to do their Business? I did agree to it, and in April 77, I went aboard one Luke Roch, Master of the Bilboa-Merchant, bound for Bilbao, having their Letters of Recommendation. After I arrived there, which was on a Sunday in May or June, I can't tell which, I went the Friday following for Valladolid in Castile, and I got thither the Tuesday following; but by the Way I opened certain Letters, wherein was made mention of a Disturbance designed in Scotland. And the Letters did express what Hopes they had to effect their Design in England, for the carrying on (as they worded it) the Catholick Cause, and for the Advancement of the Interest of the Bishop of Rome. My Lords, after I had arrived at Valladolid, there were Letters there got before me, which were dated in May, wherein was expressed News, that the King was dispatched, which was the Cause of great Joy to the Fathers there; and afterwards Letters dated in May too (but towards the latter End of May) came, that they were mistaken, and desired the Fathers there to stifle that News. My Lords, there came Letters dated in June, wherein they did give an Account, That they had procured one Beddingfield to be Confessor to the Duke of York; which Beddingfield by his Interest might prevail much with the Duke, in order to this Design. Letters came also in June from St. Omers, which gave them an account, that Father Beddingfield had assured them of the Duke's Willingness to comply with them for the Advancement of the Catholick Religion. My Lords, after I had stayed some Time there, and had passed through the Country for the Business of the Society, I found that in the Court of Spain some Ministers of that Court had been very ready to advance Money, which Money was returned for England; and that the Father Provincial of the Jesuits of Castile, by his Care and Industry, had advanced ten thousand Pound, which was promised to be paid in June following, within a twelvemonth after.

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My Lords, in July I received Letters out of England, wherein an Account was given there, to the Fathers in Spain, that they were sending them a Mission of twelve Students, four whereof were to go to Madrid, and eight to Valladolid: The Conductors of these twelve Students were one Father *Crosse*, that was his true Name, and one Father *Mumford*, whose true Name was *Armstrong*. These Missioners arrived in December, where they had a Sermon preached at their coming by this same *Armstrong*, wherein the Oaths of Allegiance and Supremacy were declared to be antichristian, heretical, and devilish; in which the King's Legitimacy was vilified and abused; and that his Religion did entitle him to nothing but sudden Death and Destruction, in that he appeared an Enemy both to God and Man. These were the Contents of that Sermon, as near as I remember. My Lords, after the meeting with several Letters there, in July, August, and September, in the Kingdom of Spain, it was ordered I should return for England; and in the Month of November I came for England, at which Time I had Letters from the Provincial of *Cassile*, called by the Name of *Padre de Hieronimo de Corduba*, who did in his Letter assure the Provincial in England and the Fathers here, that the ten thousand Pounds should be paid (as I said before) in June following. When I came for England, at London I was lodged at one *Grigson's*, that lived in *Drury-Lane*, near the Sign of the *Red-Lion*, and there I lay till I went to *St. Omers*; and by the Provincial and Consultors of the Province I was order'd a Maintenance, and it was paid to this Man for entertaining of me. I went and brought these Letters to this *Strange*, and there was Father *Keins* lying ill upon *Strange's* Bed; and *Keins* was saying, he was mighty sorry for *honest William* (so they called the Ruffian that was to kill the King), that he had missed in his Enterprize. But, my Lords, this I think good to tell your Lordships, they were not so zealous for the Destruction of the King; till the King had refused *Coleman* the dissolving of the Long Parliament. Then they were more intent upon it, though they had several Times attempted it ever since the Fire of London; but when *Coleman* was refused the Dissolution of the Long Parliament, then were they more zealous for the Destruction of the King: But the Design for the introducing the Popish Religion, they have been carrying on some Years before the Fire, by those Instruments, some of whom are yet alive. My Lords, I left England in November O. S. and December N. S. for when I came to *St. Omers*, it was (as near as I can remember) the 9th or 10th of December, according to the Stile of the Place. I carried with me a Packet of Letters from *Strange* the Provincial, and other Fathers that were of the Consult for the Province of England, to the Fathers at *St. Omers*, wherein *Strange* did tell them, that they had great Hopes of their Design taking effect the next Year, but as yet it would not be effected: He said, therefore they at London thought fit to suspend it till they saw what the Parliament would do. And he did in the same Letter declare, That the Parliament would be about a long Bill that had been brought into the Commons House some Sessions before, but he did not question but that the Catholick Party would evade that Bill. And, my Lords, in that Year, some Time after, we had a Letter from our new Provincial, whose true Name was *Whitebread*, and his counterfeit Name *White*. This Father writes to the Fathers at *St. Omers*, and therein he does order one *Conyers* to preach upon *St. Thomas of Canterbury's* Day; and he did therein also tell them, that he would be as zealous for the carrying on of the Design as his Predecessor had been: And a Sermon was accordingly preached at the Sodality Church, wherein after he had commended the Saint, whose Day they celebrated, for his great Virtues, declaring how unworthily he was sacrificed, he did inveigh against the Tyranny (as he called it) of temporal Princes, and particularly of the King of England; and when he came to speak of the Oath of Allegiance and Supremacy, he declared, that he looked upon them as antichristian and devilish, and that it was fit to destroy all such as would countenance them. We have done with the Year 77, and we come now to January 1678.

L. H. S. You speak of one *Keins*, who (lying upon *Strange's* Bed) said he was sorry *honest Will* had missed his Enterprize: You have not explain'd who that *honest Will* was; explain that.

Dr. Oates. It was *Grove*.

L. H. S. But about what did he say he was sorry for him?

Dr. Oates. That he had missed his Design.

Mr. Foley. What was that missing of his Design?

Dr. Oates. That he had not killed the King, my Lords, in January 78.

L. H. S. You mean according to the foreign Stile?

Dr. Oates. Yes, according to the foreign Stile, my Lords; we received Letters out of Ireland, and there, my Lords, we found by the Contents of those Letters, that they were as busy in Ireland as we were in England. We found there that the *Talbots*, and other Persons, were very zealous in raising of Forces, and were resolved to let in the French King, provided that the Parliament should urge the King to break with France. My Lords, likewise in January (as near as I can remember) *Morgan* was sent into Ireland as a Visitor, (which is something a better Place than a Provincial, but only it is but temporary for the Time he visits) and he returns in February or March, and gives us an Account how ready the Irish were to vindicate their Freedom and their Religion from the Oppression of the English, as they called it. My Lords, in February some were employed to go into some Parts of Germany, to *Leige*, and to some Parts of Flanders, to see how the Affairs there stood, and how their Correspondences stood, to see whether there was not an Interruption in the Correspondences. My Lords, upon their Return, they found that the Fathers at *Ghent* were inclined to take into this Business the secular Clergy; but the Fathers of *St. Omers*, together with the Provincial, did refuse the Motion, because the secular Clergy were more cowardly, and sought themselves, and not the Interest of the Church, or to that Purpose. My Lords, in March we received Letters, that there was a very shrewd Attempt made upon the Person of the King, and that the Flint of *Pickering's* Gun or Pistol was loose, and his Hand shaking, the King did then escape, for which he received a Discipline, and the other a severe Chiding.

L. H. S. You explain not the Meaning of what you say; that was not *honest Will*, for he, you say, was *Grove*.

Dr. Oates. I mean *Pickering* received the Discipline, and *William* was chid; for it was *Pickering's* Flint that was loose. My Lords, this was in March; and at the latter End of March there comes a Letter from London, in which there was a Summons to a Consult here in London; and being summon'd, there went over eight or nine from *St. Omers*, *Leige*, and *Ghent*, to this Consult, and I did attend them in their Journey.

L. H. S. When did that Summons come?

Dr. Oates. The latter End of March, or the Beginning of April, as I remember; they had Notice of it in England before, but we had Notice of it just when we were to come. I think it was in April, as near as I can remember; I cannot be certain in that, my Lord. We did come to Town in April, there the Consult was held; it begun at the *White-Horse* Tavern, where they did consult about some Things of the Society, and afterwards they did adjourn into particular Societies, where they did debate and resolve on the Death of the King, and that *Grove* should have fifteen hundred Pounds for his Pains, and the other being a religious Man, should have thirty thousand Masses said for him. My Lords, after staying in Town a while we returned to *St. Omers*; and after I had staid there some few Days, the new Provincial did begin to visit his Province, and comes over to *St. Omers*, where after staying some six Days, he goes over from thence to *Wotton*. But whilst he staid at *St. Omers*, I was ordered to go into England to attend the Affairs here, and for to do some other Services that they should employ me about. My Lords, accordingly I did come over, and it was on the 23d N. S. as near as I remember, I got to *Calais*; the 24th I got to *Dever*; on the 25th I got to *Sittenburn*, but between *Dover* and *Sittenburn* we had some Boxes seized: For at *Dover* we met with *Fenwick*, who is since executed, who went by the Name of *Thompson*, and carried a Box with him; and a little on this Side *Canterbury* it was seized by the Custom-House Officers, and several little Trinkets in it, which were seized as French Goods; and he did desire the Searcher to stand his Friend, and he would give him something for his Pains, and told him where he should write to him in London. There was a Superscription on the Box to one *Blundel*, but he should write to him by the Name of *Thompson*, at the *Fountain* Tavern near *Charing-Cross*. We arrived in Town the 17th of June, which is the 27th N. S.; it was upon a Monday; and there were Letters which did follow us, wherein were Proposals made to Sir *George Wakeman* for the poisoning of the King, and that the ten thousand Pounds which the Spaniards had promised in January before, and was accordingly paid in London at the Time, should be proposed to *Wakeman* to poison the King. I found that *Coleman* did look upon it as too little, and he thought fifteen thousand Pounds should be given to him: I found that *Langham* thought it too much, and that he ought to do so great a Piece of Service for nothing, and told us he was a narrow-spirited Man, if he would not engage in such a Thing. My Lords, there was five thousand Pounds, as the Books told me, paid; but I did not then see it paid, because I was then ill, and not fit to stir abroad. My Lords, we are now past June 78. In July Father *Abby* comes to Town, who did revive the Proposal to Sir *George Wakeman*; but being sick of the Gout, he hastened down to the Bath; and when he came there, as soon as he began to be well, he was advised by the Fathers to see how the Catholicks stood affected in *Somersetshire*; for they had an Account in March 78, by Letters from *Berkshire*, *Oxfordshire*, and *Essex*, that the Catholicks stood well affected; and Sir *William Andrews* did secure that the People of *Essex* should stand to their Points; and so several Men did secure that they would have them in Readiness. My Lords, in August (I cannot remember every Particular, but refer myself to the Records of the House), about the 26th of August, I find that *Fenwick* went to *St. Omers*, and there he was to attend the Provincial Home, and to give the Provincial an Account of the Proposal accepted by Sir *George Wakeman*; but in July (if your Lordships please to give me Leave to go back again) *Strange* comes to Town, and falling in Discourse about the Fire of London, and the Rebuilding of it, he very frankly told me how it was fired, and how many of those concerned were seiz'd; and amongst the rest, told me, that the Duke of York's Guard, as by his Order, did receive them, and were afterwards willing to discharge them; which I forgot to mention before; but upon review of my Papers, I do find that it was told me his Guard did release the Prisoners that were suspected about the Fire, and that all the Order they had for it, they pretended was from the Duke. But now, my Lords, we return to August again. Upon the 3d of August, I find Ireland did pretend to go to *St. Omers*, and a Letter came from him as directed from thence; but we find by his Trial and other Things since, that he went into *Staffordshire*; and about the 12th of August (as I remember) he was here in Town. The latter Part of July I communicated with Dr. *Tongue*, and gave him some particular Account of Affairs; I desired him to communicate it to some that might make it known to the King: The King had Notice the 13th of August, or the 14th, as I remember; and by the 3d of September I was betrayed, and was exposed to the Vengeance of those Men whose Contrivances I had thus discovered. So my Intelligence did cease wholly the 8th of September. Then was I forced to keep private; and upon my Examination, what Information I gave before the Lords and Commons, I refer myself to them.

L. H. S. My Lord Stafford, will you ask him any Questions?

L. Staff. No, my Lord; I am not at all concerned in his Evidence.

L. H. S. You say you were betrayed: Can you tell how, or which Way you were betrayed?

Dr. Oates. My Lord, I will give this Honourable House what Light I can in it; but I desire then to be excused from my Oath, for I can't speak it of my own Knowledge.

Sir J. Trevor. Then the next Witness we desire may be called, is Mr. *Bernard Dennis*.

Mr. Serj. *Maynard*. This Witness we call now, is to confirm what Dr. Oates hath said, that he was at Valladolid and other Places in Spain; he will be short.

L. H. S. Call you Oates again?

Sir F. Win. No, my Lord, we call *Dennis* to confirm what Dr. Oates hath said. He hath given your Lordship an Account that he was in Spain; we now produce one that saw him when he was there, and so confirms the Evidence that was given by him.

[Then Mr. Dennis was sworn.]

Mr. Treby. Mr. Dennis, Do you give their Lordships an Account of your discoursing with Dr. Oates in Spain, or any where else Abroad, and where.

L. H. S. Stay a little; do you know Mr. Oates?

Mr. Dennis. Yes, my Lord.

L. H. S. How long have you known him?

Mr. Dennis. I knew him in the Year 77.

L. H. S. Where?

Mr. Dennis. At Valladolid.

L. H. S. Did you see him there? Was he a Student there?

Mr. Dennis. Yes, my Lord.

L. H. S. Was he known by the Name of Oates?

Mr. Dennis. Yes, my Lord, he was.



Sir Fr. Win. My Lord, we desire he may tell his Knowledge of Mr. Oates, what Conversation he had with him in Spain.

Mr. Dennis. My Lords, I was in Spain, in the City of *Victoria*; and leaving the City of *Victoria* in the Month of *June*, I took my course to *Madrid*, and passing through the City of *Valladolid*, going into the Convent of Dominicans, there came an Irish Man, a Priest of Ireland, out of the City to see me; and there he told me there was a Student of the Jesuits, by Name Mr. Oates, an Englishman; and I understanding this, went into the College of the Jesuits to see Mr. Oates, and there had Conversation with Mr. Oates; and in the Conversation I had with him there, he told me that he was a Vicar in *Kent*, and that he was Chaplain to a great Nobleman of England, by Name *Howard*; and that he went out of England by the Consent of the Jesuits in England, being converted by them to the Roman Catholick Faith, and that his going into Spain was to fit himself for the Society of the Jesuits. And understanding my Resolution was to go to *Madrid*, he did desire me to carry a Letter to the Archbishop of *Tune*, one *James Lench* an Irishman, who liv'd at *Madrid*. And further; he lent me four Pieces of Eight to defray my Journey to *Madrid*, and desired me to pay the Money to the Procurator of the Jesuits at *Madrid*. And in carrying this Letter to the Archbishop, when I came there, I got a Dominican Friar of Ireland, by Name *Humphrey Delphin*, to go with me and see the Archbishop at his Lodging; and going in, I deliver'd him the Letter in the Presence of the Dominican, and he perused it in my Presence, and in the Presence of a Priest that waited upon him; and finishing the Contents of the Letter, as I suppose, with a smiling Countenance he turned about, and said, Sirs, the Contents of this Letter is, that Mr. Oates is desirous to receive the Order of Priesthood from me, or at my Hands; and if it be so, it will be much in our Way, and this Man will be a fit Man for our Purpose: for, said he further, Dr. *Oliver Plunket*, Primate of Ireland, is resolv'd this Year, or with the next Convenience, to bring in a French Power into Ireland, thereby to support the Roman Catholicks in England and Ireland; and if it please God, I my self, without any delay, will go into Ireland to assist in that pious Work. All this Discourse between us and the Archbishop, and between Oates and me, was in *July 77*. And there I did speak and converse with Mr. Oates. All this I can testify for Truth on the behalf of Mr. Oates, who was then a Student in the College of *Valladolid*, and had no other Name nor Title.

Mr. Foley. I desire himself may tell your Lordship what Religion he is of.

L. H. S. What Religion are you of?

Mr. Dennis. I am a Dominican Frier, my Lord.

L. H. S. Are you?

Mr. Dennis. My Lords, I am.

L. H. S. At this Time?

Mr. Dennis. Yes, my Lords.

Mr. Serj. Maynard. He hath a Pardon, my Lords.

Mr. Treby. This hath been controverted, my Lords, whether Mr. Oates ever was in Spain; we desire to make it out plain to the World, for the Confirmation of his Evidence; therefore we ask him again, Do you know the Person of Mr. Oates?

Mr. Dennis. Yes, I do.

Mr. Treby. Is this Person that gave Evidence last before you, the same Person you saw at *Valladolid*?

Mr. Dennis. Yes, it is.

Mr. Sacheverell. My Lords, We desire to ask of him, why he had the four Pieces of Eight of Mr. Oates?

L. H. S. Why had you that Money of Oates?

Mr. Dennis. For to defray my Journey to *Madrid*.

L. H. S. Was that all you had?

Mr. Dennis. Yes, my Lords.

Mr. Sachev. We pray he may be ask'd how he came to be so needy?

Mr. Dennis. My Lords, I was not altogether needy; but it is very certain, religious Persons, especially of my Order, cannot carry any Money about them but what is requisite for their Journey, and that which may be remov'd from place to place.

Sir J. Trevor. I desire to ask him, did he see any more Money that Dr. Oates had?

Mr. Dennis. I did see Dr. Oates in his Chamber in the College at *Valladolid*, when he delivered me the four Pieces of Eight, to draw out a Drawer of a Table in his Chamber, and out of the Drawer he pull'd a Bag of Money, which was a very considerable Sum of Money, and I am certain he did not want Money there then.

Mr. Treby. My Lords, I think we have done with him; if my Lord please to ask him any Question, he may.

L. Staff. But only one Question, for I never saw the Man in my Life. I desire he may be asked, whether he be still of the *Romish* Religion.

Sir J. Trevor. My Lords, We have not yet done with him; the Question we would ask him is this, Whether he hath heard of any Money that was gathered in Ireland for the Support of this Plot?

L. H. S. The Question ask'd of you, Have you heard of any Money gather'd in Ireland for the Support of this Plot?

Mr. Dennis. I have both heard and seen of it.

L. H. S. When, and where?

Mr. Dennis. My Lords, In the Year 68, I entred into the Order of the Dominicans in Ireland; and in the same Year there arrived at *Dublin* a Franciscan Frier, Brother to the late Earl of *Carlingford*; and arriving there, he made several Collectors for the levying a competent Sum of Money out of every Convent and Religious House. My Lords, the Collectors were by Name *John Reynolds*, alias *Landy*, and *John Berne*; and arriving at the County of *Sligoe*, in the Month of *May*—

L. H. S. What Year?

Mr. Dennis. 68. And when the Collectors came to the Convent of our Friars in *Sligoe*, all the Friars gather'd together into a Room, and these Collectors coming in did read their Commission given them from one *James Taaffe*, as they said; and I was there personally present, though a Novice; and upon reading their Commissions, they said Forty Shillings was to be paid by the Prior, and the Friars of that Convent; and the Provincial of the Order of the Dominicans question'd the Power of the said *Reynolds* and *Berne*, and so did the Prior; and I ask'd why the Money was lev'y'd? They gave answer, That that Levy and several other Levies was to encourage the French King, in whose Kingdom were several Bishops of Ireland, Clergymen, and others, whose Business it was to provoke the King to bring an Army to invade Ireland, whenever Time should serve.

L. H. S. Have you done with him now?

Mr. Treby. Yes.

L. H. S. Will your Lordship ask him any Questions?

L. Staff. My Question is only, Whether he profess himself of the Church of *Rome*, or a Protestant?

Mr. Dennis. I am a Roman Catholick still, my Lord.

L. H. S. Are you?

Mr. Dennis. I am, my Lord.

L. Staff. Then I have no more to say.

Sir J. Trevor. Then we call Mr. *Jenison*. [Who was sworn.]

Mr. Treby. Mr. *Jenison*, you have been among the Papists, and you have had great Confidence among them; pray declare what you know of their Designs for the Destruction of the Protestant Religion, or the Means of doing it, whether by the Murder of the King, or what other Means, tell your whole Knowledge.

Mr. *Jenison*. My Lords, in the Beginning of the Year 78, I have heard Mr. *Ireland* and Mr. *Thomas Jenison*, both Jesuits, speak of a Design they had to gain a Toleration of Conscience for their Party in England: and the way then design'd to get it was, by procuring a great Sum of Money from their Party, and by bribing the then Parliament. I have heard them likewise discourse of procuring the Duke of *York's* Succession; and that (they told me) was to be done, by procuring of Commissions to be granted out to those of their Party, to be ready to rise upon the Death of the King. I likewise have heard them discourse of the Necessity and Usefulness to their Party of the Alteration of the Government establish'd, and that their Religion could never flourish till that was done, and this Kingdom altered according to the French Model. In the Month of *June 78*, I was at Mr. *Ireland's* Chamber; and there happening a Discourse, that the Roman Catholick Religion was like to come into England, Mr. *Ireland* did then say, there was but one who stood in the Way, and that it was an easy Thing to poison the King, and that Sir *George Wakeman* might easily and opportunely do it. I ask'd Mr. *Ireland*, whether Sir *George Wakeman* was the King's Physician? His Answer was, No, but he was the Queen's, and so might have an Opportunity to do it. In the Month of *August* the same Year, the Day that I came from *Windsor*, I went to Mr. *Ireland's* Chamber, and I found that he was newly come from *Staffordshire*, and was drawing off his Boots on the Frame of a Table; he ask'd me whence I was come? I told him from *Windsor*: He enquired of me about the Diversions of the Court. I told him, I understood his Majesty did take Delight in Hawking and Fishing, but chiefly in Fishing; and that he went accompanied only with two or three, early in the Morning. Then Mr. *Ireland* reply'd, He were easily taken off or remov'd. To which I answer'd, God forbid; being surpriz'd at that Time; Oh, said he, I say not that it is lawful. Then there happen'd some Interruption to our Discourse, about *Staffordshire*; then we fell into a Discourse of their Religion that he said was suddenly to come into England; and he ask'd me if I would be one of those that would go to *Windsor* to assist to take off the King. I told him, No; then he told me he would remit the 20*l.* I ow'd him, if I would go to *Windsor* to be one of those that were to take off the King. My Lords, I told him I would have no hand in any such Matter, and that I would not for twenty times 20*l.* have any hand in the Death of the King. Said he, Would you do nothing for the bringing in of our Religion? I told him, I thought it would never come in by Blood: I told him further, God forgive me, if the King were taken off so, well and good, but I would have nothing to do with it. He left not the Discourse there, but ask'd me, if I knew any Irishmen that were stout and courageous. I told him, Yes, I did, and nam'd Captain *Levallian*, Mr. *Karney*, Mr. *Brogball*, and Mr. *Wilson*, all Gentlemen of my Acquaintance about *Gray's-Inn*. When I nam'd these, he ask'd me if I would go along with him to *Windsor*, to assist them in taking off the King. I told him, I did not think any Man of Estate would engage in such a Matter; that I was Heir to an Estate, my Brother being a Priest, and that Captain *Levallian* was Heir to a very good Estate, and therefore I did believe he would not do such a thing, unless the Pique which he had to the King or Religion might move him to it. My Lords, he approved of these Persons, and said, he knew the first two of them, *Levallian* and *Karney*; and he set down, as I remember, the other two Names in Writing. He told me he was going to the Club, to Mr. *Coleman*, and Mr. *Levallian*, and *Karney* at that Time, and then ask'd me for the Money, the 20*l.* that I ow'd him. He told me, he wanted fourscore Pounds, and he desir'd me that I would return it as soon as I came into the Country. Now, my Lords, the same Day that I receiv'd this twenty Pound of Ireland, I went with Mr. *Thomas Jenison*, the Jesuit, to *Harcourt's* Chamber, to give the Fathers Thanks for the Loan of the Money; and there Mr. *Jenison* falling into Discourse on that common Topick of their Religion coming into England, he did then use that Expression which Dr. Oates hath in his Narrative, *If C. R. would not be R. C. he should not be long C. R.* And he did interpret it thus in Latin: *Si Carolus Rex non esset Rex Catholicus, non foret diu Carolus Rex.* And he did add, my Lords, upon the Discourse, that if the King were excommunicated or depos'd, he was not longer King, and it was no Sin, or no great Sin to take him off; and if it were discover'd who did it, two or three might perhaps suffer, but denying the Fact, the Matter soon would be blown over. My Lords, about two Months after the mustering the Forces upon *Hounslow-Heath*, Mr. *Thomas Jenison* did tell me he had a Matter of great Consequence to impart to me; that there was a Design on Foot so laid, as that it could not well be discover'd, and that the greatest Papists, the greatest Catholicks in England, were in the Design; that the Queen and the Duke were in it, and that several Lords, by Name my Lord *Bellasis*, my Lord *Powis*, my Lord *Arundel of Wardour*, and others: I believe my Lord *Stafford* was nam'd, but I cannot be positive in that. At that Time, my Lords, I did wish I had had a Commission in the new rais'd Levies that were muster'd on *Hounslow-Heath*. He told me he would procure me a Commission from the Duke of *York*, and that there was a new Army to be rais'd to bring in the Catholick Religion; but he did say he would tell me more Particulars after my receiving the Sacrament of Secrecy; and I did understand by him, that that Commission was not to be sent till the taking off the King was effected: But being I was surpriz'd at it, he would not tell me the whole Matter, but he desir'd me to come and receive the Sacrament at Sir *Philip Tyrwhitt's* in *Bloomsbury*, and then he would acquaint me with the whole Affair. My Lords, being in *Berkshire* about the Month of *December 78*, at *Madam Hall's* in *Shinfield* Parish, one Mr. *Cuffil* a Jesuit came into our Company. It was about the Trial of *Coleman*; and Mr. *Cuffil* did then say, that he thought Mr. *Coleman* was infatuated, upon the Discovery of the Plot, to give Notice to Mr.

*Harcourt*,



Harcourt, Mr. Ireland, and Mr. Fenwick, and the other Jesuits, to burn or secure their Papers, and yet not to secure his own. My Sister Hall was present at this Discourse; and Mr. Cuffil did then further say, that Bellarmine did draw a Sentence out of the Scripture, to favour the Pope's Authority of excommunicating, depriving, and deposing temporal Princes; and the Saying was this, *Quod Papa habeat eandem potestatem super Reges, quam Jehoiada habuit super Ahaliam*. And that there were other corroborating Testimonies among the Fathers for it.

Mr. Treby. My Lords, we desire to ask him, whether ever he heard of Mr. Oates being in the Plot, or being thought Trust-worthy among them.

Mr. Jen. Yes, my Lords, I did.

L. H. S. When did you hear it, and of whom?

Mr. Jen. Of my Brother Tho. Fenison the Jesuit.

L. H. S. When did he tell you so?

Mr. Jen. About the latter end of July 78, when there was a Discourse of a Design, and that the greatest Papists were in it, he said, Mr. Oates, a Parson newly come over to them, was in that Design: I answer'd, I did wonder that he would trust a reconcil'd Enemy. He answer'd, That being once reconcil'd, they were more zealous and trusty. I submitted to his Opinion, and instanc'd in Dr. Godwyn and Dr. Bayley, that were Protestants, and afterwards came over to the Church of Rome.

Mr. Treby. We have done with him, my Lord.

L. H. S. Will your Lordship ask him any Questions, my Lord Stafford?

L. Staff. No, my Lord.

Sir F. Win. My Lords, I would only observe the time when he says his Brother told him of the Design, that it was about the time of the mustering the Forces on Hounslow-heath; and that he was then told Mr. Oates was in the Plot: I only observe it now, for the end of the Case in point of Time.

L. H. S. He said it was in July.

Mr. Jen. It was two Months after the mustering of the Forces, about the latter end of July.

L. H. S. Before the Discovery?

Mr. Jen. Yes.

L. H. S. Did you know Oates at that time?

Mr. Jen. No, my Lords, I was not acquainted with him.

Sir J. Trevor. Did you not see him then?

Mr. Jen. Yes, I saw him at Ireland's Chamber.

Sir J. Trevor. When was that?

Mr. Jen. The latter end of April, or the beginning of May.

L. H. S. You say you did not know him in July; how then can you say you saw him before?

Mr. Jen. I did not know him; I only saw him come into Ireland's Chamber, and whisper for some time, two or three Minutes, and then they told me that that was Mr. Oates, a Parson newly come over to them, a brisk jolly Man, and worthy my Acquaintance.

L. H. S. Is this the same Man you saw there?

Mr. Jen. My Lords, I cannot remember his Face, for he was gone out when I was told of him.

L. H. S. Why, you know Mr. Oates now?

Mr. Fenison. Yes, I do.

L. H. S. Do you know him to be the same Man that you saw then?

Mr. Fenison. I can't tell that.

Sir J. Trevor. My Lords, He says, Mr. Oates only came in for three or four Minutes, and his Back was towards him, and his Brother told him when he was gone who it was.

Mr. Fenison. I only knew his Name from my Brother.

Mr. Treby. And I presume your Lordships will observe this was at the very Time of the Jesuits Consult.

Sir J. Trevor. We desire this Gentleman may tell your Lordships who his Brother is, and what Profession he is of.

Mr. Fenison. My Brother was a Jesuit brought up at St. Omers.

L. H. S. Your Brother is dead, and died in Newgate?

Mr. Fenison. Yes, he did so.

L. H. S. Pray recollect yourself again: When was it that you saw the Man they called Oates at the Jesuit's Chamber?

Mr. Fenison. My Lords, It was in the Year 78, the latter end of April, or the beginning of May. And I will tell you why I apprehend it to be that Time. My Brother being a Priest, liv'd with Sir Philip Tyrwhitt in Lincolnshire; and in that Year, in Lent, he came to Town with my Lady and that Family, and he and I used to dine together at the Fifth-Ordinary at Pedley's. And about three Weeks or a Month after that Time, when he came to Town, I was at Mr. Ireland's Chamber, and there was a Gentleman, whom they told me was Oates.

L. H. S. This you say was the latter end of April, or beginning of May 78; for the Time is material: Upon your Oath you say it?

Mr. Fenison. Yes, my Lords, I do.

L. H. S. You say it was at Ireland's Chamber?

Mr. Fenison. Yes, my Lords.

Sir F. Win. My Lords, Will you give us leave to ask him one short Question; because some of the Gentlemen doubt of it, we would ask it again: What his Brother was, whether he was a Jesuit or no?

Mr. Fenison. I have heard him own it, my Lords.

L. H. S. Whom do you call next, Gentlemen?

Mr. Treby. If it please your Lordships, we shall in the next place produce our Evidences that are Matters of Record; and we desire your Lordship's Advice and Direction how we are to minister the same, whether your Lordships will have them all read, or but a Word of them, and let them be left with your Lordships.

L. H. S. What Records are they?

Mr. Treby. They are the Records of the Attainder of Coleman, Ireland, and the other Conspirators.

L. H. S. The Fact is so notorious that they were attainted and executed, that the reading of a Word will serve the Turn.

Sir J. Trevor. Then we desire they may be produc'd here, and the Copies prov'd upon Oath; and then we shall leave them upon your Lordships Table. And, my Lords, we desire likewise at the same time, to save another Trouble, there may be deliver'd in the Convictions of Reading, Lane, Knox, and others.

Then Mr. Clare was sworn, and deliver'd in the Copies of the Records.

L. H. S. What Record is that?

Mr. Clare. It is the Record of the Attainder of Coleman for High-Treason.

L. H. S. Did you examine it?

Mr. Clare. I did examine it.

L. H. S. Is it a true Copy?

Mr. Clare. To the best of my Understanding, it is. Here is likewise a Copy of the Record of the Conviction of Ireland, Pickering, and Grove, for High-Treason.

L. H. S. Is there Judgment of Attainder entred upon Record?

Mr. Clare. Yes, my Lords, there is Judgment entred. Here is a Copy of the Indictment, Conviction, and Attainder of Whitbread, Fenwick, Harcourt, Gavan, and Turner for High-Treason. Here is a Copy of the Record of Attainder of Richard Langbarn for High-Treason. Here is a Copy of the Attainder of Green, Berry, and Hill, for the Murder of Sir Edmundbury Godfrey. Here is a Copy of the Conviction of Mr. Nathaniel Reading, for endeavouring to suborn Mr. Bedloe to retract his Evidence against some Lords in the Tower, and Sir Henry Tichburn.

L. H. S. What is the Judgment there?

Mr. Clare. The Judgment is entred upon it; and 'tis to pay 1000l. Fine, and to be put in and upon the Pillory in the Palace-Yard, Westminster, for an Hour, with a Paper upon his Head, written in great Letters, For endeavouring Subornation of Perjury. Here is a Copy of the Record of the Conviction of Tsbrough and Price, for endeavouring to suborn Mr. Dugdale, and Judgment entred upon it. And here is a Copy of the Record of Conviction of Knox and Lane, for conspiring to asperse Dr. Oates and Mr. Bedloe.

Here is the Record of the Conviction of John Giles, for barbarously attempting to assassinate John Arnold, Esq. one of his Majesty's Justices of the Peace; and the Judgment entred thereupon is, To stand three times on the Pillory, with a Paper on his Hat declaring his Offence; to pay 500l. to the King, to lie in Execution till the same be paid, and find Sureties for his good Behaviour during Life.

L. H. S. Deliver them all in. And if my Lords have occasion to doubt of any thing, being left in the Court, they will be there ready to be us'd. (All which were then deliver'd in.)

Mr. Treby. My Lords, we humbly desire that the Record of Coleman may be read, because there is more of special Matter in it than any of the rest, and your Lordships may dispose of the others as you please.

L. H. S. Read the Record of Coleman.

Then the Clerk read (in Latin) the Record of the Attainder of Edward Coleman, formerly executed for High-Treason, by him committed in this horrid Popish Plot, which is in English as followeth.

Of the Term of St. Michael, to the thirteenth Year of the Reign of King Charles the Second, &c.

Middlesex.

At another Time, to wit, on Wednesday next after eight Days of St. Martin this same Term, before our Lord the King at Westminster, by the Oath of twelve Jurors, honest and lawful Men of the County aforesaid, sworn and charged to enquire for our said Lord the King and the Body of the County aforesaid, it stands presented, That Edward Coleman, late of the Parish of St. Margaret, Westminster, in the County of Middlesex, Gent. as a false Traitor against the most illustrious, most serene, and most excellent Prince, our Lord Charles the Second, by the Grace of God of England, Scotland, France and Ireland, King, Defender of the Faith, &c. and his natural Lord, not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance, but by the Instigation of the Devil moved and seduced, the cordial Love, and the true, due and natural Obedience, which true and faithful Subjects of our said Lord the King towards him our said Lord the King ought and of right are bound to bear, utterly withdrawing; and devising, and with his whole Strength intending the Peace and common Tranquillity of this Kingdom of England to disturb, and the true Worship of God within this Kingdom of England practised, and by Law established, to overthrow; and Sedition and Rebellion within this Realm of England to move, stir up, and procure; and the cordial Love, and true and due Obedience, which true and faithful Subjects of our said Lord the King towards him our said Lord the King should bear, and of right are bound to bear, utterly to withdraw, blot out, and extinguish, and our said Lord the King to Death and final Destruction to bring and put; the 29th Day of September, the 27th Year of the Reign of our Lord Charles the Second, by the Grace of God, of England, Scotland, France and Ireland, King, Defender of the Faith, &c. at the Parish of St. Margaret, Westminster aforesaid, in the County aforesaid, falsely, maliciously, subtilly and traitorously proposed, compassed, imagined and intended Sedition and Rebellion within this Realm of England to move, raise up and procure, and a miserable Slaughter among the Subjects of our said Lord the King to procure and cause; and our said Lord the King from his kingly State, Title, Power and Government of this Realm of England utterly to deprive, depose, deject and disinheret, and him our said Lord the King to Death and final Destruction to bring and put; and the Government of the same Realm, and the sincere Religion of God in this Kingdom, rightly, and by the Laws of this Realm established, for his Will and Pleasure to change and alter, and the State of this whole Kingdom in it's universal Parts well instituted and ordained, wholly to subvert and destroy, and War against our said Lord the King within this Realm of England to levy. And to accomplish and fulfil these his most wicked Treasons and traitorous Imaginations and Purposes aforesaid, the same Edward Coleman afterwards, to wit, the said 29th Day of September, in the above said 27th Year of the Reign of our said Lord the King, at the Parish of St. Margaret Westminster aforesaid, in the County of Middlesex aforesaid, falsely, subtilly and traitorously devised, composed, and writ two Letters to be sent to one Monsieur le Chaise, then Servant and Confessor of Lewis the French King, to desire, procure and obtain to the said Edward Coleman, and other false Traitors against our said Sovereign Lord the King, from the said French King, his Aid, Assistance and Adherence, to alter the true Religion in this Kingdom then and still established, to the Superstition of the Church of Rome, and to subvert the Government of this Kingdom of England: And afterwards, to wit, the said 29th Day of September, in the above said 27th Year of the Reign of our said Lord, now King of England, &c. at the aforesaid Parish of St. Margaret Westminster in the County of Middlesex aforesaid, falsely and traitorously devised, composed and writ two other Letters to be sent to one Monsf. le Chaise, then Servant and Confessor of the said French King, to the Intent that he the said Monsf. le Chaise should

Records of  
Attainder  
of Coleman  
Ireland &  
conspirators  
judgments  
of Reading  
Lane, Knox  
& others



should intreat, procure and obtain to the said *Edward Coleman*, and other false Traitors against our said Sovereign Lord the King, from the aforesaid French King, his Aid, Assistance and Adherence to alter the true Religion in this Kingdom of England then and still establish'd, to the Superstition of the Church of Rome, and to subvert the Government of this Kingdom of England: And that the aforesaid *Edward Coleman*, in further Prosecution of his Treasons and traitorous Imaginations and Purposes aforesaid, afterwards, to wit, the same 29th Day of September, in the aforesaid 27th Year of the Reign of our said now Lord the King, the aforesaid several Letters from the said Parish of St. Margaret Westminster, in the County of Middlesex aforesaid, falsely, subtilly and traitorously did send into Parts beyond the Seas, there to be delivered to the said Monsieur Le Chaise. And that the aforesaid *Edward Coleman*, afterwards, to wit, the 1st Day of December in the 27th Year of the Reign of our Sovereign Lord Charles the Second, now King of England, &c. at the aforesaid Parish of St. Margaret Westminster, in the County of Middlesex aforesaid, one Letter from the aforesaid Monsieur Le Chaise (in answer to one of the said Letters, so by him the said *Edward Coleman* writ, and to the said Monsieur Le Chaise to be sent, first mentioned) falsely, subtilly and traitorously receiv'd; and that Letter so in Answer receiv'd, the Day and Year last aforesaid, at the aforesaid Parish of St. Margaret Westminster aforesaid, in the County of Middlesex aforesaid, falsely, subtilly and traitorously did inspect and read over; and that the aforesaid *Edward Coleman*, the Letter aforesaid so by him in answer received, in his Custody and Possession the Day and Year last aforesaid, at the aforesaid Parish of St. Margaret Westminster, in the County of Middlesex aforesaid, falsely, subtilly and traitorously detained, concealed and kept; by which said Letter the said Monsieur Le Chaise, the Day and Year last aforesaid, at the aforesaid Parish of St. Margaret Westminster, in the County of Middlesex aforesaid, signify'd and promised to the said *Edward Coleman*, to obtain for him the said *Edward Coleman* and other false Traitors against our said Lord the King, from the said French King, his Aid, Assistance and Adherence. And that the aforesaid *Edward Coleman*, afterwards, to wit, the 10th Day of December in the aforesaid 27th Year of the Reign of our said Sovereign Lord Charles II. now King of England, &c. at the Parish of St. Margaret Westminster aforesaid, in the County of Middlesex aforesaid, falsely, maliciously, subtilly and traitorously did relate and declare his traitorous Designs and Purposes aforesaid to one Monsieur Ruigni (then Envoy Extraordinary from the French King to our said most serene King, at the Parish aforesaid, in the County aforesaid, residing) to move and excite him the said Envoy Extraordinary with him the said *Edward Coleman* in his Treasons aforesaid to partake: And the sooner to fulfil and compleat those his most wicked Treasons and traitorous Imaginations and Purposes aforesaid, he the said *Edward Coleman*, afterwards, to wit, the 10th Day of December, in the aforesaid 27th Year of the Reign of our said Lord Charles the Second now King of England, &c. at the aforesaid Parish of St. Margaret Westminster, in the County of Middlesex aforesaid, advisedly, maliciously, subtilly and traitorously did devise, compose, and write three other Letters to be sent to one Sir William Throgmorton, Kt. then a Subject of our now Lord the King, of this Kingdom of England, and residing in France in Parts beyond the Seas, to solicit him the aforesaid Monsieur Le Chaise to procure and obtain of the said French King his Aid, Assistance and Adherence aforesaid. And those Letters last mentioned, afterwards, to wit, the Day and Year last aforesaid, from the aforesaid Parish of St. Margaret Westminster, in the County of Middlesex aforesaid, to the same Sir William Throgmorton in France aforesaid, falsely and traitorously did send, and cause to be delivered, against the Duty of his Allegiance, and against the Peace of our said now Lord the King, his Crown and Dignity, and against the Form of the Statute in such Case made and provided. Wherefore it was commanded the Sheriff of the County aforesaid, that he should not omit, &c. but that he should take him, if, &c. to answer, &c. And now, to wit, on Saturday next after eight Days of St. Martin, this same Term, before our Lord the King at Westminster, came the aforesaid *Edward Coleman*, under the Custody of William Richardson, Gent. Keeper of the Goal of our said Lord the King of Newgate, by virtue of the King's Writ of Habeas Corpus ad subjiciend', &c. (into whose Custody before then, for the Cause aforesaid, he was committed) to the Bar here brought in his proper Person, who is committed to the Marshal, &c. and presently of the Premises to him above imposed, being asked, How he will thereof be acquitted? saith, That he is in no wise thereof guilty, and thereof for Good and Evil doth put himself upon the Country. Therefore let a Jury thereupon come before our Lord the King at Westminster on Wednesday next after fifteen Days of St. Martin; and who, &c. to recognize, &c. because, &c. the same Day is given to the said *Edward Coleman*, &c. under the Custody of the said Keeper of the Goal of our said Lord the King, of Newgate aforesaid, in the mean time committed to be safely kept until, &c. At which Wednesday next after fifteen Days of St. Martin, before our Lord the King at Westminster, came the aforesaid *Edward Coleman* under Custody of the aforesaid Keeper of the King's Goal of Newgate aforesaid, by virtue of a Writ of our Lord the King of Habeas Corpus ad subjiciend', &c. to the Bar here brought in his proper Person, who is committed to the aforesaid Keeper of the King's Goal of Newgate aforesaid. And the Jurors of the Jury aforesaid, by the Sheriff of the County aforesaid hereunto impannell'd, being call'd, came; who being chosen, tried and sworn to speak the Truth upon the Premises, say upon their Oaths, That the aforesaid *Edward Coleman* is guilty of the High-Treason aforesaid, in the Indictment aforesaid specify'd, in manner and form as by the said Indictment above against him is supposed; and that the aforesaid *Edward Coleman* at the time of Perpetration of the High-Treason aforesaid, or at any time afterwards, had no Goods, Chattels, Lands or Tenements, to the Knowledge of the Jurors aforesaid. And the aforesaid *Edward Coleman* being asked if he hath any thing, or knows what to say for himself, why the Court here ought not to proceed to Judgment and Execution of him upon the Verdict aforesaid, saith nothing, but as before he had said: And hereupon instantly the Attorney-General of our said Lord the King, according to due Form of Law, demandeth against him the said *Edward Coleman* Judgment and Execution to be had upon the Verdict aforesaid, for our Lord the King. Whereupon all and singular the Premises being view'd, and by the Court here understood, it is considered, That the said *Edward Coleman* be led by the said Keeper of the Goal of New-

gate aforesaid, unto Newgate aforesaid, and from thence directly be drawn to the Gallows of Tyburn, and upon those Gallows there be hanged, and be cut down alive to the Earth, and his Entrails be taken out of his Belly and be burned (he still living); and that the Head of him be cut off, and the Body of him be divided into four Parts; and that those Head and Quarters be put where our Lord the King will assign them, &c.

L. Staff. I do not hear one Word he says, my Lords.

L. H. S. My Lord, This does not concern your Lordship any further than as to the Generality of the Plot.

Sir Will. Jones. My Lords, We have now done with our Proofs for the first general Head that we open'd, which was to make it out, that there was a Plot in general. We now come to give our particular Evidence against this very Lord; and before we do begin, we think fit to acquaint your Lordships, that our Evidence will take up some time: If your Lordships will have the patience to hear it out now, we will give it; but if your Lordships will not sit so long till we can finish it, it may be some Inconvenience to us to break off in the middle: And therefore we humbly offer it to your Lordships Consideration, whether you will hear it now, or no.

L. H. S. If it cannot be all given and heard now, it were better all should be given to-morrow.

Sir Will. Jones. If your Lordships please, then, we will reserve it till to-morrow.

L. Staff. My Lords, I would only have your Directions, whether I shall answer this General first, or stay till all be said against me. That which I have to say to this General, will be very short.

L. H. S. My Lord, you are to make all your Answer entire, and that is best for you.

L. Staff. I am very well contented, that I may be the better prepared for it.

L. H. S. Is it your Lordships Pleasure that we should adjourn into the Parliament-Chamber?

Lords. Ay, Ay.

L. H. S. Then this House is adjourned into the Parliament-Chamber.

And the Lords went away in the same Order they came.

The Commons returned to their House, and Mr. Speaker resumed the Chair, and then the House adjourned to eight of the Clock the next Morning.

The SECOND DAY,

Wednesday, December 1, 1680.

A Message was sent from the Lords, by Sir Timothy Baldwin, and Sir Samuel Clark.

Mr. Speaker,

The Lords have sent us to acquaint this House, That they intend to proceed to the Trial of William Viscount Stafford, at ten of the Clock this Morning, in Westminster-Hall.

Mr. Speaker left the Chair, and the Commons came into Westminster-Hall in the new-erected Court.

And the Managers appointed by the Commons went into the Room prepared for them in that Court, to proceed to the particular Evidence against William Viscount Stafford.

About ten of the Clock in the Morning, the Lords came into the said Court in their former Order; and Proclamation being made of Silence, and for the Lieutenant of the Tower to bring his Prisoner to the Bar, they proceeded.

L. H. S. My Lords expect you should go on with your Evidence, and proceed in the Trial of this noble Lord.

L. Staff. My Lords, if your Lordships please, I humbly desire that my Council may be near me for the arguing of what is fit to them to speak to, as to Points of Law; for Points of Fact I do not desire it.

L. H. S. My Lord, You have an Order for your Council to attend, and they must and ought to attend.

Mr. Serj. Maynard. The Council must not suggest any thing to him while the Evidence is giving; they are not to be heard as to Matter of Fact.

L. H. S. It is not intended to make use of Council as to Matter of Fact, but they may stand by.

Mr. Serj. Maynard. My Lords, They may stand within hearing, but not within prompting.

L. Staff. I assure you, if I had all the Council in the World, I would not make use of them for any Matter of Fact.

Mr. Treby. My Lords, will you please to order them to stand at a convenient Distance, that they may not prompt the Prisoner?

Sir Will. Jones. My Lords, I hope your Lordships will consider, that a Man in a capital Cause ought not to have Council to Matter of Fact. 'Tis true, he may advise with his Council; I deny it not; but for him in the Face of the Court to communicate with his Council, and by them be told what he shall say, as to Matters of Fact, is that which (with Submission) is not to be allow'd. If your Lordships order they shall be within hearing, I do not oppose it; but then I desire they may stand at that Distance, that there may be no Means of Intercourse, unless Points in Law do rise.

L. H. S. You were best make that Exception when there is Cause for it; in the mean time go on with your Evidence.

Sir F. Win. We did perceive his Council came up towards the Bar, and very near him, and therefore we thought it our Duty to speak before any Inconvenience happened. This Lord being accused of High-Treason, the allowing of Council is not a Matter of Discretion. If Matters of Law arise, all our Books say, that Council ought to be allow'd: But we pray that there may be no Council to advise him in Matter of Fact, nor till your Lordships find some Question of Law to arise upon the Evidence.

L. H. S. When there is Cause, take the Exception; but they do not as yet misbehave themselves.

Mr. Treby. My Lords, We presume your Lordships did, from the Strength and Clearness of Yesterday's Evidence, receive full Satisfaction concerning the general Plot and Conspiracy of the Popish Party.

It being an Evidence apparently invincible, not out of the Mouths of two or three Witnesses only, but of twice that Number, or more, credible Persons.

Upon which we doubt not but your Lordships who hear, and Strangers and unborn Posterity when they shall hear, will justify this Prosecution of the Commons, and will allow that this Impeachment is the proper Voice of the Nation crying out, as when the Knife is at the Throat. By the Evidence



dence already given, I say, it is manifest that there was a general grand Design to destroy our Religion, our King, and his Protestant Subjects. And 'tis even impossible that this Design, so big, could be conducted without the Concurrence of such Persons as this noble Lord at the Bar: It could not be carried on by less and lower Men.

And it were a Wonder, that a Person so fervently affected and addicted (as this Lord is) to that Party, should not be in at so general a Design of the Party.

But this indeed is but presumptive Evidence, which will induce a moral Persuasion.

We shall now produce such positive Evidence as will make a judicial Certainty; and will abundantly suffice to convince your Lordships, and convict this Lord.

The Particulars you will hear out of the Mouths of the Witnesses, whom we shall call: They will testify what Share this Lord had in (almost) all the Parts and Articles in our Charge; contriving and contracting for the Murder of the King, levying Arms, &c. And first we call Mr. Dugdale.

L. Staff. My Lords, I do conceive I have good ground to except against this Man for a Witness: For my own particular, I know myself as clear and free as any one here; but I will not except against him now, but reserve it against the time when I come to make my Defence, and therefore admit him to be sworn, provided, my Lords, that he look me full in Face.

L. H. S. My Lord Stafford, What is your Exception against this Man that he may not be a Witness?

L. Staff. I do admit him to be sworn, I say nothing now against him.

Mr. Treby. He is sworn already.

L. H. S. You swore him to give Evidence as to the general Plot; you did not swear him as to the Particulars against my Lord Stafford.

Sir John Trevor. We are content he shall be sworn again, we pray he may be sworn.

Sir Will. Jones. 'Tis true, my Lords, we did divide the Evidence into two Parts, but his Oath was not divided: If your Lordships please, you may swear them all over again, if it may be any Satisfaction, but I think it was never seen before.

Then Mr. Dugdale was sworn.

*W. Dugdale.*

L. H. S. There is Mr. Dugdale; come, Sir, what say you?

L. Staff. Really he is so changed I do not know him.

Mr. Dugd. My Lord, I have Witnesses to prove that you know me.

L. Staff. I beg your Lordships that he may look me in the Face, and give his Evidence, as the Law is.

Sir John Trevor. My Lords, if this noble Lord, the Prisoner at the Bar, will have this Witness to look him continually in the Face, the Court will not hear half his Evidence: We desire he may address himself, as the Law is, to your Lordships and the Judges.

L. Staff. I desire the Letter of the Law, which says, my Accuser shall come Face to Face.

Mr. Dugd. My Lords, I am willing to do as your Lordships shall order.

L. H. S. My Lord, you do see the Witness, that is enough for Face to Face; and you make no legal Exception against him, why he should not be heard.

L. Staff. Very well, my Lord, I submit.

Mr. Dugd. My Lords, I have for some Years past, whilst I was a Servant with my Lord Aston, been acquainted and frequently had Discourses with my Lord Stafford, before we came to discourse any thing concerning the Plot on foot. Lately, in 78, my Lord coming down into the Country, it was either in August or September, the latter end of August, or the beginning of September—

L. Staff. I beseech your Lordships he may name the times.

L. H. S. My Lord, if your Lordship please, do not interrupt the Witnesses; but wherein he is short, do you ask him the Question when it comes to your turn, I will bring it to as much Certainty as I can.

Mr. Dugd. There was a Meeting at Tixal, where there were several present—

L. H. S. When?

Mr. Dugd. It was in September, or the latter end of August.

L. H. S. What Year?

Mr. Dugd. 78. My Lords, I had by Mr. Evers's means Admittance to hear, because of my Encouragement, what the Discourse was at that time. It was to debate and determine upon the former Resolutions both beyond Sea and at London before, both to take away the Life of the King, and to introduce their Religion, of which I was then one. My Lord Stafford was there present, and did with the rest consent to it. Afterwards my Lord Stafford being at one Mr. Abnett's of Stafford one Sunday Morning in September, came to my Lord Aston's House to Mass: I met with my Lord Stafford at some Distance from the Gate, and my Lord speaking to me when he alighted off from his Horse, told me it was a very sad thing they could not say their Prayers but in an hidden manner, but ere long we should have our Religion established; which was much to my Joy at that time. After that time my Lord Stafford was sometimes at Stafford, and sometimes at Tixal, I will not be positive as to a Day, but I think it was about the middle of September. My Lord Stafford sent for me to his Lodging-Chamber, as he had several times before sent for me; and said, he had had great Commendations of me from Mr. Evers, that I was faithful and trusty.

L. Stafford. My Lords, I desire I may have Pen, Ink, and Paper, allowed me.

L. H. S. Ay, God forbid you should be denied that: Give my Lord Pen, Ink, and Paper. I hope your Lordship hath one to assist you that takes Notes for you; if you have not, you have lost a great deal of time already.

L. Staff. There was one all Day yesterday, my Lords; I desire he may speak his Evidence over again.

L. H. S. Let him begin his Evidence again, for my Lord had not Pen, Ink, nor Paper, which he ought to have to help his Memory.

Mr. Dugd. I may mis as to the Words, but the Matter of Fact I shall repeat: My Lords, I have been frequently acquainted whilst I was a Servant at my Lord Aston's with my Lord Stafford, coming to my Lord's House in the Country, and my Lord being several times where I came to that Intimacy by Mr. Evers's Means, that my Lord would frequently discourse with me. About the latter end of August, or some Day in September, my Lord Stafford, my Lord Aston, and several other Gentlemen, were in a Room in my

Lord Aston's House, and by the means of Mr. Evers I was admitted to hear for my Encouragement; and there I heard them in that Debate at that time fully determine a Resolution upon all the Debates that had been beyond Sea and at London before, that it was the best way they could resolve on to take away the Life of the King, as the speediest Means to introduce their own Religion. After some time my Lord being at Stafford at Mr. Abnett's—

L. H. S. Was my Lord Stafford at that Meeting where they debated to kill the King?

Mr. Dugd. My Lord was there.

L. H. S. Was he consenting to that Resolution?

Mr. Dugd. Yes, I heard every one give their particular full Assent.

(At which there was a great Hum.)

L. H. S. What is the Meaning of this? For the Honour and Dignity of publick Justice, let us not carry it as if we were in a Theatre.

Mr. Dugd. My Lords, some time in September, my Lord Stafford being at Mr. Abnett's House in Stafford, came once upon a Sunday Morning to hear Mass: I meeting him at the outward Gate of my Lord Aston's House when he alighted off his Horse, after some Discourse he turned to me, and told me, It was a sad thing we could not say our Prayers but in an hidden Manner; but ere long, if Things took Effect, we should have the Romish Religion established: and I at that time did seem to be, and really was as glad as any Person could be. After some time, I think it was about the 20th or 21st of September, my Lord Stafford sent for me into his Lodging-Room, I think it was by his Page, or him that waited upon him in his Chamber; and he told me I must come to my Lord; and I immediately went to his Lordship, he was just then arising and dressing; he sent his Man out, and told me, he had had a good Account from Mr. Evers and other Gentlemen, that I would be faithful and true to their Intentions about the introducing their Religion. He told me, he was likewise concerned himself, and that in a very high degree; and for taking away the Life of the King, he offered me at that time for my Charges and Encouragement 500*l.* and that I should go in October after to London with him (my Lord Stafford), and that I should be with him sometimes at London, and sometimes at an House of my Lord Aston's, about twenty-five Miles from London; and that I should be under the Care of him in London and Mr. Ireland, and in the Country of one Mr. Parsons that knew of the Design. I did then shew as much Resolution to be faithful to my Lord as I could, and that I would be true to what my Lord then engaged me. I after went to Mr. Evers, and communicated to him what my Lord Stafford said, and was something in Admiration at my Lord's offering me such a Sum of Money, for I doubted of my Lord's Ability to make good Payment. He told me, that I need not fear it, for Mr. Harcourt and Mr. Ireland had Money enough in their Hands to defray that and other Charges; and I should not want Money for the carrying it on. My Lords, I remember that at another time there was a Meeting, wherein there was a Debate about my going up, and other Business; my Lord Stafford was present, and there were several there besides, I did not know them all then; but in the first place they told me, I should be made equal with one Captain Adderley that is since dead, and that I should have a Reward in London. I understood that the Duke of York, my Lord Arundel, and my Lord Bellasis, and others, were to give it me; and speaking of the Rewards to those that were engaged, they said, there would be Land enough from the Protestants to satisfy all that acted in the Design. Another time my Lord Stafford discoursing in a Dining-Room in my Lord Aston's House, did express his great Zeal, and the Reason why he was such an Enemy against the King; he said, both he and my Lord Aston had been great Sufferers for the King, and for his Father, and that my Lord in particular, his Grandfather or his Father, had spent 30,000*l.* in the King's Service, and had no Recompence; that he had always shewed himself loyal to the King; but whenever there came any Place of Preferment to be disposed of, it was rather given to such as had been Traitors and Rebels to the old King, and likewise to the King himself, than to any that had been loyal. He said, this was his chief Motive, if there were not Religion in the Case, which was of an higher Nature, or to that Purpose.

L. H. S. When was this last Discourse?

Mr. Dugd. In September 78, as near as I remember, for we had several Discourses.

L. H. S. This was not the time you were at my Lord's Chamber?

Mr. Dugd. No, It was in my Lord Aston's Dining-Room.

L. H. S. No, nor when he sent for you to offer you the 500*l.*

Mr. Dugd. No, not at that time, it was another Time.

L. H. S. What Month and Year?

Mr. Dugd. September 78, my Lord.

Mr. Foley. I desire he may give your Lordships an Account what Assurance he had of Pardon, if he did succeed.

Mr. Dugd. I was told I need not fear; and particularly my Lord Stafford told me, I should have a free Pardon for it; for the King had been excommunicated, and was likewise a Traitor, and a Rebel, and an Enemy to Jesus Christ.

L. H. S. But how could you be pardon'd? From whom were you to have that Pardon?

Mr. Dugd. I was to be pardon'd by the Pope.

L. H. S. That was for your Sins.

Mr. Dugd. Yes; I expected no other, if I had gone on.

Mr. Treby. Were you promis'd nothing else but a Pardon from the Pope?

Mr. Dugd. Yes, I was to be fainted.

Sir W. Jones. Will his Lordship please to ask him any Questions? We ask him no more.

Mr. Foley. Yes, I desire another Question may be ask'd him: That he would give an account of the Letters my Lord Stafford writ to Evers about the Design.

L. H. S. What say you to that Question?

Mr. Dugd. There came a Letter to Evers from my Lord Stafford; I knew it to be my Lord's Hand: Some might counterfeit his Hand; but as near as a Man can swear to the Hand of another in a Paper he did not see written, that was my Lord's Hand: That Things went all well beyond Sea, and so he did hope they did here, for the carrying on of the Design: It was to this Purpose expressly.

Mr. Treby. We have done, my Lords, with him.

L. H. S. My Lord Stafford, will you ask him any Questions?

L. Staff.



L. Staff. My Lords, I have divers Questions to ask him, very many; but I humbly crave your Lordships Directions, if I ask him any Questions now, whether I may not ask him some afterwards?

L. H. S. My Lord, you may ask Questions of the Witnesses as often as you please, and whenever you find it useful to you: God forbid there should be any time to foreclose a Man from asking a Question that may save his Life.

L. Staff. I pray he may be ask'd how long before this time he knew of the Plot.

L. H. S. How long have you known this Plot?

Mr. Dugd. In general, for the introducing of the Popish Religion, and the Encouragement to it by the Duke of York's being Successor, I have known it fifteen or sixteen Years by the means of Mr. Evers.

L. Staff. My Lords, I understand him, he says he knew the Plot fifteen or sixteen Years ago; if I be not mistaken, he says so.

Mr. Dugd. My Lords, if your Lordships please to give me leave to explain my self further, it was not for taking away the Life of the King, but for making ready against the King died, with Men and Arms.

L. Staff. My Lords, he says in the latter end of August, or beginning of September, I told him such and such things; I desire he may name the Day; that may be many Days, and I may prove I was not there; and I can prove for all August, and a good while in September; therefore I desire he may name the Day.

L. H. S. My Lord Stafford, I come thus near on purpose to serve your Lordship, that you may not strain your Voice too much; but I am not so happy as to apprehend what it is you say.

L. Staff. My Lords, I say, he speaks of the latter end of August, or the beginning of September; which is too great a Latitude, and I conceive more than ought to be given in such a Matter of Importance as this is to me; I desire he may name the Day, for he may name Days, perhaps, that I was not there.

L. H. S. Look you, Mr. Dugdale; my Lord does desire, if you can, you would be a little more particular than about the latter end of August, or the beginning of September; if you can remember the Day, tell it us.

Mr. Dugd. I cannot remember particular Days, it being a thing I then took no account of; only this I do remember by a remarkable Circumstance, that one time was either the 20th or 21st of September 78.

L. H. S. That was the time of your coming into his Chamber, and his offering you five hundred Pound?

Mr. Dugd. It was so; but other Meetings I dare not charge to a Day.

L. Staff. How then can I make my Defence?

Mr. Dugd. I will stand to that time.

L. Staff. How, my Lords, can I be able to give an Account of it? I shall prove to your Lordships, that he once said it was in August, now he says it was in August or September. I beseech you that he may positively stand to the Month, if not to the Day.

Mr. Dugd. I speak as near as I can.

L. Staff. But he says the 20th or 21st particularly.

Mr. Dugd. Thereabouts I am sure it was.

L. Staff. Look you, he will be positive in nothing.

Mr. Dugd. I will stand to that time.

L. Staff. If he swears false in one Thing, I hope, upon proof of that, your Lordships will believe he may be false in all. I pray he may be asked what Hour of the Day it was, whether it was Morning or Afternoon.

L. H. S. He is positive only to the 20th or 21st of September, the time when he says you called for him into your Chamber, and offered him five hundred Pound to kill the King: would your Lordship ask him whether it were in the Forenoon or the Afternoon?

L. Staff. Yes, my Lord, I would.

L. H. S. Was it in the Forenoon or in the Afternoon?

Mr. Dugd. It was in the Forenoon; for I did formerly speak of that, he was dressing himself when I came in.

L. H. S. Then that is answered positively.

L. Staff. My Lords, he says one Sunday Morning I came to my Lord Aston's to Mass, I desire you would please to ask him, whether ever he saw Mr. Evers and me in his Life alone together?

L. H. S. Have you seen my Lord Stafford and Mr. Evers ever together alone?

Mr. Dugd. Several times I have seen them walking together in the Garden, and in the Walks, at my Lord Aston's; and I have been with them myself when there hath been only them two besides.

L. H. S. That is answered fully; will your Lordship ask him any thing else?

L. Staff. He says he was to go to London in October with me, I stand not upon that till I come to make my Answer; but I take it, he says the 20th or 21st of September, when I offered him five hundred Pound, in my Chamber, to kill the King, that he went presently to Evers to speak with him about it.

L. H. S. As doubting the Payment of the Money, and he told him, that Harcourt and Ireland would pay it.

L. Staff. Was it the same Day? Pray ask him, my Lords.

Mr. Dugd. I do not say it was the same Day, but it was the next time I could come to speak with him.

L. H. S. He tells you, it was as soon as he could speak with him.

L. Staff. He said before, it was presently after he went from me. I desire your Lordships would take notice how he contradicts himself in every Circumstance.

L. H. S. What say you, did you go presently to Mr. Evers after my Lord Stafford had made the Offer, or was it the same Day, or the next Day?

Mr. Dugd. To the best of my remembrance, it was the same Day; I can't say positively.

L. Staff. My Lords, I have no other Questions with Dugdale.

Sir J. Trevor. Then, my Lords, we will call another Witness.

L. H. S. Have you no more to say to Dugdale, my Lord?

L. Staff. Not at present, till I come to make my Defence.

L. H. S. God forbid, but you should have leave to say all that you can for yourself.

Mr. Treby. Then set up Dr. Oates. Do your Lordships require that he should be sworn again?

L. Staff. I desire nothing, nor propose it, if he will declare upon his Oath that he took yesterday.

L. H. S. Hark you, Dr. Oates, this is but a Continuation of the Proceedings yesterday; you are upon the same Oath now that you were then, and what you say this Morning will be taken to be upon the same Oath.

Mr. Treby. Dr. Oates, upon the Oath you have taken yesterday—

L. H. S. Pray swear him again. (Which was done.)

Mr. Treby. Dr. Oates, pray speak your Knowledge of my Lord Stafford's being engaged in the Design.

Dr. Oates. I desire I may be left to my own Method.

L. H. S. Go on in your own Method.

Dr. Oates. My Lords, in the Year 67, there were divers Attempts upon the Life of the King, as the Jesuits told me; and in the Year 74, there was an Attempt upon the account of the King's withdrawing the Indulgence in 74 and 75: in the Year 1677, whilst I was in Spain, I met with several Letters signed Stafford, wherein my Lord Stafford did assure the Jesuits in Spain, that were of the Irish Nation, how zealous he should appear in the promoting of the Catholick Design. My Lords, in the Year 77, I went to St. Omers, and I came there in December. My Lords, in that Year I being order'd to look over the Papers, and put them in order, I found several Letters signed Stafford; wherein my Lord Stafford did intimate to the Fathers, that whereas there had been some Difference betwixt him and the Society for several Years, the Business was reconciled by one Signior Con, who came over into England in the Year 76, to reconcile the great Difference that was betwixt the Jesuits and the Secular Clergy, and between the Benedictine Monks and the Jesuits. My Lords, my Lord Stafford, upon the persuasion of this Signior Con, as he does intimate in his Letter, does assure the Jesuits of his Fidelity and his Zeal. My Lords, in the Year 78, I found Letters from my Lord Stafford, wherein he does blame Mr. Coleman's Openness, and his being too publick in the great Affair, and that Mr. Coleman was pleased to communicate several great Secrets to Men, of whose Fidelity his Lordship was not secure. My Lords, in 1678, in the Month of June, my Lord Stafford, the Prisoner at the Bar, came to Mr. Fenwick, and there received a Commission from him to pay an Army that was to be raised for the promoting of the Catholick Interest; and he did assure Mr. Fenwick that he was going down into Staffordshire, and there he did not question but he should have a good Account how the Catholicks stood affected; and he did not question but to give a good account how affairs stood in Staffordshire, Shropshire, and Lancashire: and this Commission to my Lord Stafford was, as near as I can remember, to be Pay-Master-General of the Army. My Lords, among other Discourses with my Lord at the Bar, he was discoursing about my Lord Duke of Norfolk, and my Lord Arundel his Son; and after several other Passages, he (Fenwick) was asking of him how my Lord Arundel came to have a Jesuit in his House. My Lord Stafford did say, that my Lord of Peterborough, his Father-in-Law, was instrumental in it, on purpose to oblige the Duke of York; for my Lord Arundel, as I have been told, kept Father Symonds in his House, who to my knowledge was a Jesuit. But, my Lords, he came to Mr. Fenwick's (my Lord Stafford did) by the Name of Mr. Howard of Effingham.

L. H. S. Were you at Fenwick's when my Lord Stafford came to his Chamber?

Dr. Oates. Yes, my Lords.

L. H. S. Look upon my Lord Stafford, is that the same Person?

Dr. Oates. It is the same Gentleman that came there by the Name of Howard of Effingham.

L. H. S. And he took the Commission?

Dr. Oates. Yes, he did so.

L. H. S. And he promised to effect it?

Dr. Oates. Yes, and he said that he was then going down into the Country, and he did not doubt but at his return Grove should do the Business.

L. H. S. Who said so, Fenwick?

Dr. Oates. No, my Lord Stafford. And says Fenwick to my Lord Stafford again, Sir, 'tis fit that some should be here present, lest you fail of your Expectation; or to that purpose. 'Tis two Years since, and I cannot remember the Words, but my Lord Stafford did say, he was of necessity to go into the Country at that time. And there he did write a Letter to St. Omers, in which he did excuse himself about a young Man that was to be sent to the Jesuits College, whom he had taken care of another way. And he desired their excuse, but he would be as faithful to them as any body, for all that. And the same Hand that wrote that Letter, by all the comparing I could make in my Thoughts, wrote all the other Letters that I saw at St. Omers, and in Spain. My Lords, I saw my Lord Stafford at Dr. Perrott's, I think verily it was in June or July 78; it was before the rising of the Parliament that sat that Summer, and my Lord Stafford was discoursing of a Son he was to send over to Lisbon, and he went over by the Name of Sir John Stafford. And after this Discourse was over, they fell into a Discourse of the Affairs in hand, and my Lord was mighty glad there was so good a Correspondence and Concord, tho', my Lords, it was not very great; for the Jesuits had an irreconcilable Quarrel with the rest of the Clergy: But my Lord did hope that their fair Correspondence might tend highly to the advancing the Catholick Cause. But, my Lords, I have one thing more to speak as to the Discourse at Fenwick's Chamber; speaking of the King, he said, he hath deceived us a great while, and we can bear no longer.

L. H. S. Who said so?

Dr. Oates. My Lord Stafford, the Gentleman at the Bar.

L. H. S. When was that? At Dr. Perrott's?

Dr. Oates. No, I speak of a Passage at Fenwick's which I had forgot. My Lords, this is all I can remember at present.

Mr. Foley. My Lords, I desire he may give an account what Letters my Lord Stafford sent to Fenwick and Ireland to pay Money.

Dr. Oates. There was some Money returned, but it was no great Sum, and it was about private Business; Mr. Morgan was to receive it: I chanced to have the Money in my own keeping; Mr. Fenwick gave it me to pay to Mr. Morgan, and the Letter in which the Sum was mentioned did give them an account (for it was out of Staffordshire), that he found things stand in a very good state there. But I being not within, Mr. Morgan called on Mr. Fenwick for the Money, which I returned to him when he had paid it.

L. Staff. My Lords, I do, in the first place, desire to know where Mr. Fenwick lived.

L. H. S. Where did Mr. Fenwick live when you saw my Lord at his Chamber, and the Commission delivered?

Dr.



Dr. Oates. His Lordship, I suppose, knows very well where he lived; he lived in *Drury-Lane*.

L. Staff. I will submit to any Thing, if ever I saw the Man, or heard of him till the Discovery of the Plot.

Dr. Oates. He came to him by the Name of *Thompson*.

L. H. S. Your Lordship does not observe; your Lordship says that you never knew any *Fenwick*, but your Lordship knew one *Thompson*, and that *Thompson* was *Fenwick*.

L. Staff. I did know one *Thompson*, but that *Thompson* I knew was an English Merchant in *Brussels*, and not a Jesuit.

Dr. Oates. I can't say what my Lord knows, that he knew *Fenwick* to be a Jesuit, but he knew one *Thompson*, that was *Fenwick* the Jesuit.

L. Staff. I never heard of the Name till this Plot.

Dr. Oates. But, if your Lordship please, I will give you a Reason why I believe he knew him to be a Jesuit, because the Society was very often in their Mouths in their Discourses; which gives me a Ground to believe he knew him to be what he was: But, my Lord, he took his Commission from him.

L. Staff. I desire he may be asked—

L. H. S. Good my Lord, raise your Voice, for I am come half way to hear you.

L. Staff. Pray, my Lords, give me leave to ask him, whether Dr. Oates hath not said several times since I was first imprison'd, that he never saw me in his Life. I think I was imprison'd the 21st of *October* 78.

Dr. Oates. My Lords, I never said any such thing.

L. Staff. I will willingly die, if ever I saw this Doctor in my Life.

Dr. Oates. I excuse my Lord for that, for I was in another Habit, and I went by another Name; and your Lordships do remember I came in another Habit to make the first Discovery.

L. Staff. My Lord, I never saw his Face, nor know him, nor *Fenwick*, or *Thompson*, otherwise than one *Thompson*, a Merchant at *Brussels*.

Dr. Oates. But, my Lords, I have one thing more to say of my Lord *Stafford*; my Lord *Stafford* went into *France*, I can't say the Year, but I believe it is within the Term of six or seven, but he went over to *France*; and it did appear by Letters from him, that Signior *Con* was made choice of to heal the Difference between the Regulars and the Seculars; and Signior *Con* did come over in the Year 76, and there did make a kind of a Peace among them, which lasted whilst *Con* stayed here, and *Con* did bring over Messages, to which my Lord *Stafford* (if he tells any Truth in his own Letter) did return Answers.

L. Staff. For the present, all I say to it is this, I never writ any one Letter this 25 Years, nor had any Correspondence with any Jesuit.

L. H. S. I beseech you, my Lord, make me capable of serving your Lordship, by letting me hear what you say.

L. Staff. My Lord, I have a great Cold, and can speak no louder; I desire to ask this Witness no more Questions at present, but I say, I never writ any Letters to any Priest this 25 Years.

Mr. Foley. Then, my Lords, if my Lord hath done, we will call another Witness, and that is Mr. *Edward Turberville*. (*Who was sworn.*)

L. H. S. Look upon the Prisoner. Do you know my Lord *Stafford*?

Mr. Tur. Yes, my Lord.

L. H. S. Raise your Voice, and speak deliberately.

Mr. Treby. Give an account of your Knowledge, and use your own Method.

Mr. Tur. My Lords, in the Year 1675 I was persuaded by my Lady *Powis*, and one *Morgan* that was Confessor to the Family, to go to *Doway*, in order to take upon me the Frier's Habit. When I came there, instead of Religion, I found nothing but Hypocrisy and Villainy among them, and quickly grew weary of staying there, and with much difficulty I escaped thence to go for *England*: When I came into *England*, I did think that my Friends would look unkindly upon me, because I refused to live in that Way that they proposed to me to live in. I used all the Means I could to have them reconcil'd, and made Application to them, that since I could not bear with the Life they would have had me lived in, they would contrive some Way for me, being a younger Brother, that I might live in the World; but they were so averse and inveterate against me, that they told me, instead of doing any thing for me, they would do me all the Mischief and Prejudice they could; and having lived all my Time among them, I thought the World would receive a Character of me from them who were my Relations, as they would please to represent it. So having no hopes in *England*, I took a Resolution to go into *France*, where I had a Brother that was a *Benedictine* Monk: And I hoped that he being in good Repute amongst them, might be able to do me some Service there. When I came to *Paris*, my Brother used all the Endeavours imaginable to get me to be of that Order; but I having so ill a Conceit and Opinion of the Order that I was in before, and thinking all the rest were the same, I was unwilling at all to enter into it. And after I staid there a while, I resolved to come over into *England*. My Brother used all the means he could for my Accommodation, and recommended me to this noble Lord, the Prisoner at the Bar, who lodged then at a Corner-House in a Street which, as I remember, bears the Name of *La Rue de Beaufort*, where I was several times with him, in order to come over with him in the Yacht for *England*. After I had been there for a Fortnight with this Lord, he understanding my Condition, by my Brother, and by the other Fathers of that Convent, and imagining I was a fit Instrument to be employ'd on such an Occasion, propos'd to me a Way, whereby, as he said, I might not only retrieve my Reputation with my Relations, but also make myself a very happy Man: And after having exacted from me all the Obligations of Secrecy which I could give him, he at length told me in direct Terms, it was to take away the Life of the King of *England*, who was an Heretick, and consequently a Rebel against God Almighty. I looked upon it as an extraordinary Attempt, and desired time to consider of it before I would undertake it. And I gave him this Answer, I would give him my Resolution at *Diep*, where we were to go on board for *England*. And when I came to take my leave of this noble Lord at the Bar, he was sitting upon the Bench, and he was troubled with the Gout in his Foot at that time. And he told me he had some Business to go to *Versailles*, and that he should not be in six or seven Days at *Diep*, where I was to wait for him. After a while, I received a Letter at *Diep* from his Lordship, wherein he writ me word, that he had altered his Resolution, and would go by the way of *Calais*, and that I should hasten to wait on his

Lordship at *London*: I have one thing more to observe to your Lordships: When I got passage from *Diep*, in a Fisher-boat for *England*, I never came near my Lord *Stafford*, because being not willing to undertake his Proposal, I thought myself not safe, even from my own Relations; and therefore I made my Applications to the Duke of *Monmouth*, and his Grace was pleased by Letter to recommend me into the *French* Service, and by that means I avoided his Lordship's further Importunity.

L. H. S. You say, my Lord did propose to you the killing of the King; did he plainly make the Proposal in direct Terms to kill the King?

Mr. Tur. Yes, he did, my Lord.

L. H. S. What did he offer you to do it?

Mr. Tur. Nothing, for I would not accept of it. I told him it was a Matter of great Concernment, and I ought to consider of it; and I took time to think of it, and would give him my Answer at *Diep*, which he came not to; and so there was an end of it.

L. H. S. What Engagements of Secrecy had you given my Lord, before he open'd himself so plainly to you?

Mr. Tur. I gave my Lord my Word and my Promise, that I would not discover it to any Person directly or indirectly; my Lord had nothing of an Oath from me.

L. H. S. Will you ask him any more Questions, Gentlemen?

Sir Will. Jones. No, my Lords.

L. H. S. Will your Lordship ask him any Questions, my Lord *Stafford*?

L. Staff. My Lord, I never saw the Man before in my Life. I will ask him one Question, since he hath been pleased to swear against me.

Mr. Tur. My Lords, I had no Reason but the Truth to do it; for I never received any Injury from his Lordship in my Life.

L. Staff. It seems I had ill Luck to chuse this Man for an Attempt to kill the King, who was such a Coward he ran away from his Colours, and was to have been shot to death.

Mr. Tur. Ask the Duke of *Monmouth* what Character he received of me.

L. Staff. He says, in the Year 75 he went from *London* to *Doway*, and staid some time there, and then came back to *England*; I beseech your Lordships to ask him what time he went back to *Paris*.

L. H. S. What time was it you went back to *Paris*?

Mr. Tur. Truly, my Lord, I cannot be punctual to a Fortnight, but I believe it was the Beginning of *June*.

L. H. S. What Year?

Mr. Tur. 75.

L. Staff. My Lords, I would know who recommended him to me to go over with me into *England*?

L. H. S. Who recommended you to my Lord *Stafford* to go into *England*?

Mr. Tur. My Lords, it was Father *Sherborn*, who was then Prior of the *Benedictine* Monks in *Paris*, and father *Nelson*, Sub-Prior of those Monks, and my Brother, who is a Monk in the same Convent.

L. H. S. He says, that there were three Persons that recommended him to your Lordship.

L. Staff. I never saw them in my Life.

Mr. Tur. Your Lordship, that says I was a Coward, and run away from my Colours, will say any thing.

L. Staff. I not only say it, but will prove it by two Witnesses.

Mr. Tur. Do it if you can.

L. Staff. He says, in the beginning of *June* 75 he went into *France*. I desire to know of him, when was it he spoke to me?

Mr. Tur. In *November* 75.

L. Staff. He says in *November*.

Mr. Tur. Yes, my Lord, about the Beginning of *November*.

L. Staff. I beseech your Lordship, where was it he spoke to me?

L. H. S. *Turberville*, where was it you spoke to my Lord?

Mr. Tur. In *Paris*.

L. Staff. Whereabouts in *Paris*?

Mr. Tur. It was the Corner-House of the Street, which Street faces *Luxembourg-House*; the Prince of *Conde* lodges on the right hand in that Street, I take it to be so, and you lodged at the Corner-House; I think the Name of the Street was *La Rue de Beaufort*.

L. Staff. Which if the Prince of *Conde* did—I will say no more.

Mr. Tur. I cannot be upon my Oath in such Cafes, but I think he does, I take it so.

L. Staff. He says he was with me a Fortnight, what does he mean?

Mr. Tur. I came to my Lord several times in the Space of a Fortnight.

L. Staff. I desire to know who brought him to me?

Mr. Tur. Father *Sherborn*, Father *Nelson*, and my Brother Father *Anthony Turberville*; and sometimes I came alone.

L. H. S. He says, those three Fathers recommended him to your Lordship, and he came himself several times.

Mr. Tur. Yes, my Lords, it is true.

L. Staff. I beseech your Lordships, did he come directly to my Chamber, or where?

Mr. Tur. Sometimes to my Lord's Chamber, and at other times I met him in a lower Room.

L. Staff. It concerns me much, my Lords; and tho' they be foolish Questions, yet I hope your Lordships will pardon me if I ask them. Where was this Discourse about killing the King?

L. H. S. Was this Discourse in the Chamber, or in the lower Room?

Mr. Tur. In the lower Room.

L. Staff. He says, I think, that he hath been in my Chamber.

L. H. S. Have you been in my Lord's Chamber as well as in the lower Room?

Mr. Tur. Yes, my Lords, I have.

L. Staff. What kind of Room is it?

Mr. Tur. I can't remember that.

L. Staff. No, I dare swear you can't.

Mr. Tur. I cannot tell the Particulars; what Stools and Chairs were in the Room.

L. Staff. My Lords, I have no more to say to him at present.

L. H. S. Mr. *Turberville*, how long have you been in *England*?

Mr. Tur. I cannot answer punctually; I have been in *England* near four Years.

L. H. S. How came it to pass that you never discovered this sooner?

Mr. Tur.



Mr. Tur. I had no Faith to believe that I should be safe if I did it, but my Brains might be knocked out; and that kept me off from doing that Service which I might be better able to do, if I did defer it.

L. H. S. How come you to discover it now?

Mr. Tur. The King's Proclamation, and some Friends that have persuaded me that I may do it with Safety, who will give your Lordships an account of it.

L. Staff. I desire he may attend when I make my Defence.

Mr. Tur. Yes, I shall: But I am sorry his Lordship hath so ill a Memory as to what passed between us. I shall be very unwilling to do his Lordship or any Body else any Injury, but I must tell the Truth.

Sir Will. Jones. My Lords, we shall call no more Witnesses, unless my Lord, the Prisoner, give us an Occasion. If he shall make any Objections to any of our Witnesses, I hope we shall have Liberty to call Witnesses to support them; but we give over at present, and expect his Lordship's Answer.

L. Staff. May it please your Lordships, I beseech your Lordships, before I say any thing, that I may know if they have any more Witnesses to examine.

L. H. S. They say they will call no more Evidence, unless your Lordship's Answer do give them Occasion to fortify their Witnesses you except against.

L. Staff. My Lords, It is now about two Years that I have had the Misfortune to be accused of this detestable Treason. I have been several times in these two Years a close Prisoner, that my Wife and Children were deny'd to come near me; and hardly a Servant permitted to ask how I did, but at the Door of my Prison. My Lords, this was a great and an heavy Affliction to me; and, my Lords, it was so great an Affliction to me, that truly I did not know how to bear it. 'Tis true, I had that Comfort, that I did hope I should soon come to my Trial, and before your Lordships make my Innocency appear. In order to which, I did all I could, having heard this Hall was provided for it; and I did expect in a very few Days to clear myself before your Lordships and all the World. When I had settled my Mind, and did not foresee any greater Affliction that could befall me, I had on the sudden, by some of my Friends, a sad Message sent me, That the House of Commons had impeached me of High Treason. My Lords, I looked upon the House of Commons then (as I do now) as the great Representative Body of the Commons of England; and I confess, my Lords, to be accused by them was a Load, especially being added to what lay before upon me, more especially to my weak Body and weaker Mind, that I was so afflicted with it, and have so continued, that I am scarce yet able to bear up under it: for I look upon the House of Commons as the great and worthy Patriots of this Kingdom; I ever held them so, and I hold them so still. My Lords, these Things being such great Afflictions to me, and some other Accidents, which I shall not trouble your Lordships with the telling you of, have so much disorder'd my Sense and Reason (which before was little), that I scarce know how to clear myself to your Lordships, as I ought to do; or which way to go about the doing of it; therefore I do with all Humility beg your Lordships' Pardon if I say any Thing that may give an Offence, or urge that which may not be to the Purpose. All which I desire you would be pleased to attribute to the true Cause, my want of Understanding, not of Innocency, or a Desire to make it appear.

My Lords, these Gentlemen the Managers of the House of Commons, who are great and able Men, some I am sure, if not all of them very well read, and have Understanding in the Law, have set forth to your Lordships Treason in an horrid Shape; but I confess, my Lords, if they had made it never so much worse, it cannot be so horrid as I have often fancied it myself: For, my Lords, I do, and did ever hold Treason to be the greatest Sin in the World, and I cannot use Words enough to express it; and therefore I hope you will give me leave to clear myself of it, and I shall give you one Notion of it, which I heard at your Lordships Bar some Years ago, where you were pleased to hear several People of several Persuasions give you some Reason why Liberty of Conscience should be allowed them. And I remember one of them, an Anabaptist, I think, did tell you, That they held Treason to be the Sin of Witchcraft, and so do I. And next to Treason, I hold Murder to be the worst Sin. But the Murder of the King I look'd upon to be so above all others, that it is not to be express'd by Words.

My Lords, I have heard very much of a thing that was nam'd by these Gentlemen of the House of Commons, and that very properly too, to wit, of the Gunpowder Treason. My Lords, I was not born then, but some Years after I heard very much Discourse of it, and very various Reports; and I made a particular Enquiry, perhaps more than any one Person did else, both of my Father who was alive then, and my Uncle, and others; and I am satisfied, and do clearly believe, by the Evidence I have received, that that Thing called the Gunpowder-Treason, was a wicked and horrid Design (among the rest) of some of the Jesuits: and I think the Malice of the Jesuits, or the Wit of Man, cannot offer an Excuse for it, it was so execrable a thing. Besides, my Lords, I was acquainted with one of them that was concerned in it, who had his Pardon, and lived many Years after: I discoursed with him about it, and he confessed it, and said, he was sorry for it then; and I here declare to your Lordships, that I never heard any one of the Church of Rome speak a good word of it: it was so horrid a thing, that it cannot be expressed or excused. And God Almighty shew'd his Judgments upon them for their Wickedness; for hardly any of the Persons, or their Posterity, are left, that were concerned in it, and even a very great Family too, that had collaterally something to do in it, is in the Male Line extinct totally; and I do think God Almighty always shews his Judgments upon such vile Actions. I have been told, all those Persons that were engaged in this wicked Act, were all heartily sorry for it, and repented of it before they died, without which I am sure there is no Salvation. And therefore I think it was not the Interest of Religion, but a private Interest put them upon it.

My Lords, as to the Doctrine of King-killing, and absolving Persons from their Allegiance, I cannot say the Church of Rome does not hold it; I never heard it did hold it; it may be it does, it may be not: I say not one Thing or other: But, my Lords, there was an English College of Priests at Rheims, that translated the Bible, and printed it with Authority, according to their Translation; and in their Annotations upon the 14th Chapter

Vol. III.

to the Romans, they do declare their Dislike and Detestation of that Opinion. They say, all Subjects ought to obey their Kings, as the primitive Christians did the Heathen Princes of the Empire; and the learned Doctors of the College at Sorbonne, did upon an Occasion administered to them about that Opinion, declare the Mistakes that were in it, and own'd it to be a damnable Principle. My Lords, I have an authentical Copy of that Decree of the Sorbonnists, whether it be here or no, I can't tell—Yes, here it is, which does declare that a damnable Position; and there is lately come out a Book, written by a Priest of the Church of Rome, tried for his Life for being in the Plot, but acquitted of that, in which he says, That that Opinion of killing Kings is damnable and heretical, and declar'd so by the Council of Trent.

My Lords, this gives me Occasion to believe that the Church of Rome holds it not. I do not say that it does not; but some particular Persons do abhor it, which are great in that Church, and which weighs far with me: but that which furthest of all confirms me in my ill Opinion of it, is the Words of our Saviour, when not only he commands us to give unto Caesar the Things that are Caesar's, but asserts our Obedience to our Governors in many other Passages of the Holy Scripture; and what I find there, the whole World is not able to alter my Opinion of.

I do assure your Lordships in the Presence of Almighty God, that I do extremely admire when I hear of any thing like it; and I did read with great Horror what I found the other Day in the Gazette, of some imprudent People in Scotland, and of their wicked Principles and Practices.

My Lords, I do in the Presence of Almighty God, who knows and sees all Things, and of his Angels which are continually about us, and of your Lordships who are my Peers and Judges, solemnly profess and declare, that I hate and detest any such Opinion, as I do Damnation to myself. And I cannot be more desirous of Salvation to my self, than I am cordial in hating this Opinion.

My Lords, I know no Person upon Earth, nor all the Persons in the World put together, nor all the Power they have, can in the least absolve me of my Allegiance. And I do acknowledge the King is my Sovereign, and I ought to obey him as far as the Law of the Land obliges any Subject of his to obey him: Whether I have taken the Oath of Allegiance, I appeal to your Lordships to be my Witnesses; and if I did not take it a thousand times for my Allegiance to the King, if required, I should think I deserved a thousand Deaths, and all the Torments in the World for refusing it.

My Lords, these Gentlemen here did begin their Charge (Serjeant Maynard, and Sir Francis Winnington) with telling your Lordships there was an horrid Design to murder the King, to alter the Government, and introduce the Popish Religion. This, they say, was engag'd in by the Roman Catholics; that all the Church of Rome were the Contrivers of it; for they tell your Lordships, the whole Body hath been engag'd in it, and they have given you many Proofs by Witnesses examined the first Day, of a general Plot: what Credit you will give to them, I leave to your Lordships in the end of the Case; but still they said it was the Body of the Roman Catholics in England, or the Papists, or what they call them, that were the Plotters in this Design. But I beseech your Lordships, how am I concerned in it? for I must say to your Lordships, they have not offer'd one Proof that I am of that Religion. So that tho' any of you should have seen me at the Exercises of that Religion, or otherwise know it of your selves, yet if there be no Proof judicially before you, you are not to take notice of it. I have heard, if a Man be accused of a Crime, and be to be tried, and no Evidence come in; if every Man of the Jury were sure that the Fact was done, yet they must go upon the Evidence produced to them, and not upon their own Knowledge. So then, no Evidence being produced before your Lordships, about my being a Papist, you are not to take me for such a one. But, my Lords, if I were of that Church, and that were never so well prov'd too, I hope I have an Advantage in it, that I have kept myself from being poison'd with so wicked a Principle, or engaged with the rest in so ill a Thing.

My Lords, I am here accused of having endeavoured to kill the King. I find by the Law, upon reading Sir Edward Coke, since my Imprisonment, That all Accusations of Treason ought to be accompanied with Circumstances antecedent, concomitant, and subsequent; but I conceive, my Lords, there is no Tittle of any such Thing prov'd against me. The whole Compass of my Life, from my Infancy, hath been clear otherwise. In the beginning of the late unhappy Times, the late King, of happy and glorious Memory, did me the honour to make me a Peer; and thinking that my Presence might rather prejudice him than serve him, my Wife and I settled at Antwerp when the War begun, where I might have liv'd, tho' obscurely, yet safely; but I was not satisfied in my Conscience to see my King in so much Disorder, and I not endeavour to serve him what I could, to free him from his Troubles. And I did come into England, and served his Majesty faithfully and loyally, as long as he lived. And some of your Lordships here know, whether I did not wait upon the now King in his Exile, from which he was happily restor'd; which shews I had no ill Intention then.

My Lords, I hope this I have said does shew, that my Life hath given no Countenance to this Accusation, but clear contrary to what these (I hope I may call them so, and I doubt not to prove them so) perjur'd Villains say against me.

My Lords, after I had this Misfortune to be thus accused, about a Month or six Weeks after, your Lordships were pleased to send two Members of this honourable Body to me, (I do not see them at present here) to examine me about the Plot: (they were my Lord of Bridgewater, and my Lord of Essex) if they be here, I appeal to them what I did say. These two, after they had examin'd me, told me, they did believe, and could almost assure me, that if I would confess my Fault, and let them know the Particulars of it, your Lordships would intercede with the King for my Pardon; but I then, as I ought, asserted my own Innocency. Not long after, the King, out of his Grace and Goodness to me, sent six of the Council to the Tower, to offer me, That tho' I was never so guilty, yet if I would confess, I should have my Pardon. I did then consider with myself; I could not imagine what Ground there was to believe your Lordships could have Evidence of what there was not, to bring me in guilty; and thereupon I was so far from being able to make a Discovery, that I could not invent any Thing that might save my Life, if I would.

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My Lords, I was seven Days in the Country after I heard of the Plot; if I had known myself guilty, I should surely have run away. As I came to London, when I was at Litchfield, there met me two of my Lords; they told me, and so did a Gentleman of the House of Commons, how much there was in the Plot, which, if I had had a Hand in it, would certainly make me fly for it. I have ever heard, when a Man is accused or suspected of a Crime, Flight is a great Sign of Guilt; and that it is often asked of the Jury, though there be no certain positive Evidence of the Fact, whether a Man fled or no? As that is a Sign of Guilt, so remaining is a Sign of Innocency. If then after Notice I come to Town, and suffer myself to be taken; if after Imprisonment and Accusation, I refuse my Pardon, and yet had been guilty, I ought to die for my Folly as well as my Crime.

My Lords, 'Tis a great Offence to commit Treason, and a great Addition to continue obstinate, when upon Acknowledgment a Man can save his Life; nay, my Lords, if I should have refused these Offers, and yet known myself guilty, I had at the same time been guilty of one of the greatest Sins in the World, as being the Cause of my own Death. And as I hold, next to Treason, Murder the greatest Sin, so I hold of all Murders Self-murder to be the greatest; nay, I do not think any Man living can pardon that Sin of Murder. And I do profess to your Lordships, in the Presence of Almighty God, that if I could immediately, by the Death of this impudent Fellow *Dugdale*, who hath done me so much Wrong, make myself the greatest Man in the World that is or ever was, I profess before God I would not. I cannot say my Charity is so great, but that I should be glad to see him suffer those Punishments the Law can inflict upon him for his Crimes; but his Death I would not have. Blood is so great a Crime, and I know every Man is careful of giving his Voice in the Case of Blood, I should be very cautious myself; and if I were a Judge, I would rather save twenty Guilty, than condemn one Innocent. I bless God, I have not the least Desire of the Death of any Man, and would not for all the World have innocent Blood lie upon me.

I beg your Lordships Pardon that I have troubled you thus long: I shall now, as well as I can, apply myself to my particular Defence. I do, my Lords, before I can go on to it, desire I may have such Depositions as have been taken against me, and the Liberty to look upon your Journal-Book when I have Occasion. I do particularly desire the Depositions of *Oates*, upon which I was committed by my Lord Chief Justice; the two Depositions of *Stephen Dugdale*, taken at *Stafford* before two Justices of the Peace, *Mr. Lane* and *Mr. Vernon*; I desire the Depositions taken before, I think it was *Mr. Warcup* and *Sir William Poultney*, or some other two Justices, which was made by *Turberville*; and then I shall compare their Testimonies together, and I hope shall give you a clear Account that they are perjured Persons. How without these to go on to my just Defence, I cannot well tell.

*L. H. S.* What do you say to it, Gentlemen? You hear what my Lord prays.

*Sir F. Win.* The Witnesses are here, and have been heard *viva voce*: As we cannot use any of the Depositions of which he speaks, so no more can they be used by him.

*L. H. S.* If I understand my Lord aright, this is the Thing he desires: Says he, You have brought Witnesses against me *viva voce*; they have been examined here, and they have been examined elsewhere, and their Depositions are upon Record: I desire to confront what they have said here, with what they have said contrary in other Places.

*Mr. Serj. Mayn.* If there be any Thing expressed by my Lord, wherein they have contradicted themselves, and produce that Deposition, he may do that; but to desire to have all the Depositions that have been made by our Witnesses, is a strange Request. When there is Occasion to use them upon any particular Point, he may produce them if he can.

*L. H. S.* Can you object why my Lord should not have Copies of any Thing that is upon the Journal and Depositions that are sworn before a Magistrate, which may be of Use to him?

*Sir W. Jones.* My Lords, We do not object against it; but, my Lords, I think it is out of Time to desire it. What was sworn, and is entered in your Lordships Journal, was sworn above two Years since. My Lord, or any Man else, might repair to them; they are Matters of Record, and for aught we know were never denied to any, especially if they desired it in the House; but after two Years Time, and after three Weeks Time given to prepare for this Trial, when my Lord could not but know what Witnesses would be examined before your Lordships; for him to come now and desire such and such Depositions may be produced, which if by Law he might be allowed to do, he might have done before, is to no other Purpose, under Favour, but to gain Time, and cause our Evidence to be forgotten; and therefore we most humbly pray it may not be admitted: My Lords, I think it is an unusual Thing. My Lords, the Judges are near your Lordships, I suppose they will inform your Lordships. If a Man be tried at the Assizes, for him to desire a Copy of the Informations remaining in Court, by which he may except against the Witnesses, is what the Court does not use to grant. But if your Lordships Proceedings vary from the common Proceedings of other Courts, then I resort to what I said before, Whether your Lordships will think this a proper Time, when he might have had it in the Parliament that was first dissolved, and then in the Parliament that was last dissolved. Now to desire those Copies at this Time, is to put off the Cause for that which perhaps he cannot be furnished with in a Day or two.

*Sir F. Win.* I would add but one Word, if your Lordship please to give me Leave. My Lords, You have the learned Judges near you, who will inform you, whether ever, when a Man was accused of a capital Offence, and the Evidence against him had been fully heard by the Court and by himself, he was admitted to require from the Prosecutors the Copies of Examinations formerly taken before other Persons. Does my Lord intend to have time to peruse those Examinations, and to have the Copies of them, that he may consult in private with his Council to find out Exceptions, and with his Witnesses to make them good? My Lords, I must say, that in my short Experience (and I have attended a considerable Time upon the greatest Court for Trial of Offenders), I never heard such a Thing asked by a Prisoner, either at the Bar of the *King's Bench*, or at the Assizes. I speak with all the Tenderness imaginable, because we are in a Matter of Blood, and God forbid but the Lord at the Bar should have true and equal Justice done him! But if I take my Lord

right, this seems but an Artifice to delay the Trial, of which it is our Duty to be very cautious. Indeed I have seen the Judges, upon Trial of a Criminal, call for the Depositions or Informations from the Clerk, or the Justice of the Peace who took them, and caused them to be read; but for a Prisoner to call for Examinations at the Bar from the Prosecutors, & *ex debita Justitia*, to demand them, is a Thing, which, as it never has been, so I think will not be admitted at this Time, especially when we are now almost at the End of the Cause. And with all Modesty and Submission to your Lordships, I look upon it as a very strange and unreasonable Demand.

*L. H. S.* My Lord *Stafford*, What is the Reason your Lordship had not all this while Copies of the Journal, which is that you now ask?

*L. Staff.* I shall not undertake that I am able to give your Lordships a Reason for it, because I think, wherein I have been mistaken as to Point of Time, your Lordships will not tie me up to that. But this Gentleman that spoke last is not acquainted with me, and does not know me; for I have no Desire to go back, or to put off this Trial: But if it cannot be done to Day, I am as guilty To-morrow as I am To-day; and I desire no more than what he says hath been done in the like Cases. I do desire, my Lord, the Informations and Depositions of *Dugdale*, *Oates* and *Turberville* may be produced and read, and I will make Observations upon them in my Defence. I desire those Affidavits may be brought.

*L. H. S.* Affidavits taken when and where?

*L. Staff.* Of *Dr. Oates*, that was read in your Lordships House; I heard it.

*L. H. S.* Let us understand your Lordship's Demands, that when my Lords are withdrawn, I may know what Questions to put to them, and acquaint them with your Desires: The one is the Journal of the Lords House, which is always before their Lordships, and you might have had Copies long since. The next Thing you ask is an Affidavit of *Dugdale*; if this Affidavit is entered into the Journal, that supplies your Demands; if it be not entered there, where shall we find it?

*L. Staff.* I do not know.

*L. H. S.* Does your Lordship think all this Matter must stay till we can find a loose Affidavit, that we know not where 'tis filed?

*L. Staff.* I know it was before the Council, and I believe my Accusers have it; I desire the Gentlemen of the House of Commons may produce it.

*Sir J. Trevor.* I have seen none, nor have none.

*L. Staff.* The one was taken the 24th of December this Time two Year, and the other the 29th.

*L. H. S.* My Lord, Will your Lordship give me Leave to tell you, you ought to be provided with some particular Exception, and not to make your Demand in general. If your Lordship will say, *Dugdale* did swear such and such Things, which are contrary to what he now affirms, we know what to make of it; but to hunt after an Affidavit that we know not where to find, to pick up something out of it, that I do not understand.

*L. Staff.* I appeal to my Lord *Essex*, and my Lord *Bridgewater*, whether they did not examine me the first Time upon one or two Affidavits of *Dugdale*.

*L. H. S.* Suppose it be not to be found, my Lord?

*L. Staff.* Then I must have Patience, and submit,

*L. H. S.* Can you tell wherein he swore quite blank contrary to what he swears now?

*L. Staff.* My Lord, I conceive it was never denied before; but your Lordships may do what you please.

*L. H. S.* Well, my Lord, let us go on to the next. The Affidavits of *Dugdale*, if they be entered on the Journal, may be ready; if not, then I shall acquaint their Lordships, and they will direct what is fit in the Case.

*L. Staff.* Then there is the Affidavit of *Oates* before my Lord Chief Justice, upon which I was committed; the next Day, which was Friday, it was read in your Lordships House.

*L. H. S.* I believe that it is entered upon the Journal, and so will be ready to be used.

*L. Staff.* I do hope to make it evidently appear thereby, that he is forsworn. I desire two Affidavits more, that were taken before the Justices of the Peace of *Middlesex*, who examined *Mr. Turberville* twice.

*L. H. S.* What Justices of the Peace?

*L. Staff.* *Mr. Warcup*, *Sir William Poultney*, and *Sir Thomas Stringer*. I desire I may not be misunderstood; I do not desire to have them to instruct my Council, or advise with them upon them, but I cannot make my Defence without them.

*L. H. S.* Those are voluntary extrajudicial Affidavits, that no body is bound to keep.

*L. Staff.* They were spoken of in the Votes of the House of Commons.

*L. H. S.* What say you, Gentlemen, to it?

*Sir F. Win.* My Lords, because my Lord at the Bar is pleased to insinuate, as if we knew where those Affidavits are which he seems to desire, and because your Lordship was pleased to say, that the Commons in Parliament are the Grand-Jury of the Kingdom, I desire to say one Thing, That certainly it will not be required from us to produce and publish the several Facts and Circumstances that induced us to impeach him, if it shall be demanded by the Prisoner at the Bar.

*L. H. S.* I wish you would answer the Question, and not argue upon it, whether those Affidavits of *Turberville* may not be produced; for 'tis my Lord's Exception against your Witness, that he swears several Ways; and by those Affidavits of *Turberville*, he intends to disprove him in what he hath said To-day.

*Sir F. Win.* My Lords, The House of Commons never administer an Oath; and therefore it is not to be said to us, but my Lord *Stafford* must go to the particular Offices where they are to be found.

*L. H. S.* I do not ask you where my Lord should find them, but whether if they can be found, you can object any Thing why they should not be produced and read?

*Mr. Serj. Mayn.* When they are produced, we will give Answer.

*L. Staff.* My Lords, I am informed this is the Substance of the Affidavit, That *Turberville* did swear before two Justices of the Peace, whether they be of the House of Commons, or no, I can't tell, That he spake with me at *Doway*, and in *Paris*, in the Years 73 and 76, and now he says



says 72 and 75, I am informed, my Lords: And I appeal to the House of Commons, they are all Persons of Honour and Worth, (if my Information be mistaken, I beg their Pardon and yours for't) whether he did not mend it after he had sworn it.

L. H. S. Are these all you do demand?

L. Staff. Yes, my Lords. Whether this was true or no, I don't know; it is what I have been told; I appeal to the House of Commons, (who are all worthy Persons, I do not believe I have an Enemy among them,) they know whether I speak true or no.

L. H. S. When will your Lordship be ready to make your Defence?

L. Staff. As soon as ever I have them, I will not stay a Minute, a Moment, an Instant; I desire not to shew my Council, nor any one, for my Trial is a thing that I have long desired; therefore I would not be mistaken, as if I would put off the Cause. I am innocent, and shall be so while I live, and hope I shall make it appear so. I beg, if this be a Matter of Law, whether I may have them or not, that my Council be heard to it.

L. H. S. This is a Matter of Fact.

L. Staff. I insist upon it as things without which I cannot make my Defence: I am innocent, and I suppose not one of the House of Commons, nor one of your Lordships, will debar me of that by which I may make my Innocency appear.

L. H. S. You cannot know my Lords Pleasure till they are withdrawn.

Sir W. Jones. Before your Lordships withdraw, I hope you will please to hear us a few Words, which we think may be for the Service of this Court. My Lords, what Evidence is before your Lordships, 'tis in your Lordships Pleasure what of that you shall please to communicate to my Lord Stafford; but for this Evidence he speaks of, as remaining in our Hands, and which he takes upon himself to appeal to us for, admits of another Consideration. My Lords, if we were conscious of any thing in these Affidavits that were for my Lord's Advantage, and knew where they were, we would readily produce them; but for my self, I must answer, and I think my Companions will say so too, that we do not know where these Affidavits are, nor of any Variation in those Affidavits from what is now sworn; but whatever they were, they were taken for the Information of the House of Commons, who are the Prosecutors in this Cause, and who are no Judges. Now, if my Lord will bring any Witness that will say this Witness of ours did before a Justice of Peace depose so and so, and says the contrary now, there might be then just Reasons to look after these Affidavits, and to have them produced; but upon a bare Imagination that there is a Variance, where in truth there is none, and the Truth may otherwise be known; to desire that these Affidavits that never were before you should be produc'd, whether such a Suggestion is to be admitted, I humbly submit to your Lordships Consideration.

L. Staff. My Lords, if these Gentlemen that are the Managers for the House of Commons will aver to your Lordships, that there is no Variation in them, I will submit to them, and be quiet; if they will say it was not debated in the House, whether he should amend or no.

L. H. S. Look you, he puts it upon you so far, Gentlemen, that if you will take it upon you to aver that there is no Variation between those Affidavits upon which you grounded your Impeachment, and the Evidence you have given upon the Trial of your Impeachment, he will not give you the trouble.

L. Staff. I beseech you, let me say one Word: My Lords, I have been thus long a Prisoner; I was as far from being proceeded against now, as any of the rest of the Lords in the Tower, till *Turberville* came in with his Discovery; and I believe I am now called the sooner (which I am glad of, and I give the Gentlemen thanks for it) upon the Affidavit of *Turberville*; I desire that Affidavit. And though it be true, the House of Commons give no Oath, yet they appointed two Members of the House, that were Justices of the Peace of *Middlesex*, to take it upon Oath, and he desired the next Day to amend it; and I put my self upon them, whether this be not true.

L. H. S. What say you, Sir, to it?

Sir W. Jones. My Lord, I cannot answer, because I don't hear.

L. Staff. My Lords, I say this, I do observe that Mr. *Turberville* (whose Face I never saw in my Life that I know of, till to-day, nor never spoke a Word to him, and I shall prove that no Servant that ever I had see him) did depose (for the purpose) to-day, that he was in the Years 72 and 76 in such and such Places, and that he did speak with me at *Doway* and *Paris*; and to-morrow recollecting his Notes, he found he was mistaken in his Affidavit that he had made before, and desired to mend it, and brought it to the Years 72 and 75: There was some Debate in the House about it, whether they should permit him to mend it: I appeal to all the Gentlemen, whether it were not so.

L. H. S. Your Labour is to have two Affidavits; that you do presume will do your Business in order to the finding out a Variety of Time of his being at *Doway* or at *Paris*: That which does press your Lordship we know in *Turberville's* Evidence is, That at *Paris*, in the Room below your Lodging, you encourag'd him to kill the King, and you were to have met him at *Diep* to know his mind, but you came not, and he went away; if you have it in the Affidavit quite contrary to this, you say somewhat.

L. Staff. My Lords, I beseech you, it presses me and every Man in *England*, not to be run down by a Fellow that forswears himself: For him to swear one Thing to-day, and another Thing to-morrow, is Perjury.

L. H. S. What say you to it, Gentlemen?

Sir W. Jones. What was done in the House of Commons, it does not become any of us that are Members to disclose: But I have heard, and will admit it, that in the Depositions the Witness made before a Justice of Peace, there was a Year put down, which he going home, and upon sight of Letters and Papers finding it to be mistaken, he comes the next Day, and desires to alter it: If this be for my Lord's Service, we shall grant it.

L. H. S. What say you, my Lord, now?

L. Staff. I do say, my Lord, I am informed by what I have heard cursorily, (for I have not seen one of the House of Commons before the Day of my Trial) that though in his second Deposition he named the Years 72 and 75, yet I can prove him perjured as to what he hath sworn here to-day.

L. H. S. Since 'tis insisted upon, Gentlemen, that there is a Variety in the last Deposition from what he swore at first, what can you say why he should not have the Avail of his Exception?

Sir Will. Jones. My Lords, whether your Lordships will think fit to consider by what Ways and Means the House of Commons inform'd themselves in order to Impeachments, I submit to you; and for those things that still remain in the Hands of the Commons, I suppose you will be pleased to consider how you can send for them to inform you. We would not be mistaken in the Matter; let not any one that hears us think that we are conscious there is the least Variation; nay, we are confident, if the thing were produced, it would turn to my Lord's Prejudice; but what is done in this Case may be a Precedent for the future, and therefore we cannot, without resorting to the House, consent to deliver any thing the House took for their Information. Therefore if your Lordships stand upon it, and incline to have it done, we must resort to the House to ask their Leave, whether we shall do it or no.

L. H. S. I cannot tell what my Lords will incline to do; but I desire, when you are gone back, you will consider how far it will make the Matter easy to my Lord.

Sir Will. Jones. My Lords, we can give no Answer to that till we have attended our House.

Mr. Serj. Mayn. I desire your Lordships to consider what a Piece of Cunning he hath put upon both Houses, to pass by his vilifying our Witnesses, which I may say was not comely. But if he makes any Question, it must be put to the Houses upon Supposition to be a Question, and so he would bring things only to this Issue to put off the Cause for To-day. He ought to put that which might probably be something of a Question. Let him instance in Particulars, and make out his Evidence, not feign things to put off the Cause; for aught I see 'tis to no other End, and 'tis a Jesuitical Trick, I think.

L. Staff. I feign nothing; I have been told this that I speak here, and I desire it may be proved.

L. H. S. If you are bound up so that you cannot consent, I can't help it.

Mr. Serj. Maynard. Let him put the Fact, my Lords, and not suppose and imagine Things, and then raise Questions.

L. H. S. It is usual in these Cases for the Gentlemen of the House of Commons to stay till the Lords are withdrawn, and expect their Lordships Resolution; perhaps they may so order it that you need not go back.

Sir Will. Jones. I desire before your Lordships withdraw, that it may be taken Notice of by your Lordships, that for the Matter of the Variation of the Year, we do admit it. My Lord is not pleas'd to mention any other particular Matter of the Affidavit, but only says in general, that it is contrary to what he says To-day: If my Lord would tell us wherein, perhaps we should admit it, or answer it, or take it into further Consideration. But to make so general an Allegation, and give your Lordships no particular Account, we submit whether such a Suggestion ought to be regarded.

L. H. S. Is there any further Variation, besides the Variation of the Year?

L. Staff. I cannot say there is, my Lord, I do not know it; but I do really believe in my Conscience there is, from what I have heard; but however, I insist upon it, and demand your Judgment.

Sir Fr. Win. My Lords, I humbly desire one Word as to the Objection that hath been made, that he hath prayed your Lordships to grant him the sight of such and such Papers. The Nature of this Cause, my Lords, we know is such, that there was never the like Number of Papers known, as to the general Plot; and my Lord that is the Prisoner at the Bar, may as well demand to-morrow such a particular Paper, and the next Day another, that he hath heard of in the general Plot; and where will the End of this be? So that if the thing be granted upon the Variation of the Time that it was immediately rectified, and he cannot produce any Grounds that may satisfy your Lordships why he should have that Paper, you may as well suffer him to demand any other Paper after, and so never end the Cause.

L. H. S. Your Lordship hath been told, and you shall find it, that you shall have as fair and equal an Hearing as is possible, and nothing shall be denied you that is just and reasonable to save your Life, or make your Defence. But pray, my Lord, for so much as is upon the Journal, which you may resort unto, you may easily know what Answer my Lords will give to that; but for this other Thing, if it be only the Variety you alledge of the Time and the Year, and you do desire it to look for other Exceptions, and you pray the Help of the Lords to see such a Paper, that you may make Enquiry after other Varieties, do you think they are to help you to find out Exceptions to the Witnesses?

L. Staff. I do not desire their Lordships to help me to find out Exceptions; but I have told your Lordships of one Exception to the Affidavit, which these Gentlemen acknowledge to be true; and the other Affidavit is, that he swears I spoke to him at *Doway* in the Year 72 or 73, which I can disprove; and then I say, he swearing several Things false, he is no credible Witness.

L. H. S. 'Tis admitted to your Lordship that he did mistake the Time.

L. Staff. It is admitted that he said he spoke to me at *Doway*.

L. H. S. How very easy a Matter were it to expedite this Process, by allowing the Prisoner his Demand in this Particular!

Sir Will. Jones. I never saw it, and a great many of the Managers say they never saw it.

L. Staff. These Gentlemen say, I did it to put off the Cause. I am far from it; for tho' I am in a Condition very unfit to manage my Defence, faint and weak with speaking so long, and hardly able to speak any more, yet I desire to finish this Night; and if I see it now, it will be enough, I shall not desire to have a Copy to advise with my Council or any body else.

L. H. S. Pray, Gentlemen of the House of Commons, will you observe, My Lord, as weary as he is, would make an end of the Matter presently, if you would but send for the Affidavit.

Mr. Foley. My Lords, it is not in our hands here; if the House of Commons will order it, it may be done; we cannot order it our selves.

Mr. Powle. My Lords, this is a Paper that does properly belong to the House; and I do think, that none of us here that are Managers for this Trial, will undertake it shall be deliver'd, without resorting to the House for their Opinion: For tho' I do verily believe, and am fully persuaded, that what this noble Lord at the Bar does object, will not appear to be so; for I think there is not any thing of my Lord Stafford's speaking with this Witness at *Doway* mentioned therein; yet how far the Precedents of this may reach in other Cases, I think is worthy the Consideration of the House. And we cannot presume to offer any thing in it to your Lordships, until you be pleased to give us leave to go and resort thither.

Then



Then the Lords withdrew, and after an Hour and an Half's Space returned, and Proclamation was made for Silence.

**L. H. S.** My Lord Viscount *Stafford*, my Lords have considered of the Demands you made, and my Lords upon the Debate of the Reasons of your Demands, are come to this Resolution: Your Lordship did demand in the first Place, that you might have a Sight of the Journal, and have the Papers lodged in the House of Peers; my Lords take Notice that this Demand which your Lordship now makes, is a Demand that was granted you long ago, about two Years since; you have an Order entered upon the Books, that your Lordship should have Copies of every Thing in that House; and if your Lordship have not taken out Copies, and if any Thing is missing to your Lordship that is yet there extant, 'tis your Lordship's Fault. However, my Lords will command their Journals to be brought hither, that your Lordship may make that use of them that may be of most Profit to you. For the other Demand touching the Affidavit supposed to be taken from *Turberville* by the Justices of the Peace, that my Lords, upon Consideration had, do find that there is no Obligation at all upon them as a Court, to concern themselves in that Matter. And therefore my Lords have made no order in that Point, but your Lordship must come provided as well as you can, and the Court can do no more to help you in it. For the rest, my Lords did take Notice that your Lordship said before they were withdrawn, that you found yourself very faint and weary, and that you were much spent in Discourse, and tired with what already you have done. My Lords are extremely willing to give your Lordship all the Favour and Accommodation possible, for the recollecting yourself; therefore my Lords will not now put you upon it, to go on to make your Defence, but will give you Time till To-morrow.

**L. Staff.** I humbly give your Lordships Thanks for your Kindness and Favour to me; but here I profess, and call Almighty God to witness, rather than I would have it thought I am willing to put it off, I would have sunk down dead at the Bar. But, my Lords, there was another Demand that I made: Your Lordships say, I shall have Copies of all the Journals, and that you cannot help me to the Affidavit of *Turberville*. I submit to it without saying one Word more: But I desire that I may have brought hither To-morrow the Journals, and other Papers in the Lords House; but I desire also the two Affidavits of *Dugdale*, taken the one on the 24th, the other the 29th of *December* following, which Depositions were taken before Mr. *Lane* and Mr. *Vernon*, in *Stafford Town*, when *Dugdale* was in Prison.

**L. H. S.** Look you, my Lord, this is all under the same Rule: What Evidence soever there is before the Court of Peers, that you shall have; whatsoever Evidence is not in that Court, you ought to come provided of: The Court is not to stay, nor to help you to Evidence.

**L. Staff.** My Lord, I beg your Pardon, *Dugdale* made an Affidavit then, and says the clean contrary now; I desire nothing but Justice, and I am sure I shall have all Justice from your Lordships.

**L. H. S.** Produce it; alledge what you will for yourself, it shall be heard.

**L. Staff.** How then shall I be able to make my Defence if I have not those Papers, which I humbly conceive by the Law ought to be brought? These Gentlemen of the House of Commons say, that I could not have *Turberville's* Affidavit, because it was in the House, and they could not give it without Consent of the House; but this was examined before a Justice of Peace, and returned to the Council: Sure I shall have that. I was examined by my Lord of *Essex*, and my Lord of *Bridgewater*, upon that Affidavit twice, I think, therefore that is material and necessary; and I know your Lordships would not have me come to defend myself without Weapons.

**L. H. S.** My Lord *Stafford*, I do beseech your Lordship to be a little better informed in your own Business. You have Leave to make Use of the Journal, and all Papers that are entered there; the Clerks say, *Dugdale's* Oath is entered there.

**L. Staff.** Is the 24th of *December* there?

**Clerk.** It is there.

**L. H. S.** Pray, my Lord, do not put the Court upon Interrogatories, but come provided as well as you can.

**L. Staff.** If it be entered on the Journal-Book, I desire not the Original, I am very well satisfied.

**L. H. S.** Will you be ready to go on To-morrow, my Lord?

**L. Staff.** I will with all my Heart.

**L. H. S.** 'Tis too late, Gentlemen, to go on To-night; we must adjourn till To-morrow.

**L. Staff.** My Lords, I had so much to write last Night, that I had very little Sleep; I desire I may not come till ten.

**L. H. S.** My Lord, I am not able to hear you; I take as much Pains to come near you as I can.

**L. Staff.** I had a great deal to write last Night, I say, and I want some Sleep; I desire I may not come till ten.

**L. H. S.** Will you be ready by ten o'Clock To-morrow.

**L. Staff.** I will be ready by ten.

**L. H. S.** I will move my Lords when they are withdrawn, to adjourn till ten To-morrow. But, my Lord *Stafford*, I do not know how your Lordship is provided, or how you look after your own Business. If you have not had Copies of the Journal all this while, 'tis you are in the Fault. A great deal of it is in Print, you may send your Solicitor to the Clerk of the Parliament, and take Copies of what you have need of. I give you Notice of it, that if you come unprovided, you may know it is your own Fault.

**L. Staff.** I do acknowledge I have Copies of the Journal-Book, I think of all; but I do not find any Thing of *Dugdale's* second Deposition there.

**L. H. S.** Here is that of the 24th of *December*, that you ask after; send your Solicitor, and then you shall have a Copy out of the Journal of it.

**L. Staff.** I assure your Lordship I will be ready To-morrow, if I can get those Copies.

**L. H. S.** My Lords will give you as much Ease, and all the Accommodations that are fit.

**L. Staff.** Then To-morrow I will be ready by ten o'Clock if your Lordships please; only I would desire your Lordships to take Notice, that these Gentlemen of the House of Commons do acknowledge that *Turberville* swore one Day to one Year, and the next Day to another.

**L. H. S.** My Lord *Stafford*, you say you can be ready To-morrow at ten o'Clock; are you sure you can be ready then?

**L. Staff.** I say, my Lords, this, I shall not be so ready as I shall be next

Day; but I assure your Lordships, I will rather sink down in the Place where I am, if you think fit, than put off the Trial.

**L. H. S.** Look you, Gentlemen of the House of Commons, in a Case of this Consequence, and of this vital Importance to a Man as this is, where is the Inconvenience if there should be a Day's Respite, and the Court should adjourn till *Friday*, if my Lords be moved in it? I make no Direction, but what Inconvenience will be in it? Will it not be every Way as well?

**Sir Will. Jones.** My Lords, your Lordships do not expect from us to give our Consent to put off the Trial.

**L. H. S.** I ask only, what Inconvenience it is?

**Sir Will. Jones.** Your Lordships are the Judges, and will do as you find it reasonable; but this I say, it is very unusual, and scarce to be precluded, that when the Prosecutors have given an Evidence, the Prisoner should have Time, a further considerable Time, to give his Answer to it. The Prisoner knows before-hand the general Scope and Drift of the Evidence; therefore for him to have Time till To-morrow, is a Favour; but to have more than that, even a whole Day to intervene, is very unusual.

**L. H. S.** If that be all, and the Matter depend upon what is usual, I do venture with my Lords leave to inform you, that my Lord of *Stafford* had two Days Time after the Prosecution, to give his Answer to what was said against him.

**Sir Will. Jones.** That was an Evidence of twenty-eight Articles, this but upon two Heads; and that was after a long Examination of many Days.

**L. Staff.** My Lords, I had prepared myself for my Trial as well as I could, and written down a few Things that I intended to say; and I profess before God, as I am a Man, and as I am a Christian, of all I intended to say: I have in a Manner made use of very few Words; but as to what I had to say upon Evidence, I was forced to lay all aside, because I wanted these Papers. I have not eaten To-day, and being forced to lay aside all that I had written, I shall need a whole Day to write; however, I submit myself to your Lordships in that Matter.

**L. H. S.** My Lord, if it will be equal to your Lordship, and your Lordship will be as ready To-morrow as another Day, this Court will be more ready.

**L. Staff.** I assure your Lordships, if your Lordships do give me another Day, I will not debate with my Council any one Thing upon the Papers I have asked.

**L. H. S.** Pray, my Lord, will you be pleased to make your Demand to my Lords, who are your Judges, by what Time you will be content to be foreclosed.

**L. Staff.** My Lords, if you will give me till *Friday*, I shall be ready to give my Evidence, and I will bring Witnesses sufficient, I hope, to prove my Innocency.

**Sir Will. Jones.** My Lords, we do not presume at all to offer our Consent to what Time the Court shall be adjourned—

**L. H. S.** No, we do not ask your Consent.

**Sir Will. Jones.** And I hope your Lordships will not ask the Prisoner's Consent, nor do it by his Direction.

**L. H. S.** *De morte hominis non est cunctatio longa.*

**Sir Will. Jones.** But we must desire your Lordships, as we are entrusted by the House of Commons to manage this Trial, to take Notice, that as we do not expect your Lordships should take the Measures from our Desires, much less do we expect you should do it at the only Instance of the Prisoner. 'Tis a great Advantage to this Lord to chuse his own Time, when he will please to answer our Evidence. We do know very well, that in this Case there have been Attempts to suborn Witnesses, and that we shall prove in due Time, and Attempts to destroy Witnesses too; so that there hath been too much Time lost already, and I think To-morrow is a very convenient Time for him to make his Answer. And I must observe to your Lordships, that the Prisoner hath gained his End of not making his Answer this Day, by raising an Objection, which in my Thoughts carried no great Weight in it; though when it was made, your Lordships were pleased to adjourn upon it: But seeing he hath got his Point of deferring the making Answer till To-morrow, there can be no Reason he should gain a further Day, since the Depositions may be ready by To-morrow as well as by the next Day. And therefore we desire your Lordships will be pleased to go on in the Trial To-morrow.

**L. H. S.** You shall know their Lordships Pleasure when they are withdrawn. Is it your Lordships Pleasure that we should adjourn?

**Lords.** Ay, ay.

**L. H. S.** This House is adjourned into the Parliament-Chamber.

So the Lords withdrew in their Order, and the Commons went back to their House, and Mr. Speaker resumed the Chair.

A Message was sent from the Lords by Sir *Timothy Baldwin*, and Sir *Samuel Clark*.

Mr. Speaker, *The Lords have sent us to acquaint this House, that they have ordered the Prisoner William Viscount Stafford to be brought to the Bar in Westminster-Hall To-morrow Morning at Ten of the Clock.*

And then the Commons adjourned to eight of the Clock next Morning. *What that it doth not appear by the Lord's Journal of 1. Dec. 1680. that there was any The THIRD DAY. What on the 2. Dec. the Lord's Journal says, that the next day with the Trial contrary to his Lordship's request.* Thursday, December 2, 1680.

At the Hour of ten in the Morning, the Lords adjourned into Westminster-Hall, and returned in their former Order into the Court there erected; and Mr. Speaker having left the Chair, the Commons were seated as before. The Court being sat, Proclamation for Silence was made, and the Lieutenant of the Tower commanded to bring his Prisoner to the Bar; which being done, the Lord High Steward spake to him as followeth:

**L. H. S.** My Lord *Stafford*, this is the Time appointed to hear what your Lordship hath to say in your Defence, and to call your Witnesses.

**Sir W. Jones.** My Lords, Yesterday my Lord Viscount *Stafford* was pleased to make mention of an Affidavit of Mr. *Turberville* taken before two Justices of the Peace, wherein he was pleased to say there was some Amendment made; and so indeed we did then acknowledge there was. But he had a Desire to see it, notwithstanding our Acknowledgement, because he was informed that that which *Turberville* swore then, differed from what *Turberville* swore Yesterday. My Lords, at that Time we had not the Affidavit; nor was it proper for us to produce it, for indeed it remained in the Justice



of Peace's Hands that took it: But now that his Lordship may have full Satisfaction, and not only his Lordship, but also all that are present at this Trial, I do inform his Lordship, that the Affidavit is in the Hands of a Member of the House of Commons, Sir *Will. Poultny* by Name; and if his Lordship please, he may have it produced, and make what Use he can of it.

*L. H. S.* It is extreme honourably and worthily done of the House of Commons; and my Lord hath no Manner of Exception left him.

*L. Staff.* My Lords, if I shall have Occasion to use it, I shall call for it; but I would first say something to your Lordships: My Lords, I first give your Lordships Thanks for granting me the Liberty to come so late To-day; I have had a little Sleep upon it. Your Lordships heard Yesterday, when you had *Dr. Oates* at the Bar, the first Thing that he said, as I remember, was, to desire you would be pleased to leave him to his own Method: I beg of your Lordships the same Favour, that I may begin with the one or the other Witnesses, or with Matter of Law, as I please.

*L. H. S.* God forbid but you should take your own Method in your Defence.

*L. Staff.* In order to which, I desire first *Mr. Turberville* may come to the Bar.

*L. H. S.* Do you call *Turberville*, my Lord?

*L. Staff.* Yes, my Lord, I do.

*L. H. S.* He is there, what say you to him?

*L. Staff.* My Lords, I will ask him but one Question, and I hope I shall have Occasion to ask him no more: When was the last time that he spoke with me?

*L. H. S.* *Mr. Turberville*, I think I hear right, I do not know: My Lord *Stafford* asks, when was the last time you spoke with his Lordship?

*Mr. Tur.* It was in November, 1675.

*L. Staff.* I have very much to say against his Evidence; but I hope your Lordships will not think him any Evidence at all against me, or any body else. But I desire your Judgment, whether I be not within the Compass of the Time limited by the Statute.

*Mr. Serj. Mayn.* Express yourself, my Lord, for we do not understand you.

*L. Staff.* I cannot say more than I do: The Time which the Statute limits, is six Months, but this is five Years; I desire the Statute may be read.

*L. H. S.* What Statute, my Lord?

*L. Staff.* The Statute of the 13th of this King.

*L. H. S.* If your Lordship pleases you shall have it read: But your Lordship does not observe, you are prosecuted and impeached of High-Treason upon the Statute of the 25th of *Edward III.* not upon the Statute of the 13th of this King, made for the Safety of the King's Person, which limits the Prosecution of some Offences to be within six Months; but the Prosecution for Treason may be at any time.

*L. Staff.* Does your Lordship say it may be at any time?

*L. H. S.* Yes, my Lord.

*L. Staff.* This truly does very much surprize me, though I am wholly ignorant in Matters of Law. My Lords, I have ever heard that no Man can be prosecuted by that Statute, but within so many Days, in one Part of it in thirty Days, in another six Months; and I desire your Lordships that the Statute may be read.

*L. H. S.* If your Lordship please the Statute shall be read; if your Lordship desires the Clause of the Statute of the 13th of this King, which limits the Prosecution to be within six Months, that shall be read. But I conceive your Lordship is not accused upon that Statute.

*L. Staff.* I beseech your Lordships I may know whether I am prosecuted upon the Statute of the 13th of this King, or upon what other Statute.

*L. H. S.* What say the worthy Gentlemen of the House of Commons: Is my Lord prosecuted upon the Statute of the 13th of this King?

*Mr. Serj. Mayn.* Not at all, my Lord; he is not prosecuted upon that Statute, but upon the Common Law, and the 25th of *Edward III.* which was only declarative of the Common Law.

*L. Staff.* This is a Point of Law.

*Sir W. Jones.* What is the Point of Law?

*L. Staff.* Whether I can be prosecuted after so many Days.

*L. H. S.* The Law is very clear. If you were prosecuted upon the 13th of this King for any less Offence than Treason, you could not be prosecuted after six Months; but if you be prosecuted for Treason either upon the 25th of *Edward III.* or the 13th of *Car. II.* there is no time limited, and God forbid there should.

*L. Staff.* I beseech your Lordships Judgment, whether there be not a Statute, I think 'tis in the Reign of *Edward VI.* that sets the time, after which no Man shall be prosecuted for any thing of Treason. I desire a Quarter of an Hour's time to look into the Statute.

*L. H. S.* What say you, Gentlemen?

*L. Staff.* Pray, my Lord, let me read the Statute of *Edward VI.*

*Mr. Serj. Mayn.* We know not of any such Statute.

*L. Staff.* I will not say there is, but I will say I cannot read if there be not.

*L. H. S.* Pray, Gentlemen of the House of Commons, my Lord does suppose he has some Kind of Objection in Law to make, which he cannot make out of himself; will it be amiss to let his Council make and propose the Question for him?

*Sir W. Jones.* My Lords, we rather would have my Lord propose the Objection; for your Lordships know, till a Matter of Law is proposed, he cannot be admitted to have Council. If he desires time to recollect himself about the Objection, we can't oppose it. But we desire that he may propose the Objection; and after, if it be any Doubt in Matter of Law, your Lordships will assign him Council to be heard to speak to it.

*Sir F. Win.* This would be a Way for a Prisoner to have the Advantage of Council, when they ought not to be allowed it; for 'tis but to say, he hath some Doubt which he cannot propose himself, and so let in his Council to make Objections for him. If any Question of Law do arise, and that Question is stated, you will allow the Prisoner Council to argue it: But at this Rate he may make the like Pretences in every Part of his Defence, and so obtain that Council shall manage his whole Defence for him.

*L. H. S.* I suppose my Lord does intend an Objection as to the Time of the Prosecution, but he does not know how to make it. He supposes, he is prosecuted after the six Months, which he thinks is the Time limited for the Prosecution. But I pray, my Lord *Stafford*, will your Lordship

Vol. III.

take time to recollect yourself, and make an Objection fit for Council to be heard upon, and you shall have it.

*L. Staff.* I beseech you I may have the Statute-Book with me, for I have none myself, my Lord.

*Sir W. Jones.* With all our Hearts, we do not oppose it:

Then my Lord withdrew into the Room provided for him, and within a Quarter of an Hour returned.

*L. H. S.* Say, my Lord:

*L. Staff.* My Lords, I do confess I have been very much mistaken ever since I was first committed to the Tower: For I did conceive that they would have proceeded, as I thought I was impeached, upon the Statute of the 13th of this King. I humbly desire your Lordships Judgment, whether I ought or no to be prosecuted upon that Statute?

*L. H. S.* The Gentlemen have told you already: They prosecuted you upon the Statute of 25 *Ed. III.* and upon the Common Law.

*L. Staff.* And they lay aside that Statute:

*L. H. S.* What Statute?

*L. Staff.* the 13th of this King:

*L. H. S.* What say you, Gentlemen, once more?

*Sir F. Win.* My Lords, we have declared already to his Lordship; and if my Lord had looked well upon the Articles of Impeachment, he could not have put that Question, but would have found himself impeached for Treason at the Common Law, declared by the 25th of *Edward III.*

*L. Staff.* So then they lay that aside of the 13th of this King?

*Mr. Serj. Mayn.* We do not mention any Statute, but we mention the Crime; and that Crime is against the Common Law, declared by the Statute, to wit, the attempting the King's Death, and the Subversion of the Government.

*L. Staff.* My Lords, there is no Doubt but the attempting the King's Death is a great and heinous Crime; but, my Lords, I do not find that in the Impeachment there is any Overt-Act at all. And whether I shall answer to a Treason not proved by any Overt-Act sworn by two Witnesses, I submit to your Lordships. But, my Lord, because your Lordships and the House of Commons may not think that I propose these Things out of a Desire of Delay; if your Lordships please it may be saved to me, with all other Points of Law; I will go on to my Proofs.

*L. H. S.* Yes, all these Things shall be saved to you; pray let us hear your Evidence.

*L. Staff.* Since your Lordships have granted me that, be pleased to give me Leave to go to my Evidence; and I begin with *Stephen Dugdale*:

*L. H. S.* Set up *Dugdale*.

*L. Staff.* Will your Lordships please I may have Pen, Ink, and Paper?

*L. H. S.* By all Means, my Lord. [Which was given him.]

*L. Staff.* May it please your Lordships, *Stephen Dugdale* said, if I understand him right (and I ask him again), that he knew something of the Plot fifteen or sixteen Years ago?

*L. H. S.* What say you, *Mr. Dugdale*, you hear the Question? Did not you say you knew of the Plot fifteen or sixteen Years ago?

*Mr. Dugd.* I did say it, and did explain my Meaning in it. I did say there was among us such a Preparation to be made against the King died, of Arms and Money, that neither should be wanting.

*L. Staff.* I beseech your Lordship to ask what Proportion of Arms was to be provided.

*L. H. S.* What Proportion of Arms was to be provided?

*Mr. Dugd.* I never heard it nominated how many absolutely. I have heard of some Numbers. I heard of late of 30,000 that were to be raised beyond Sea: What the whole Number in England was, I have forgot; but I think I have heard *Mr. Gavan*, and some of the Priests say, That if there was Occasion they should have at least 200,000 to assist them, that was of Men; and I suppose they had Arms as well as Men.

*L. Staff.* My Lords, if this were true which he says *Mr. Gavan* said, that they were 200,000, I desire to know what Men he meant, what Religion they must be of.

*L. H. S.* What Religion were they of that were to come in and help?

*Mr. Dugd.* He did not name them at that time; but I understood them, and so I apprehend the Company would, that they were Roman Catholics.

*L. Staff.* 'Tis a strange thing that there should be 200,000 Catholics raised, when there are not 20,000 in England that can bear Arms.

*L. H. S.* Good my Lord, they might come from beyond Sea, and so they might be so many Roman Catholics, tho' there were not so many in England.

*Mr. Serj. Mayn.* And he says not they were Roman Catholics, but he heard so.

*Mr. Treby.* There might be so many Roman Catholics, and such as should be with them.

*L. Staff.* Did he hear fifteen or sixteen Years ago that I was to be among them?

*L. H. S.* Answer that Question: Did you hear then that my Lord *Stafford* was to be one among them?

*Mr. Dugd.* I cannot remember that I did, my Lord.

*L. Staff.* Then, my Lords, I make this Use of it: He tells you of a Plot sixteen Years ago, that 200,000 Men in Arms were ready against the King's Death.

*Mr. Dugd.* I did not say so, my Lords; I desire I may be understood aright.

*L. Staff.* You say you heard so.

*Mr. Dugd.* I speak as to the Number of Men, what I heard of late at the Consults and Meetings within these two Years.

*L. Staff.* But I speak of sixteen Years ago, what Number of Men was there to be raised?

*Mr. Dugd.* My Lords, it was a general Word that was amongst us, That we must be provided against that Time, against the Death of the King, but no Number at all.

*L. Staff.* This, my Lords, under Favour, I conceive does not concern me. He tells you there was such a Thing; it might be so, or it might not be so; I am not concerned in it, then 'tis out of Doors as to what concerns me, I conceive; if the Gentlemen conceive otherwise, they will say so. Then, my Lords, the next thing is, How long ago it is since I first spake to him about this Plot? And I beseech your Lordship he may mention Time and Place.

*L. H. S.* You hear the Question, *Mr. Dugdale*.

*Mr. Dugd.* The first Time, to my best Remembrance.

*L. Staff.* I beseech you, my Lords, let us have no Remembrance, but let him swear positively.

T

L. H. S.

*Dugdale  
for the  
Crown!*



L. H. S. There is no mortal Man can swear otherwise than according to his Remembrance.

L. Staff. When a Man's Life and Honour, and all he hath is at stake, and indeed in consequence, every Man in England is concerned, if they swear not positively, but still say, As I remember; who can make a Defence?

L. H. S. Mr. Dugdale, Go on, and say, as near as you can, and be as particular as you can upon your Oath.

Mr. Dugd. That which I can positively affirm, is, It was about August or September, 78.

L. Staff. He said Yesterday it was in the latter end of August, or the Beginning of September, which are two Months. I beseech you what does he mean by the latter end of August? How long before the End of August?

L. H. S. How long was it before the last Day in August?

Mr. Dugd. My Lords, I will not be positive; but it was either in one Month or the other: I did not keep a Diary, or else I would give your Lordships Satisfaction.

L. Staff. I beseech your Lordships he may positively say, whether in August, or not in August; or whether in September, or not in September.

Mr. Dugd. I dare not venture to swear that, I dare not do it.

L. Staff. Then saving my Exceptions to the Incertainty of that afterwards, I would ask him, what Day was it in September that I spoke to him.

Mr. Dugd. I remember one was either the 20th or 21st of September, 78.

L. Staff. My Lords, He says the 20th or 21st; does he say that was the first time he spoke with me?

Sir J. Trevor. No, no.

L. Staff. I beseech you, my Lords, they may not answer the Questions, but the Witnesses; they cry, no, no.

L. H. S. My Lord, You shall certainly have an Answer to all the Questions you will ask.

L. Staff. But when I ask, they answer for them; I would know whether that is the Course or no?

L. H. S. Do not disquiet yourself for any thing that is said about you; you shall have a fair Hearing.

L. Staff. But, my Lords, I cannot but be disquieted when I hear these learned Gentlemen make Answers to my Questions for the Witnesses.

L. H. S. Mr. Dugdale, was the 20th or the 21st of September, you speak of, the first time that you spoke to my Lord Stafford?

Mr. Dugd. No, my Lords, it was not.

L. Staff. Pray, my Lords, what Day was it then I spoke first to him?

L. H. S. What was the Day you first spoke to my Lord?

Mr. Dugd. Truly, my Lords, I cannot remember so well as to tell you.

L. H. S. Do you remember when my Lord came to Tixall?

Mr. Dugd. I remember one Sunday in particular; but I cannot tell what Day of the Month it was.

L. H. S. Do you remember my Lord Stafford at Tixall, in Company with my Lord Aston and Father Evers?

Mr. Dugd. Yes, I do.

L. H. S. Do you remember that any Discourse passed between them?

Mr. Dugd. Yes, I do.

L. H. S. Was that before or after the 21st of September?

Mr. Dugd. Both before and after.

L. Staff. My Lords, He says there was a Consult at Tixall, where such and such were present, and the King's Death determined; I ask when was that?

Mr. Dugd. That was in September, I cannot say positively the Day; but in September, or the latter end of August.

L. Staff. My Lords, I must acquiesce and submit to your Lordships to do what you please; but if he does not name Times nor Places, how can I make my Defence? I desire he may say positively within five Days of the one or of the other; and, my Lords, I will put it upon that, if he say five Days before the end of August, or five Days in the beginning of September, which one would think is space enough, that is ten Days time.

L. H. S. My Lords, do observe how far Mr. Dugdale goes, and that he is no further positive than he does express himself.

L. Staff. I beseech your Lordships, I press this, because it concerns me very much, that he may be positive within five Days or under.

L. H. S. Can you remember whether it were within five Days of the one or of the other?

Mr. Dugd. Truly, my Lords, I cannot be positive; if I had not made a particular Remark upon that of the 20th or the 21st, I could not have remembered that; for I did not then intend to reveal the Plot, or else I could have given you Satisfaction in that.

L. H. S. My Lord, Your Lordship hath an Answer to it; he cannot speak more positively to it than he does.

L. Staff. I beseech you, then, how is it possible I can make my Defence?

Mr. Dugd. My Lords, I kept no Journal; if I had, I would be more positive.

L. Staff. He says it was the latter end of August, or the beginning of September; I desire he will say, whether it was the last Week in August, or the first Week in September?

L. H. S. He answers he cannot tell; your Lordship must make what Advantage you can of that Answer.

L. Staff. I can make no Advantage of it, unless he does speak positively to the time. My Lords, I beseech you I may know what is the End of August and the Beginning of September?

L. H. S. My Lord, I hear you not.

L. Staff. If a Man says the Beginning of June I was at such a Place, how many Days is the Beginning, and how many Days the End of a Month? How much time will your Lordships understand the Meaning of that to be? I am concerned extremely in the point of Time; for it is that which the whole Business depends upon, I mean as to this Man.

L. H. S. My Lord, go on with your Evidence; I know not how to give you an Answer, what Judgment my Lords will make of it, or how much they will understand by it, till they are withdrawn: They observe how much your Lordship insists upon it, and will hear what the worthy Gentlemen of the House of Commons will answer to it.

L. Staff. My Lords, my whole Business with this Fellow is concerned in a positive Answer to this Question; I give him, I think, reasonable time to confine himself to.

L. H. S. What say you to the 20th or 21st of September, my Lord?

L. Staff. My Lords, I shall give a clear Answer to that anon; but I am extremely concerned in this, to know whether it was in August or September.

L. H. S. My Lord, if your Lordship be concerned never so much at that, the Witness can swear no more than he can swear. He says about the latter end of August or the beginning of September; will your Lordship stand still for that?

L. Staff. Well then, I will go on as well as I can: As for the matter of the 20th or 21st of September, I beseech your Lordships I may ask Dugdale one Question, whether at the Trial of Sir George Wakeman or the five Jesuits, he did not say the Consult was in August; if he deny it, I shall prove it.

L. H. S. Mr. Dugdale, My Lord asks, whether at the Trial of Wakeman, or the five Jesuits, you did not say it was in August?

Mr. Dugd. My Lords, I did name there was a Consult at Boscobel in August, but I do not remember that I did name my Lord Stafford in any Consult in August positively; but, as I say now, the latter end of August, or the beginning of September. But I did name that there was a Consult at Boscobel in August 78.

L. Staff. My Lords, He did say I was at the Consult in August.

Mr. Dugd. I did not say My Lord Stafford was there, I don't charge him in it; and if any such thing was printed, I have wrong done me.

L. Staff. Then he says he had nothing to do with me till the latter end of August, or the beginning of September. My Lords, I beseech your Lordships to ask him, whether in Sir George Wakeman's Trial he did not say, he was to receive Orders from me in June or July, when I came into the Country.

L. H. S. Did not you say at Sir George Wakeman's Trial, that you were to receive Orders from my Lord Stafford in June or July, when he came into the Country?

Mr. Dugd. My Lord, I submit to your Lordship, and the rest of my Lords here, whether when that Question was ask'd by my Lord Stafford, I did not say, That the first time I entered into Correspondency with the Consulters, they told me, my Lord was to come down then, and I should receive Orders from him. I had heard of my Lord Stafford before, but not to enter into any Consults with him, till he came down the latter end of that Summer.

L. Staff. I beseech your Lordships pardon me; I desire him to answer positively, whether at the Trial of Sir George Wakeman, he did not say he was to receive Orders from me in June or July, when I came into the Country.

L. H. S. Did you say so at Sir George Wakeman's Trial?

Mr. Dugd. I believe I did say so; for I had it from others, and not my Lord Stafford himself.

L. Staff. My Lords, In June or July I was not in the Country.

L. H. S. He says you were to come down, not that you did come down.

L. Staff. If you will let him do thus, there is no Man safe: I shall begin the Tragedy, and Millions will follow. He swore at the Trial of Sir George Wakeman, or that of those other Persons, That there was a Consult at my Lord Aston's at Tixall, where I was one, in August.

Mr. Dugd. My Lords, I did not swear so; but in August or September, or one of them, as now I swear.

L. Staff. I shall prove it by the Book, and Witnesses that were there.

Mr. Dugd. Then they did me wrong by printing it; for I never said of your Lordship otherwise than I do now.

L. Staff. I desire my Witnesses may be call'd to prove it, for I conceive it is very material. My Lords, does he deny it?

Mr. Dugd. I do say there was a Consult at Tixall in August; but I did not charge your Lordship positively to be there then, nor with any more than I do now.

L. Staff. I think you did, and I have Witnesses to prove it. And 'tis impossible for any Man living to defend himself, if Persons shall swear as they suppose, think, or remember. I tell your Lordships I was not there all the Month of August.

L. H. S. Does your Lordship intend to call any Witnesses?

L. Staff. My Lords, I thought I had more Witnesses than I have. But I have two here, if your Lordships will hear them, that he did swear I was at Tixall in August.

L. H. S. Who are they?

L. Staff. My Daughter Wincheste for one, and a Lady that is my Kinswoman for another.

L. H. S. Let them stand up, they are not to be sworn. You don't expect against them, Gentlemen?

Sir W. Jones. No, let him prove what he can.

L. Marchioness of Wincheste. He did swear that he was to receive his Orders from—

L. H. S. Madam, your Ladyship is not upon your Oath; but you are under all the Obligations of Truth and Honour in the World.

L. March. Winch. My Lords, by the Grace of God, I will not speak an untrue Word.

Sir Will. Jones. We desire to know this Lady's Name.

L. Staff. It is my Daughter Wincheste.

L. March. Winch. This Stephen Dugdale did say at the Trial of Sir George Wakeman, That he was to receive Orders from my Lord in June or July, when he was to come down; and that my Lord was at a Consult at Tixall in August.

L. H. S. Did he say positively in August, or in August and September.

L. March. Winch. No, he did not name September.

Mr. Dugd. My Lords, I might say my Lord was to come down then; but not that ever I said he was there, but as now.

L. H. S. But she says you did not name September.

L. Staff. Here is another Lady.

Sir Will. Jones. Who is she, my Lord?

L. Staff. Mrs. Howard, Daughter to Sir George Blount, and married to Mr. Howard, a Kinsman of mine; she is now a Widow.

Mrs. Howard. My Lords, at the Trial of Sir George Wakeman, Dugdale was asked to be positive in the Month my Lord Stafford came down; and he said, he came down in June or July; but he said the Consult was in August, wherein my Lord Stafford was.

L. H. S. That Lady likewise says the same, That you would not be positive as to June or July; but as to August, you were positive that my Lord was there.

Mr. Dugd. No, my Lords, I only said, In August there was a Consult; and in June or July my Lord was to come down.

Mrs. Howard. I do assure you we came to that Trial on purpose to observe



observe every Word he said about my Lord *Stafford*, and we have kept it in our Memories ever since.

*L. H. S.* What do you say, *Mr. Dugdale*, to it?

*Mr. Dugd.* I suppose there was a great many more at that Trial than those two worthy Ladies; and I suppose some of them may remember I said no more than I do now. I said then, my Lord was to come down at that time, and so I said several times, but not positively, that he was there till the End of *August*, or the Beginning of *September*.

*L. Staff.* My Lords, I do positively aver, here are two Witnesses that say, he swore I was there at the Consult in *August*. Now it concerns me to prove that I was not there in *August*, since he said absolutely I was there in *August*; and I assure you I can prove I was not there all the whole Month. In the Beginning of *August* I come from *London*, from my own House; on *Tuesday* or *Wednesday* the 6th of *August*, I went to my Lord *Bellasis's*, and that Night I went to *George Porter's*; the next Night I went onwards towards *Bath*; when I was there I went over and staid with my Noble Lord the Marquis of *Worcester*; there I staid two or three Days, and I went thence to another Place hard by there; and then I came back again to *Bath*, and went back again afterwards to my Lord's House; and the first or second of *September*, I went from my Lord's House to *London*. Then if this be acknowledged I need say no more; if not, I'll prove it by sufficient Witnesses: So then I was not there the whole Month of *August*; and the Beginning of *September* he says he spoke with me. I was not there till the 12th of *September*. Now I beseech your Lordships, how that could possibly be the beginning of *September*. I submit to you, Whether then he be a Witness fit to be heard, that shall swear positively what hath no Colour of Truth in it, I also leave to you. And if they object I was not where I say I was in *August*, I will prove it. And for the 20th and 21st of *September*, I do own something of that, and I shall prove to your Lordship what it was.

*L. H. S.* Call what Witnesses you please, my Lord.

*L. Staff.* My Daughter proves when I went out of Town.

*L. March. Winch.* My Lords, it was on a *Tuesday* my Father went to my Lord *Bellasis's*, he dined there, and then went on to *George Porter's*.

*L. Staff.* That I was at *Bath* I shall call Witnesses.

*L. H. S.* My Lord, you should prove when you first came to *Tixall*, my Lord *Aston's*.

*L. Staff.* Will that satisfy your Lordship?

*L. H. S.* Me! 'Tis not me you are to satisfy, but my Lords, and the Gentlemen of the House of Commons.

*L. Staff.* Then I do own to your Lordships, I came the first time the 12th of *September* to *Tixall*.

*L. H. S.* That was the first Day you were there?

*L. Staff.* That Year, my Lord, it was.

*Sir Will. Jones.* Prove it.

*L. Staff.* Does he deny that, my Lords?

*L. H. S.* Do you deny that my Lord came first to *Tixall* the 12th of *September*, or do you know he was there before?

*Mr. Dugd.* My Lords, I have positively spoke to no Day, but only to the 21st or 20th of *September*.

*L. Staff.* Where is my Lord Marquis of *Worcester's* Servant?

*L. H. S.* My Lord *Stafford*, it will be best for your Lordship to produce all the Witnesses you have, and not to leave any thing undone that you can prove.

*L. Staff.* But I beseech your Lordships I may ask one Question: If I shall name any of the House of Peers as my Witnesses, does that exempt them from being Judges?

*L. H. S.* No, my Lord. If your Lordship have any Witnesses among any of my Lords here, they may very well testify for you, and yet remain still in the Capacities of your Judges; for my Lord of *Stafford* had a great many Witnesses that were Peers.

*Sir J. Trevor.* We do not oppose it, my Lords.

*L. H. S.* My Lord, Call your Witnesses.

*L. Staff.* There is no Place appointed for them, and therefore I could not have them ready here; I have sent for them; I have a Throng of them.

*L. H. S.* They will open the Way, and we will stay for them.

*L. Staff.* My Lords, I desire, that as Yesterday, when the Witnesses were sworn against me, mine did not hear what they said, so I desire when my Witnesses come, theirs may not be present.

*L. H. S.* My Lord, with your Lordship's Pardon, it was not well done that your Witnesses were not there; but if Witnesses be to confront one another, shall they not hear what one another say?

*L. Staff.* My Lords, I am so clear in every thing, I will dispute no little Matters.

Then my Lord's Witness stood up.

*L. H. S.* What is this Man's Name you call now, my Lord?

*L. Staff.* Indeed, my Lord, I don't know.

*Witness.* My Name is *Bonny*, My Lords.

*L. H. S.* Does your Lordship call this Man?

*L. Staff.* Yes, my Lords.

*L. H. S.* You are not upon your Oath, but you are to look that a strict Account will be taken of what you say.

*Mr. Foley.* My Lords, we desire to know where this Witness lives?

*Bonny.* I live in *Exeter-Street*, by *Exeter-Exchange*.

*L. Staff.* I declare it I know him not, but I am told he can witness for me.

*L. H. S.* Your Christian Name?

*Bonny.* *Thomas*.

*L. H. S.* What Profession are you of?

*Bonny.* I live as Clerk of the Kitchen to my Lord Marquis of *Worcester*.

*Mr. Foley.* What Religion are you of?

*Bonny.* A Protestant, one of the Church of *England*.

*L. Staff.* My Lords, I humbly move your Lordships, when I asked *Mr. Smith* the first Day, where he was made a Priest? The Gentleman said, he was not bound to answer any thing against himself that might make him criminal. I desire that the Question may not be put to my Witnesses what Religion they are of?

*L. H. S.* The Gentlemen will not offer to ask any Question that may make a Man accuse himself; but my Lord, a Papist or not a Papist is not so penal as a Priest or not a Priest.

*Mr. Foley.* To acknowledge a Man's self a Papist, is not to make him a Criminal.

*L. H. S.* What does your Lordship call this Witness for?

*L. Staff.* To prove when I was at my Lord Marquis of *Worcester's*?

*L. H. S.* What say you? when was my Lord *Stafford* at my Lord Marquis of *Worcester's*?

*Bonny.* In *August* 78.

*L. H. S.* Do you remember it perfectly?

*Bonny.* Very well.

*L. H. S.* What Day of *August*?

*Bonny.* The 17th of *August*, which my Lord Marquis keeps as his Wedding-Day every Year, and the Gentlemen of the Country are invited thither. My Lord *Stafford* was then at *Bath*, and my Lord Marquis was pleased to send his Coach for him, to be present there that Day; there he staid that Day and the next Day; and then return'd on *Monday*. And in the same Month, the 31st of *August*, my Lord came again from *Bath* to *Badminton*, my Lord Marquis of *Worcester's*, and upon the *Monday* after returned for *London*.

*L. H. S.* That was the Beginning of *September*?

*Bonny.* Yes, the 2d he went to *London*.

*L. H. S.* Will you ask him, Gentlemen, any Questions?

*Managers.* No, my Lords.

*L. H. S.* Call another Witness then.

(Who stood up).

*L. H. S.* What is this Man's Name?

*Witness.* *Thomas*.

*L. H. S.* *Thomas* what?

*Witness.* *Thomas White*.

*L. H. S.* Where do you live?

*White.* I live with my Lord Marquis of *Worcester* at *Badminton*.

*L. H. S.* What do you say?

*White.* My Lords—

Lord Marquis of *Worcester*. My Lord Steward, I have only this to say, my Lord *Stafford* desired that his Witnesses might not be asked what Religion they were of; but I desire all my Servants may be asked, for I keep none but Protestants.

*L. H. S.* What Religion are you of?

*White.* A Protestant.

*L. Staff.* My Lords, I did not require it for them, I know my Lord keeps none but Protestants; but I asked it for others of my Witnesses, that may come, and be startled at it.

*L. H. S.* What say you, when was my Lord *Stafford* at my Lord Marquis of *Worcester's* House?

*White.* The 17th of *August* 78; I fetched him from *Bath*, being my Lord's Wedding-Day.

*L. H. S.* You fetched him?

*White.* Yes, my Lords.

*L. H. S.* What Place do you serve my Lord Marquis in?

*White.* As Coachman.

*L. H. S.* Was he there afterwards?

*White.* Yes, he was, but I can't remember the Day; only this being a remarkable Day, I can remember it.

*L. H. S.* Did you carry my Lord from thence towards *London*?

*White.* Yes, I did.

*L. H. S.* When was that?

*White.* The second of *September*, to the best of my Remembrance.

*L. H. S.* Gentlemen will you ask him any Questions.

*Managers.* No.

*L. Staff.* I think this is so clear, I shall not need to trouble your Lordships further with more Witnesses.

*L. H. S.* Call whom you please, my Lord, and as many as you think fit, they shall be heard.

*L. Staff.* One more then, my Lords.

(Who stood up).

*L. H. S.* What is your Name?

*Witness.* *Richard Bevan*.

*L. H. S.* Who do you live with?

*Bevan.* I am Groom to my Lord Marquis of *Worcester*.

*L. H. S.* What Religion are you of?

*Bevan.* A Protestant.

*L. H. S.* Do you remember when my Lord *Stafford* was at the Marquis of *Worcester's* House?

*Bevan.* Yes, I do.

*L. H. S.* What time was it?

*Bevan.* The 17th of *August*.

*L. H. S.* Do you remember any other Day?

*Bevan.* No, my Lord; but he was there that Day.

*L. H. S.* Will you ask him any Questions?

*Managers.* No, my Lords.

*L. Staff.* My Lords, if your Lordships please, I desire my Lord Marquis of *Worcester* may tell your Lordships whether his Men have said true or no?

*L. Marq. of Worcester.* My Lords, I do remember, that my Lord *Stafford* was pleased to do me the honour to come upon my Wedding-Day from the *Bath*, and dine with me, as most Persons of Quality that are of my Acquaintance, and happen to be at the *Bath* at that time, are pleased to do; and as most of the Gentlemen of the Country, within such a Distance, do also. (And that Day is the 17th of *August*). I think he was there once or twice after, from the *Bath*, but I cannot tell precisely the Days; but that particular Day I remember, because it was my Wedding-Day.

*L. H. S.* Can your Lordship remember when my Lord *Stafford* went to *London*?

*L. Marq. of Worcester.* Truly I cannot tell that, my Lords.

*L. H. S.* Did you not after that lend my Lord your Coach?

*L. Marq. of Worcester.* Yes, I did, to carry him as far as *Sandy-lane*, on the Road to *London*; but the particular Day I remember not: But one of the Persons examined (who was then my Clerk of the Kitchen) must needs know, because he books every Day who is in the House, and therefore I believe what he has said is true.

*L. Staff.* *Stephen Dugdale*, I desire, may come again. I conceive I have made it plain to your Lordships, that *Stephen Dugdale* did swear, That in *August* there was a Consult at my Lord *Aston's* where I was; and I conceive it is also clear that in *August* I was not there; and then if it were the Beginning of *September*, that could not be neither; for I came not down to *Tixall* till the 12th. I beseech you to ask him when I offer'd him the five hundred Pounds to kill the King, I think he says it was the 20th or 21st.

*L. H. S.* What was the time my Lord offered you the five hundred Pounds?

*Mr. Dugd.* It was about that time, the 20th or 21st of *September*, to my Remembrance.

*L. Staff.* He said positively before, it was one of those two Days; I beseech your Lordship to ask him where it was.

*L. H. S.* Where was that Offer made?

*Mr. Dugd.*



Mr. Dugd. In my Lord's Lodging-Chamber at *Tixall*.

L. Staff. Then one Question more, I desire your Lordship to ask him, what Day the Race was at *Etching-Hill* between Sir *John Crew's* Man and *Lazingby*?

Mr. Dugd. If it please your Lordship, I do conceive it was about that Time.

L. Staff. I pray he may answer positively, for, if you please, I will tell you how it was. It is very true, the 20th of *September* this Fellow was in my Chamber, and I shall trouble your Lordships with some little Discourse about it, and my Reasons why: First, I beseech your Lordships to permit me to let you know, that this Fellow did serve my Lord *Aston* in the Quality of a Bailiff. And I never thought him to be an honest Man, he was a mean Servant, and when the other Servants waited but till the second Course came in, he staid till the Coachman and the Groom went to Dinner, and eat with them. I profess before God it is true as that the Sun shines, I have often and often, I cannot tell how many Times, when I have been very dry at my Lord's Table, and seen him by me, not called for Drink; I did detect him as so mean a Knave, that I often refused to take drink at his Hands: And now for me to offer this Fellow five hundred Pounds—

L. H. S. I think your Lordship says he was Bailiff to my Lord *Aston*?

L. Staff. But I knew him to be an arrant Knave, and a great Gamester at Races, and such Things.

L. H. S. My Lord, would you have offered five hundred Pounds to an honest Man to kill the King?

Mr. Serj. *Mayn*. You said you never saw him.

L. Staff. I said I had seen him, but now I did not know him by his Perriwig.

L. H. S. Did you not know him, my Lord?

L. Staff. No, my Lords, I profess I did not.

L. H. S. Why, your Lordship was agoing to shew that the Race at *Etching-Hill* was upon the 20th of *September*; and your Lordship confesses, that he did speak with you on the 20th of *September* in your Chamber; and *Dugdale* says, this Day was the very Offer made him of five hundred Pounds to kill the King. What do you say, *Dugdale*, were you at the Race?

Mr. Dugd. Yes, I was with my Lord at the Race.

L. H. S. Did my Lord speak with you before he went, or after?

Mr. Dugd. Before.

L. H. S. That Morning in his Chamber?

Mr. Dugd. Yes, it was that very Morning, before he went to the Race.

L. Staff. I do own, my Lord, thus far; he was in my Chamber that Morning; but, my Lord, I can prove what I say to you: My Lords, the 20th of *September* in the Morning, I was in my Bed, and there comes a Servant of mine that hath served me twelve or fourteen Years, and he comes in to me, and says, Yonder is *Stephen Dugdale*, very desirous to go to this Race. It seems he says he went along with me to this Race.

Mr. Dugd. I say I went either before or after, or when you went to the Race, for I was with you at the Race.

L. H. S. Whether he went with you or no, is not the Point, but whether he was in your Chamber at that time.

L. Staff. 'Tis the Point; for he said just now, he went with me, as I apprehended him. But I tell your Lordships, my Servant came and told me, *Stephen Dugdale* desires that you would ask my Lord *Aston* Leave that he may go before to the Race; my Lord is angry with him already for his meddling in Races, and he dare not ask himself. My Lords, I was a little concerned in the Race, for I had betted some Money; and I thought with myself, should I ask my Lord *Aston* Leave for him to go, my Lord will not deny me, but perhaps will take it ill to be asked, so I was not over-willing to do it. But I bid my Servant call him in, and when he came, I asked him some foolish Questions about the Race, as who he thought would win, and the like; but I told him, I would get Leave of my Lord for him. My Lords, I did go to my Lord *Aston*, and told him, my Lord, I am sending my Servant before to the Place of the Race, but I am afraid he does not well know the Way, shall *Stephen Dugdale* go along with him? My Lord gave him Leave to go. But, my Lords, I dressed me, and did not speak one Tittle more to this *Dugdale*, but he went before, and I was hardly or but just dressed when he was gone.

L. H. S. I pray, my Lord, was your Lordship at no Time alone with him in your Chamber?

L. Staff. No, never since I was born, never in all my Life.

L. H. S. No, my Lord?

L. Staff. He says my Servants used to come for him, I profess it is all false.

L. H. S. What say you to that, Mr. *Dugdale*?

Mr. Dugd. My Lords, I was in my Chamber, and busy when my Lord sent for me that Morning, and it was either by his Page, or one that waits on him in his Chamber; I went to my Lord, and the Page was in the Chamber, and he ordered him to go out.

L. Staff. I declare and aver to your Lordships he was in the Hall, or the next Room, and desired to come in.

L. H. S. Where is the Page?

L. Staff. This Fellow was but a poor Boy, found at the Door, then he was a Thresher, and now a Witness for the King.

(Then my Lord *Stafford's* Man stood up.)

L. H. S. What is your Name?

Witness. My Name is *Nicholas Furnese*.

L. H. S. Do you remember the Day of the Race at *Etching-Hill*?

Furnese. Yes, I do, my Lords.

L. H. S. Do you remember *Dugdale* was in your Lord's Chamber that Morning?

Furnese. Yes, I do.

L. H. S. Do you remember whether your Lord did bid you go out or no?

Furnese. No, he did not.

L. H. S. Were you there all the while *Dugdale* was there?

Furnese. Yes, my Lords, I was.

L. Staff. Pray, my Lords, ask him, whether I sent for *Dugdale*, or he desired to speak to me?

L. H. S. Did my Lord send for *Dugdale*, or did he come to you to speak to my Lord for him?

Furnese. No, *Dugdale* spoke to me first.

L. H. S. What did he say to you, pray?

Furnese. My Lords, about eight or nine of the Clock in the Morning, I came to go to my Lord's Chamber, and I came thro' my Lord *Aston's* Hall; and coming through, I met Mr. *Dugdale* coming to me, and said, he had one Favour to desire of me. He said, he would fain go to the Race; but,

said he, I do not know how to go, for my Lord is very angry with me, and, if I should ask him, he would be worse, for he is displeased that I have meddled so far in these Matters already; therefore I desire some Means may be used that I may go, and I desire that you would speak to my Lord to get Leave for me to go; for Mr. *Fox* is there, and hath a great deal of Money in his Hands, and divers People will give Money to bett, and so it will be a great Loss and Prejudice to me not to go. So I did promise him, my Lords, and I went into my Lord's Chamber, and told him; and when I had spoke to my Lord, my Lord bid him come in. And when he came in, my Lord asked him several Questions about the Race: My Lord asked him what Hopes he had, for he said a great deal of Money was laid by several People; he replied, he could win, but he wanted Money to bett: Says my Lord, I will bett twenty Pounds for *Staffordshire* Sake, though I were sure to lose. And then after some Discourse to that Purpose, my Lord told him, he would speak to his Lord. After my Lord was dressed, he went out of his Chamber, and went to my Lord *Aston*, to ask him Leave for *Dugdale*; and my Lord bid me make myself ready to go to the Race. About nine or ten of the Clock I was ready to go, and coming down the Back-stairs my Lord met me: Go, says he, to *Etching-Hill*, and see what Betts there are, and take *Stephen Dugdale* with you to shew you the Way; for I have asked his Lord Leave for him to go. So *Stephen Dugdale* went along with me to the Stable, and took out his Horse; mine was not ready; but I overtook him in Half a Mile, and it was eleven of the Clock ere we were at *Ridgely*. I asked him some Questions about one Mr. *Gerard*; and I think about twelve of the Clock we were at the Race, and I staid till one with him and Mr. *Fox*, who was a Party concerned in the Race, and there were several Betts laid. I was watchful when my Lord should come, lest he should want me; so I left them, and went to the Room where my Lord was to dine; and when I went to my Lord, I left him betting. About two of the Clock the Lords and Gentlemen all went to Dinner (that were there), and when we had half dined, betwixt two and three, *Dugdale* came in, and we asked him how the Wagers went; he said, he would bett Gold to Silver, if he had it, but he had betted away all his Money, I knew not how much. So there was a Gentleman that was Servant to my Lord *Aston*, one *George Hobson* by Name, he lent him two Guineas and odd Money, and I lent him some forty or fifty Shillings out of my own Pocket, which I told him, I would not lend, unless he would give it me at the Hill again, before the Race begun, because I was fearful my Lord should go to *Stafford* again from my Lord *Aston's* that Night. About four or five o'Clock I went up to the Race, and demanded my Money, and he paid it me before the Race begun, and after the Race was done I lost him. My Lord went home, and I waited on him. This was about five or six, and about the Midway towards my Lord *Aston's* House, he went into the Coach, and I got on Horseback, and we got home about six or seven of the Clock, as I suppose. But at Night after Supper I enquired for *Dugdale*, how he took his Losings, and how he did after it: They told me, he was gone to Bed, so I saw him no more that Night. The next Morning, my Lord bid me come betimes, for he would go to *Stafford* that Morning, where we dined, at Mr. *Abden's*, and from thence took our Way to go to my Lord's own House.

L. Staff. Now, my Lords, if you please to ask this Boy, whether I bid him go and call *Dugdale* to me, and leave him there?

L. H. S. My Lord *Stafford* did bid you, Mr. *Furnese*, go and dress yourself, and make you ready for the Race; did you not leave *Dugdale* behind you in the Chamber when you went to dress yourself?

Furnese. No, my Lord, *Dugdale* was gone thence; and my Lord was gone too, before me, to my Lord *Aston's*.

L. H. S. I still ask you the Question (you are upon an Obligation very great, as much as if you were upon your Oath), Whether you were in my Lord's Chamber before *Dugdale* came in, and staid till after he went out?

L. Staff. And whether I bid him go out or no?

L. H. S. Were you there before *Dugdale* went in?

Furnese. He went along with me in; I conducted him in.

L. H. S. Did you stay all the while *Dugdale* was there?

Furnese. As near as I remember, I staid there all the while.

L. Staff. Ask him positively.

Furnese. Yes, my Lords, I was there all the while *Dugdale* staid; but I cannot say positively how long it was.

L. H. S. Mr. *Dugdale*, you are upon your Oath; he says he came in along with you, and you went out of the Chamber before him, and he was there all the while you were there.

Mr. Dugd. My Lords, I am not positive which of my Lord's Servants it was that came for me; but one it was. But when I came into the Chamber to my Lord, my Lord was getting up, and he charged them both to go forth, and the Room was clear, and I saw no Body.

L. Staff. My Lords, ask my Man.

Furnese. My Lord never bid me go forth that Day, nor any else in my Life, when any was in the Room.

Mr. Dugd. My Lords, if it please your Lordships, Mr. *Furnese* was pleased to say, I would bett Gold to Silver; but in that he was mistaken, for the Odds was quite six to four against us.

L. H. S. Well, we are not upon the Race now, or the Wagers laid there. But, Gentlemen of the House of Commons, will you ask this Man any Questions?

Sir *William Jones*. No, my Lords, we have none to ask.

Sir *Thomas Lee*. We desire to know where he lives now, what Countryman he is, and what Religion he is of.

L. H. S. Whom do you serve now?

Furnese. My Lord *Stafford*.

L. H. S. Do you live with him still?

Furnese. Yes, I do, and have done this fourteen Years.

L. H. S. What Countryman are you?

Furnese. A Dutch-Man.

L. H. S. Where born?

Furnese. At *Brussels*.

Sir *Francis Winnington*. We would ask him what Persuasion or Religion he is of?

L. H. S. You may be sure of what Answer you shall have.

Furnese. I am a Roman Catholick.

L. Staff. That is as good as a Jew.

Mr. *Treby*. The Question is not intended for any Harm, not with any Purpose to criminate him; 'tis only in regard of his Credit in this Matter.

L. H. S. Call another Witness, my Lord.

L. Staff. Where is *George Leigh*? (Who stood up).



L. H. S. How old are you?—*Leigh*. I am about fifteen or sixteen.  
 L. Staff. My Lords, I believe he is eighteen or nineteen.  
 Mr. Treby. Whose Servant is he?  
 L. Staff. He is my Servant; he hath served me seven or eight Years.  
 L. H. S. What does your Lordship call him for?  
 L. Staff. To tell you whether I bid my Servants to go out when *Dugdale* came in, and whether ever he saw *Dugdale* and I alone.  
 L. H. S. *George Leigh*, how long have you lived with my Lord *Stafford*?  
*Leigh*. Seven Years the 10th of *June last*.  
 L. H. S. Why then you were but nine Years old when you came to him?  
*Leigh*. No, my Lords, I think I was not.  
 L. H. S. Do you remember when my Lord *Stafford* was at *Tixall*?  
*Leigh*. I do not remember the Month very well.  
 L. H. S. Do you remember the time of the Race at *Etching-Hill*?  
*Leigh*. I do not remember the Day; but I was at it.  
 L. H. S. Did Mr. *Dugdale* come into your Lord's Chamber that Morning?  
*Leigh*. I do not remember he was there that very Morning.  
 L. Staff. Be pleased to ask him whether ever I bid him go out of my Chamber when *Dugdale* was there.  
 L. H. S. Did you ever see *Dugdale* any other Morning in your Lord's Chamber?  
*Leigh*. My Lords, I think not; I am not certain: He was there one Morning, and it was about a Race; but I am not certain what Race it was, whether it was two Boys ran, or two Men.  
 L. H. S. Did your Lord bid you go out of his Chamber?  
*Leigh*. No, my Lords.  
 L. Staff. *Dugdale* says I often sent him for him; pray ask him that Question.  
 L. H. S. My Lord, this Boy does not remember that *Dugdale* at all was at your Chamber that time of the Race at *Etching-hill*; so that it is not material to the Thing in question.  
 L. Staff. Yes, my Lords, *Dugdale* told your Lordships yesterday that I sent this Boy often for him.  
 L. H. S. Did ever this Boy come for you?—Mr. *Dugdale*. Yes he hath, I am sure, come to my Chamber for me to go to my Lord.  
 L. H. S. Were you sent for by my Lord more than once?  
 Mr. *Dugdale*. Yes, several times.  
 L. H. S. Before or after the Race?  
 Mr. *Dugdale*. Both before the Race, and after the Race.  
 L. H. S. By whom were you sent for?—Mr. *Dugdale*. Sometimes by the Gentleman that was last examin'd, and sometimes by this Boy.  
 L. H. S. Did you ever come from my Lord *Stafford* to bid *Dugdale* come to him?—*Leigh*. My Lords, I do not remember that ever I did.  
 L. H. S. 'Tis an hard thing to remember so long.  
 L. Staff. If ever he came once to me, and was alone with me, I will be content to acknowledge all this to be true. Pray ask the other Man if ever I sent him for him.  
 L. H. S. He did testify before, that he came with him that Day to your Lordship's Chamber.  
 L. Staff. That Day, my Lords: But he says, other Days I sent for him.  
 L. H. S. Call *Furness* again. (*Who stood up*) *Furness*, did my Lord *Stafford* ever send you for *Dugdale*, either before or after the Race?  
*Furness*. Never, my Lords, to his Chamber.  
 L. H. S. Did he ever in his Life send you to Mr. *Dugdale*, to speak with him, as you remember?—*Furness*. Never, my Lords.  
 L. Staff. He was, my Lords, such a Fellow, I could not endure he should come near me; such an impudent lying Fellow.  
 L. H. S. Have you any more Witnesses my Lord?  
 L. Staff. Yes, a great many.  
 L. H. S. Call them all, I pray.  
 L. Staff. My Lords, I hope you think I would not be so great and imprudent a Fool to employ such a Fellow as this, who not long after run away from my Lord *Aston*'s.  
 L. H. S. Who did?  
 L. Staff. *Stephen Dugdale*. And for that, if you please, I would call some Witnesses.  
 L. H. S. Call *Furness* again. (*Who stood up*.) Did you ever see *Dugdale* and my Lord *Stafford* together?  
*Furness*. Never in my Life.  
 L. H. S. Why you saw them together that Morning you brought him to the Chamber. (*Then the Auditory laughed*.)  
*Furness*. Never alone.  
 L. Staff. I did not think I was in a Cock-Pit, or a Play-House. But if your Lordships please to let me call my Witnesses, to prove that *Dugdale* ran away from my Lord *Aston*, I shall call for that *Thomas Sawyer*. (*Who stood up*.)  
 L. H. S. What is your Name?—*Witness*. *Sawyer*.  
 L. H. S. Your Christian Name?—*Witness*. *Thomas*.  
 L. H. S. Who do you live withal?—*Sawyer*. My Lord *Aston*.  
 L. H. S. Where do you live?—*Sawyer*. At *Tixall*.  
 L. H. S. Are you my Lord *Aston*'s Servant?—*Sawyer*. Yes.  
 L. H. S. How long have you been so?  
*Sawyer*. Six Years, and ever since *Michaelmas*.  
 L. H. S. What have you to say?  
*Sawyer*. As to *Dugdale*'s Reputation, I have this to say, How that he went from my Lord *Aston*'s for Debt, and was taken by the Watch at *Heywood*.  
 L. H. S. When was that?  
*Sawyer*. The latter end of *November*, or the beginning of *December*.  
 L. H. S. What Year?—*Sawyer*. (78.)  
 L. H. S. Then the Family broke up?  
*Sawyer*. And coming thither, and being taken by the Watch, he was brought by the Justices to *Tixall*; and after the Justices had been with my Lord, their Resolution was to carry him to the Goal. So coming to *Tixall*, where *Dugdale* was at an Ale-house, he desired me to go to my Lord, and desire him that he would own him as his Servant, for he was so much in Debt, that he should else be undone for ever. In the mean time Mr. *Philips* the Parson of the Town, had been with my Lord, (for *Dugdale* had desired him to go to him also) and he asking me whither I was going; said I, I am going to my Lord from *Dugdale* to desire him to own him as his Servant. Said he, I have been with my Lord just now, and he said, he

will not own him as his Servant; it was his own Act and Deed. So Mr. *Philips* and I came back to him, and told him. So he sat down in the Chair, and then rose up again, and swore, He would be revenged of my Lord *Aston*, if ever it lay in his Power.

L. H. S. You never heard him say he would be revenged of my Lord *Stafford*, did you?

*Sawyer*. No, of my Lord *Aston*. Then another time, being at *Stafford*, he owed me twenty-nine Pounds, and he was under the Serjeant's hands; and then he promised me from to time he would pay me, and did not keep his Word. This was three or four Days before he began to peach. He bid me come such a Day, and he would pay me part of the Money; and when I came thither, he told me it was reported that he should be a Peacher; and that there was a Speech, how that he should have two hundred Pounds for informing that there were fourteen Priests in the Country: But he takes a Glass of Drink, and, *Thomas*, says he, by God, I wish this may be my Damnation and my Poison, if I know of any Plot, or any Priests.

L. H. S. Was not he a Papist then?

*Sawyer*. I cannot absolutely tell that, whether he was or no.

L. H. S. Do you know one Father *Evers*?

*Sawyer*. My Lords I have seen him.

L. H. S. Hath he never been at *Tixall*?

*Sawyer*. Yes, my Lords, I have seen him there.

L. H. S. And have not you seen *Dugdale* in his Company?

*Sawyer*. Yes, I have.

L. H. S. Did not you at *Tixall* think *Dugdale* a stout able Fellow?

*Sawyer*. No, he never was accounted to be so.

L. H. S. Then I ask you, if you thought him an honest Man, or a rich Man?

*Sawyer*. No, truly, my Lords: For I'll tell you more than that: My Lord *Aston* employ'd him to be his Bailiff, and receive his Rents, and to pay Workmen their Wages, which he received every *Saturday*. And my Lord *Aston* did account with him, where he did set his Hand to receive the poor Workmen's Wages according to their Bills, when they had not been paid some of them whole Years, and Half Years, and Quarters. And they came and cried to my Lord, that they were not paid. And thereupon *Dugdale* did say, that one of them had demanded more of my Lord than was his due; for he said he had reckoned such a Day with him, and paid him so much Money; which Man said he was not that Day at *Tixall*: And so he hinder'd him of part of his Money.

L. H. S. Did you ever know that *Dugdale* did forswear himself?

*Sawyer*. That I do not know, my Lords, I did hear he was concerned in a Race, about which there was a Trial and a Dispute which had won. This I have heard by Report.

Sir *Fran. Win.* Speak your own Knowledge, not Reports.

L. H. S. I ask you, do you remember the Day when my Lord *Stafford* came to *Tixall*?

*Sawyer*. He came on the 12th Day of the Month.

L. H. S. What, *September*?—*Sawyer*. Yes, the 12th of *September*.

L. H. S. Did you ever see *Dugdale* in the Company of my Lord *Stafford*, while was at *Tixall*?

*Sawyer*. No, never in the House; but at the Race, he hath come into the Parlour.

Mr. *Treby*. You had Discourse with *Dugdale*: You say he took a Glass and drank, and wished it might be his Poison. Was not Father *Evers* that time at my Lord *Aston*'s?

*Sawyer*. Not that I know of, my Lords.

Mr. *Treby*. Was he not commonly there?—*Sawyer*. Yes.

Mr. *Treby*. If he were, Mr. *Dugdale* must know it; and how then could he take a Glass, and wish it were Poison, if he knew where any Priest was; since it was apparent he knew where that Priest was? 'Tis most improbable Mr. *Dugdale* should say thus!

*Sawyer*. My Lords, this was three or four Days ere he confessed any thing he knew of his Knowledge.

Mr. *Treby*. What Persuasion of Religion are you?

*Sawyer*. Of the Church of *England*.

Mr. *Serj. Mayn*. Pray, my Lords, ask him one Question; he says *Dugdale* went away from my Lord *Aston*'s, was not there a Speech of a Plot (at that time) that was discover'd?

*Sawyer*. Yes, that I heard.

Sir *Fr. Win.* My Lords, I would ask him one Question more: Was there no Discourse of the Death of a Justice of the Peace that was said to be killed in *London* about that time?

*Sawyer*. To my best remembrance, as I heard, there was.

Mr. *Dugd.* My Lords, if your Lordships please that I should call Witnesses to confront him now, or afterwards?

Sir *Will. Jones*. Not now; stay till your time comes.

L. Staff. Then call *Philips*. (*Who stood up*.)

L. H. S. What is your Name, Sir?—*Witness*. *Ralph Philips*.

L. H. S. What are you, a Clergyman?—Mr. *Philips*. Yes.

L. H. S. Are you beneficed?—Mr. *Philips*. Yes, my Lord.

L. H. S. Where?—Mr. *Philips*. At *Tixall*, my Lord.

L. H. S. You are a Person that knows the Obligation that lies upon you to give a true Testimony; what can you say of Mr. *Dugdale*?

Mr. *Philips*. My Lords, I have very little to say concerning *Stephen Dugdale* as to any thing of the Plot, but in reference to what he should relate concerning Mr. *Samlidge* and me in the Narrative which he deposed upon the Trial of Sir *George Wakeman*: He said then he did receive a Letter concerning the Death of Sir *Edmundbury Godfrey*, which was dated the 12th of *October*, as I remember; and that he did communicate the Letter to Mr. *Samlidge* and me immediately the next *Tuesday*: whereas I will assure you, my Lords, I never heard neither by Letter nor Word of Mouth from him nor any other, till it was publicly known.

L. H. S. You did not live in my Lord *Aston*'s House, did you?

Mr. *Philips*. No, my Lords.

Sir *W. Jones*. We know not what he says, we desire to understand what he means.

L. H. S. He takes notice that *Dugdale* at the Trial of Sir *George Wakeman* did depose touching a Letter dated the 12th of *October*, which should come down to *Tixall*, intimating the Death of Sir *Edmundbury Godfrey*, and that



that he did communicate that with the Parson of *Tixall* and another; which Parson comes now to say, he did communicate no such Matter to him.

Sir *W. Jones*. We desire to ask him whether he was present at that Trial, and heard him say so?

Mr. *Philips*. I was not present at the Trial, but if the Narrative of the Trial be Truth, he did say so.

L. H. S. So then, you only come to disprove what is printed that *Dugdale* should say.

Mr. *Philips*. Then I leave it to your Judgments, whether what he said in the Narrative of that Trial do concur with the Truth.

L. Staff. I desire then to ask him, whether *Stephen Dugdale* did not run away from my Lord *Aston's*, and would have him go to my Lord to own him for his Servant.

L. H. S. What do you know of *Dugdale's* running away?

Mr. *Philips*. I know nothing at all of that, my Lords.

L. Staff. Whether he did speak to him to own him for his Servant when he was in the Justice's Hands?

L. H. S. Can you say any Thing touching the Credit of *Dugdale*?

Mr. *Philips*. I have nothing to say concerning *Dugdale's* Credit.

L. H. S. Did you know him?—Mr. *Philips*. Yes, ever since I came to *Tixall*.

L. H. S. How long is that?—Mr. *Philips*. About fourteen Years.

L. H. S. What Reputation had he in the Country? Was he looked upon as one that would perjure himself?

Mr. *Philips*. I never knew any thing of that.

L. H. S. Was he thought a stout Man?—Mr. *Philips*. He was in good Repute with some, and indifferent with others.

L. H. S. Will you call any more Witnesses, my Lord?

L. Staff. I would only ask him one Question; whether he did go to my Lord *Aston* from *Dugdale* to know if he would own him for his Servant?

L. H. S. What say you, Sir; did you?

Mr. *Philips*. Yes, my Lords, he knows very well I did; he did request me to go to him. My Lord *Aston* I was loth to go to, because I had no Familiarity with him, nor Interest in him; but he did request and urge me so much, that I did go by much Motives and Persuasion from him, and I did speak to my Lord: So I told him the Message I had was from Mr. *Dugdale*, who would request of my Lord that he would own him for his Servant; for if he did not, he knew not what to do with himself: but if he did, he might be free from the Goal and from the Oaths, and escape the Troubles that were upon him. So my Lord replied to me, 'Tis his own Act and Deed, and I have nothing to do with him, and let the Justices do what they will with him; which were Sir *Walter Bagott*, and Mr. *Kinnerley*.

Mr. *Foley*. We desire to know whether he heard any Discourse about a Plot at that Time or no?

Mr. *Philips*. Truly, my Lords, I heard a Talk of a Plot, but not at that Time.

Mr. *Foley*. My Lords, I desire to know if he took Mr. *Dugdale* for a Person that might be in the Plot, if there was any such Thing?

Mr. *Philips*. I cannot tell how to answer that, 'tis a hard Question; I am not so intimately acquainted with Persons whose Secrets are not reposed in me.

L. Staff. The next Witness I desire may be (with the leave of the Gentlemen of the House of Commons) Sir *Walter Bagott*; I did desire him to be here.

Sir *W. Jones*. There he is, we do not oppose it.

L. H. S. Is it your Lordships Pleasure that Sir *Walter Bagott* be heard in his Place?—Lords. Yes.

Sir *Walter Bagott*.

L. H. S. What would you ask Sir *Walter*, my Lord?

L. Staff. My Lords, I desire to ask Sir *Walter Bagott*, whether he did not apprehend *Dugdale*, and upon what Account it was?

L. H. S. Sir *Walter Bagott*, My Lord, desires to know of you, whether you did apprehend *Dugdale*, and upon what Account?

Sir *Walter Bagott*. My Lords, Mr. *Dugdale* was taken at an unreasonable Time of Night, and brought to me the next Morning by the Watch, as the other Witnesses have told your Lordships. And I took him away to *Stafford*, where there were several other Justices of the Peace; there were offered him the Oaths of Allegiance and Supremacy, which he took. After the taking of these Oaths, we told him, that he was a likely Man to know something of the Plot, and it was a very proper Time for him to discover it to us that were Justices; he at that Time did deny the Knowledge of it; that is all I can say.

L. Staff. I desire Sir *Walter Bagott* may be asked, whether he did not go to my Lord *Aston*, to see whether he would own *Dugdale* for his Servant?

L. H. S. Did you ask my Lord *Aston* to own him for his Servant?

Sir *W. Bagott*. Yes, I did: For my Lord's House being in the Way to *Stafford*, whither I was going, I called upon him to know if Mr. *Dugdale* were his Servant: He told me he was no Servant of his, and he would not receive him; upon which I and another Justice of the Peace that was with me, took him to *Stafford*. The Occasion of our Meeting there, was to summon in the Militia, upon an Alarm of the Papists being risen in *Derbyshire*.

L. Staff. I make this Use of it, my Lords, that my Lord *Aston* would not receive him: And if my Lord *Aston* had known he had been in the Plot, and could have discover'd him, he would not have disobliged him.

L. H. S. Nay, he says more than that, which you don't hear; he says, when they examined him, they gave him the Oaths of Allegiance and Supremacy, and then told him he would do well to discover his Knowledge of the Plot, and then he did not know any Thing he knew; nay, he denied it.

Mr. *Foley*. Did he deny the knowing of it?—Sir *W. Bagott*. Yes, he did then.

Sir *F. Winn*. He was not resolved to discover at that Time.

Mr. *Serj. Mayn*. We desire Sir *Walter Bagott* may be asked whether he examined him upon his Oath, or no?—Sir *Walter Bagott*. No, I did not.

Mr. *Serj. Mayn*. But had they then just given him the Oaths of Allegiance and Supremacy?

Sir *Wal. Bagott*. Yes, my Lords, we gave him those Oaths, and those only.

L. Staff. Then Mr. *Kinnerley*, if you please. (*Who stood up*) Be pleased to ask this worthy Gentleman what he knows about *Dugdale's* going from my Lord *Aston*.

L. H. S. First let us know this Gentleman.

L. Staff. His Name is *Kinnerley*.

Mr. *Kin*. What Questions would your Lordship ask me?

L. Staff. What you know about *Dugdale's* going from my Lord *Aston*.

L. H. S. Mr. *Kinnerley*, we must know your Christian Name,

Mr. *Kin*. *Thomas*.

L. H. S. Do you know Mr. *Dugdale*?

Mr. *Kin*. My Lords, I was not acquainted with Mr. *Dugdale*, till Sir *Brian Broughton*, Sir *Walter Bagott*, and I and others gave him the Oaths of Allegiance and Supremacy, the latter End of *November*, or the Beginning of *December*; I did not take Notice exactly of the Time.

L. H. S. What Year?—Mr. *Kin*. 78.

L. H. S. Well, Sir, go on.

Mr. *Kin*. When he had taken the Oaths of Allegiance and Supremacy, I asked him if he knew any Treason or Conspiracy against the King, telling him it was a seasonable Time to declare it. He told me he knew of none. This is all I know, and all the Discourse that I remember we had with Mr. *Dugdale*.

Mr. *Serj. Mayn*. Pray why did you ask him that Question?

Mr. *Kin*. The Plot was then newly broken out.

Mr. *Serj. Mayn*. Why did you ask him so particularly?

Mr. *Treby*. Why did you think Mr. *Dugdale* concerned in it?

Mr. *Kin*. Because we heard he was a Papist, and my Lord *Aston's* Servant.

L. Staff. Then I desire Sir *Thomas Whitgrave* may be examined. (*Who stood up*.)

L. H. S. What say you to Sir *Thomas Whitgrave*, my Lord?

L. Staff. Will your Lordships please to ask Sir *Tho. Whitgrave* whether he did not examine *Dugdale* about the Plot, and what he said at that Time.

Sir *Tho. Whitgrave*. My Lords, I came to *Stafford* the latter End of *November*, or the Beginning of *December*, I am not certain which; but I think it was this Time two Years. The Deputy-Lieutenants met about the Militia of the County. They told me that Mr. *Dugdale* was in Town, and was under an Arrest: The Occasion of his coming to Town, was his Refusal of the Oaths of Allegiance and Supremacy, which he hath since taken. I proposed to them the sending for him, for I thought this was a fit Opportunity to get something of him about the Plot. They seemed to approve of what I said; but withal, I told them it was not good to send for him till the Evening late, that the People of the Town might not take Notice of his coming. At Night we did send for him, and the Gentlemen desired that I would examine him at the End of the Table: So I called him up, and told him, I was sorry he was fallen into that Misfortune to be arrested, and that Mr. Mayor had not dealt well with him or us to take that Advantage of him; that now he had taken the Oaths, I looked upon him as one of us, and would do him any Kindness I could. He said, Truly, for his Part, he was born a Protestant, and of Protestant Parents; and it was his Misfortune to fall into the Houses of Papists, but he never liked their Religion. I then told him, Sir, you may do yourself a Kindness, serve God, and oblige your King and Country: I am very confident you know of this horrid Plot; pray do not stifle your Conscience with any Oath of Secrecy, but let it come out. Many, I told him, strained their Consciences to serve their Interests; but you may clear your Conscience, and at the same Time promote your true Interest. He replied, As he hoped to be saved, he knew nothing of it. And this is as much as I know of the Matter.

L. H. S. Do you ask him any Questions, Gentlemen?

Manag. No, my Lord.

L. Staff. My Lords, I shall humbly move your Lordships now, that you will please to take Notice, this Fellow, *Dugdale*, hath endeavoured to persuade People to swear against me falsely, and offered them Money for it. In order to the Proof of which, I desire your Lordships would call *John Morrall*, *Samuel Holt*, and *William Robinson*.

(*Then Robinson stood up*)

L. Staff. This Man I never saw before in my Life.

L. H. S. What is your Name?—*Witness*. *Robinson*.

L. H. S. What is your Christian Name?—*Robinson*. *William*.

L. H. S. Where do you live?—*Robins*. In *Worcestershire* now.

L. H. S. With whom?—*Robins*. With myself now.

L. H. S. Do you know *Dugdale*?

Sir *F. Winn*. We desire he may give you an Account what Profession he is of.

*Robins*. An Upholsterer.

Sir *F. Winn*. How long hath he lived in *Worcestershire*, and in what Place there.

*Robins*. I have lived half a Year in *Worcestershire*, half a Mile beyond *Worcester*.

Sir *F. Winn*. And whether he follows that Trade or Profession now, or no?

*Robins*. No, I do not follow it now.

Sir *F. Winn*. What do you live upon, and how?

*Robins*. I live of myself now.

L. H. S. How is that?—*Robins*. Of my own Money.

Mr. *Hampden*. We desire to know whether this Man was a Servant to my Lady *Gerard*, or no.

*Robins*. Never.

Mr. *Hampden*. Or to my Lord *Gerard* of *Gerard's Bromley*?

*Robins*. Never, not a hired Servant, my Lords.

Mr. *Foley*. Were you a Volunteer Servant, or what were you?

Mr. *Treby*. Did you work at any Time there for my Lord or Lady *Gerard*?

*Robins*. No.

L. H. S. How came you to live there?

*Robins*. I went over from a Cocking out of *Cheshire*.

L. H. S. How long were you there?—*Robins*. Three Weeks or a Month.

L. H. S. What was your Employment there?

*Robins*. Nothing at all: I followed no Employment.

Mr. *Treby*. What Kind of Servant were you then?

L. H. S. Come, do you know *Dugdale*?—*Robins*. Yes.

L. H. S. How long have you known him?

*Robins*. I have known him about five Years.

L. H. S. What say you to him?

*Robins*. I say, I met Mr. *Dugdale* about Midsummer was twelve-month, in *London*, about *Charing-Cross*, and he carried me to the *Harp and Ball*, and gave me Beer and Mum, and such as the House did afford, and treated me; and asked me what made me so dejected and cast down. I told him

I was



I was not well; I was poorer than I used to be. He told me again, I should not want any Money that he had; and if I would please to be ruled by him, and do what he would have me, he would furnish me with Money. And he took his Handkerchief out of his Pocket, and bid me, if I wanted, take Money there. I took none; but told him, I would not meddle nor make with any thing that Night. Then he told me he could furnish me with Money, and put me in a Way to get Money, if I would come in as an Evidence against my Lord Stafford.

L. Staff. Be pleased to ask him, for I never saw the Man before, nor heard of him till last Week, what he should say against me, and whether he knew me, or not?

L. H. S. Did he tell you what you should say against my Lord Stafford?

Robin. Nothing at all, my Lords.

L. Staff. Did he say any thing or nothing? Or, did he ask whether he knew me or not?

L. H. S. Did you tell him you knew my Lord Stafford?

Robin. No, if it please you, I told him I did not know him.

L. H. S. And after you said you did not know him, he offered you Money to swear against him, did he?

Robin. Yes, my Lords, he did so, to come in as an Evidence against him.

L. Staff. Will your Lordships please to ask how much Money there was in the Handkerchief?

L. H. S. How much Money was in the Handkerchief?

Robin. I believe there might be eight, or nine, or ten Pounds.

L. H. S. Did he offer you all the Money, or bid you take some?

Robin. He bid me take some.

L. H. S. Did he make any Agreement with you for what you should take?

Robin. No, not at all, my Lords.

Mr. Foley. Did you see Dugdale any more, or was there an end of it then?

Robin. No, I saw him no more.

L. H. S. Will you ask him any more Questions?

Sir W. Jones. We shall have occasion to speak of him (we desire him not to go away) when our time comes. (Then another Witness stood up.)

L. H. S. What is your Name?-----Witness. John Morrall.

L. H. S. What are you?-----Morrall. A Barber.

L. H. S. Where do you live?-----Morrall. At Ridgeley.

L. H. S. Where is that?

Morrall. In Staffordshire, within six Miles of Stafford.

L. H. S. What do you ask him?

L. Staff. Whether Dugdale did not persuade him to swear against some of the Lords in the Tower?

L. H. S. Do you know Dugdale?

Morrall. Yes, my Lords, I have known him twelve or thirteen Years.

L. H. S. What can you say against him?

Morrall. My Lords, this Mr. Dugdale, the 6th of August last was Twelvemonth, sent for me to the White Horse in Ridgeley; and there, when I came to him, he told me I knew as much of the Plot as he. I told him I was innocent of the Thing. He swore God damn him, that I knew as much as he. Then I told him, if he knew no more than I did, he knew no more than my Lord Mayor's great Horse did. Then he took me aside: Come, says he, you are a poor Man, and live poorly, I can put you in a way whereby you may live gallantly; I will give you 50*l.* in hand, if so be you will do so and so, and 50*l.* more when the thing is done.

L. H. S. What do you mean by so and so?

Morrall. To swear against Mr. Howard, Sir James Symons, and several other Gentlemen of the Country.

L. H. S. Did he offer you any Money to swear against my Lord Stafford?

Morrall. No, I did not hear him mention any think of him.

L. H. S. But he offer'd you Money to swear against Symons and Howard?

Morrall. Yes, my Lord; and Herbert Aston, my Lord Aston's Kinsman.

L. H. S. What were you to swear?

Morrall. That they were at such a Meeting at Mr. Herbert Aston's, upon the Conspiracy of the Plot.

L. H. S. Will you ask him any thing?

Man. No, let him by. (Then another Witness stood up.)

L. H. S. What is your Name?-----Witness. Samuel Holt.

L. H. S. What Profession are you of?

L. Staff. Pray, my Lords, ask him whether Dugdale would persuade him to swear that which he knew not.

L. H. S. What Profession are you of?

Holt. A Protestant of the Church of England.

L. H. S. What Trade?-----Holt. A Blacksmith.

L. H. S. Where do you live?-----Holt. At Tixall.

L. H. S. Are you my Lord Aston's Servant?-----Holt. No, my Lords.

L. H. S. What say you?-----Holt. My Lords, He sent a Man and

a Horse for me to Stafford, to the Star-----

L. H. S. Who did?

Holt. Mr. Dugdale did. And there I waited upon him a good while. At length he came and told me he must speak with me privately; so he told me, if I would swear that Walter Moor carried Evers away, he would give me 40*l.* And he bid me not be afraid to swear, for fear of my Lord Aston; for he would hire me an Horse, and get me to London, and place me, that where I got one Shilling I should get five.

L. H. S. Did you know Evers?

Holt. Yes, my Lords, I have seen him.

L. H. S. Do you know when he went away from Tixall?

Holt. No, my Lords.

L. H. S. What else can you say?-----Holt. Nothing else.

L. H. S. Will you ask him any Questions, Gentlemen?

Man. No.

L. Staff. The next Thing I go upon is, that Stephen Dugdale, at the Trial of the five Jesuits, swore, That he acquainted Sambidge with the Letter about the Death of Sir Edmundbury Godfrey, the Monday or Tuesday after, which Mr. Sambidge denies. And in order to that, I call Mr. Sambidge; but if your Lordships please, I shall first prove that he swore it then. Where is Mr. Lydcott? (Who stood up.) I desire to ask him

whether Dugdale did swear at the Trial of the five Jesuits, that he acquainted Mr. Sambidge with the Letter about the Death of Sir Edmundbury Godfrey.

L. H. S. You, Fellow!-----Witness. My Lord.

L. H. S. What is your Name?-----Witness. John Lydcott.

L. H. S. How do you live?

Lydcott. I am a Fellow of King's-College in Cambridge.

L. H. S. What do you come to say?

Lyd. I don't know, my Lords, what my Lord will ask me.

Sir W. Jones. My Lords, before you enter into the Examination of this Man; we desire to ask him a Question or two.

Mr. Serj. Mayn. Whose Servant are you, or were you lately?

Lyd. I am a Fellow of King's College.

Mr. Serj. Mayn. But whom did you serve lately? Were you never Secretary to a Lord?-----Lyd. Yes, I was.

Mr. Serj. Mayn. To what Lord?

Lyd. To my Lord Castlemaine, Sir.

L. H. S. What Religion are you of?-----Lyd. Of the Church of England, and always was; nay, I can't say always, for I was bred up a Presbyterian; my Father was a Colonel under Monk.

L. Staff. Mr. Lydcott, I ask whether you did not hear Mr. Dugdale swear at the Trial of the five Jesuits?

Mr. Serj. Mayn. I desire one Favour, my Lords; my Lord Stafford asks Questions to lead the Witnesses; pray let him ask his Questions more generally.

L. H. S. You say you are a Protestant?-----Lyd. Yes, my Lords.

L. H. S. When did you last receive the Sacrament?

Lyd. When I was last at Cambridge-----No, not so; for it is not above a Year ago that I was there.

L. H. S. When did you receive the Sacrament?

Lyd. I do not exactly remember, my Lords.

L. H. S. My Lord, I would be glad to know what is the Question your Lordship calls him for, that your Lordship may not ask the Question, but by me.

L. Staff. My Lords, I desire to know (for my part I know not what his Answer will be) whether he did hear, at the Trial of the five Jesuits, Dugdale swear he had communicated the News of Sir Edmundbury Godfrey's Death, which was on the Saturday, and on the Tuesday after to any People, and to whom.

L. H. S. Were you at the Trial of the five Jesuits?

Lyd. Yes, I was.

L. H. S. Did you hear Dugdale swear there, and give his Testimony?

Lyd. Yes, I did.

L. H. S. Do you remember what Dugdale swore then?

Lyd. Very well.

L. H. S. What was it?-----Lyd. My Lords, Mr. Dugdale spoke of a Letter that came down to my Lord Aston's on the Monday, and he imparted it on Tuesday after, at an Alehouse, to one Mr. Sambidge, and Mr. Philips: This was also at Sir George Wakeman's Trial, which I took notice of more particularly, because I had occasion to take some Notes there.

L. H. S. What use do you make of this, my Lord?

L. Staff. If that be allow'd to be so, then I will call no more Witnesses; otherwise I have more.

L. H. S. Call them all.

L. Staff. Then call Mr. Charles Gifford.

Mr. Serj. Mayn. Pray, my Lords, give me leave to ask this young Scholar one Question before he goes. By whose Commendation or Means did you come into that College?-----Lyd. By Election from Eaton.

Mr. Serj. Mayn. Who promoted you?-----Lyd. One Mr. Doyley, now Senior Fellow of King's-College; it was his Election.

Sir F. Win. My Lords, I would ask him one Question. He says he went to take Notes; by whose Direction did he go to take Notes at Sir George Wakeman's Trial?

Lyd. It was for my own Curiosity.

L. H. S. Friend, 'tis all one as if you were upon your Oath, and as penal to you: By whose Direction did you go?

Lyd. It was partly my own Curiosity, and partly to see what Evidence was against my Lord; for my Lord Castlemaine thought himself concerned as well as others, and therefore desired me to go.

Sir F. Win. Now it is out.

Sir W. Jones. It was done like a Secretary.

L. H. S. Had you ever that Curiosity before?

Lyd. Yes, I'll assure your Lordships, I had a great Curiosity to hear it.

L. H. S. Were you at any other Trial?

Lyd. Yes, at the five Jesuits Trial, and Langborn's.

(Then another Witness stood up.)

L. H. S. What is your Name?-----Witness. Charles Gifford.

L. Staff. Ask him whether he did not hear at the Trial of the five Jesuits, or Sir George Wakeman, Dugdale say, that he did communicate that Letter to some People, I name not who, the Tuesday after?

L. H. S. Were you at the Trial of the five Jesuits?

Gifford. Yes, my Lords.

L. H. S. Did you take Notes?

Gifford. Yes, my Lords, I was summoned there as an Evidence; I had occasion of being there, both at the five Jesuits Trial, and Wakeman's, and Langborn's.

L. H. S. You took Notes, you say?-----Gifford. Yes, I did.

L. H. S. What do you remember that Mr. Dugdale did then swear?

Gifford. I remember at the five Jesuits Trial, he did swear he received a Letter sent to Evers, which he intercepted, and it spoke of the Death of a Justice of Peace; and he returned answer to Evers again, he would be hang'd if it did not spoil the Business. And he said farther, he could not hold, but went to an Alehouse, and there he did impart it. But then he did say there was one that could testify and make out what he said: Upon which he call'd Mr. Chetwyn, who depos'd much to the same purpose. And then at Sir George Wakeman's Trial he did positively declare, that he spoke of it at an Ale-house to a Minister, Parson Philips, and my Lord Aston's Kinsman.

L. H. S.



L. H. S. What is his Name?-----Giff. Mr. Sambidge.  
 L. Staff. Well, my Lords, I have no more to say to him: But I conceive by this 'tis plain, that *Dugdale* did then say, he had communicated it to Mr. *Philips* and Mr. *Sambidge*. I shall call Mr. *Sambidge* to give you an Account. [Mr. *Sambidge* stood up.]  
 L. Staff. Be pleased to ask him whether he did hear Mr. *Dugdale* say on the Tuesday, that Sir *Edmundbury Godfrey* was murdered the Saturday before?  
 L. H. S. You hear the Question, answer it.  
 Mr. *Samb.* Who must I speak to?  
 L. Staff. He is very deaf, and very old, my Lords,  
 [Then the Black-Rod was sent to be near him, to put the Question to him.]  
 Black-Rod. What would you have him asked, my Lord?  
 L. Staff. Whether Mr. *Dugdale* did tell him on the Tuesday, that Sir *Edmundbury Godfrey* was murdered the Saturday before?  
 Black-Rod. Did Mr. *Dugdale* tell you of the Tuesday, that Sir *Edmundbury Godfrey* was murdered the Saturday before?  
 Mr. *Samb.* No, my Lords, he never told me any such Thing, I take it upon my Salvation. I never heard it till Friday or Saturday he was found at *Bury-Hill*.  
 L. Staff. Ask him if he were with *Dugdale* at the Alehouse the Tuesday before.  
 Mr. *Samb.* *Dugdale* never spoke any such Thing to me.  
 L. H. S. Were not you with him at the Alehouse?  
 Mr. *Samb.* No.  
 L. H. S. Not on Monday?-----Mr. *Samb.* No.  
 L. H. S. Nor on Tuesday?-----Mr. *Samb.* No.  
 L. H. S. Nor Wednesday?-----Mr. *Samb.* Not as I know of.  
 Sir *W. Jones.* We shall prove he was.  
 L. Staff. Pray ask him what Reputation *Dugdale* hath in the Country.  
 Mr. *Samb.* Oh, the wickedest Man that ever lived upon the Face of the Earth! I know great Part of it myself; and a hundred and a hundred of People will say as much.  
 L. H. S. What Religion are you of?  
 Mr. *Samb.* I was never a Papist in my Life, nor ever a Fanatick.  
 L. H. S. What do you know of *Dugdale* in particular, that is ill?  
 Mr. *Samb.* Yes, my Lords, I'll tell you; he was a very abusive Man, especially to the Clergy, and most especially to Mr. *Philips*, with whom I boarded. My Lord *Aston*, that is dead, came and told me of it. Said I, You are misinformed, for this *Dugdale* is a Knave and a Rogue, and all the Country rings of him for his Wickedness. Upon which, he cites me into *Litchfield* Court for defaming him; and he entertains all the Proctors, that I could not get one to put in my Answer: But before the Day came, he discharged the Court, and never appeared; for we had that against him that he durst not appear.  
 L. H. S. What Particulars do you know?-----Mr. *Samb.* He said the Clergy of *England* was a lewd Clergy, and a Pack of Rogues.  
 L. H. S. Gentlemen of the House of Commons, will you ask him any Questions?-----*Manag.* No.  
 L. H. S. Hath my Lord no more to say to him?  
 L. Staff. No, my Lords.  
 L. H. S. My Lord *Stafford*, go on: Hath your Lordship done with *Dugdale*, or have you any more Witnesses?  
 L. Staff. No, my Lords; I have a great deal more to say to him.  
 L. H. S. Go on then.  
 L. Staff. My Lords, I conceive by this, 'tis proved to your Lordships, that *Dugdale* did at that Trial declare, he had acquainted Mr. *Sambidge* and Mr. *Philips* with the Letter about the Death of Sir *Edmundbury Godfrey*, the Tuesday after he was murdered. And I conceive I have proved to your Lordships, by their denying it, that he did not tell them so; and so he is forsworn in that. I should now have humbly desired your Lordships, that you will please to call *William Day*; but upon asking the Question, I find he is not yet come to Town, and so I shall not trouble your Lordships with him: I desire that *Thomas Sawyer* may be called again. (Who stood up.)  
 L. Staff. Pray be pleased to ask him, whether he did not hear *Dugdale* with he might be damned if he knew any Thing of the Plot.  
 L. H. S. He said that before.  
 L. Staff. Then I beg your Lordships Pardon, I shall not call him again.  
 L. H. S. Go on, my Lord.  
 L. Staff. My Lords, there are a great many other Witnesses which I could call; but it is to no Purpose, and so I shall call no more as to *Dugdale*. I conceive upon the whole Matter, his Reputation and Credit are gone; for he is forsworn before the Justices of Peace, in that he said there was no Plot, and wished he might be damned if he knew of any Plot. I conceive it is also proved, that upon the twentieth of September, when he says, I did communicate with him about the King's Death, he was only then with me upon his own Desire, and my Servants were by: There was nothing discoursed of but about the Foot-Race. And likewise, as to what he swore in August, that I was at such a Meeting at *Tixall*, he is forsworn, for I was not there; and so I hope that Witnels is laid aside; no Creature will give any Credit to him, neither your Lordships nor the House of Commons.  
 L. H. S. Have you done with Mr. *Dugdale*?  
 L. Staff. Yes, my Lords.  
 L. H. S. Whom will you proceed against next?  
 L. Staff. Dr. *Oates*.  
 L. H. S. Call Dr. *Oates*.  
 L. Staff. Only give me leave to say one Thing, my Lords, that you were pleased to say, I should have Copies of the two Depositions of the twenty-fourth and twenty-ninth of December: And I had one to enquire, but cannot find that of the twenty-ninth. (Then Dr. *Oates* stood up)  
 L. H. S. What say you to Dr. *Oates*, my Lord?  
 L. Staff. This Dr. *Oates*, if your Lordships please, I desire may be asked, when was the first Time he ever saw me in his Life.  
 L. H. S. When was the first Time, Dr. *Oates*, you saw my Lord *Stafford*?  
 Dr. *Oates.* My Lords, the first Time I saw this Gentleman at the Bar, was, as near as I remember, at Mr. *Fenwick's*.  
 L. H. S. That was in *Drury-Lane*?-----Dr. *Oates.* Yes, my Lords.  
 L. H. S. When was that?

Dr. *Oates.* That was, as near as I remember, in June.  
 L. H. S. Was it that Time the Commission you spoke of was delivered?  
 Dr. *Oates.* Yes, my Lords.  
 L. H. S. Did you see that Commission?-----Dr. *Oates.* Yes, my Lords.  
 L. H. S. Did you read it?-----Dr. *Oates.* Yes, my Lords.  
 L. H. S. From whom was it?-----Dr. *Oates.* I cannot be positive as to that; but, as near as I remember, it was signed as the rest was signed.  
 L. H. S. How was that?-----Dr. *Oates.* *Johannes Paulus Oliva*.  
 L. H. S. You read it?-----Dr. *Oates.* Yes, I did, my Lords.  
 L. H. S. It was a Commission to be Paymaster of the Army, was it not?  
 Dr. *Oates.* Yes, it was.  
 L. H. S. And it was delivered to my Lord?-----Dr. *Oates.* Yes, it was.  
 L. H. S. By the Name of Mr. *Howard* of *Effingham*?  
 Dr. *Oates.* Yes, my Lords.  
 L. H. S. What says your Lordship to this?  
 L. Staff. What is it possible for me to say against this? I declare to your Lordships, in the Presence of God, I never saw the Man in my Life. I never went by any Name, since I had the Honour of being a Peer, but by the Name of *Stafford*. I never heard of Mr. *Fenwick* the Jesuit, nor by the Name of *Thompson*, till this Plot was discovered and he taken. This you may believe, or not, if you please; but this is as true as I am alive. My Lords, I desire I may have out of the Journals the Deposition on which I was committed.  
 L. H. S. Turn to the Journal.  
 L. Staff. It was read, as I remember, Friday 25 Octob. 78.  
 Then the Clerk turned to the Journal, and read.

*Die Veneris 25 die Octobris 1678.*

Clerk. THE Lord Viscount *Stafford* acquainted the House, That he was informed that there was a Warrant issued out from the Lord Chief Justice of *England* to apprehend him, which he thought fit to acquaint their Lordships with, and submitted himself to their Lordships Judgment.

The Lord Chief Justice being present, was commanded to give the House an Account of the Business; who said, That last Night, about nine of the Clock, he received a Letter from the Speaker of the House of Commons, dated from the Speaker's Chair, to come to the House of Commons about Business of great Concernment. Accordingly he attended the House of Commons, where the Speaker told him, That the House of Commons had received Accusations of High-Treason against five Lords, and some Gentlemen, and desired him to issue out his Warrants for their Apprehension. The Persons were, the Earl of *Powis*, Viscount *Stafford*, the Lord *Arundel* of *Wardour*, the Lord *Petres*, and the Lord *Bellasis*. And upon this he issued out his Warrants for their Apprehension, having taken the Examination of *Titus Oates* upon Oath. That the Earl of *Powis* and the Lord *Arundel* were brought to him this Morning in Custody; and he advised them to render themselves to the Gatehouse, where now they are.

Upon this the Examination of *Oates* was read, whereby it did appear, that the Lord Viscount *Stafford* was charged to be in a Conspiracy of Treason against the King.

The Lord Viscount *Stafford* denied the Fact, and after this withdrew. And after a while the House was informed that his Lordship would render himself to the Lord Chief Justice.

L. H. S. This is all that is in the Journal.

L. Staff. Then, my Lords, if your Lordships please to remember, all of you that were there, that I was accused by Dr. *Oates*, whose Depositions I desire to see, taken before my Lord Chief Justice, that he had seen Letters of mine written to *Fenwick*, *Harcourt*, and some others, three or four Jesuits, in which I was consenting to the Plot; that I had sent my Son to *Lisbon*, yet I would be as kind to the Jesuits as before, though there was some Difference between us. These Affidavits I desire to see, which, as I take it, were read before your Lordships that Day.

L. H. S. The Affidavit was taken by my Lord Chief Justice in the House of Commons, where he did attend them upon their Summons: I know not if the Original were read in the House of Lords, or the Copy; but it seems it is not entered into the Lords Journal: But your Lordship had an Order to take Copies of all things you would have demanded; and if you would not, I cannot tell what to say to it.

L. Staff. Truly I could not take a Copy, because I did not know where it was. I desire my Lord Chief Justice may be asked where it is? that is all I desire, and I will then go on.

L. H. S. I think Dr. *Oates* does say at this Time that he had seen Letters of your Lordship's, offering your Correspondence and Assistance.

L. Staff. If Dr. *Oates* will own he said no more than is in that Affidavit, I am content.

L. H. S. Have you any Copy of your own Examination, Dr. *Oates*?

Dr. *Oates.* Yes, my Lords, I think I have it here.

L. H. S. Marry, that is very well; produce it then. Do you oppose it, Gentlemen?

*Manag.* No, we agree; we desire the Truth may come out.

Then Dr. *Oates* looking among his Papers, drew out one, and offered it to the Court.

L. H. S. Is that a true Copy of your first Examination?

Dr. *Oates.* My Lords, I will not swear it, but it was given me for a true Copy.

L. H. S. By whom was it given you?

Dr. *Oates.* I can't remember now, 'tis two Years ago.

Sir *W. Jones.* Unless we know whence it comes, or what Authority it hath, we cannot consent it should be read.

L. H. S. Had you it from my Lord Chief Justice, or any Servant of his?

Dr. *Oates.* I cannot tell whether Sir *Charles Harbord* give it me, or no.

Sir *F. Win.* My Lords, Sir *Charles Harbord* might be of the Committee of Examinations; but the Examination for which my Lord asked, was not in the Committee nor before the House: My Lord Chief Justice retired out of the House, & *virtute Officii* took it. Now it was very fair in Mr. *Oates* to produce it; but yet in Point of Evidence, if he will not swear it to be a true Copy, or give an Account how he came by it, we cannot allow it to be read.



L. H. S. My Lord *Stafford*, 'tis you that want this Paper, you desire to have the Benefit of the Examination that was taken of Mr. *Oates*, and therefore you must produce a Copy of it.

L. Staff. My Lords, I could never get it.

L. H. S. 'Tis not entred in our Journal, nor is it to be trac'd; we know not where it is: You have had Time enough to look after it. You are now offered by *Oates* himself a Copy that was given him for a true Copy, though he cannot swear by whom. Are you content that shall be read, if the Gentlemen will admit it?

L. Staff. By what I guess of Dr. *Oates*, (I know him not) he would not give in a Copy of an Examination unless it were true; if it be true, I know not what should hinder the reading of it: But as far as concerns me, I desire it may be read.

L. H. S. You do consent, and will you, Gentlemen, permit it?

Mr. Serj. *Mayn*. We do not know whence it comes; we cannot admit it, unless *Oates* says 'tis true.

Sir *Will. Jones*. My Lords, it hath been long in the Doctor's Possession, he hath read it over, he can't say 'tis a true Copy; but I desire to ask him whether all in that Writing be true, and whether he did swear what is in that Writing.

L. H. S. If your Lordships please thus, and you Gentlemen of the House of Commons, the best Way to have an Answer to this Question is, that it may be read *de bene esse*.

Sir *F. Win*. Pray, my Lords, let him read it over to himself privately, and then let us know whether he can swear the same things that are in that Paper.

(Which Dr. *Oates* began to do.)

Dr. *Oates*. Your Lordships ask only as to my Lord *Stafford*?

L. H. S. My Lord desires no more; but pray read it over all, and give your Answer to all; for that Question, may be, will be ask'd in other Cases, and it is fit you should be provided for it. (Which he did.)

L. H. S. What say you, Doctor?

Dr. *Oates*. My Lords, I do verily believe I did swear the Contents of that Paper.

L. Staff. My Lords, I do not oppose the reading of that Paper; but I have here a Copy of something in the Journal, and do not stand upon my Memory; but I think upon the viewing of it now, there is something in the Copies of the Journal.

Clerks. We cannot find it.

L. Staff. Then read this Paper.

L. H. S. Will you have this Copy of the Examination read, or not?

L. Staff. Yes, my Lords.

Clerk. The Examination of Titus Oates Clerk, taken before us—

L. H. S. When was that?

Clerk. The 24th of October, 1678.

L. H. S. That was read the 25th, the next Day, in the House of Lords.

The Examination of Titus Oates Clerk, taken by us this 24th of October, 1678.

THIS Examinant saith, That in the Month of May last, this Examinant saw a Patent under the Seal of the Father-General of the Society of *Jesús* at Rome, called *Johannes Paulus Oliva*, at the Chamber of Mr. *Langhorn*, wherein it was express'd, That by virtue of a *Breve* from the Pope, he did constitute the Lord *Arundel* of *Wardour* Lord High Chancellor of England, which Patent was sent to the Lord *Arundel* of *Wardour* by a Messenger, who was the Son of Mr. *Langhorn*. And this Examinant saith, That he saw a Letter subscribed by the Lord *Arundel* of *Wardour*, as he believes, wherein the Lord *Arundel* did acknowledge the Receipt of the said Patent, and accepted of the same, and promised to answer the Expectation of the Society.

This Examinant saith, That in June last he saw the like Patent, wherein the Lord *Powis* was constituted Lord Treasurer of England, which Patent was carried by one *Parsons*, Secretary to the Lord *Powis*, from one *Sanders*'s House in *Wild-street*, to be delivered to the Lord *Powis*; and at the Delivery of the Patent 300*l*. was paid by *Parsons* to *Fenwick* and *Ireland*, to carry on the Design of the *Jesuits*, which was to raise a Rebellion in the three Kingdoms, and to destroy the King.

In the Month of July this Examinant saw a Letter subscrib'd *Powis*, and directed to *Fenwick*, wherein his Lordship did acknowledge the Receipt of the said Patent, and did accept of the same, and said he had three hundred Men and Horse ready for the Design, and that his Lordship would venture his Life and Fortune in the Affair.

In the Month of August last this Examinant saw a Letter directed to Mr. *Langhorn* by the Outside, but within to the Society of the *Jesuits*, wherein Sir *William Godolphin* acknowledg'd he had receiv'd the like Patent to be Lord Privy-Seal, and had accepted thereof; and in July 1677, this Examinant saw the same in the Hands of the Archbishop of *Tuam*, at *Madrid* in Spain.

This Examinant saith, That in July last Mr. *Coleman* acknowledged and confessed to *Fenwick*, in this Examinant's Presence, that he had receiv'd the like Patent to be Secretary of State, and that it was a good Exchange.

This Examinant saith, That in May, June, July, and August last, this Examinant saw several Letters sign'd *Stafford*, whereby it appear'd that the Lord *Stafford* was in this Conspiracy against his Majesty, and that he had returned several Sums of Money to the *Jesuits* to carry on the Design; the Letters were directed to *Fenwick* and *Ireland*; and in August last this Examinant saw another Letter, directed to the same Persons, sign'd *Stafford*, wherein my Lord writ, that although he had sent his Son to *Lisbon*, yet he would be never the worse Friend to the *Jesuits*; and this Examinant conceiveth the Reason of that Letter was, because there was then a Difference between the *English College* at *Lisbon* and the *Jesuits*. In July last this Examinant saw in the Hands of *Fenwick*, a Commission directed to the Lord *Bellasis*, from the Person afore said, to be Lord General of the Army to be raised in England against his Majesty; and in July this Examinant saw a Letter from my Lord, directed to *Fenwick*, wherein his Lordship acknowledged the Receipt of the Commission, and thanked the Society for the same, and that he accepted the same, and would do what in him lay to answer their Expectations.

In May last this Examinant saw a Patent in the Hands of Mr. *Langhorn*, to make my Lord *Petres* Lieutenant-General of the Army; and in June last this Examinant did hear my Lord *Petres*, in the Presence of Mr. *Langworth* his Confessor, acknowledge the Receipt of the same, and that he accepted hereof, and his Confessor wish'd him much Joy thereof.

L. Staff. My Lords, If this be own'd for Truth that he swore, then I proceed upon the Evidence of that.

L. H. S. Without allowing it to be a true Copy, Dr. *Oates* at the Bar does swear what is said there is true.

L. Staff. Then he says there, he saw Letters sign'd by me to *Fenwick* and others: I do humbly desire to know whether that be Evidence or no, that a Man says he saw Letters, and does not say he knew them to be my Hand, nor what the Letters were in particular; nothing that he did prove of it. I must appeal to your Lordships, to all my Lords, to my Lord High-Steward, and the rest that were of the Council at that Time, Whether Dr. *Oates* did not positively name some, and left me out at the Council-Table? And whether Dr. *Oates* did not say there was no Lord concerned in the Plot, and whether some of my Lords did not say so, and told some other Lords of it, from whom I had it? And in order to this, I desire Sir *Philip Lloyd* may be examin'd; and if he did not know of my being in it, then he hath since forsworn himself.

L. H. S. My Lord, I know not where you are, nor what you are about: Are you objecting against *Oates* upon any Evidence out of the Journal?

L. Staff. My Lords, I go upon this that hath been read.

L. H. S. Pray, my Lord, produce your Witnesses that did hear him say any Thing, and take your Advantage of it.

L. Staff. I call Sir *Philip Lloyd*.

L. H. S. Where is Sir *Philip Lloyd*?

L. Staff. My Lords, I do not know; I think he is here, I hope he will come.

Then he appeared amongst the Members of the House of Commons, and was called to the Bar amongst the other Witnesses, and stood up.

L. H. S. What does your Lordship ask Sir *Philip Lloyd*?

L. Staff. Whether he was not by when Dr. *Oates* was ask'd, if there were any Lords concerned in the Plot, and he said, No; and whether he did not tell me so a Day or two before I was committed, in the Prince's Lodgings?

L. H. S. What say you, Sir *Philip Lloyd*, did you ever hear Dr. *Oates* deny upon his Oath, that ever he heard of any Lords that were concern'd in the Plot?

Sir *Phil. Lloyd*. My Lords, truly I cannot remember any such thing: If my Lord put me in mind of any particular Circumstance or Time, I may recollect it: I must confess I think I have heard such a thing rumour'd; but I am so unfortunate I cannot remember any thing positively of it.

L. Staff. He did tell me so, I am sure.

Sir *Philip Lloyd*. Truly, my Lords, I would be glad to remember any thing to justify the Truth; but I cannot remember this.

L. Staff. But whether it were so or no, your Lordships that were of the Council can tell.

L. H. S. My Lord, I do not know. Your Lordship cannot be refused, if you press it, to ask any of the Lords of the Council, if they remember any such thing that did pass there; but if I were there or in the Council, I deal plainly with your Lordship, I cannot say that there was any such thing said.

L. Staff. If there be any here that were there besides, I desire they may be ask'd.

L. H. S. If your Lordship will call upon any other of my Lords that were there, they will tell you.

L. Staff. I don't know who were there, I can't call them.

L. H. S. You may ask any of the Lords of the Council, who were there that time Dr. *Oates* was examined.

L. Marq. of *Worcester*. My Lords, I was not at the Council then; but I heard it, not there indeed, but as a general Report abroad.

L. Staff. I desire my Lord Privy-Seal may tell what he knows of it.

Lord Privy-Seal. What is it your Lordship would know of me?

L. Staff. Whether *Oates* did not say he had no more to accuse?

Lord Privy-Seal. Where, my Lord?

L. Staff. At the Council-Table.

Lord Privy-Seal. 'Tis a very hard thing for me to charge my Memory with all the Questions at an Examination; we use to refer to the Examinations themselves: I have seen some Examinations, I with all were so, wherein the Questions are put down as well as the Answer; and I cannot charge my Memory that he said he had no more to accuse.

L. Staff. I desire, then, all the Lords of the Council that are here to say, whether or no he was not ask'd this Question particularly by my Lord Chancellor, (and I desire particularly his Lordship would say whether he can't remember it) Whether he had any thing to say against some Lords? And he answer'd, They were to know of it, but God for bid he should accuse them.

L. H. S. When should that be?

L. Staff. My Lords, I can't say the Day, for I was not in Town. But I desire to ask, whether you did not ask him upon the first Discovery of the Plot, whether he had any thing to say against some Lords?

L. H. S. Do you desire to know whether I asked him this Question, If he had any thing to say against some Lords?

L. Staff. I do not say positively your Lordship, but whether that Question was not ask'd him?

L. H. S. Certainly I should never ask any such Question of any Man alive. I might ask in general of any Lord, but not of some.

L. Staff. Some or other Lords it was.

L. H. S. I don't remember it; and 'tis impossible for any Man living to remember what Questions he did ask two or three Years ago upon an Examination.

L. Staff. I desire I may have leave to ask the Earl of *Berkley* a Question.

L. H. S. What is it you would ask him?

L. Staff. My Lords, I humbly ask his Lordship, whether he did not hear Dr. *Oates* say, after he had accused some Persons before the Council, that he had no more to accuse?

Earl of *Berkley*. My Lords, I had the Honour to be of the Privy-Council about the Time of the Discovery of the Plot; but I do not remember that I heard Dr. *Oates* say any such thing there.

L. Staff. Or in the House of Lords; for I may mistake. And therefore I desire my Lord of *Berkley* would declare what he heard Dr. *Oates* say before the House of Lords.

Earl of *Berkley*. Yes, my Lords; in the Lords House I will tell your Lordships what I remember. My Lord Chancellor, to the best of my remembrance,



*to Journal  
from Acc.  
20. Oct.  
1678.*

brance, did ask Dr. Oates, at the Bar of the House, this Question—My Lords desire to know, if you can accuse any other Person or Persons, of what Quality soever, and you are encouraged by their Lordships to accuse them: His Answer was—My Lords, I have no more to accuse in relation to England, but in relation to Ireland I have.

L. H. S. That was after he had accused your Lordship, my Lord Stafford.

Sir W. Jones. We pray, my Lords, we may have the Favour to ask that very Honourable Lord, at what time Dr. Oates said this, for the Satisfaction of those that are present.

Earl of Berkley. My Lords, It was after Dr. Oates had accused my Lord Stafford, but before he had accused the Queen.

L. Staff. I beseech you, my Lords, to mark it, (and I am very glad of it) he said he had no more to accuse in relation to England, and yet after that he accused the Queen.

L. H. S. My Lord, Then the best Account of it will be on the Journal; the Question and Answer is entered there.

*Die Jovis 31 die Octobr. 1678.*

*Post Meridiem.*

Titus Oates being at the Bar, is directed to proceed in giving an Account of the Commissions given to several Lords and other Persons for Offices Civil and Military.

Upon which he proceeded in a particular Narrative thereof, with some Circumstances tending to make out the Truth thereof, and then was commanded to withdraw, but stay without.

Then upon Consideration had hereof, the Lord Chancellor, by Directions of the House, caused him to be called in again, and told him, that the Lords expect not his entering into particular Circumstances, but if there be particular Persons concerned, of what Quality soever they be, the House expected he should name them: but he named none but those he had mentioned in his Narrative, nor could name no other Person.

L. Staff. Then, my Lords, he said, he knew no Persons more than he had discovered; and after, did he not accuse the Queen, and several others? If he said true, then he knew no body more; if not, he is forsworn.

Sir W. Jones. Pray prove he did accuse the Queen.

L. Staff. He did so in the Council, and he is clearly perjured in that, and so not to be believed. And I say besides, after that Dr. Oates had consulted with himself, and possibly with some others, what his Narrative should be, and what he should accuse Persons of, and did only accuse me of seeing some Letters signed Stafford, and now he comes to give Evidence, he knows more of my having a Commission. After this rate, it may be he may know a great deal more To-morrow, when he hath invented it: And 'tis a great Sign he did not know of any more, if he did know of that; for I never had any Correspondence with the Jesuits, nor any Business transacted with them these twenty-four or twenty-five Years. Indeed at Ghent the English Jesuits were desired to do a little Thing for me, and they refused it me; it was to send over a Man that was to be a Witness in a Suit I had beyond Sea: And I never writ one Letter to a Jesuit since, nor he to me, that I know of, nor never had to do with them, that I know of. I never heard of Fenwick's Name, nor Harcourt's, till I heard of the Plot: nor of Johnson nor Thompson, Jesuits: And if any can prove it, I will acknowledge myself guilty of all that is said against me. And for that Dr. Oates at first said, he only saw Letters of mine, and after comes and accuses me of a Commission, I appeal to your Lordships if there can be any Truth or Belief in him. I cannot say more than what I have said already, and I do challenge Dr. Oates, at the Day of Judgment, to say, if ever he saw me in his Life till I was committed; or if I did ever go by any Name but that of Stafford, I will be content to die immediately. If I had gone by the Name of Howard, I need not be ashamed of it: for 'tis a Name good enough to be owned. I know there is a worthy Gentleman that bears the Name of Howard of Effingham, but I never did. If your Lordships please to let me ask Mr. Dugdale one Question.

L. H. S. Call Dugdale again. (*Who appeared.*) What say you to him, my Lord?

L. Staff. I desire to ask Dugdale, whether he did not, in his Depositions before Mr. Lane and Mr. Vernon, swear, that the 20th of October I offered him 500*l.* to kill the King?

Mr. Dugd. No, September.

L. Staff. Ay, September.

Mr. Dugd. Yes, I think I did make that Deposition before Captain Lane. I am certain I did, that my Lord Stafford the 20th or 21st of September offered me 500*l.*

L. Staff. Then did he not say presently upon this, he went to Mr. Evers's Chamber?

L. H. S. He says so now.

Mr. Dugd. My Lords, I am not certain it was the same Day; it was as soon as I could have Opportunity, it was presently after.

L. Staff. Did he not say he told Evers what I said to him, and he did not understand the Meaning of it?

Mr. Dugd. I did say so to Mr. Evers: I did ask Mr. Evers what my Lord Stafford's Meaning was, whether his Intention was true or no, to do as he said, and whether my Lord was in that Condition, as to be able to perform his Promise, for I feared Payment of the Money; and he told me, Harcourt and the rest of the Jesuits would furnish it.

L. H. S. So he said Yesterday.

L. Staff. Then ask him if he did not say, the Beginning of September I met him at Tixall, and I spake to him about such a Business.

Mr. Dugd. My Lords, I did say, to the best of my Remembrance, it was about that Time, the latter End of August, or the Beginning of September, I would not be positive, nor could not, to five Days.

L. Staff. No, I think not to 5000. Then I asked him this Question, whether he did not presently upon that, when I told him about the Design, go to Mr. Evers, and asked what it meant?

L. H. S. He said so but now, he went to Evers and asked what you meant.

L. Staff. I beseech you I may be understood, whether he did not say in the Beginning of September, which was before the 20th or 21st in the Journal?

L. H. S. Is it in the Journal?

L. Staff. Yes.

L. H. S. Why, then, read it.

*Die Sabbati 28 Decembris 1678.*

The Earl of Essex acquainted the House, that he had received an Information out of the Country of very great Concernment, which was read as followeth.

Staffordsh.

*December 24, 1678.*

The Information of Stephen Dugdale, Gent. late Servant to the Lord Aston of Tixall, concerning the Plot against our Sovereign Lord the King, as followeth:

1. THIS Informant saith, that presently after one Howard, Almoner to the Queen, went beyond the Seas, he was told by George Hobson, (Servant to the said Lord Aston) that there was a Design then intended for the Reformation of the Government to the Romish Religion.

2. He informeth, That in the Beginning of September, 1678, he met in Tixall, nigh the Lord's Gates, the Lord Stafford, who said to this Informant, it was sad that they were troubled, for that they could not say their Prayers but in a hid Manner, but suddenly there would be a Reformation to the Romish Religion; and if there was but a good Success, they should enjoy their Religion. And upon the 20th Day of September last, the said Lord Stafford told this Informant that there was a Design in Hand, and if this Informant would undertake the Design, he should have a good Reward, and make himself famous.

3. Upon the aforesaid Day, immediately after, this Informant went into the Chamber of Mr. Francis Urie, alias Evers (a Jesuit), in Tixall-Hall, and asked him what the Lord Stafford meant by those Words; and after he had made him to swear Secrecy upon his Knees, he told him he might be a Person employed in the Work, and have a good Reward that would make him famous: And then he told him he must be instrumental with others in taking away the King's Life; and that it should be done by Shooting or otherwise. And that this Informant need not to fear, for the Pope had excommunicated the King, and that all that were excommunicated by him were Hereticks, and they might kill them, and be canonized for Saints in so doing.

4. The Informant saith, that the said Evers and Hobson both said, that the Design was as well to kill the Duke of Monmouth as the King.

5. That George North (Nephew to Pickering, and Servant to the Lord Aston,) lately told this Informant, that they had taken his Uncle, (meaning Pickering) and put him into Newgate; and thought the King deserved such an execrable Death as was intended him, because of his Whoring and Debauchery.

6. That Mr. Evers said, Mr. Bennysfield had a Pacquet of Letters delivered to him from the Posthouse, which he feared the Lord-Treasurer had Notice of, and therefore he delivered them to the Duke of York, and the Duke delivered them to the King, and that the King gave them to the Treasurer, after he had read them; but that the King did not believe them, and therefore it was happy, or else the Plot had been discovered.

7. That he had received many Pacquets of Letters for Evers, some of which this Informant broke up, and found them to be and tend to the Establishment of the Romish Religion, &c.

8. That he had received several Sums of Money himself, and knew of divers others that were employed to put forth Money, which was and is for the Jesuits Use.

Stephen Dugdale.

Taken upon Oath the 24th Day of December 1678. before us,

Tho. Lane,  
J. Vernon.

L. Staff. My Lords, I find by this here, that presently after one Howard, Almoner to the Queen, went over, George Hobson, Servant to my Lord Aston, told Dugdale there was a Design to reform the Government, &c. I beseech your Lordships I may ask him, how long after he went over this Discourse was.

Mr. Dugd. I do not say I knew George Hobson before he came to be a Servant to my Lord Aston, which was in the Year 78, but that this was only a Discourse to me, that the Plot had been so long carrying on.

L. Staff. He says upon his Oath, presently after the Almoner went over, he told him so. Now the Almoner went over three Years before that, when the Proclamation came out to banish the Queen's Servants for being Papists.

Mr. Dugd. I heard it there; I never knew George Hobson before he came to be a Servant to my Lord Aston, but I did not tell it as a Discourse at that Time, or that it was more than what I had from him, that there was such a Design so long before.

L. Staff. He says, presently after the Almoner went over, in his Oath; which was, I think, in the Year 72 or 73, or rather in the Year 75, about the End of the Year 74, as I remember. And he says presently, three Years after; is that presently? E'en now the End of August was the Beginning of September, and how long that was we can't tell, and now three Years is presently after.

Sir W. Jones. He is telling of another's Discourse with him.

L. H. S. My Lord, you must observe that Dugdale says, that he did hear it from Hobson after he came to my Lord Aston's Service.

L. Staff. But he says, presently after the Almoner went over; and 'tis impossible; for he did not say it till three Years after, and so there is no Truth in him.

Mr. Dugd. My Lords, it was, that Hobson told me, that presently after the Almoner Howard went over, there was such a Design carrying on.

L. H. S. You distinguish not, and therefore don't comprehend. 'Tis one Thing if Dugdale had said, that presently after there was such a Design, Hobson told him so.

L. Staff. I beseech you, it is said, that presently after the Almoner went over, Hobson told him so.

L. H. S. But it is not that presently after he heard the Discourse; but George Hobson told him, that presently after the Almoner went over, there was such a Design.

L. Staff. 'Tis said he was told presently after.

(Then the Information was read again.)

L. H. S. Do you know when Howard the Almoner went over?

Mr. Dugd. No, my Lords; but by Report I heard when he went: But I do not make that Part of my Oath, for I cannot absolutely remember it.

L. H. S. My Lord, You must not make a Strain to make a Mistake.

L. Staff.



L. Staff. God's Life! is three Years a Strain?

Mr. Dugd. I never did mean so, nor never did intend so, for I never knew him till he came to my Lord Aston's; but he told me then this Discourse.

L. H. S. My Lord, this is only a Question of Grammar, how it can be construed.

L. Staff. My Lords, I beg your Pardon; 'tis to my little Reason a Question of Sense, and it is plain to me it can have no other Sense; but I submit it to your Lordships, whether this be not the true Construction.

L. H. S. Go on, my Lord, with your Evidence, Notice will be taken of your Objection; you shall see what they say to it; if they do not give it an Answer, it will have it's Weight.

Sir Will Jones. We will give that an Answer in due time.

L. Staff. Then next he says, I talk'd with him at my Lord Aston's the beginning of September, where he met with me at Tixall at the Gate, and I said, it was sad we could not say our Prayers, but in private. Truly, my Lords, I cannot say I did not say this to him; but if I did say it, I do not remember it, or that I ever thought so much; for I was so much of a contrary Opinion, that I thought those of that Religion said their Prayers too openly, and have chid them for it. And why should I speak it to him, whom I did not know what Religion or what Profession he might be of? And presently after I spoke of these things, he says, he went to know what the Design was, and then Mr. Evers told him of the Plot, and yet yesterday he said he knew it sixteen Years ago. How can all this be true? And besides, it seems I could have no great Power with him to persuade him, for it seems he mistrusted my Ability to pay; and he had reason, for I should hardly have parted with 500*l.* in the Condition I was then in, to any one; but I have no more to say to him now. There is a third Witness, one Turberville, I desire to ask him a Question.

L. H. S. Call Turberville. (Who stood up.)

L. Staff. I desire to know what time he came to serve my Lady Molineux (for it is in the beginning of the Information in the House of Commons, that he came in the Year 73), and how long he staid with her.

L. H. S. My Lord Stafford, if your Lordship please, there was an Offer made to you, that those Affidavits should be produced, if you desired to see them.

L. Staff. I think I shall have no occasion as yet; it may be I may by and by: But I desire to ask him this Question first, Whether he did say he came in the Year 73 into my Lady Mary Molineux's Service, and staid with her about three Years?

L. H. S. Did he swear in the Year 73 he came?

L. Staff. 'Tis so in his Narrative in Print.

L. H. S. Do you own that Narrative in Print for true?

Mr. Tur. No, my Lords.

L. H. S. How can you challenge him, then, with a Narrative he does not own?

L. Staff. Then what can a Man do, if he must not go according to what is printed?

Mr. Tur. There is a Mistake in the Printing of it, there is a Mistake of 73 for 72.

L. Staff. I now desire that Affidavit may be produced.

L. H. S. Pray let him have the Benefit that was offer'd him of the Affidavit.

Mr. Tur. Besides, I declared I could not be positive to a Year; I own any thing else in it.

L. Staff. Then, my Lords, if I shall have Fellows that will not swear to Months nor to Years, I beg of your Lordships to know whether these be legal Witnesses.

Manag. The Affidavit is in the Custody of Sir W. Poulteney, a Member of our House.

Sir Will. Poulteney. My Lords, I have the Affidavit; if you please, I shall give you an Account what I did upon it, and Sir Thomas Stringer, another Justice of Peace. My Lords, after that Mr. Turberville had given his Evidence to the House of Commons *viva voce*, he tender'd to them this Information that I have in my Hand. The House of Commons, after it had been read, thought it might be convenient to have it sworn to before two Justices of Peace. Whereupon Sir Thomas Stringer and my self withdrew into the Speaker's Chamber. Mr. Turberville came to us, we read over the Information to him again, and after we had read it over it was sign'd, and he swore it. In this Information, when we then took it, he declared there, That he came to my Lord Powis in the Year 1673, and came into England 1676. After we had sworn him, we carried this Information into the House again. The next Morning, my Lords, he came to me (I being one of the Justices that had sworn him) and told me, that searching among his Papers the last Night for a Letter, which he said he had received from my Lord Stafford, sent to Diep; tho' he could not find the Letter he look'd for, yet he found that the precise time that he went to live with my Lord Powis was 1672, and the precise time of his coming into England was 1675. And he desired me to acquaint the House of Commons with it, that this Circumstance of Time might be alter'd. Whereupon, my Lords, I did acquaint the House of Commons with it, how he was mistaken in that Point of a Circumstance of Time; and that he came of his own accord, and desir'd me to move the House in it. I moved the House, and they did direct we should withdraw again, and take his Information again, and that he should amend it. He amended it, and made the 73, 72; and the 76, 75; and then afterwards we swore him to it again *de novo*: And this is the Matter of Fact concerning the Affidavit.

L. H. S. Sir William Poulteney, did Mr. Turberville correct the Mistake himself first, or was it found alter'd by others?

Sir Will. Poulteney. My Lords, he came to me, for I did not know any thing of it, that he was mistaken; but he came to me the next Morning as soon as ever I came to the House, before indeed I enter'd into the House, and told me of the Mistake; and told me the Reasons how he came to recollect himself, and find out the Mistake.

L. H. S. Mr. Turberville, I would ask you the Question, how came you to be inform'd that you had mistaken yourself?

Mr. Tur. My Lords, I'll tell you: I was searching for a Letter I receiv'd from my Lord Stafford, and missing that, I found my Discharge I had from the French Army, wherein I saw a Mistake as to the Time, and that I have to produce.

L. H. S. I ask you again by the Oath you have taken, did you correct it of your self, or by Information from any other?

Mr. Tur. By the Oath I have taken, I did correct it of my self, and no body mov'd it to me.

Mr. Serj. May. It was but a Circumstance of Time:

Sir F. Win. And corrected by himself the very next Morning, my Lords:

L. Staff. He does acknowledge he did forswear himself once, and did make himself an honest Man the next Day, when he was a perjur'd Villain the Day before. And now he tells your Lordships, that he was searching for a Letter that I sent to him; but he cannot find it.

Mr. Tur. No, my Lords, I thought I had it, but I cannot find it:

L. Staff. No, I'll swear thou canst not. But then he does say that he had a Discharge from the French Army.

Mr. Tur. Yes, 'tis here, my Lord.

L. H. S. Is that the Paper of your Discharge?

Mr. Tur. Yes, it is. 'Tis worn out a little, and torn, but the Seal is preserv'd: I did not know that ever I should have occasion to make use of it; but my Lord challenging me for a Coward, and a Defter of my Colours—

L. Staff. I believe so still, for I have heard so.

L. H. S. Your Honour is not in question, Mr. Turberville.

Mr. Tur. The Title is a little torn; and if your Lordships please, I will read it: (which he did, being in French, and is render'd in English in these Words:

THIS certifieth all to whom it shall appertain, that I have given an absolute Discharge to the Sieur Turberville, a Cavalier of my Company, after having serv'd the Space of six Months with all Honour and Fidelity. Therefore I desire those that are to be desired, to treat him civilly, and let him pass and repass, and without doing him any Injury, or giving him any Hindrance; but on the contrary, to afford him all Aid and Assistance where it shall be necessary, promising the like upon all Occasions that shall require it. In Confirmation of which, I have for him sign'd this present Discharge, and thereto put the Seal of my Arms, to serve him in case he shall need it. Made at the Camp before Aire this 4th of August, 1676.

Sheldon.

L. H. S. What is the Date of that Discharge, Turberville?

Mr. Tur. 'Tis in August 76.

L. Staff. May I see it, my Lords?

L. H. S. Yes. Deliver it to my Lord. (Which was done, and he look'd upon it.)

L. Staff. The thing looks like Truth, but there is no Proof of it.

Mr. Tur. The Seal is a little broke, but the Name remains perfect.

L. Staff. He says there is a Dismission from the Army in 76; how will that rectify his Mistake about 73? I understand not that.

Then the Court called for the Paper; and it was looked upon by the Duke of Monmouth, and some other Lords.

L. H. S. My Lord, this Paper hath been look'd upon; the Hand is well known by those that should know it.

L. Staff. I do not say the contrary.

L. H. S. Whereabouts are you now, my Lord, then?

L. Staff. I am extremely faint and weary, that I am sure of. This Gentleman told you yesterday, that he spoke with me several times in France, and that he was conversant with me for a Fortnight together; that he visited me, and I propos'd the killing of the King to him; and that he refus'd to give me an Answer then, but told me he would give it me at Diep: This he said yesterday, as I remember. And afterwards, when he was gone down, he came up again, and desired to put your Lordships in mind of a particular Circumstance which he said he did remember, That when he came to me, I had the Gout, and was in a lower Room of the House, in such a Street, which fac'd *Luxemburgh House*, all which I stand not upon; and that the Prince of Conde lived in the same Street, on the Left-hand he said first, and after on the Right-hand, and after he knew not where, and that I did lodge in the same Street.

Mr. Tur. I did say, I believ'd the Prince of Conde lived there, but I was not positive.

L. Staff. No; but first he swears a Thing, and then only believes it. Be pleas'd to call my Servants, to know if ever I had my Foot ill of the Gout in my Life.

Mr. Tur. Your Lordship told me it was the Gout.

L. Staff. If ever I put my Foot on a Stool, or was lame there, I will own all that he says. But when a Man swears his Evidence, and goes down from the Place, and then invents, and comes up again to tell new Stories, who shall believe such a Man?

Mr. Tur. I never went from the Bar.

L. Staff. I do say, you went down, and had given all your Evidence, and came up again, and told this Circumstance. I have not been lame, not one Moment, these forty Years; and yet this Fellow, this impudent Fellow, to say, that I was lame, and put my Foot upon a Stool! He does not, my Lords, swear positively in any thing but this, and this I can easily disprove him in.

L. H. S. What say you to this Particular, Turberville? Had my Lord Stafford never the Gout while he was in France?

Mr. Tur. He told me it was the Gout, my Lords: He had a great Lameness, he could not go from one Place to another. Here are several People to give Testimony that my Lord was lame within less Time than he says.

Mr. Foley. Hold, hold, Turberville, you must not give that Evidence now.

L. Staff. Call Nicholas Furnese again.

L. H. S. What do you call him for?

L. Staff. Ask whether ever he saw Mr. Turberville with me in France?

L. H. S. Were you with my Lord Stafford all the while he was in France?

Furnese. Yes, my Lords.

L. H. S. Did you never see Turberville there?

Furn. No.

L. H. S. Pray, did you never see Father Anthony Turberville there?

Furn. No, my Lords, I never heard of his Name.

L. Staff. Was I ever one moment lame while I was in France?

Furn. Not that I remember.

L. H. S. How long was my Lord there?

Furn. About three Months.

L. H. S. What time of the Year?

Furn. At Paris in October and November, in December at Rohan, in January we came over into England.

L. Staff. Ask him if ever I put my Foot upon a Cushion or upon a Stool for Lameness.

L. H. S. Mr. Turberville, did you ever see Furnese when you were in France?

Mr. Tur.



Mr. Tur. This Man, my Lords?  
 L. H. S. Yes.  
 Mr. Tur. No, not that I remember.  
 L. H. S. In what Quality did you serve my Lord in France, Furnese?  
 Fur. My Lords, I waited on him in his Chamber.  
 L. H. S. Do you remember any other Servant of my Lord's that you did see there?  
 Mr. Tur. Truly, my Lords, I don't remember, I might forget him.  
 L. Staff. So I believe thou dost me too.  
 Mr. Tur. Your Lordship that could call me Coward, may say any Thing.  
 L. Staff. You shall be as valiant as Hector, if you will. Pray call my other Boy. *(Who stood up.)*  
 L. H. S. You little Boy, Were you all the while with my Lord that he was in France?  
 Leigh. Yes, my Lords.  
 L. H. S. Did you ever see Turberville there?  
 Leigh. No, my Lords, not that I know of.  
 L. H. S. Had my Lord the Gout in France?  
 Leigh. No; nor never had since I have been with him.  
 L. H. S. That is six Years.  
 Leigh. Seven Years almost, my Lords.  
 L. H. S. Are you sure of that?  
 Leigh. I am sure of it.  
 L. Staff. Now, my Lords, Mr. Turberville says, I writ him a Letter to Diep, which Letter he can't find; I beseech you, what were the Contents of the Letter?  
 L. H. S. What were the Contents of the Letter my Lord sent you?  
 Mr. Tur. The Contents of the Letter were, That I should not stay at Diep in Expectation of him, for he had appointed a Yacht to come to Calais; but I should make what haste I could to London, and there I should meet with him.  
 L. Staff. I desire to ask, whether I sent him Word that Count Gramont came over with me.  
 Mr. Tur. Yes, my Lords, to the best of my Remembrance.  
 L. Staff. I shall now bring Witnesses that I did not come by Calais, but by Diep, and Count Gramont came not with me.  
 L. H. S. Mr. Turberville, which Way came you, from Diep, or from Calais?  
 Mr. Tur. From Diep, my Lords.  
 L. Staff. And I came from Diep too.  
 L. H. S. My Lord came that Way too, he says.  
 Mr. Tur. I know not of that, he sent me Word otherwise.  
 L. Staff. I shall now prove what I say. Pray call Mr. Wyborne. *(Who stood up.)*  
 L. H. S. What do you ask him, my Lord?  
 L. Staff. Whether he did not see me at Diep, and embark from thence for England?  
 Mr. Wyborne. My Lords, I will give you an Account as well as I can. In the Year 75, in December, I had Occasion to go over into France upon my own Concerns; and enquiring where there was a Conveniency to go over, I heard that a Yacht was sending to Diep for my Lord Stafford, and Mr. Henry Sidney, his Majesty's Envoy Extraordinary now in Holland: I took that Occasion, and we weighed Anchor on Friday the 24th of December; and it being foul Weather, and we being tossed long upon the Sea, we did not come to an Anchor before Diep till the Sunday was Se'nnight at two o'clock in the Afternoon, which was January the 2d. Then I came with the Captain immediately on Shore, to enquire for my Lord and Mr. Sidney; I enquired for my Lord, and they told me he was at Roban, expecting to hear of the Arrival of the Yacht: Upon which the Captain desired me to write a Letter to my Lord, and I did so; upon Sight of which Letter, he came to Diep on Tuesday in the Afternoon, which was, as I take it, the 4th of January, and we were at the Bastile there then together when he came that Evening. And the next Day I went on my own Occasions to Paris, and my Lord and Mr. Sidney did come over together in the Yacht.  
 L. Staff. If you please, I will call my two Servants again to this Matter.  
 L. H. S. Call them, my Lord. *(Then Furnese and Leigh stood up.)*  
 L. H. S. Which Way came my Lord Stafford out of France into England, by Diep or Calais?  
 Furn. By Diep.  
 L. H. S. What say you, Boy? Which Way came my Lord?  
 Leigh. By Diep, my Lords.  
 L. H. S. You came with him?  
 Leigh. Yes, we did.  
 L. H. S. My Lord, the Question is not, whether you came by Calais or no, but whether you writ a Letter to him to Diep, that you would go by Calais.  
 L. Staff. He swore Yesterday that I did come by Calais.  
 L. H. S. Do you say my Lord came by Calais?  
 Mr. Tur. My Lords, I had a Letter from his Lordship, which he wrote to me, that he would come by Calais.  
 L. Staff. He did not name the Letter Yesterday, nor is it in the Information.  
 L. H. S. Read the Affidavit.

The Information of Edward Turberville, of Skeer, in the County of Glamorgan, Gent.

WHO saith, That being a younger Brother, about the Year 1672, he became Gentleman-Usher to the Lady Mary Molinex, Daughter to the Earl of Powis, and by that Means lived in the House of the said Earl above three Years; and by serving and assisting at Mafs there, grew intimate with William Morgan, Confessor to the said Earl and his Family, who was a Jesuit, and Rector over all the Jesuits in North Wales, Shropshire, and Staffordshire. And he during the three Years Time often heard the said Morgan tell the said Earl and his Lady, That the Kingdom was in a high Fever, and that nothing but Blood-letting could restore it to Health, and then the Catholick Religion would flourish. Whereunto the said Earl many Times replied, It was not yet Time, but he doubted not but such Means should be used in due Time; or Words to that Effect. And he heard the Lady Powis tell the said Morgan and others, publicly and privately, That when Religion should be restored in England, which she doubted not but would be in a very short Time, she would persuade her Husband to give 300l. per Annum, for a Foundation to maintain a Nunnery. And this Informant was persuaded by the Lady Powis, and the said Morgan, to

become a Frier; the said Lady encouraging this Informant thereunto, by saying, That if he would follow his Studies, and make himself capable, the questioned not but he might shortly be made a Bishop by her Interest in England; because upon Restoration of the Catholick Religion, there would want People fit to make Bishops, and to do the Business of the Church. And thereupon she gave this Informant ten Pounds to carry him to Doway, where this Informant entred the Monastery, and continued about three Weeks, and with much Difficulty made his Escape thence, and returned for England; for which the said Earl and his Lady, and all the rest that encouraged him to go to the Monastery, became his utter Enemies, threatening to take away his Life, and to get his Brother to disinheret him: Which last is compassed against him. And Father Cudworth, who was then Guardian of the Friars at Doway, some Days before his Escape thence, told this Informant, That if he should not persevere with them, he should lose his Life and Friends: And further added, That this King should not last long, and that his Successor should be wholly for their Purpose. And Father Crofs, Provincial of the Friars, told this Informant, That had he been at Doway when this Informant made his Escape thence, he should never have come to England. And this Informant finding himself friendless, and in Danger in England, went to Paris, where one of his Brothers is a Benedictine Monk, who persuaded this Informant to return for England; and in order thereunto, about the latter End of November 1675, he was introduced into the Acquaintance of the Lord Stafford that he might go for England with his Lordship, and three Weeks he attended his Lordship, and had great Access and Freedom with his Lordship, who gave him great Assurances of his Favour and Interest to restore him to his Relations Esteem again: And said, That he had a Piece of Service to propose to this Informant, that would not only retrieve his Reputation with his own Relations, but also oblige both them and their Party to make him happy as long as he lived. And this Informant being desirous to embrace so happy an Opportunity, was very inquisitive after the Means; but the said Lord Stafford being somewhat difficult to repose so great a Trust as he was to communicate to him, exacted all the Obligations and Promises of Secrecy, which this Informant gave his Lordship in the most solemn Manner he could invent. Then his Lordship laboured to make this Informant sensible of all the Advantages that should accrue to this Informant, and the Catholick Cause; and then told this Informant in direct Terms, That he might make himself and the Nation happy, by taking away the Life of the King of England, who was an Heretick, and consequently a Rebel against God Almighty. Of which this Informant desired his Lordship to give him Time to consider, and told his Lordship that he would give him his Answer at Diep, where his Lordship intended to ship for England, and to take this Informant with him; but this Informant going before to Diep, the Lord Stafford went with Count Gramont by Calais, and sent this Informant Orders to go for England, and to attend his Lordship at London: But this Informant did not attend his Lordship at London, but went into the French Service, and so avoided the Lord Stafford's further Importunities in that Affair. And this Informant further saith, That one Remige, a Frenchwoman, and vehement Papist, who married this Informant's Brother, lived with the Lady Powis all the Time this Informant resided there and some Years since, and was the great Confident of the said Lady; and the said Remige was for the most Part taken with her Ladyship into Morgan's Chamber, when the Consults were held there, where he hath often seen Father Gavan, Father Tourners, Father Evans, Father Sylliard, Roberts, White, Owens, Barry, and the Earl of Castlemaine, and other Priests and Jesuits, meet and shut themselves up in the said Morgan's Chamber, sometimes for an Hour, sometimes for two Hours, more or less; and at the breaking up of the said Consults, have broke out into an Extasy of Joy, saying, They hoped ere long the Catholick Religion would be established in England, and that they did not doubt to bring about their Design, notwithstanding they had met with one great Disappointment, which was the Peace struck up with Holland; saying, That if the Army at Black-Heath had been sent into Holland to assist the French King, when he was with his Army near Amsterdam, Holland had certainly been conquered, and then the French King would have been able to assist us with an Army to establish Religion in England. Which Expressions, with many others, importing their Confidence to set up the Romish Religion, they frequently communicated to this Informant. And the said Morgan went several Times into Ireland, to London, and several other Parts of England, as this Informant hath just Cause to believe, to give and take Measures for carrying on the Design: And the said Remige and her Husband having first clandestinely sold their Estate, and fled into France about May or June last, for fear of Discovery; this Informant by many Circumstances being assured that the said Mrs. Remige was privy to all or most of the Transactions of the Plot. And he saith, That about May last was two Years, he was present at Mafs with the Lord Powis in Vere-street, when the Earl of Castlemaine did say Mafs in his Priestly Habit, after the Rites and Ceremonies of the Church of Rome.

Edward Turberville.

Sworn the 9th Day of November, 1680, before

Thomas Stringer.  
 William Poulteney.  
 Edmund Warcupp.

L. H. S. My Lord, this Affidavit is to the Purpose to which you call for it; this does say, that your Lordship did go by the Way of Calais, it does absolutely so.

L. Staff. Now, whether he be forsworn or no, your Lordships may judge by these three Witnesses.

Mr. Tur. My Lords, That which I grounded my Belief of his going to Calais upon, and so consequently that Affidavit, was the Letter which I received from my Lord; which I have looked for, but cannot find.

L. H. S. This Affidavit does not say you went from Calais to England, but you went with Count Gramont to Calais.

L. Staff. I conceive, my Lords, this Affidavit and his Narrative are Word for Word the same, only that Amendment of 72 for 73, upon which I observed before he was forsworn once. I cannot tell what to say, if this Man can be believed. And Count Gramont came by Diep too. But besides, my Lord, in this Affidavit he does not say he believed so by the Letter, though now he speaks of one.

L. H. S. My Lord Stafford, Was Count Gramont in your Lordship's Company when you came to Diep?

L. Staff.



*L. Staff.* No, my Lords, he was in England before me a Month; but, my Lords, I cannot deny but I had one recommended to come over with me, that pretended himself to be a French Count, but the Man was as arrant a Rascal as this that swears against me; and that was one that called himself Count de Brienne, whom all the World knows to be a Cheat.

*L. H. S.* Call your other Witnesses, my Lord.

*L. Staff.* Where is John Minhead? *(Who stood up.)*

*L. H. S.* Who do you belong to?

*Minhead.* My Lord Powis.

*L. Staff.* My Lords, Mr. Turberville, he says, by the Persuasion of my Lady Powis went to Doway, and he staid in the Monastery three Weeks, and not liking that Life, he came away (this may be true, I say nothing to it); but that which I take Exception at, is this; he says, for this the Earl of Powis and his Lady, when he came back from Doway, were very angry with him, and so were all his Relations, and he stood in Fear of his Life from them. Surely when Mr. Turberville knew he was in such Danger, he would not have come near them: pray ask this Gentleman, whether he was at my Lord Powis's, and how he was entertained.

*L. H. S.* Do you know Turberville?

*Minb.* Yes, my Lords.

*L. H. S.* Have you seen him at my Lord Powis's?

*Minb.* Yes, my Lords.

*L. H. S.* How was he received there?

*Minb.* Very well, my Lords.

*L. H. S.* When was that?

*Minb.* In the Year 75.

*L. H. S.* Was that before or after he came back to England?

*Minb.* It was after he came from Doway.

*L. H. S.* What Countryman are you?

*Minb.* A Frenchman.

*L. H. S.* What Religion are you of?

*Minb.* A Roman Catholick.

*L. Staff.* Pray ask him whether he lay in my Lord's House?

*Minb.* Yes, my Lords, he lay with me in my Lodgings.

*L. Staff.* And yet he says he was afraid of his Life.

*L. H. S.* Did my Lord know he lay there?

*Minb.* Yes, he must needs, because he came through the Room to go to Bed.

*L. Staff.* May it please your Lordships, he says he was threatened that he should have his Brother disinherited him, and which afterwards was compassed. Now I shall shew that this is impossible, for he had no Inheritance to lose, nor was to have none; for his Brother, who is elder than he (this Man being by a second Venter), hath Children, as I shall make appear by another of his Brothers, who is here. And this not being settled upon him, who was by the second Venter, could not come to him; but, for want of Issue of that Brother, must go to the Uncle. So he swears he was disinherited of an Estate, when he was to have no Estate, nor could have. Call Mr. John Turberville: *(Who appeared.)* My Lords, I desire you to ask him, whether he knew that upon his coming back to England he was ill used?

*Mr. J. Tur.* I never knew any Unkindness from my elder Brother to him.

*L. H. S.* Are you his Brother?

*Mr. J. Tur.* Yes, my Lord, by the Father, not by the Mother.

*L. H. S.* Well, what can you say?

*Mr. J. Tur.* I never heard any thing when he returned from Doway, that he was ill received by my Lord Powis; but in a few Days after my Brother and Sister came to Town, we went to Bloomsbury, and there we met together: And my Brother complaining that he was unfortunate, in that he had undertaken what he could not perform in going beyond Sea, and now wanted a Livelihood; my eldest Brother told him, he had done as far as his Ability, he could do no more, it was his own Choice, and he had no more to say.

*L. Staff.* Had he any Money from his Relations?

*Mr. J. Tur.* He made Intercession by Friends to my Sister, and she told me, that she gave him 7*l.* to bear his Charges to Paris, with that Proviso, that he would never trouble them more.

*L. H. S.* But they were not angry with him?

*Mr. J. Tur.* Here he is, he cannot say they ever gave him an angry Word in their Days; I'm sure I never did.

*L. H. S.* Did you forbid him the House?

*Mr. J. Tur.* No.

*Mr. Ed. Tur.* These are People that take not the Oaths of Allegiance and Supremacy, and therefore are not fit to be Witnesses.

*L. Staff.* Now your Lordships see what a Villain he is.

*Mr. Serj. Mayn.* You must give good Words, my Lord, for none but good Words are given you.

*L. Staff.* I must call them Villains, or myself Traitor.

*L. H. S.* You say they gave him 7*l.* upon Condition they should never see him more.

*Mr. J. Tur.* I did not say, my Sister said upon Condition she would give him 7*l.* he would never trouble us more: It was his Declaration.

*L. Staff.* One Thing I would ask Mr. Turberville more, and that is about this Man's being disinherited: Whether he could, or whether he was Heir to an Estate or not?

*L. H. S.* What say you to it?

*Mr. J. Tur.* By all the Information of our Relations, the Estate was made by my Grandfather to my Father for Life, and after my Father's Life, to my Mother; and after my Mother's Life, to my eldest Brother, and the Heirs Male of his Body; and for want of such, afterwards to me, and the Heirs Male of my Body; and in case I had none, then to my Father's Brother, and his Heirs Male; and if he had no Heirs Male, then after that to the right Heirs of the Grandfather. This was before my time.

*L. H. S.* Well, then, that Remainder to the right Heirs might come to him; and so there was some Estate for him to lose, and that Remainder might be docked by the Tenant in Tail. I would ask, Was there any Recovery suffered to bar that Entail?

*Mr. J. Tur.* Yes, I think there was one upon my Brother's Marriage.

*L. H. S.* Mr. Turberville, were you told you should be disinherited?

*Mr. E. Tur.* Yes, my Lords.

*L. H. S.* Who told you so?

*Mr. E. Tur.* My eldest Brother.

*L. H. S.* What did he tell you?

*Mr. E. Tur.* He told me it should not come to me.

*L. H. S.* How should it come to you?

*Mr. E. Tur.* I am not so good a Lawyer as to tell that, whether it could or no; but I thought by Succession.

VOL. III.

*L. Staff.* Then he says he came to serve my Lady Mollineux in 72; it may be it is so as he says, I don't know it of my own Knowledge; but I pray he may answer, whether it was in 71, or 72.

*Mr. E. Tur.* In January or February, 71.

*Mr. Truby.* That is in the Beginning of the Year 72, according to the Almanack.

*L. Staff.* My Lords, for the present I do not remember any thing more—Oh, yes, my Lords, he says he was at such a Time at my Lord Powis's, when my Lord Castlemain was at Powis-Castle, which must be either in the Year 72, 73, or 74. Now I desire you would ask Mr. Lydcot, whether my Lord Castlemain was there, or could be there in any of those Years. *(Then Lydcot stood up.)*

*L. H. S.* What do you ask him, my Lord?

*L. Staff.* I desire to ask him, whether in the Year 72, 73, or 74, which are the Years Turberville says he was at my Lord Powis's at Powis-Castle, whether my Lord Castlemain was at Powis-Castle, or could be there at that time.

*L. H. S.* Was my Lord Castlemain there in any of those Years?

*Lydcot.* My Lords, I can prove he was not, as much as I am capable of proving a negative. I was with him in the Years 72, 73, and 74.

*L. H. S.* Where?

*Lydcot.* He was in England in 73; I was with him all the while, and I am sure since I knew him he was never in Wales, and I was never absent from him since I knew him (which is nine Years), not four Months in all: I have travelled with him, and been abroad with him.

*L. H. S.* Turberville, when do you say my Lord Castlemain was at Powis-Castle?

*Mr. Tur.* I think it was in the Year 73.

*L. H. S.* By what Token do you remember him there?

*Mr. Tur.* He was arguing with my Lord Powis about Religion, and several times he did so: I believe it was in the Year 73.

*L. H. S.* What say you to that?

*Lydcot.* I can assure your Lordships he was not there then; I was always with him that Year: He had many times a Design to go there, but he could not but put it off; and the last Time he was there, I can prove it was fifteen Years ago.

*L. H. S.* I desire to know of you this, Friend; can you take it upon you to affirm upon the Faith of a Christian, that you were never from my Lord Castlemain all the Year 73?

*Lydcot.* I can give an Account to half a Week where he was; and when I was absent from him, it was beyond Sea; and all that while I kept Correspondence with him every Post, and received Letters from him constantly once a Week, dated from Liege; this was in the time of my Absence.

*L. H. S.* Were you at Liege when my Lord was in England, or were you with him all the time he was in England?

*Lydcot.* My Lords, I was with him all the time he was in England, and was never absent from him all that Compass of Time, but when he sent me into England from Liege.

*L. H. S.* Then he was at Liege himself?

*Lydcot.* Yes, my Lords.

*L. H. S.* Was that in the Year 73?

*Lydcot.* Yes, my Lords, I was then in England. But, my Lords, I can give you a whole Account, for my Lord and I never made any Journeys, but I put them down.

*L. H. S.* You say you can give a particular Account of the whole Year 73, even to the Compass of four Days in that Year at most.

*Lydcot.* No, my Lords, I do not say so; but I say I can give an Account of the whole time I have been with him within four Months.

*L. H. S.* Were any of these four Months within the Year 73?

*Lydcot.* No: I was with him all the Year 73.

*L. H. S.* Will you take it upon you to say, That every Day in 73 you were with my Lord?

*Lydcot.* Every Day, my Lords.

*L. H. S.* Every Week?

*Lydcot.* Yes, I do not think but that I was. My Lord did me the Honour to make me as it were his Companion.

*Mr. Serj. Mayn.* No, you do yourself the Honour to make yourself his Companion; he made you his Servant.

*L. H. S.* Come, where are your Notes you pretend to speak by? your Diary, or your Journal? Let us hear a whole Account of the Year 73; for you come to testify as if you could give an Account of every Day.

*Lydcot.* I did not think any Question of this Nature would come on the Stage; there is my Lord's Steward can give a very good Account of this by his Account-Books, which are all ready to be produced: He can tell where my Lord was, by laying out such and such Monies. And 'tis an hard thing to give a Testimony after so many Years, of a Thing that we thought not would ever be a Question.

*L. H. S.* Let us see your Notes.

*Lydcot.* My Lords, I will read it to your Lordships.

*L. H. S.* When was this written?

*Lydcot.* I took this out of another Book.

*L. H. S.* When?

*Lydcot.* Lately, since Mr. Turberville's Narrative came out.

*Sir Will. Jones.* Oh, I desire that may be observed.

*L. Staff.* If your Lordships please, I desire that he may bring his Books, Oh, Oh! will not condemn me, but Law and Justice: I am not to be run down with Oh, Oh! or what such impudent Villains as these say.

*L. H. S.* Read what you have there.

*Lydcot.* From Liege we set forth to Paris, January 1, 72, where we staid three Weeks, and arrived thence at London, January 24; there we staid till May 73, and from thence we went to Liege again in June, and from Liege we set forth to London in August, and returned October the 3d, 73.

*L. H. S.* Were you all the while between August and October in London?

*Lydcot.* I am morally certain, that I did not go from my Lord all that time.

*L. H. S.* Where were you after October?

*Lydcot.* Which October, if your Lordship please?

*L. H. S.* October, 73.

*Lydcot.* At Liege; for we returned to Liege at October the 3d, and then after this my Lord sent me into England. I left him at Liege, and from thence I set out for England; and in January I returned to Liege, which was the greatest Part of time that I was ever absent from him.

*L. H. S.* And was he at Liege, are you sure, all that time from October to January?

*Lydcot.* Yes, except he flew: For I sent Letters by the foreign Post, and received Letters by the foreign Post every Week. And his Account-Books will speak it.

Y

Sir W. Jones.



Sir W. Jones. My Lords, we desire to ask him one Question, (since he can give so exact an Account) whether my Lord Castlemain was in England, 72; and how much of that Year?

Lyd. Yes.

Sir W. Jones. How many Months of the Year 72 was he in England?

Lyd. I read it before. We arrived from Liege to London, January 24th, 72, and staid at London till May, 73.

L. H. S. But where was my Lord all the Year 72?

Lyd. Pray, my Lords, do you mean New-Style or Old-Style?

L. H. S. When I speak of his being at London, I mean the Style of the Country.

Sir W. Jones. Then, under favour, he speaks of the latter Part of the Year: I desire to know, whether my Lord, for all the former Part of the Year was in England?

L. H. S. Where was my Lord in December 72, and in November before that, and in all the Year up backwards?

Lyd. My Lords, I have told you the whole Year.

L. H. S. But where was my Lord from January 71, to January 72?

Lyd. In 71, June the 10th, New-Style, we came to London, and returned in September to Liege; from Liege we set forth to Paris, January 1, 72; and arrived at London, January 24.

L. H. S. He runs past the Time.

Sir W. Jones. My Lords, we ask him a plain Question, but he does not answer it; he slips over the Time that we desire your Lordships to ask him about.

L. Staff. I beseech your Lordships that it may be made plain, that there may nothing be said afterwards that it was not plain.

Lyd. Sir, do you propose any thing to me, and I will answer it.

Sir W. Jones. Answer not us, answer my Lords.

Lyd. I desire any body may peruse my Notes, if they please.

L. H. S. Pray, Sir, answer the Question, which in very short Terms is this, Where my Lord Castlemain was all the whole Year 72?

Lyd. Well, my Lords, I will; I can but read it over again. From Liege we set forth to Paris, January 1, 72.

L. H. S. Are not you a rare Fellow now!

Lyd. My Lords, I understand it according to the Style of that Country when I am there, and of this Place when I am here.

L. H. S. Answer me according to our Style.

Lyd. This that I have written here, in the Book out of which I took it, hath been written ever since that Time; and I did not think I should e'er be called to account about it.

L. H. S. Begin January the 1st, 71.

Lyd. We went from Liege to Paris, where we staid about a Week, or such a time, and we arrived at London January the 24th, that is the Old-Style, and staid at London till May the 8th, 73.

L. H. S. That is impossible, for you 'scape a Year and an half together.

Lyd. My Lord was here in England in January.

L. H. S. You begin very gravely with January, Stilo veteri, that you came from Liege; and so January the 24th, Stilo veteri, you came to London.

Lyd. When I speak of any Stile, I understand it according to the Stile of the Country.

L. H. S. But in your Account, what is become of all the time from January, 71, to January, 72; say and swear, if you can, where my Lord was all that time.

Lyd. He must be in London.

L. H. S. Can you take it upon your Oath, that my Lord was in London from January 71, Stilo veteri, to May 73, Stilo veteri?

Lyd. I cannot know how to count better than I have done.

L. Staff. Mr. Turberville says, my Lord Castlemain was in 73 at Powis-Castle; I beseech your Lordships this Man may be asked, and that without any Interruption, where my Lord was that Year.

Sir W. Jones. With your Lordships Favour I must desire your Lordships to ask Mr. Turberville whether he did say positively the Year 73; for if my Ears and my Notes do not fail me, he said, as he remembered; and that is the Reason why we ask about the Year 72.

Mr. Tur. My Lords, I do not say positively, nor cannot, which Year it was.

Lyd. My Lords, I do stand upon it, that he was in London January, 72, and went away May 73.

L. H. S. What becomes of the mean time, between January, 71, and May 73?

Lyd. My Lords, I explain myself as well as I can.

L. H. S. My Lord Stafford, will you call any more Witnesses?

L. Staff. Yes, my Lord.

L. H. S. Call them then.

Earl of Shaftesbury. My Lord High Steward, I desire my Lord Stafford may be asked how many Witnesses my Lord hath more, for it now grows late.

L. H. S. My Lord, I desire to know how many Witnesses you have more?

L. Staff. Three or four; I can't tell well how many.

Lords. Adjourn, adjourn.

L. H. S. Is it your Lordships Pleasure that we do adjourn?

Lords. Ay, ay.

L. H. S. Then this House is adjourned into the Parliament-Chamber. Then the Lords returned in their former Order to their House, and the Commons went back to their House.

Mr. Speaker resumed the Chair, and a Message from the Lords was sent by Sir Timothy Baldwin and Sir Samuel Clarke.

Mr. Speaker,

The Lords have sent us to acquaint this House, that they have ordered the Prisoner, William Viscount Stafford, to be brought again to his Trial at the Bar in Westminster-Hall, to-morrow morning at Ten of the Clock.

The FOURTH DAY.

Friday, December 3, 1680.

ABOUT the Hour of Ten in the Morning the Lords adjourned into Westminster-Hall, and returned in their former Order into the Court there erected; and Mr. Speaker having left the Chair, the Commons were seated as before mentioned.

The Court being sat, Proclamation for Silence was made, and the Lieutenant of the Tower commanded to bring his Prisoner to the Bar; which being done, the Lord-High-Steward spake to the Prisoner as followeth:

L. H. S. My Lord Stafford, your Lordship's Defence took up Yesterday. All the Day was employ'd in hearing your Lordship's Witnesses to impeach the Credit of the Testimony that hath been given against you. Your Lordship hath excepted against Dugdale, because you were not at Tinsall, as he says you were, neither the latter end of August, nor the beginning of September, till the Twelfth; and when you were there, you never sent for him to your Chamber, but your Man, upon his own desire, brought him: And when he came there, the Business was, to desire you to get leave that he might go to the Race; and there was no opportunity of private Discourse, because your Men were in the Room all the while: That Dugdale hath often said he knew nothing of the Plot; that he swore falsely, when he said he told of the Letter about the Death of Sir Edmundbury Godfrey before it was known he was killed, and when he said that Hobson told him presently after the Almoner went over, which was three Years before Hobson came to my Lord Aston's Service. Your Lordship hath likewise objected, that he hath corrupted Persons to swear falsely against you and others, as Robinson the Upholsterer against your Lordship, Morrall the Barber against Sir James Symonds, and Hall the Blacksmith to swear that one Moor carried away Evers. Your Lordship hath endeavoured to discredit Oates, by his saying he knew nothing of any other Persons that were concerned in the Plot, and after accusing the Queen. Your Lordship hath impeach'd the Credit of Turberville, by proving that you came home by Diep, and not by Calais, as he says you did; that you had never the Gout while you were in France, nor, as your Page says, for these seven Years; that my Lord Castlemain was not at my Lord Powis's in the Year 73, and there you left off. This I take is the Sum of what your Lordship says; if I do you any wrong, your Lordship will put me in mind of it.

L. Staff. I thank your Lordship, you have done it with great Equity and Truth.

L. H. S. Then go on.

L. Staff. The next Witness that I call is one John Porter. (Who stood up.)

L. H. S. What is your Name?

Witness. John Porter.

L. H. S. What Profession are you of?

Porter. A Butler.

L. H. S. To whom?

Porter. To my Lord Powis.

L. Staff. My Lords, I desire your Lordships would ask him what Mr. Turberville said about the Plot.

L. H. S. I will ask him all the Questions your Lordship desires I should ask him.

Mr. Foley. We desire to know what Religion he is of.

L. Staff. I desire your Lordship would ask him that Question, and not the Managers.

L. H. S. They will tell me their Questions, my Lord, and I will ask them.

L. Staff. They ask him, my Lords, and not you.

L. H. S. What Religion are you of?

Porter. A Church-of-England Man, my Lords.

Mr. Serj. Mayn. The Popish Church of England, I believe.

L. Staff. Pray, my Lords, let not this be; when my Witness says he is of the Church of England, they cry he is of the Popish Church of England. Mr. Serj. Mayn. Pray, good my Lord, we are silent when you ask him proper Questions, and make no Remarks; we do not speak it to the Court; we may say what we will among ourselves, I hope.

L. Staff. I may ask impertinent Questions, because I do not understand so well as these Gentlemen. But I pray they may not deal thus with me.

L. H. S. My Lord, you shall ask what Questions you please.

L. Staff. Pray ask him what Mr. Turberville said to him about the Knowledge of the Plot.

L. H. S. What did Turberville say to you about his knowing of the Plot?

Porter. About a Year since, when I serv'd my Lord Powis as Butler there, he was us'd to come and see me; it was not at my Lord's House, but he sent for me to a Victualling House.

L. H. S. That was last Year?

Porter. Yes.

L. H. S. What time of the Year?

Porter. It was about twelve Months ago, I cannot say positively the time.

L. H. S. Was it in Winter or Summer?

Porter. He hath been both, I can't be positive which; I believe he hath been there forty times.

L. H. S. In the Year 80, or 79?

Porter. In the Year 79.

L. H. S. What did he say?

Porter. He came there and asked me how my Lord Powis did; and said, he was extremely troubled that he was in that Affliction, for he did verily believe, that neither he nor the rest of the Lords were in the Plot; and the Witnesses that swore against him, he believed were perjur'd, and could not believe any thing of it.

L. H. S. Have you any more to say?

Porter. Yes, my Lords: I told him, If there were such a thing as a Plot, he having been beyond Sea, must certainly know of it. He told me, As he hop'd for Salvation, he knew nothing of it, neither directly, nor indirectly, against the King's Sacred Person, nor the Subversion of the Government. And he further said, Altho' I am a little low at present, and my Friends will not look upon me, yet I hope God Almighty will never leave me so much, as to let me swear against innocent Persons, and forswear and damn myself.

L. H. S. Where was this said to you?

Porter. At the Ship Alehouse in Lincolns-Inn-Fields one time, another time at the King's-Head Tavern in the Strand, and another time at the Golden-Ball in the Strand.

L. H. S. Was any body by, besides yourself?

Porter. Not at that time; but there is a Gentleman in Court, that can testify that he said such things at other times.

L. H. S. What say you to this, Turberville?

Mr. Tur. I say 'tis all false: But if your Lordships please, I'll tell you what I said once, I did conceive my Lord Powis was the least concerned of any, I thought; and I hop'd it would prove so. I can take all the Oaths in the World, I said no more.

L. H. S. What else do you know?

Porter. Only such things as these he hath often said.



Earl of Shaftsbury. Pray, my Lords, ask him how came Turberville to be a Witness about the Plot?

L. H. S. Upon what occasion came Turberville to talk of these Matters?

Porter. It was only voluntary of himself; it was speaking of my Lord's will, and the rest of the Lords in the Tower.

Earl of Shaftsbury. My Lords, I mean of his own being a Witness.

L. H. S. How came Turberville to say, he hop'd God Almighty would ever forsake him so far, as to let him swear against innocent Persons? He was never call'd to be a Witness.

Porter. But, my Lord, some of his Friends did say they were fearful of him, in regard he was reduc'd to Poverty; his Friends were fearful.

L. H. S. Who were fearful?

Porter. His Brother and Sister, Mr. Turberville and his Wife.

L. H. S. Did he take notice to you that they were afraid he would come in?

Porter. Yes, Mr. Turberville did tell me himself, that they heard he would come in.

L. H. S. Have you said all that you have to say?

Porter. My Lords, that is all I have to say.

L. H. S. Then call another, my Lord.

L. Staff. Where is Mr. Yalden?

(Who stood up.)

L. H. S. What is your Name?

Witness. Yalden.

L. H. S. Your Christian Name?

Yalden. John.

L. H. S. What is your Profession?

Yalden. A Barrister at Law.

L. H. S. How long have you been called to the Bar?

Yalden. I was called to the Bar last Trinity-Term was Twelve Months.

L. H. S. What House are you of?

Yalden. Grays-Inn.

L. H. S. Are you a Practiser?

Yalden. Yes, my Lords.

L. H. S. What Religion are you of?

Yalden. Of the Church of England.

L. H. S. Well, what can you say?

Yalden. I am summon'd to appear by Order of this House; and I desire to know of my Lord what he is pleased to examine me about.

L. Staff. What Mr. Turberville hath said in his hearing about the Plot?

L. H. S. What Discourse hath pass'd between you and Turberville about the Plot?

Yalden. My Lords, in February or March last I was walking in Grays-Inn Walks with Mr. Turberville, and Mr. Powell and he din'd with me a Day or two after; and there Mr. Turberville and I were talking of the Disfranchisement of the Times, how Trade was ruined, how the whole Kingdom was out of Order; and he a little touch'd at some things, cry'd out, *God damn me, now there is no Trade good, but that of a Discoverer; but the Devil take the Duke of York, Monmouth, Plot, and all, for I know nothing of it.*

L. H. S. That is odd, that he should say it was a good Trade to be a Discoverer, and at the same time say, he knew nothing of the Plot.

Yalden. This I understood to be his Meaning; he curs'd himself and them, because he knew nothing of the Plot to discover; for he would have got Money by it, (as I understood) as well as others.

Mr. Tur. My Lords, Mr. Yalden did declare Yesterday, he was summon'd in by my Lord Stafford the last Night, and that he had nothing to say but what was by Hear-say.

Yalden. My Lord, I do declare here what I say is true. And Yesterday Mr. Powell gave me a Caution to take heed what I did, and swore by God, it would else be the worse for me.

L. H. S. Who did?

Yalden. Mr. Powell.

L. H. S. Who is that?

Yalden. Mr. Turberville's Friend. And I said, I do not appear here as a voluntary Evidence, but by an Order of the House of Lords. I do not know what weight my Evidence may have; for I can say nothing but what I heard him say, and so perhaps it will be taken but for a Hear-say.

Mr. Tur. You said you knew nothing but by Hear-say.

L. H. S. Will you ask him any Questions, Gentlemen?

Manag. No, my Lords.

L. Staff. My Lords, I shall not trouble your Lordships with any more Witnesses as to these Points; I have here a Copy of the Warrant for the Yacht to go to Diep: And if there be any Question whether I did come over from Diep at Christmas 75, if you please the Book may be searched.

L. H. S. My Lord, it is all lost, for I hear not one Word.

L. Staff. I say, my Lords, If it be fit to trouble your Lordships with it, I can prove that I did come over in the Yacht from Diep at Christmas 75; here is the Copy of the Warrant for it to go for me. And whether you will believe it proved that I did come over thence, I submit to you.

L. H. S. I suppose that is fully proved, that you did come by Diep.

Manag. We do not deny it.

L. H. S. You do not stand upon it, Gentlemen, do you?

Manag. No, no, my Lords.

L. H. S. 'Tis admitted to you, my Lord.

L. Staff. My Lords, when I went from your Lordships Bar last Night, had no thoughts of examining any Witnesses, but what I had already done: but, my Lords, since I was here, there hath something happened, about which I desire Dr. Oates may be called again (I shall give you my reason why I move it afterward) upon something I heard Yesternight.

L. H. S. Call Dr. Oates again. (Who appeared and stood up.)

L. H. S. My Lord, What does your Lordship call him for?

L. Staff. He did say, that he being a Minister of the Church of England, did seemingly go over to the Church of Rome, or some such Words; I desire he may answer that first.

L. H. S. What say you?

Dr. Oates. Yes, I did say I did but seemingly go over.

L. Staff. I desire to know, whether he was really a Papist, or did he pretend.

Dr. Oates. I did only pretend; I was not really one, I declare it.

L. H. S. What do you make of that?

L. Staff. I desire to know how long Dr. Oates was in Spain.

Dr. Oates. My Lords, I came into Spain in May, and I came home again in November.

L. H. S. That is six Months.

L. Staff. He is called Dr. Oates: I beseech your Lordships to ask him, whether he were a Doctor made at the Universities here or abroad.

Dr. Oates. My Lords, if your Lordships please, any Matter that is before your Lordships, I will answer to it; but I hope your Lordships will not call me to account for all the Actions of my Life; whatever Evidence is before your Lordships I will justify.

L. H. S. The Doctor hath never taken it upon his Oath, that he was a Doctor, and why do you ask it?

L. Staff. He is call'd a Doctor, and I would know whether he did never declare upon his Oath, that he took the Degree at Salamanca?

Dr. Oates. My Lords, I am not ashamed of any thing I have said or done; I own what is enter'd as my Oath before your Lordships, and am ready to answer it; but I am not bound to say what does not at all concern this Business.

L. Staff. I say, my Lords, 'tis enter'd upon your Lordships Books, that he did swear at the Council, he was at Madrid with Don John of Austria; I would know of him whether he did so.

Dr. Oates. My Lords, I would have my Lord to propose the Question to the Court of Peers.

L. H. S. Have you sworn any thing of Don John of Austria?

Dr. Oates. My Lords, I refer my self to the Council-Book.

L. Staff. I beseech your Lordships, I may have that Book.

L. H. S. I believe it is in the Narrative; turn to the Journal, you have that mention'd there.

[To which the Clerk turned, but it could not be found.]

L. H. S. If you will not acknowledge it, we must stay till the Book be brought.

Dr. Oates. My Lords, if your Lordships please, I will repeat, as well as I can, what was said at the Council Table; but I had rather the Council-Book were fetch'd, because I am upon my Oath: But, my Lords, I always thought the Council Book is no Record upon any Man.

L. Staff. I desire it may be produc'd, or he own that he said so.

L. H. S. What you said at the Council-Table, you said upon your Oath, and 'tis lawful to lay it before you.

Dr. Oates. But if your Lordships please, as to what was said at the Council-Table, if my Lord will bring any one *viva voce* to swear what was said by me there, that will make something.

L. H. S. That may be material, as he says, that your Lordship should bring somebody to swear he said so, for the Clerks may mistake him.

L. Staff. If your Lordship please that the Book may be sent for, I will make it out.

Sir Will. Jones. It could not be read if it were here.

L. H. S. If the Clerks will swear what is in the Books, it may.

Sir W. Jones. But whether the Clerks will take that upon them or no, may be a Question.

L. H. S. Go on in the mean time.

L. Staff. I cannot conclude with him without it.

L. H. S. Where is the Council-Book? For the Clerks inform me 'tis not in their Custody; but the Gentlemen of the House of Commons have been attended with the Book, and other Papers relating to it.

L. Staff. In the mean time, give me leave to say something, tho' perhaps it may be nothing to the purpose: Mr. Yalden was just now going down, and Turberville threatened to lay him by the Heels.

L. H. S. If he did so, 'tis a Misdemeanor, and he must be punish'd for it. Call Yalden and Turberville.

L. H. S. Mr. Turberville, have you dar'd or threaten'd Yalden the Witnesses, to lay him by the Heels?

Mr. Tur. I did not speak any such Words to him; Mr. Dugdale was just by me all the while.

L. Staff. I tell you but what he said, and what I can prove by Witnesses; pray call Yalden.

Mr. Tur. This Gentleman, Captain Scudamore, stood by me too.

L. H. S. But I ask you upon this Misdemeanor, whether you threaten'd Yalden to lay him by the Heels?

Mr. Tur. My Lords, I stood by Mr. Dugdale till he was gone down.

L. H. S. How could he lay him by the Heels? By what Authority could he do it?

Mr. Tur. I did not speak such a Word, upon my Oath.

L. Staff. Ask Yalden; I am told he did.

L. H. S. I am afraid you are misinform'd, my Lord; for he could not do it, 'tis not in his Power.

L. Staff. He threaten'd he would goal him; but if you won't examine it, I submit to you.

Dr. Oates. My Lords, Yalden, it seems, calls us a Pack of Rogues, that give Evidence for the King; and here are Witnesses of it.

(Yalden stood up.)

L. H. S. Yalden, were you threaten'd by Turberville?

Yalden. Yes, I will tell you how I was threaten'd, my Lords: Mr. Turberville pulls me by the Arm, when I had given my Evidence, and asked me if I knew him, and bid me take care.

L. H. S. Do you call that Threatning?

Yalden. My Lords, I did not make this Complaint, nor did I desire it should be made; but speaking this in the Room, somebody carried it to my Lord.

Mr. Tur. My Lords, now he hath done, let me speak, I pray: Mr. Yalden did say in the hearing of Captain Scudamore, who is here, he had got a great many Clients here; but you, says he, have got nothing but a Pack of Rogues.

Yalden. That is a Mistake.

L. H. S. This is fine Work. But, Gentlemen, will you call Captain Scudamore now, or will you stay till afterwards?

Sir F. Win. My Lords, Mr. Turberville desires it may be now, and we do also desire it upon this Occasion; Captain Scudamore is a Man of Quality, and will give you a true Account. We did not think to have interpos'd in my Lord Stafford's Evidence; but he having impeach'd our Witnesses of a Misdemeanor, we conceive it fittest to clear it at this time.

(Then Captain Scudamore was sworn.)

L. H. S. Mr. Scudamore, what are you call'd for? Can you say any thing that happen'd between Turberville and Yalden?

Capt. Scudamore. The Gentleman that is here, that said he was one of Grays-Inn, I don't know his Name—

L. H. S. 'Tis Yalden.

Captain



Captain *Scudamore*. I heard a Gentleman ask him if he came there to get Clients, and he said, I know nothing among you but Regency.

L. Staff. Whereabouts did this Gentleman stand?

Capt. *Scudamore*. In the Passage.

Mr. *Tur*. Here are five or six more that heard him say so.

*Yalden*. That which I said, was this, That I might come hither for Practice, but I did not come hither for Regency.

L. H. S. My Lord *Stafford*, until such time as the Council-Book comes, which may be sent for, will your Lordship proceed to something else?

L. *Wharton*. My Lord Steward, I humbly conceive, that it was resolved in the Lords House, the Day before yesterday, that no Book should be sent for out of the Court; and it was done upon the Judgment of all the Judges of *England*.

*Yalden*. My Lords, they will not permit me to go down.

L. H. S. There is a strange Quarrel between your Witnesses, and an Affliction of complaining one of another: Let Mr. *Yalden* go down.

Sir *Will. Jones*. My Lords, I would only acquaint your Lordships, that the Council-Book, that my Lord does make mention of, was in the hands of our Clerk, we did not know of it when it was first discoursed of; but now understanding that here it is, we desire it may be delivered in to any body that hath occasion for it.

L. H. S. Hand it in. (Which was done).

L. H. S. What Day does your Lordship speak of?

L. Staff. The 28th, 29th, or 30th of September.

Clerk. Then this is not the Book, for this is for January.

L. Staff. My Lords, Is it your Lordships pleasure I may have Pen, Ink, and Paper allowed me?

L. H. S. Yes, yes; give my Lord Pen, Ink, and Paper.

(Which they did).

[Then the Lord High Steward looked upon the Council-Book.]

L. H. S. My Lord *Stafford*, in this Council-Book, as far as we can inform our selves by the Table of it, there is nothing at all of it; it must be the Council-Book in September.

Sir *W. Jones*. We have no other Book but that.

L. H. S. Why did not your Lordship send all this while to the Council-Table for any thing that was material, but give the Court the Trouble to be interrupted upon your Enquiries?

L. Staff. My Lords, you may do what you please, I did not know any such thing would have needed to be urged, I have Proof enough without the Book: The use I should have made of it, is this, I do appeal to some of your Lordships (you that were of the Council) I do appeal to which of you that were by, whether Dr. *Oates* did not say at the Council-Table, he had been at *Madrid*, he went from *Valladolid* to *Madrid*, and there did preach something at the Jesuits College at *Madrid* (what it was I cannot tell) when Don *John* of *Austria* was by.

L. H. S. If any of my Lords of the Council do remember it, they may testify.

L. Privy-Seal. My Lords, I shall tell your Lordships as much as I remember of it: Dr. *Oates* was examined about his Journey into *Spain*, and (amongst the rest) some Question happened to be asked, whether he had seen Don *John* of *Austria*; he said he had seen one that was called so; that he knew him not, but he was pointed to one that they said was Don *John* of *Austria*: that I heard.

L. Staff. My Lord, I thank you.

L. H. S. You hear what is said, Dr. *Oates*.

Dr. *Oates*. My Lords, suppose I did say so, I think there is no Crime in it.

L. H. S. 'Tis not objected against you as a Crime, but as a Mistake in your Oath, there was no such Man there.

L. Privy-Seal. My Lords, I would not be misunderstood in the Evidence I give; I did not say that *Oates* said he knew him, but that he knew him not, and only was told such a Man was he.

Dr. *Oates*. It was made apparent that I did not know him, because I mistook his Person.

L. Staff. I do stand upon it, That upon his Oath (and I have reason to believe he did so, because I am so informed) he said it was Don *John* of *Austria*.

L. Privy-Seal. No, my Lord, Dr. *Oates* said, he was a tall lean Man, and it seems he was a little fat Man.

L. Staff. If any Man would shew him a Man to counterfeit Don *John* of *Austria*, he would not shew him a lean Man for a fat.

L. H. S. Go on, my Lord.

L. Staff. I shall now put your Lordships in mind that he swore, but my Memory is bad, and my Eyes much worse, that he saw me receive a Commission, and it seems he saw what it was too: Now it is strange, that amongst so many Commissions that were given, none should be extant; I desire him to shew the Commission he saw me receive.

L. H. S. Would your Lordship have him shew the Commission which he saw you receive?

L. Staff. I do not believe he can shew my Commission; for I am sure there was none: I desire him to shew any one of my Letters he talks of. He says, he came over, feigning to be a Papist, when he was not, and that they shewed him presently all my Letters; and now he is come to discover the Plot, I ask him, did he keep any one of my Letters?

L. H. S. Have you any of my Lord's Letters by you?

Dr. *Oates*. My Lords, I could not keep any Letters sent to the Fathers; I had a Sight of them, but none of them to my particular use.

L. Staff. Does he know my Hand? Did he ever see it in his Life?

Dr. *Oates*. Yes, I do know his Hand, I believe I have a Letter of my Lord's by me, but not about me, 'tis of no Concern: I am sure I have one of my Lord *Arundel's*.

L. Staff. But he says he hath a Letter of mine; let him shew one of my Letters.

Dr. *Oates*. He writes a mix'd Hand, I think 'tis but an indifferent one.

L. Staff. So many Commissions, and so many Letters as are spoken of, and not one to be found or produced!

L. H. S. Can you send for the Letter?

Dr. *Oates*. My Lords, I am not certain of that.

L. H. S. Where did you see my Lord write?

Dr. *Oates*. At *Fenwick's*, my Lords, when I carry'd the Letter to the Post.

L. Staff. How often hath he seen me at *Fenwick's*?

Dr. *Oates*. My Lords, not above twice, if twice.

L. Staff. My Lords, I cannot say I did not see him there; but I can say I don't know the Place, nor that ever I was there.

Dr. *Oates*. My Lords, will his Lordship say I never saw him Dr. *Perrot's*?

L. Staff. Who?

Dr. *Oates*. My Lord *Stafford*.

L. Staff. Where did he live?

Dr. *Oates*. In *Duke-Street*, going into *Lincoln's-Inn-Fields*: He is the Arch-Priest of the Seculars, that is, the Principal of the Secular Clergy; and he hath the Care of the *English* College for the sending of Scholars to the College. Mr. *Fisher*, my Lord *Stafford*, and Dr. *Perrot* were discoursing together about sending his Son thither, and Mr. *Fisher* would have one sent with him, that was Dr. *Perrot's* Man.

L. Staff. I do profess before God, I was never at Dr. *Perrot's* in my whole Life!

L. H. S. Did not you send your Son abroad?

L. Staff. No, my Lords, not I.

L. H. S. Had he a Servant at Dr. *Perrot's* to attend him?

Dr. *Oates*. No, my Lords, not that I know of, I cannot say he had not.

L. Staff. I tell you positively, as I am a Christian, my Lords, I did not send my Son to *Lisbon*, he went against my Will. I told him I had an Aversion to it, but said, I will not lay my Commands on you not to go; but he would go, I could not help it: I told him, Do you mean to go into the College? He would not tell me.

L. H. S. Pray, my Lord, does not your Lordship know Dr. *Perrot*?

L. Staff. Yes, my Lords, I do.

L. H. S. Were you never with him at his House in *Duke-Street*?

L. Staff. No, my Lords, never in my Life; nor saw that *Fisher* he speaks of, ever in my Life.

Dr. *Oates*. My Lord, 'tis against the Rules of that House, that any be admitted of that House (if their Parents be Catholics) without Consent of their Parents.

L. Staff. If he be admitted there, I know it not.

Dr. *Oates*. He lives there.

L. Staff. But I protest before God, my Lords, I asked him that Question, Will you go to the College? No, says he, I will go to lie at the Bishop's House: But as for Dr. *Perrot*, I never was at his Lodgings in my Life, and I never knew where he lay; he hath been with me sometimes, but I knew not that he was a Doctor. But, my Lords, I desire I may not be run down by these Fellows, who do not speak a Word true, nor one tittle. My Lords, I have Witnesses in whose House *Fenwick* lay. Call them, and ask them if ever they knew me there in their Lives.

L. H. S. What kind of Man was he?

Dr. *Oates*. My Lords, he is an ancient Man, he wears his own Hair.

L. H. S. Is he a tall Man or a low Man?

Dr. *Oates*. A luffy Man.

L. Staff. Truly, my Lords, I never was at his House since I was born.

Dr. *Oates*. My Lords, I'll tell your Lordships a Circumstance; That Summer Don *Francisco de Melos*, the Ambassador here, was sick, and I think he died of the Sickness, Dr. *Perrot* was his Father Confessor; I was waiting for Dr. *Perrot* some time, for he promised to meet me at his Lodgings, and this Gentleman, the Prisoner at the Bar, did come in there.

L. Staff. Where?

Dr. *Oates*. Into Dr. *Perrot's* Lodging. Dr. *Perrot* had a Kinsman there that waited on him; and when my Lord came in, he was in haste to speak with Dr. *Perrot*, and he offered me Half a Crown to fetch Dr. *Perrot* to him, and I made him this Reply, I was no Porter.

L. Staff. If ever I saw this Man in my Life since I was born, or heard of his Name till the Plot, then I will confess myself guilty of all. Indeed, when first I heard of the Plot (they said) there was one Mr. *Oates* discovered it, but I did not know any such Man.

Dr. *Oates*. I went by another Name, and went in another Habit; and my Lord *Stafford*, tho' his Memory be bad, yet it can't be so bad, but that he must remember something of me.

L. Staff. I don't remember you, I never saw your Face in my Life.

L. H. S. You would have given him half a Crown to have fetch'd Dr. *Perrot*.

L. Staff. It seems then at that time, I took him for a poor Fellow, that I should offer him a Shilling or two.

Dr. *Oates*. It is like I was, but I refused your Half-Crown, and told you I was no Porter.

L. Staff. My Lords, I shall give you Evidence that he was a poor Fellow, since he gives me occasion to prove it; nay, that he was so poor, that he was brought down to accept of 6d. I will prove it by the Party that gave it, now he puts me upon it. But, my Lords, this Dr. *Oates* says he saw some of my Letters, I desire to know what was in them; did he take any Notes? What was in them?

L. H. S. Did you, when you had a sight of these Letters at St. *Omers*, take any Notes out of them?

Dr. *Oates*. What Notes I did take, if I did take any, I have not now in being; but I do not remember that I did take any. Besides, my Lords, we could keep no Papers by us, but what we communicated to our Superiors, and therefore it was still their Care to look after their Papers themselves; and in that Circumstance of Time, if they had known I had taken Notes out of their Papers, it would have been prejudicial to me, and endanger'd my Life.

L. Staff. My Lords, I do infer this one thing further, upon what this Dr. *Oates* tells you; He did seemingly profess himself of the Catholic Religion, and I do stand upon it, that hereupon he is no competent Witness in that which he offers against me: For he being of the Church of *England*, (for I think he professes himself so, and wears that Habit) I say, any Man, let him be who he will in the World, Church of *England* Man or other, that shall pretend himself to be a Papist, for what end soever it be that he so pretends, and dissembles with God Almighty, which he must do to a great Height in receiving the Sacrament, which is by your Lordships and the House of Commons declared to be gross Idolatry, is not easily to be esteemed a Witness. I appeal to your Lordships, to the House of Commons, and every body, whether such a Fellow, that will abhor his Religion, let him do it for any ends in the World, be a Man to be credited; and especially engaging in such a way to such an Height, in that which his Conscience tells him is idolatrous, is not a perjured Fellow, and no competent Witness? No Christian, but a Devil, and a Witness for the Devil. And I appeal to the whole Christian World, if a Protestant of the Church of *England* should come to be a



want to a Catholick, and pretend himself a Papist, and were not so, whether he were fit to be countenanced: As it did once happen to me at *Brussels*, before the King came in, one that was a Protestant came to be my Footman; and he professed himself afterwards to be a Catholick; and when I found he was not so, I told him what a Villain he was, and he ought to be punished severely. I detest such dissembling with God; and I think by the Laws of God and Man, and the Holy Scriptures, such a perjured Man is no Witness. I am sorry I have troubled your Lordships so long; but now if you please to give me leave, my Lords, I will give you my Reasons why I called him now: When I did remember how he had dissembled with God Almighty, as I said before, I did consider with myself, Sure this Dr. *Oates* must have been, ever since he hath returned, of a very severe, strict, and sober Life; for a Man that hath so dissembled with God, ought to shew himself of an exemplary, peaceful, pious, civil Life, to testify the Truth and Reality of his Repentance. But last Night when I came Home, and was sitting by the Fireside, extremely weary, my Daughter here comes in, and asks me if I had heard what had passed between Dr. *Oates* and the Lieutenant; how he called the Lieutenant Rascal and Gaoler: Sure then, said I to myself, this is not the quiet, civil, sober Man, that such a one that hath lived as he hath done, ought to be. And this is the Reason I speak of it, that he should call him vile Names, Gaoler and Rascal; it did not become a Man of his Coat to do it: Whether it was so or no, I do not know; but Mr. Lieutenant, I suppose, will satisfy your Lordship.

L. H. S. What did *Oates* say to you, Mr. Lieutenant?

Mr. Lieut. My Lords, I was desiring Mr. *Oates* that he would keep the People down, because there was a great Crowd; and seeing a great many People come in, he told me they were Witnesses that were to come in: Said I, I believe half of these are not Witnesses; and the Door opening so often, I could keep this Place in no order; so I desired they would stand away that were not Witnesses: Why, says he, you are but a Gaoler. Then I told him, if it were not for his Coat, and I were out of this Place, I would break his Head. Then he called me Rascal.

L. Staff. My Lord Steward, I desire to know whether this be a Witness fit to be believed against any Man.

L. H. S. Mr. *Oates*, this does not become you; 'tis very ill Manners in you.

Dr. *Oates*. My Lords, the Lieutenant of the Tower hath the Law; and I refer myself to the Law, if I have done him any Wrong.

Mr. Serj. *Mayn*. It did not become Mr. Lieutenant of the Tower to tell him he would break his Head.

Mr. Lieut. Why? If any Man out of the Court, or in any other Habit, should tell me I was a Gaoler, I think I should not deserve to be the King's Lieutenant, if I did not break his Head.

Mr. Serj. *Mayn*. Pray tell the Court so. But yet, under Favour, you ought not to threaten him for a Word to break his Head.

L. Staff. My Lords, I do say this to your Lordships, a Man that hath dissembled with God Almighty in so high a Nature, as he acknowledges himself to have done, ought to be a Man of a very severe Life afterwards, and not so passionate and choleric, as it seems this Fellow is.

L. H. S. Will your Lordship proceed?

L. Staff. For this Man truly I shall say no more; I think I have said enough to make him appear a Person not fit to be believed. I would only ask *Stephen Dugdale* a Question, if you please; 'tis but a little, I won't hold you long. I only ask, and if he deny it I'll prove it, whether he was not a Prisoner at *Stafford* for Debt, when he made the first Affidavit?

L. H. S. Were you a Prisoner for Debt at *Stafford*, when you made your first Affidavit?

Mr. *Dugd*. In the Serjeant's Hands I was, my Lords.

L. Staff. For a very great Debt, my Lords, some hundreds of Pounds, and he was a Fellow not worth a Groat. And, my Lords, Dr. *Oates* says I offered him Half-a-Crown, and he refused it: I call *Ellen Rigby* to prove he was so poor he begg'd for Six-pence.

Dr. *Oates*. I will save my Lord the Trouble of proving any such Thing. My Lord *Stafford* says I was a poor Man, and had not Six-pence in my Pocket: I can make it appear to the House of Lords, that some Time since I came in upon this Discovery, I have not had Two-pence in my Pocket, and sometimes I have not had Six-pence; but a Man's Poverty is no Objection against his Honesty.

L. Staff. Where is *Ellen Rigby*, to prove whether she did not give him Six-pence? But then, my Lords, pray ask him, whether he did not swear at a former Trial, he had spent six or seven hundred Pounds more than he got?

L. H. S. Did you say at a former Trial, you were five or six hundred Pound out of Purse?

Dr. *Oates*. My Lords, I will satisfy this House what I said: What Folks write after me, I am not to justify. But, my Lords, I had a Friend of mine presented me with 100*l*. I name not his Name, but if that be questioned, he is a Peer of this House, and will justify it: I had 100*l*. for my Narrative; I had 100*l*. for taking some Jesuits, which is 300*l*. I had for some other Copies that I printed, a Matter of 50 or 60*l*. And now I can make it appear, that as to those Sums which I received in gross, I have spent them all, and more, in this Service: for I have none of the Money now by me.

L. Staff. He makes out but 350*l*. and he swore he was out 700*l*. but he does not swear one true Tittle, nor is any whit to be believed.

Dr. *Oates*. If you expect I should prove it, I can prove it now.

Managers. Be quiet, Dr. *Oates*, we will do you Right anon.

L. Staff. My Lords, I do not know for the present that I have any Thing else to trouble your Lordships with. I remember these Gentlemen, when I asked them if they had any more Evidence to give in, said, No, unless I should give them some Occasion: And now I desire your Lordships, if they bring any new Evidence, that I may have Time to answer to it.

L. H. S. God forbid but you should have Liberty to answer any Objection.

Sir *Will. Jones*. My Lords, before we go about to sum up our Evidence, we shall have Occasion to call some Witnesses, and that will be to fortify that our Witnesses have said, to discover what kind of Witnesses have been made Use of against them, and to falsify what my Lord's Witnesses have said in some Particulars. These will be the three Heads for which we desire to call Witnesses. And because, my Lords, we will not trouble you with making one entire Narration of what they can say, or to what Purpose we call them before they come, desire the Favour that we may acquaint your Lordships with it, still as we call them; for that we think will be the

Way more clearly to be understood. My Lords, we shall begin to make good by other Witnesses, some Things said by Mr. *Dugdale* (for he was our first Witness, and therefore in order of Time we will begin with him.) My Lords, the Prisoner at the Bar was pleased to object—

L. Staff. My Lords, I would not interrupt him; but I would ask whether there are more than two Heads that he proceeds upon to fortify their own Evidence, and to falsify mine.

Sir *Will. Jones*. My Lords, I think we may comprehend all under those two Heads. But, my Lords, you observe, one great Matter my Lord did insist upon Yesterday, was this, That he, it is true, hath seen Mr. *Dugdale* at my Lord *Aston's*; (though by the Way I must say this, my Lord at the first did not seem to know him)—

L. Staff. I did not know him in his Perriwig.

L. H. S. Do not interrupt them, my Lord, for they must have the same Liberty that you had, to go on without Interruption.

Sir *Will. Jones*. We must have the same Freedom my Lord had. I will do his Lordship that Right, he did afterwards recollect himself and say; his Perriwig had made that Alteration in him, that he did not know him. But my Lord was also pleased to say Yesterday, That though he did not know him, yet he looked upon him as so mean and inconsiderable a Fellow, that he did purposely avoid all Discourse with him; and that sometimes when he was a-dry at my Lord *Aston's*, he would not speak to him to help him, nor to call one, to help him to drink. My Lord was pleased Yesterday also to deny that ever he had any Converse with him, but only that one Time, when indeed Mr. *Dugdale* did desire to make Use of my Lord, that by his Interposition he might have leave to go to the Foot-Race. My Lords, your Lordships very well perceive we are now going about to prove a Matter mostly arising within my Lord *Aston's* Family; and what Witnesses we shall have from thence, your Lordships may easily imagine will not be very favourable to us: And if we have not many to this Point, your Lordships will take into Consideration, that those who can give the fullest Proof here, must be those of the Family, and the Religion of the Family. But, my Lords, we will call one or two that I believe will give you Satisfaction that my Lord, the Prisoner, was no such Stranger to Mr. *Dugdale*; that they have been seen together, and alone together: And that is the first Thing we desire to call Witnesses to. Call Mr. *Ansell* and *William Hanson*.

Mr. Hanson was sworn.

L. H. S. Where do you live? Whose Servant are you?

Mr. Hanson. At *Widnal* in *Staffordshire*.

L. H. S. What do you ask him?

Sir *Will. Jones*. I desire, if you be satisfied where he lives, that he will tell you, whether he hath been at my Lord *Aston's*, and seen my Lord *Stafford* there?

L. H. S. Have you seen my Lord *Stafford* at my Lord *Aston's*?

Mr. Hanson. Yes, my Lords.

L. H. S. When?

Mr. Hanson. A little above two Years ago.

L. Staff. Be pleased he may name the Time positively.

Sir *Will. Jones*. My Lord *Stafford* is not so well versed in Prosecutions of this Nature, as to know that he is not to interrupt us while we are examining our Witnesses.

L. H. S. My Lord, your Lordship received no Interruption, nor must give none.

Sir *Will. Jones*. My Lords, we desire this Witness may be asked, whether or no he hath seen Mr. *Dugdale* and my Lord *Stafford* at any Time together?

L. H. S. What say you?

Mr. Hanson. Yes, my Lords.

L. H. S. When, and where?

Mr. Hanson. I cannot justly tell the Time.

L. H. S. Can you tell the Place?

Mr. Hanson. Yes, at my Lord *Aston's*.

L. H. S. Whereabouts?

Mr. Hanson. In my Lord *Aston's* Parlour.

L. H. S. And were they alone?

Mr. Hanson. Mr. *Dugdale* fetched me to my Lord *Stafford*.

L. H. S. And was no body in the Parlour when *Dugdale* fetched you to my Lord?

Mr. Hanson. No, my Lords, I think there was not.

L. Staff. He thinks there was not.

Mr. Hanson. There was not, to my best Remembrance.

Sir *Will. Jones*. My Lords, will you be pleased to ask him the Occasion why *Dugdale* fetched him to him?

Mr. Hanson. My Lord had a Mind to have a Boy.

L. H. S. What was the Occasion that *Dugdale* did come to fetch you to my Lord *Stafford* in the Parlour?

Mr. Hanson. To bring the Boy, my Lords, Young *Hawkins*. Mr. *Dugdale* fetched me and the Boy to him; it was a Boy that my Lord would have to live with him.

Sir *Will. Jones*. Can you tell what Time of the Year it was? Whether Winter or Summer, as near as you can?

L. H. S. Ay, what Time of the Year was it?

Mr. Hanson. Indeed, my Lords, I cannot tell.

Sir *Will. Jones*. I desire to ask him, whether when he went away he left them together?

L. H. S. Did you leave them together?

Mr. Hanson. To my best Remembrance, my Lords, I did. The Boy and I went away together, and we left them at my Lord *Aston's* Parlour Door.

Sir *Will. Jones*. Call *James Ansell*.

L. H. S. Nay, if you have done with him, my Lord *Stafford* may ask him any Questions.

L. Staff. My Lords, I shall tell you how this Thing is: There was a Report that this *Hawkins* was a very good Running Footboy; and this was spoken of at my Lord *Aston's* at Dinner or Supper, I don't know which, nay several Times about that Time: It was when my Lord of *Danby* was Treasurer, and his Son, my Lord *Dunblain*, was much for Foot-Matches, and I had a Mind to have a Footboy to make a Match with him; and I believe *Dugdale* at Dinner or Supper did say that he was a good running Lad, and I might desire to see him, and *Dugdale* did bring him to me I believe into my Lord *Aston's* Parlour; but there was at least six or seven in the Room besides.

L. H. S. My Lord *Stafford*, was this at that Time when your Lordship was at *Tixall* the 12th of September?

Z

L. Staff.



L. Staff. Pray, my Lords, I desire to ask him that Question; I would know what Year it was.

L. H. S. He says it was above two Years ago.

L. Staff. I profess I believe it was one or two Years before I was taxed with this Plot. I did never think I should be questioned about this, or I could easily have brought Witnesses, that were by at that time. It is true, he did come to me; but pray what time of Day was it?

Mr. Hansf. In the Morning, I think it was.

L. Staff. I profess to God; it was after Supper; as I hope to be saved, it was as we were going to Bed, to the best of my Remembrance.

Sir Will. Jones. Did you come into the Parlour after Supper?

Mr. Hansf. I am not sure what time it was.

Sir W. Jones. If his Lordship please to ask him any more Questions; if not, we will call another. *James Ansell.* (Who was sworn)

L. H. S. What is your Name?

Witness. James Ansell.

L. H. S. Where do you live?

Mr. Ansell. At Heywood in Staffordshire.

L. H. S. Did you live with my Lord Aston?

Mr. Ansell. I have been at my Lord's House at Tixall.

L. H. S. But you are not of the Family?

Mr. Ansell. No.

L. H. S. How far is Heywood from Tixall?

Mr. Ansell. A Mile.

L. H. S. Have you seen my Lord Stafford at Tixall?

Mr. Ansell. I have seen a Man they called my Lord Stafford. I did not know him, but as they told me.

L. H. S. Did you ever see Dugdale in the Company of a Man they called my Lord Stafford?

Mr. Ansell. Two Years ago I was at Tixall, and there I saw one, that they said was my Lord Stafford, walking with Mr. Dugdale, whom I did know.

L. H. S. Where was it?

Mr. Ansell. In the Court at Tixall, walking together.

L. H. S. Were they alone? Was there no body else in Company?

Mr. Ansell. None that I saw; there might be more Company, but I saw no more.

Sir Will. Jones. Pray, my Lords, ask how long ago this was.

Mr. Ansell. About a Summer was two Years.

Sir Will. Jones. If his Lordship will ask him any Questions now we have done, he may; otherwise we will call another.

L. Staff. My Lords, I have recollected myself as well as I can in so short a Time, and all I can say, is, Some of my Servants were by, I suppose; and I do assure your Lordships, the other Buisness was above three Years ago: So the Fellow does not know what he does say.

L. H. S. Will you ask him any Questions?

L. Staff. Pray ask him how long he saw me in the Court with Dugdale.

L. H. S. How long was it?

Mr. Ansell. I cannot tell: I did but walk through the Court. I came to speak with Mr. Dugdale, and he was with my Lord.

L. Staff. Did he hear us discourse, any Word we said?

Mr. Ansell. No, I did not.

Sir W. Jones. My Lords, if you please, before Ansell go away, we would ask him a Question to another Point; and that is, For what Reason Dugdale was secured, whether he went away for Debt or no?

L. H. S. Do you know wherefore Dugdale was secured, or why he went from my Lord Aston's?

Mr. Ansell. I can't tell why he went away; whether for fear of the Plot, or no, I can't tell.

Sir Will. Jones. What Discourse was between you and Dugdale about it?

Mr. Ansell. Where? There was a Discourse at Stafford, when he was there.

Sir Will. Jones. But before he went away?

Mr. Ansell. I came to my Lord Aston's one Day, and told Mr. Dugdale I heard say he was concerned in the Plot; for I told him I was amongst some People, and they say you are concerned in the Plot. And this was about a Fortnight after the News was hot in our Country.

L. H. S. What said he?

Mr. Ansell. He laugh'd at it, and said, God blast him if he knew any thing of it.

L. Staff. So he denied it then?

Sir Will. Jones. Pray, Sir, at that time did he say he knew any thing about my Lord Aston, and why my Lord Aston did use him ill?

[Then my Lord Stafford objected Mr. Dugdale was too near the Witnesses, and desired he might go down; and it was ordered accordingly.]

Sir Fran. Win. My Lords, we would ask this Man what he does know of Dugdale's concealing himself after he had heard of the Discourse about the Plot.

Mr. Ansell. I know not that, my Lords; he was fearful of coming in Company; what his Discourse was, I do not know.

Sir W. Jones. My Lords, now, if it please your Lordships, we will go to another Particular. Your Lordships will please to remember, that yesterday there were two Witnesses called by my Lord Stafford, that is, Sambidge and Phillips. Sambidge was the old Gentleman that was deaf, and a little passionate too, because he was once summoned to Litchfield Court: Mr. Phillips was the Minister of Tixall: And both these did testify, That whereas Mr. Dugdale had sworn at a former Trial, that he did give notice before them of the Death of Sir Edmundbury Godfrey upon Monday, which (as I take it) was the 14th of October, there was no such notice given in their Presence. Mr. Dugdale did affirm they were by, and that he gave notice before them and others. This was made use of by my Lord to invalidate the Testimony of Mr. Dugdale, that he should go and affirm at a former Trial, that he did give notice of the Death of Sir Edmundbury Godfrey within two Days after he was killed, before any one knew of it; and Dugdale must needs know it from the Jesuits; and both of these Gentlemen being now in Court, do deny that they heard of it at that time. My Lords, we shall prove to you here, that he did give notice of it at that time, and that they were both present: For Mr. Sambidge, it is not so strange he should not observe it; he was very deaf, and he could hardly hear yesterday; and as he was deaf, so he was very passionate. As for Mr. Phillips, I cannot say that as to him, but perhaps he cannot at that Distance of Time remember; but we will prove by undeniable Witnesses, the notice was given that Monday, and that these Persons were by when it was given.

Sir Fran. Win. This Witness we use to another Purpose besides this; but we will ask him only to this now.

-he I was at the

L. Staff. I desire the Witnesses may stand by themselves.

L. H. S. Let them take care that there be but one Witness at a time, and that no body approach them while they are giving their Testimony.

Sir Will. Jones. We did not make the like Desire as to my Lord's Witnesses.

L. Staff. In troth, you might with all my Heart, if you would.

Sir Will. Jones. It may be so; but we did not fear them so much. Swear William Goldsmith.

(Which was done.)

Sir Will. Jones. I would begin with James Ansell.

(Who appear'd, and stood up again.)

Sir F. Win. If your Lordships please, we would ask him what he knows of a Discourse about the Justice of Peace's Death; to tell the Time, and what it was that was said? We only ask general Questions.

L. H. S. What Discourse did you hear of the Murder of a Justice of Peace, and when?

Mr. Ansell. My Lords, I heard it at Tixall.

L. H. S. When did you hear it first?

Mr. Ansell. The 14th of October.

L. H. S. Who did you hear it from?

Mr. Ansell. From Mr. Dugdale.

L. H. S. The Letter was dated the 12th. Where did you hear of it?

Mr. Ansell. It was at one Eld's House, an Ale-house in Tixall.

L. H. S. Where?

Mr. Ansell. At an Alehouse hard by my Lord's.

L. H. S. Who was by?

Mr. Ansell. When that was spoken, there was I, and William Hanson, and Mr. Sambidge, and Mr. Phillips.

L. H. S. Did Dugdale speak with them at that time?

Mr. Ansell. Yes, he was with them at that time, but he spoke with me at the Parlour; for he sent for me into the Parlour.

L. H. S. Then at the same time he spoke it to you, and they were in the House?

Mr. Ansell. Yes, he came from them to me into the Parlour, and went to them again.

Sir Will. Jones. My Lords, I hear him speak to the Day of the Month; if you please to ask him if he can tell what Day of the Week it was?

Mr. Ansell. It was on a Monday.

L. H. S. That is right, the Letter was dated on Saturday the 12th of October.

Sir F. Win. I would ask him, whether afterwards he came into the Room where Mr. Phillips the Parson was?

Mr. Ansell. Yes.

Sir F. Win. Was there any Discourse after you came in, about the Death of a Justice of Peace?

Mr. Ansell. I cannot tell that.

L. H. S. Will you please to ask him any thing, my Lord?

L. Staff. Indeed, my Lords, he says nothing concerning me; therefore I say only this, I desire to know, if he can tell, what time of Day it was?

Mr. Ansell. It was the Forenoon.

Sir Will. Jones. Then call William Hanson again.

(Who appear'd.)

Sir F. Win. We call him to the same Question. Do you declare to my Lords what you know of Mr. Dugdale's acquainting you with the Death of a Justice of Peace, and when it was.

Mr. Hansf. I heard Mr. Dugdale say at old Eld's House at Tixall, There was a Justice of Peace murder'd that lived at Westminster.

L. H. S. When did he tell you so?

Mr. Hansf. The Day that I went to run the Race, the 14th of October.

Sir F. Win. Can you remember what Day of the Week it was?

Mr. Hansf. It was on Monday.

L. H. S. Was it the Forenoon or Afternoon?

Mr. Hansf. The Forenoon.

L. H. S. What Company was in the House when he told you of it?

Mr. Hansf. Old Mr. Sambidge, and Mr. Phillips the Parson of Tixall.

L. H. S. Were they in the House at that time?

Mr. Hansf. Yes.

L. H. S. Were they by when the Discourse was?

Mr. Hansf. Mr. Sambidge was going to drink a Bottle of Ale, as he said, at my Lord's Bowling-Green; and for a while he sits down, and presently Mr. Phillips comes in and sits down, and Mr. Dugdale came out of the Parlour into the Room where we were come: Said I, What News? Said he, They say there is a Justice of Peace murder'd at Westminster.

Sir F. Win. Was Phillips in the Room?

Mr. Hansf. Yes, he hath forgot it, but he was there.

L. H. S. Did Phillips hear it?

Mr. Hansf. He might have heard it if he would.

L. H. S. Had you any Discourse with Phillips about this since?

Mr. Hansf. No, my Lords.

Sir F. Win. He is positive both as to the Day of the Month, and as to the Week, and that both of them were present.

Sir Will. Jones. My Lords, we shall prove to you now, that the Post which comes out of London on Saturday, comes to this Place on Monday Morning; and those which come out of Tuesday, come there on Thursday Morning; and the Post which goes out of London on Thursday, comes to this Place on Saturday Morning.

L. Staff. He says the Post comes such and such Days, I own it, and in the Morning too.

Sir Will. Jones. Then I go on, my Lords, to another Point, which will be a farther Confirmation of the Matter. For, my Lords, we will prove to you, and that by Men of Quality, that the Noise of the Murder was in that Country, the Wednesday and Thursday following the Murder. Your Lordships please to observe, Sir Edmundbury Godfrey was killed the twelfth of October; he was found the Thursday following, which was (as I take it) the 16th or 17th of October. We will prove now, that the Noise and Knowledge of the Murder was in the Country about Tixall, before he was found here near London. Now we only bring this as a Confirmation of this Matter, that it was revealed at the Alehouse, and so it went about the Country. And for this we call Edward Birch, Esq; and John Turton, Esq;

Sir F. Win. Before we examine them, I would state the Time. Sir Edmundbury Godfrey was missing on Saturday, which was the 12th of October; his Murder was not discover'd till Thursday. We call these Persons to a

double



double Purpose; the one to fortify what our Witnesses have said, and the other to shew, that this Man was dispatched by these Men's Confederates, because they knew it so soon; which could not have been, but that they were in the Conspiracy themselves.

L. Staff. I desire only that he may say whether he means me among the rest?

Sir F. Win. My Lord, I will do you no wrong, I speak of those at *Tixall*.  
(Then Mr. Birch was sworn.)

L. H. S. When did you hear of the Death of Sir Edmundbury Godfrey, Mr. Birch?

Mr. Birch. My Lords, I did not hear any Thing of the Death of Sir Edmundbury Godfrey, till the *Saturday* Post; but, I presume, that which these Gentlemen call me for, is this: I did hear before *Thursday*, I think *Tuesday* was the first Day, that there was a Justice of Peace of *Middlesex* killed, and it was thought the Papists murdered him; and this on *Tuesday* and *Wednesday* was all over the Country, that is, *Tuesday* after his Death. For I'll tell your Lordships how I came to take Notice of it; for hearing such a Report in the Country, I did not so much as take Notice of it; but being at the King's-Bench Bar, at the Trial of *Green, Berry, and Hill*, for the Murder of Sir Edmundbury Godfrey, I found upon the Evidence, that the Body was not found till the *Thursday* after he was killed; that made me recollect myself as to what I had heard in the Country: And as I stood at the Bar, I told several Gentlemen that I did perfectly remember, before *Thursday* it was discoursed of in the Country by several Gentlemen where I lived.

Sir Will. Jones. Call John Turton, Esq;

Sir F. Win. Some of my Lords here, I perceive, desire he should be asked a more particular Question.

L. H. S. I desire to ask him this: You heard of it, you say, on *Tuesday*, that a Justice of Peace of *Middlesex* was killed; I desire to know who you heard it from?

Mr. Birch. Truly, my Lords, I can't tell: For I'll tell your Lordships, I have some certain Days that I constantly appoint to be at Home in, when People come about Business to me. Among these People, several came that asked me what News I had from *London*. I told them, I had received a Letter or two by the Post, and I shewed them those Letters, there was little or nothing in them. Thereupon they asked me, if I did not hear of a Justice of *Middlesex* that was killed? No, said I: How come you to hear it? Says one, I come through *Cank*, (which is within half a Mile of mine own House, and as I came through, there came a Person from *Heywood*, that said, 'tis all the News about *Tixall* and *Heywood*, and that Part of the Country. And this was said to me in my own House.

Sir F. Win. How far is *Heywood* from *Tixall*?

Mr. Birch. About a Mile.

Sir F. Win. Now, my Lords, I would ask Mr. Turton to the same Business.

(Mr. Turton was sworn.)

L. H. S. Mr. Turton, pray hear: When did you first hear in *Staffordshire* of the Death of a Justice of Peace of *Middlesex*?

Mr. Turton. My Lords, There are two Races in that Country, at a Place near *Lichfield*, and they are about the Middle of *October*; the one that Year was the 15th, the other the 18th. The one the *Tuesday*, and the other the *Friday*. I was at both of them: And one of the Days, which I cannot be positive in, there was one Mr. *Whitehall*, a Justice of Peace in *Staffordshire*, called me from the Company, and desired to speak with me by myself. Said he, Do you hear any News? No, said I. Do you hear nothing, said he, of a Justice of Peace that is murdered? (I then had not heard of Sir Edmundbury Godfrey's being missing) No. Says he, Don't you hear he is murdered? Do you know him? Yes, said I: How do you hear it? Says he, 'tis a Report about us. But I did not then believe it: But the next Post-day, which was *Monday*, I did hear it. It was either *Tuesday* or *Friday*, one of those Days.

Sir W. Jones. If it were either one or t'other, 'tis as strange, and the Evidence as strong; for his Body was not found till *Thursday*.

Sir F. Win. And will your Lordships please to observe, that by that Time the Report had got the Name of *Godfrey* too, when at the same Time we in *London* did not know what was become of him.

Mr. Turton. He asked me if I knew Sir Edmundbury Godfrey: Said he, I hear he was an active Justice of the Peace against the Papists; and he made this Inference, We had need have a Care what we do, for we shall be all sacrificed.

Sir W. Jones. My Lords, Will your Lordships be pleased to observe, that Yesterday there were some Witnesses called to disparage Mr. *Dugdale*; and the first Man, as I can remember, was a very substantial Gentleman, called Mr. *Robinson*: I think he was not able to give an Account of his Employment, but he was a Gentleman that lived upon his Money; I remember those were his Words. My Lords, we shall call (without telling you what they will say) some Witnesses to prove the Condition of this Gentleman, what Reputation he is of, and what is his Conversation. And we first call my Lady *Gerard*.

L. Staff. My Lords, pray give me leave to say one Word—But 'tis no great Matter, 'tis not worth the speaking.

L. H. S. What can you say, my Lord?

L. Staff. It was only a Thought of my own, not worth troubling your Lordships with.

(Then the Lady Gerard appeared, and was sworn.)

L. H. S. Does your Ladyship know one William Robinson?

Lady Gerard. No, my Lords.

Sir Will. Jones. He hath several Names, we desire he may be called.

L. H. S. Call Robinson the Upholsterer.

(He was called, but appeared not.)

Sir Will. Jones. I perceive we mistake one Lady for another. We desire Mr. Booth, a Member of the House of Commons, may be sworn.

(Which was done in his Place)

L. H. S. My Lord Stafford, send for Robinson your Witness.

L. Staff. I believe he is here; but if he be not, one that belongs to me I have sent to see for him: Whether he be a good or bad Witness, I do not know personally.

Sir W. Jones. Mr. Booth knows him very well, he saw him Yesterday, and so we may venture to ask him the Question.

L. H. S. Did you see Robinson the Witness yesterday?

Mr. Booth. Yes, my Lords, I did.

L. H. S. Do you know him?

Mr. Booth. My Lords, I do know him very well, though I have not seen

him often: For indeed, my Lords, he behaved himself so the first Time that I saw him, that I believe I shall never forget him. My Lords, I am better acquainted with his Character than his Person, though I know the Man very well; and truly the first Time that ever I was in his Company, he gave me no Encouragement ever to desire it again; for, if you please, I'll tell you how I came to know him. He told your Lordships that he came into *Cheshire* at a Cocking; it was at that Time that I saw him: For upon the *Sunday* after the Cocking, I was invited to a Neighbour's, about two Miles from Home. We were set down to Dinner, and we had not sat long, but this Man comes into the Room where we were; there was an empty Place at the lower End of the Table, and he sits him down, and began a Discourse to ridicule the Lord's Day, in such a Manner as I never heard the like. And the rest of his Discourse was full of a great deal of Contempt of God Almighty, and all that was sacred. All his Discourse at Dinner was very profane. It was not in mine own House; and because it was not taken Notice of by the Master of the House, and he coming under the Protection of a young Gentleman, I did not what else I should; for I should have made him hold his Tongue, or have used it to better Purpose: The whole of his Discourse was so atheistical and profane, that I never heard the like in my Life. When Dinner was done, he used a great many Inticements to draw the Company into Play, by asking what would they say, if they should see such and such Things to be done? And at length he pulls out a great many Dice out of his Pocket, and behaves himself in that Manner, as People do that would draw in others to play; and they that had better Skill in it than I, said that they were all false. When I saw this, I desired him to leave our Room, or to forbear; for, said I, if this be the Entertainment of the Day, I must leave the Company: Then they commanded him to desist. This is all that I do know of my own Knowledge: But I shall acquaint you what I believe; for I have heard it from very considerable Persons, whom I dare credit: For the Man run much in my Mind, because I never saw so ill a Man in my Life. Coming Home, I was speaking to some of my Family; says I, Yonder I met with the strangest Fellow that I ever saw in my Days, he is fitter to be hanged than any Thing else. Oh, Sir, said they, there is such a Fellow hath cheated I know not how many at the Town where the Cocking was. The next Day, I think it was, or shortly after, I had Occasion to go to that Town; and many People came and complained to me of his Cheats, to a very great Degree. They asked me, what they should do? Said I, You have nothing to do but indict him for a Cheat. Why, said they, will you take no Course with him? Said I, What Course can I take? I am turned out of the Commission of the Peace, else I know enough to bind him to his good Behaviour. After this, I had Occasion to go into *Lancashire*, and there I found he was better known than trusted. There were very loud Complaints against him, and some would have given twenty Pound to meet with him. I heard afterwards he went into *Staffordshire*, and he changed his Name wherever he went; but he soon discovered himself, and all thereabouts he goes for a notorious Cheat. This is all I can say of him.

L. Staff. My Lords, Be pleased to give me leave to say one Word. I assure you, if I had thought this Man had been such a Fellow as now he proves, I would not have brought him before you. I never knew what he was in my Life, nor heard of his Name till *Saturday* last.

L. H. S. It may be so, my Lord: But your Lordship must take Notice, this is the Man that gave the most important Evidence, that *Dugdale* should corrupt him to swear against you for Money.

L. Staff. Give me leave to observe upon that, my Lords, That if *Dugdale* knew him to be a cheating Fellow, he might think him the liker to take Money to forswear himself.

Sir W. Jones. My Lords, We shall not reply now, but observe anon, how this cheating Fellow comes to swear for my Lord at this Time. But we desire an Honourable Peer of this House may give some Account of him, and that is the noble Lord the Earl of *Macclesfield*; I think he may be known to your Lordships.

(Then the Earl of Macclesfield stood up.)

L. H. S. Pardon me, my good Lord, my Lord must be sworn.

Earl of Macc. Before I am sworn, I would know of your Lordships, whether I should be sworn or no? for your Lordship shall not make me be sworn, unless my Lords say I should.

L. H. S. I should not offer it, if there were any Colour of doubt in it.

(Then my Lord was sworn.)

Earl of Macc. My Lords, I have nothing to say against this Man, but what he said to me, and before a Justice of Peace too; for I did take this Man when he had run away from my Lord *Gerard*. He had cheated many of his Servants. I caught him on the Way running to play his Tricks somewhere else, and I intercepted him; but tho' I was a Justice of Peace there, yet because it was in a Manner my own Cafe, I would not commit him, till I had carried him before another Justice of Peace. So the Man comes up to me; says he, My Lord, have you a Mind to have your Son-in-law bubbled? I have been only teaching him how to avoid being cheated; I acknowledge myself to be a Cheat, and I would teach him to avoid them. I am going now into *Staffordshire*, and that was all I intended to his Lordship: I am a Rogue I confess. And upon this a Justice of Peace comes in, and while they were examining of him, we bid some that were by to search him, and they found in his Pocket false Dice; and truly the Justice nor I did not know whether they were true or false. Says he, You don't know what to do with these, but I do. This is all I can say; but in all the three Counties of *Staffordshire*, *Cheshire*, and *Lancashire*, there are several Men that I see here, that know his Life better than I do; for 'tis his common Practice. And I believe, my Lords, the Judges must know him; for it was his common Practice at all Assizes and great Meetings to play these Pranks.

Sir W. Jones. My Lords, We will not trouble your Lordships any further as to *Robinson*; if he were here, perhaps my Lady would know him; but having two such Witnesses, I think we need not trouble ourselves nor you any more about him.

L. H. S. Have you done with my Lady Gerard?

Sir W. Jones. Yes, and we beg her Pardon for this Trouble. My Lords, your Lordships will be pleased to remember, there was one *Holt* was produced as a Witness by my Lord *Stafford*; and your Lordship, when you look on your Notes, will remember, he testified to this Purpose: That *Dugdale* sent an Horse for him to *Stafford* Town; which Horse brought him to the *Star* Inn, and there *Dugdale* did offer him forty Pounds to swear, That one Mr. *Moor* carried away *Evers* the Jesuit. My Lord, we will call some Witnesses to this Mr. *Holt*; you will find him to be something a-kin to Mr. *Robinson*, and, as we suppose, of nothing a better Reputation than he.

The



The Witnesses will give you an account of his Pranks. Call *Sampson Rawlins*, and *Lander*. (*Rawlins stood up, and was sworn.*)

L. H. S. What is your Name?

Witness. *Sampson Rawlins.*

L. H. S. What do you ask him?

Sir W. Jones. We desire to ask him if he knows *Samuel Holt* the Blacksmith?

L. H. S. Do you know *Holt*?

Rawlins. Yes.

Sir F. Win. Acquaint my Lords what Reputation he is of, where he lives, and what he is.

Rawl. He is counted to be a very lewd, loose Fellow.

L. H. S. Why so?

Sir W. Jones. What hath he done?

Rawl. He is counted a drunken, lewd Fellow.

Sir W. Jones. Is he of an ill Reputation in the Country where he lives?

Rawl. Yes, he is so.

L. H. S. For what?

Rawl. 'Tis said in the Town he keeps another Man's Wife.

Sir W. Jones. Is there any other Fault he hath?

Rawl. He said there were none but Rogues would take Mr. *Dugdale's* Part; whereas I never knew any harm by Mr. *Dugdale*, and I have known him this fourteen or fifteen Years: I dealt with him, I was a Taylor to the Family, and he ever paid me very honestly and well.

Sir W. Jones. Have you heard of Mr. *Holt* any other ill thing besides what you speak of?

Rawl. He broke open my Lord *Aston's* Wine-Cellar, and stole several Bottles of Wine; wherefore my Lord *Aston* bid Mr. *Dugdale* send him to the Goal: but he curry'd favour with Mr. *Dugdale*, and so kept in with him, that he afterwards begged for him of my Lord to forgive him; and now he comes to evidence against Mr. *Dugdale*, that was his sure steadfast Friend, and saved him from the Goal.

L. Staff. I would ask this Witness a Question—

Rawl. And because I took Mr. *Dugdale's* Part, saying, he was an honest Man (and he was so to me, and all others, as far as ever I heard) he met me, and would have murder'd me.

L. H. S. When was this?

Rawl. Since last Term, when I was up here. And likewise *Sawyer* took a Pot, and would have don'd my Brains out.

Sir F. Win. My Lords, I think this Man was summoned as a Witness, to attend at my Lord *Aston's* Trial. What Occasion brought you to London at that time?

Rawl. I was subpoena'd up. And when I came home to my Wife and Children, they grossly abused me, and said I was a Rogue, because I came up upon his Majesty's Service.

L. Staff. Pray, my Lords, ask him whether *Holt* was my Lord *Aston's* Servant or no.

L. H. S. Was *Holt* a Servant to my Lord *Aston*?

Rawl. He was a Smith hard by his Gate, and he worked to the Family.

L. H. S. Were you subpoena'd up to the Trial of my Lord *Aston*?

Rawl. Yes.

L. H. S. And it was for coming to that Trial he offered to murder you?

Rawl. Yes, I have several Witnesses of it. And by the Blow that *Thomas Sawyer* gave me, for a good while I could not lay my Head on the Pillow.

Sir W. Jones. Call *Thomas Lander*. (*But he did not appear, being gone away sick.*)

Sir W. Jones. Because we would not lose your Lordships time, seeing the Man we call for is gone away sick; we will call a Witness as to another of my Lord's Witnesses, *John Morral*. Call *Thomas Thorne*. (*Who was sworn.*)

Sir F. Win. My Lords, if that other Man come by-and-by, we hope your Lordships will give us leave to ask him a Question to the Point which we are now gone over. But my Lord *Stafford* did produce one *John Morral*, a Barber that lived at *Ridgely*, who said, that Money was offer'd him to swear against Sir *James Symons*, and Mr. *Howard*, and others. We call this Witness to give your Lordships an account what this *Morral* is, and how he hath behaved himself in this Business.

Sir W. Jones. What do you say about *John Morral*? Do you know him?

Thorne. Yes.

L. H. S. What do you know of him?

Thorne. I know he is a Man that used to come often to my Lord *Aston's* to *Tixall*; to trim him, he is a poor Fellow that walks up and down the Country, and hath little or nothing to live on.

L. H. S. Is he poor and needy?

Thorne. Yes, he hath been sued for Money, and I have been contributory to keep him out of Prison.

Sir W. Jones. I ask you in general, is he of a good or bad Reputation?

Thorne. Indifferent.

Sir W. Jones. 'Tis modestly said. My Lords, your Lordships have heard what kind of Witnesses have been brought against us: For two of them, you have had particular Matters; for a third, our Witness speaks modestly, that he is a Man of indifferent Reputation. But now, my Lords, we must prove what Endeavours have been used to get other Witnesses against our Witnesses; and for that, I desire to call one *Simon Wright*, to tell your Lordships what hath been offered him to swear against *Dugdale*, and by whom. (*Wright stood up and was sworn.*)

Mr. Foley. My Lords, we desire this Witness would give your Lordships some account what Endeavours have been used by Offers of Money, or otherwise, to make him swear against *Dugdale*, and by whom.

L. H. S. Hath any body endeavoured to persuade you to swear against *Dugdale*?

Wright. Yes, my Lords.

L. H. S. Tell your whole Story, who it was, and what was offer'd you?

Wright. The first time I was employed was presently after the Murder of Sir *Edmundbury Godfrey*; and it was by one Mr. *Plessington*, that was in custody about that matter: And he sent me one Sunday Morning to the Marquis of *Winchester's*, to desire him to consider what a Charge he lay at; and my Lord did send him Word, he could not expect to be discharged so soon. The Tuesday after he was discharged; and afterwards coming unto me, I told him I was glad he had so good Friends to get out so soon. He told me, were I in the same condition, I should have as good, or better.

Whereupon Mr. *Plessington* and I were as good Friends as any about the Town. I was his Barber, and Barber to Mr. *Dugdale*, and we were all great Cronies. And *Plessington* told me, if I could find a way to take off his Evidence, or destroy him, I should have seven hundred Pounds. I went to enquire out where I might have a Security for the Money, and Mr. *Reeves*, an Apothecary in *Chancery-Lane*, did proffer me his Note, and so did Mr. *Dray* the Scrivener: but I did not, nor had the Money. And several times, particularly at the Trial of Mrs. *Price* and Mr. *Taffborough*, they would have had me sworn quite blank, That he would have hired me to have sworn against them. And afterwards they would have had me own I was forsworn, and they would get me a Pardon.

L. H. S. What had you sworn?

Wright. What I heard Mrs. *Price* say at the *Horst-shoe*, in *Chancery-Lane*, as to the blasting of *Dugdale*, as may be seen in the Trial.

L. H. S. Who offered you that seven hundred Pounds?

Wright. My Lord *Bellasis's* Steward.

L. H. S. What is his Name?

Wright. *Plessington*.

Sir F. Win. My Lords, I think he says he was to swear against Mr. *Dugdale*; I desire he would explain himself more particularly, and tell who it was that offered the Money to swear against *Dugdale*.

Wright. Mr. *Plessington*, my Lords. And since the Trial of Mrs. *Price*, they did persuade me to write a Paper for the blasting the Reputation of *Dugdale*, and to shake his Credit by it. And that they carried to Mr. *Drayton* and Sir *James Symons*, and they being satisfy'd, would have me write again to those Gentlemen, and they framed a Letter for me to write. And thereupon Mr. *Longmors* (I know the Gentleman if I see him again) told me that Sir *James Symons* was better able to perform, than *Dugdale* was to promise; and if I would stand by it, I should be a happy Man.

L. H. S. What had you said in that Paper?

Wright. I had said according as they directed me, That Mr. *Dugdale* would have given me Money to swear against Sir *James Symons* and Mr. *Gerard*.

L. H. S. Did you swear that?

Wright. No, I did not, but I was to have done it.

L. H. S. How came it to pass you did not agree with them?

Wright. My Lords, I have had four Pounds in hand, and that I had by reason Poverty came upon me. And my Lord *Bellasis's* Steward came and lay with me, and spent twenty Shillings upon me; but finding that I was not absolutely true to them, nor like to go through, they distrusted me: and I borrowed an Horse of Capt. *Chetwin*, and got down into the Country, where I have been since July last, till I was fetch'd up by a Messenger to come and give Evidence for the King. And there I received a Letter from my Lord *Aston's* Agent, That if I would call at *Stafford*, and come up with my Lord's Witnesses, they would bear my Charges up to London. I have the Letter in my Pocket.

L. Staff. If it please you, he may shew the Letter. (*Which he did.*)

Clerk. This for *Simon Wright*, a Barber, at *Deliver with Care*, Subscribed, Your loving Friend *Abnett*.

*Simon Wright*,

I have just now received a Letter from the Lord *Stafford*, wherein my Lord mentioned *Wright* to be one of his Witnesses, and desired me forthwith to give *Wright* notice, that, if possible, he should be at London on the Saturday Night next, his Trial being to be on the Tuesday after; therefore if he pleased to come to him, he should give him Money to bear his Charges up, and he should come up with my Lord's Witnesses.

(This is the Substance of the Letter as it was taken.)

Sir W. Jones. I presume your Lordships will be pleased to take notice, he was intended a Witness for my Lord; and it was supposed then that he was able to say something, but he was not produced by my Lord yesterday.

L. Staff. Pray, my Lords, give me leave, as to this Witness; I desire, if you please, I may have time to prove something against this Man till tomorrow: I have enough against him.

Mr. Serj. Mayn. You will find another Witness, I suppose, by that time.

L. Staff. No, I will not find him, I have him already; I have enough against this Fellow.

L. H. S. You shall have time to say what you will, my Lord.

Mr. Serj. Mayn. I would my Lord would name his Witnesses.

L. Staff. I will name him to you, since you ask it, 'tis *Dodd*; he knows what I mean well enough.

Wright. I don't know him, my Lord, I assure you.

Sir Will. Jones. My Lords, we will go on now to another Matter. My Lord *Stafford* was pleased to object, that Mr. *Dugdale* did talk much of Letters and Proceedings, but was able to shew none of them. My Lords, we will give an Account how that comes about: Mr. *Dugdale*, as in part hath been proved already, was apprehensive of being accused for the Plot; nay, I think we shall prove he was afraid he had been in the Proclamation against those Traitors and Jesuits that were fled. We shall prove, that Mr. *Dugdale*, to secure himself, and his then Friends (for he was not then come over to make any Discovery) did burn a great many Letters and Papers that did relate to those Proceedings, and did not leave any thing remaining; hoping thereby to prevent a Discovery. We will call Witnesses that were by when it was done, and I think that will be some Answer to this Objection. Call *Elizabeth Eld*, and *Anne Eld*. (*Elizabeth Eld sworn.*)

Sir F. Win. My Lords, if your Lordships please, we would ask her this general Question; What she knows of Mr. *Dugdale's* burning a great many Letters and Papers, at what Place, and about what time?

*Elizabeth Eld*. I cannot possibly say to the time; I burnt some Writings for him when he went away, he desired me to burn them, he did not tell me what Writings they were. He said, the Times were troublesome, and if he should be sick upon the Road where he was going, he would not have all his Papers seen; but he desired me to burn them. And I took and burnt them all but one Book; and my Sister asked if that Book should be burnt: he said, No, there was nothing of Treason in it. I asked him if there were any thing of Treason in the others; and he said, Do you think there was?

Sir Will. Jones. How long was this before he went away?

*Eliz. Eld*. That Morning when he went away.

Sir Will. Jones. How many Papers were there?

*Eliz. Eld*. I cannot say how many.



Sir Will. Jones. I do not ask you the Number, but the Quantity, was there a Bushel?

E. Eld. I cannot say; they were rolled up, and put in his Pockets and his Breeches.

L. H. S. Were they Parchments or Papers?

E. Eld. They were Papers.

L. H. S. Were they Letters?

E. Eld. I did not see what they were, but they were wrapt up together; they might be the Accounts of the House, for what I know.

Sir F. Win. But she says, as I take it, that Mr. Dugdale said there was Treason in them.

E. Eld. No, he said, Did I think there was? He said it was no Matter for burning that little Book, there was no Treason in that; and when I asked him if there was any in the others, he said, Do you think there was?

L. H. S. Was it one or two Bundles?

E. Eld. There were several bundles, they were not tied up, but taken in Handfuls and thrown into the Fire.

Mr. Foley. If my Lord Stafford will ask her no Question, we will call up another.

E. Eld. My Lords, I did see Mr. Dugdale take a Glas of Cyder, and I heard him say, and wish it might be his Damnation, and he might sink in the Place where he stood, if he knew any Thing of the Plot.

Sir Will. Jones. I pray what Religion are you of? I don't ask you to disparage you.

E. Eld. A Roman Catholick.

L. H. S. When was it that he said that?

E. Eld. When he was in Staffordshire.

(Anne Eld was then sworn.)

Mr. Foley. Tell my Lords what you know of any Papers that were burnt by Mr. Dugdale, or by his Direction, and at what Time.

A. Eld. Mr. Dugdale came to my Father's House over Night, and the next Morning (before he went away) he brought a great many Papers he had in his Breeches, and in his Pockets, bundled together, and he desired us to burn them in the Flame of a Candle.

L. H. S. Why did he desire you to burn them?

Anne Eld. He said, the Times were troublesome, and being to travel, he was to go to divers Places, and if he were taken, People would think him a Plotter, having all those Papers about him.

L. H. S. Did he burn the Book at that Time?

A. Eld. No.

L. H. S. Why not?

A. Eld. I found that Book, and asked him, if that should be burnt; he said, No, lay that by, it might do good seven Years hence, there is no Treason in it. Says my Sister to him, Is there any Treason in the rest? Says he, Do you think there is? That was all.

Sir Will. Jones. Not to trouble you longer, my Lords, upon this, your Lordships will be pleased to remember, Yesterday my Lord Stafford was pleased to offer by Way of Evidence, as if Mr. Dugdale was a Man of an ill Reputation in these Particulars, That he had defrauded my Lord Aston, that he was a mean Man, run in Arrear to my Lord; and that being in Necessity, he became a fit Instrument to give false Evidence. We shall shew, That Mr. Dugdale was a Man of Estate; that both before, and since he came away from my Lord Aston, he hath made it his Business to desire my Lord to come to Account; that he hath pressed him, and that he does believe, and hath Reason so to believe, that there is Money coming from my Lord Aston to him, and that a considerable Sum. Now, my Lords, if we shall make it appear, that he hath made it his Business to come to Account with my Lord, I hope it will not be supposed that he is afraid of it, or so needy, or so mean. For this we call Michael Noble and Stephen Colledge.

(Michael Noble sworn.)

Sir John Trevor. What do you know of Mr. Dugdale, and my Lord Aston?

Mr. Noble. My Lords, I can say little or nothing as to Mr. Dugdale, for that I have never been acquainted with him, but since the Plot, and he came to be an Evidence; but Mr. Dugdale desired me to assist him as much as I could, to make up his Accounts with my Lord Aston. And we were twice at the Tower, one Time we spoke with my Lord with great Difficulty; another Time we could not see him. There were three Books of Account, two my Lord would let us see, but the third, wherein all the Discharges were, as Mr. Dugdale said, he would never let us see, that is all I can say.

(Then Stephen Colledge was sworn.)

L. H. S. What is your Name?

Witness. Stephen Colledge.

Sir Will. Jones. Declare to my Lords what you know concerning Mr. Dugdale's pressing my Lord Aston to account with him.

Mr. Colledge. In January last I went along with Mr. Dugdale, at his Request, to the Tower, with one Mr. Noble a Barrister of the Temple, and one Mr. Boson of Lion's-Inn, in order to the making up Accounts between Mr. Dugdale and my Lord Aston; for he told me he was going thither for that End. When we came thither, we met with one Captain Hawley, who belongs to the Lieutenant of the Tower, and we desired him to go to my Lord Aston, and tell him Mr. Dugdale was there, in order to make up his Accounts with him. He went, and brings an Answer back again, that my Lord was not at Leisure to speak with Mr. Dugdale then, nor none of us from him. And Mr. Hawley said he was then going up with the Lords to Nine-pins. Mr. Dugdale said, he was very ill used, for he had been several Times there before, and he could not be admitted to speak with him. He hath a little Book, says he, (meaning my Lord) wherein there is an Account made up under his own Hand, of almost two or three hundred Pounds; which Sum I cannot say, but one of them I am certain of, which he hath denied several Times that he had it, (but I can prove that he hath it:) If he will be pleased to produce that Book, we need not be a Quarter of an Hour in making up the Account. He did speak of some other Sums he had to place to Account, but so much was made up already. But Captain Hawley saying he would not speak with him, nor any of us from him, I did take the Liberty to say to Captain Hawley, that it was hard his Lordship, and his Party should abuse Mr. Dugdale at that rate, to make him his Debtor; for now I understand by what Mr. Dugdale said, my Lord was his Debtor: And said I, if I can persuade Mr. Dugdale, he shall publish his Case, for the Protestant Interest suffered by it, that he should be made a Debtor to my Lord when he was not so. And I believe Captain Hawley told my Lord Aston what I did say; for when he came back again from my Lord Aston, he said, my Lord did acknowledge he

Vol. III.

had that Book, and it was ready to be produced, but he would stay till a Counsellor of his came out of the Country, and till he had spoke with the Lieutenant; for he would not speak with Mr. Dugdale unless the Lieutenant were by, and in three or four Days Time he would send for him: But I never heard that he sent for him ever since. If it please your Lordships, I have one Thing more that I remember: There was a young Man that belonged to my Lord Aston's Family, that heard Mr. Dugdale was at Captain Hawley's Chamber, and came to see him, and paid a very great respect to him, and would stand bare to him, though Mr. Dugdale desired him to put on his Hat several Times. Some of us asked him, whether Mr. Dugdale was thought to be such a Knave, when he lived with his Lord, as they would have made him since. No, said he, Mr. Dugdale was as honest a Gentleman as ever lived in our Family. I remember my Lord Aston's Man said this to us then.

L. Staff. My Lords, will you be pleased to give me leave; if I speak impertinently, I am under your Correction; I conceive I shall have something to answer to this, but I would first know whether I may desire of your Lordships, that I may have my Lord Aston here to give an Account of this Matter.

Sir Will. Jones. If he were here he could not be heard, being a Person accused for the same Offence.

L. H. S. My Lord, he stands indicted for the same Treason, and cannot be a Witness.

L. Staff. I beg your Pardon, my Lords.

(Nicholas Boson was sworn.)

L. H. S. What is your Name?

Witness. Nicholas Boson.

Sir Will. Jones. Declare to my Lords what you know concerning Mr. Dugdale's pressing my Lord Aston to come to an Account.

Mr. Boson. In January last, I met with Mr. Dugdale, and one Mr. Noble, and one Mr. Colledge. And Mr. Dugdale desired us to go down with him to the Tower. He said he had an Order of the Council to pass his Accounts with my Lord Aston; and when we came there, we enquired for Captain Hawley, and desired him that he would acquaint my Lord Aston, that he was there to account with him. Captain Hawley went up to my Lord Aston, and brought Word back again, my Lord was not at Leisure, or would not speak with him, or to that Effect; whereupon Mr. Dugdale said, it was very hard that he should be aspersed to owe my Lord Money, and he would not come to Account with him. For my Lord Aston had a Book or Books in his Custody which he would stand by, and they would determine the Business between them; that my Lord Aston was almost two hundred Pounds in his Debt. And pray, says he, Captain Hawley, do me the Favour to go to my Lord Aston again, and desire him that he will be pleased to produce that Book or Books. If I owe my Lord any Money, I am ready to pay him. And if he owe me any, I hope his Lordship will do the like by me; as I am sure he does two hundred Pounds. Captain Hawley went away, and brought this Answer, that his Lordship would send for him in some short Time, as soon as a Counsellor did come out of the Country, whom he had entrusted with the Books; and that was one Birch, as near as I remember.

Sir Will. Jones. We have done with this Witness. And because we desire to conclude as to Mr. Dugdale, we shall call some Persons of Quality as to his Reputation, my Lord having gone about to make him a Man of no Reputation.

Mr. Boson. I can speak too about the Boy that came in.

Sir Will. Jones. There is no Need of that now; We shall trouble you no further, Sir. Your Lordships will be pleased to observe, That Mr. Philips, the Minister, that was one of my Lord Stafford's Witnesses, did say, Mr. Dugdale was a Man of whom many spoke well, and some indifferently, and perhaps that is the Case of most good Men; for scarce any are so good that all speak well of them: But that many should speak well, and some indifferently of him, may be the Lot of a very good Man. We shall call some Witnesses, and begin with Mr. Whitby a Justice of the Peace, that will tell you he hath known Mr. Dugdale long, and what Reputation he is of.

(Thomas Whitby, Esq; sworn.)

Sir John Trevor. My Lords, We desire your Lordships would be pleased to ask him what Reputation and Credit Mr. Dugdale was in, in my Lord Aston's Service.

Mr. Whitby. My Lords, I have known Mr. Dugdale to be a Servant to my Lord Aston this nine or ten years; he was Steward to him, and there was no other Person between my Lord and him; he received my Lord's Rents and Debts for him, exchanged his Lands for him in forty Places; I exchanged some Land with my Lord myself, and he was the Man that did it. He was very hard for my Lord's Advantage, and did what he could for my Lord's Profit.

Sir John Trevor. What do you know more as to his Dealing?

Mr. Whitby. He was a Person that was next to my Lord, and did rule and govern the rest of the Family. All the Servants were under him.

Sir John Trevor. Was he looked upon to be an honest Man in his Dealings?

Mr. Whitby. As to what I had to deal with him, he was an honest Man, I never heard to the contrary. I have heard some Tradesmen complain that he hath put them off without Money, would not pay them what my Lord owed them.

L. Staff. I desire that Mr. Whitby may be here when I shall have Occasion to say something to him.

Sir Will. Jones. That will be, I hope, by and by, for we have almost done. Call Mr. William Southall.

(Who was sworn.)

L. H. S. What is your Name?

Witness. William Southall.

Mr. Foley. Give my Lords an Account how long you have known Dugdale, and what you know of him.

Mr. Southall. My Lords, I have known Mr. Stephen Dugdale about eight Years.

Mr. Foley. How hath he behaved himself? What Reputation hath he born?

Mr. Southall. Truly he hath always had a good Repute, not only with my Lord's Tenants, but also with the Workmen, and those People that had Dependence on the Family; and truly I never heard any ill Report of him, but only what is spoken of now of late.

Sir Francis Winnington. Were you very well acquainted with him?

Mr. Southall. Yes, but never had any Business with him. Several Discourses I have had with him about the Popish Religion.

A a

Sir John



*Sir John Trevor.* My Lords, I only observe this, This Gentleman is Coroner of the County, and hath a general Knowledge of the County, and must know most Men there.

*Sir F. Win.* You are Coroner of the County of Stafford, Sir, I think?

*Mr. Southall.* Yes, I am one of them.

*Mr. Foley.* What was he in my Lord's House.

*Mr. Southall.* Bailiff, and a Kind of Governor, providing Meat, and paying Workmen; most of the Things of the Family went through his Hands.

*Sir Francis Winnington.* My Lords, This Gentleman is a Coroner of the County, and can speak materially to other Particulars besides this of Dugdale's Reputation; for he was a Person who was present when he made his first Discovery of this Plot, and was very instrumental in prevailing with him to do it. He will give your Lordships an Account of the whole Business, and I would rather he himself should relate all the Progress of it, than take upon me to recite any of the Passages.

*Mr. Southall.* There was, the latter End of November (78.) a Report that Mr. Dugdale was gone away from my Lord Aston's suddenly and strangely; and it was the common Report in the Country that he was in the Plot, and was fled for it. In the Beginning of December I went through a Town called Great Heywood, a Mile and a Half from Tixall, where my Lord Aston and Mr. Dugdale dwelt. I called at Mr. Thomas Whitby's House, the Gentleman that was up here lately, and he was telling me, Dugdale was come again, and apprehended by the Watch at Heywood upon Suspicion. He told me further, he would make no Confession of the Plot, though he had been under Examination before Sir Walter Bagott, Mr. Kinnerley, and I think he said Sir Thomas Whitgrave. But he told me divers Passages by which we both suspected he might be concerned and know of the Plot. We thought so from the various Reports and Rumours we had heard in the Country, and from those great Grounds of Suspicion that were given us. As I returned from Heywood, I resolved I would speak with Dugdale the first Opportunity, for I had a strong Persuasion I could prevail with him to make a Discovery of the Plot: But before I did speak with him, there was one Goldsmith my Kinsman, had some Difference fallen out between him and Mr. Ansell, and Mr. Dugdale, touching a Deed, the deciding of which they had referred to Mr. Dugdale. And he desired me to go to Mr. Dugdale to Stafford with him; I was very glad of the Opportunity. Ansell was to bring one Hanson, Mr. Goldsmith was to bring me, and Mr. Dugdale was to bring one Mr. Gerard, that was concerned in the Pre-mortgage, that we might all have Discourse together. I promised to meet them at the Time appointed; and accordingly the 23d of December, two Days before Christmas-Day, I came to the Place in Stafford, where Dugdale was, about ten o'Clock in the Morning, where they met according to their Promise. We had not been in the House longer than a Quarter of an Hour, but the King's Business, which I thought was a Business of greater Weight than any particular Business, did stick much upon me; and I resolved before I spoke to the particular Business about which we all met, I would first speak to Mr. Dugdale to put that in Execution which I had resolved. After a short Space of Time, I desired Mr. Dugdale that I might speak with him in a Chamber privately between him and me; he told me, if I would go into the next Chamber to his, he would come to me. Accordingly I went, and staid a short Space of Time, and Mr. Dugdale came to me. I desired him to make the Door to, which he did, and I began thus with him. Mr. Dugdale, said I, for some Years last past, since I came to be acquainted with you, I have always had a good Esteem of you, and you a good Report in the Country where you live; and now there is an Opportunity put into your Hands to serve his Majesty and his Protestant Subjects, if (as an honest Man ought) you will discharge your Duty. Mr. Dugdale replied, Sir, what do you mean? Why said I, I mean this in a few Words, Here is a Plot discovered in London, and if it be in London, I conceive it hath been in Part acted at Tixall; and if there, of Necessity, you having such a Government and Rule over that House, it is impossible but you must know it. He looked upon me very earnestly, and gave me a Smile, but answered me not. I replied to him again thus; said I, There is a natural Allegiance which every Subject owes to his Sovereign; and by that it is required, that if any Subjects know of any Plot or any Conspiracy against his Person and Government, they ought in Conscience to discover it; therefore Mr. Dugdale, said I, discharge a good Conscience, and tell what you know, for it is commonly suspected you are concerned in the Plot. He answered, I have taken the Oaths of Allegiance and Supremacy. When and where? said I. Before his Majesty's Justices of the Peace at Stafford, said he. Then, said I, there is not only that natural Allegiance which every Subject owes to his Prince, but the Oath of Almighty God lies upon your Conscience; therefore discharge a good Conscience, and tell your Knowledge. He stood pausing a little while, and by and by, said he, If I should make any Discovery, how should I be secured of my Life? You need not question that, said I, nor his Majesty's Gracious Pardon, which he hath promised in his Proclamation. Have you seen the Proclamation? Yes, said he. Said I, you have but a short Time, a Day or two to discover in, for this is the 23d, and as I do conceive, you ought to discover before the 25th. He stood pausing a while about the Time; said I, You need not question his Majesty's gracious Promise, and to encourage you thereto, there is not only an Assurance of Pardon, but a Promise of Reward of two hundred Pounds. Said he, if I do discover any Thing of my Knowledge, I matter not, nor desire (I don't know which it was) his Majesty's Money, so I may be secured of my Life. Upon this, my Lords, said I, Sir, you need not question his Majesty's Gracious Promise, my Life for yours if you have not his Pardon; but I will take special Care about it, for I will send up a Letter to London, directed to some of the Lords, (which I accordingly did) and I will also speak to Captain Lane, who is a worthy Gentleman, to interpose in it too. Then, said he, I will make a Discovery of the Plot. Then, my Lords, he told me first some particular Passages relating to this Lord at the Bar, and also concerning Mr. Evers and Mr. Petres, now in Custody, and some other Particulars: I wished him that he would speak no more at that Time. And when I parted with him, forthwith I consulted with myself what I ought to do in Point of Law: I knew, I must discover, that a further Discovery might be made of what had passed between us. Then I went to Mr. Freke, who was either Mayor or Justice of Peace in Stafford, and told him he must come with me to Serjeant Parry's. He asked me what to do. I told him, when he came, he should know;

he accordingly came, and took short Notes of a further Discovery, and Mr. Freke he certified it up to Mr. Chetwyn, who was then at London. Upon the Day following, the 24th, I rose and went to one Mr. Vernon, one of his Majesty's Justices of the Peace, and told him what had happened, and he sent for Captain Lane, another of his Majesty's Justices of the Peace, and they took an Examination of him. I have done, my Lords, with reference to his Discovery, and the Time.

*L. H. S.* Do you remember what he mentioned of my Lord Stafford? What he said of him?

*Mr. Southall.* Truly, my Lords, I can only tell what he said at the first Examination: He told me, the first Time my Lord Stafford spoke with him was at Tixall-Hall, nigh to the Gatehouse, betwixt the Gate and the Hall. My Lord was going into the Hall, and my Lord Stafford told him it was a very hard Thing, or to that Purpose, that they could not say their Prayers but in private, and after told him the same Day or Night 'one, that they had some Work to do, and he might or must be instrumental in it. This was the Effect of what he told me passed the first Time. Another Time I think he told me he was to have five hundred Pounds to kill the King.

*L. H. S.* When did he tell you so?

*Mr. Southall.* Not till Captain Lane examined him, which was the second Time he was examined; which was about the 26th.

*L. H. S.* Did he swear that before Vernon and Lane?

*Mr. Southall.* Yes, he did, I could give your Lordships a Breviate of what he swore then.

*L. Staff.* I desire he may give that Breviate.

*Mr. Southall.* I took some Notes of what he swore then.

*L. H. S.* Have you them by you, or about you?

*Mr. Southall.* Yes, my Lords, I have.

*L. H. S.* Produce them.

*Mr. Southall.* I took this upon some Paper I had in my Pocket, and is the Substance of what he swore.

(Which he delivered to the Clerk.)

*Clerk.* December the 24th 1678, Mr. Dugdale informeth, That in September last, he met in Tixall the Lord Stafford, nigh to the Gates, who said, That it was sad they were troubled they could not say their Prayers, but in a hid Manner; but suddenly there would be a Reformation to the Romish Religion, and if there be a good Success we shall enjoy our Freedom. And that upon the 20th Day of September 1678, the said Lord Stafford told this Informant, That there was a Design in Hand, and if he would undertake in it, he should have a good Reward, &c. and make himself famous. The same Day this Informant went up into Mr. Francis Evers's Chamber, to know what my Lord Stafford meant by his Words; and he first made him swear Secrecy upon his Knees, and then told him, That he might be a Person employed, and have a good Reward, and make himself famous, if he would stand instrumental with others in taking away the King's Life, by Shooting, or otherwise; and need not fear, for that the Pope had excommunicated the King, and that all that were excommunicated by him were Hereticks, and they might kill them, and be canonized for Saints in so doing. And that the Design was to kill the Duke of Monmouth as well as the King.

December the 29th 1678, this Informant saith, That since the 20th Day of September last, the said Lord Stafford did promise him five hundred Pounds as to the carrying on of the Plot, and that Mr. Evers should give him Instructions about the same. And that the Lord Stafford told him, he did not doubt of his Fidelity, for Mr. Evers had given him a good Character to be trusty. And that the Lord Stafford told this Informant, That there was a Design to take away the Life of the King; and the Life of the Duke of Monmouth, and that several others were to be employed in the Design besides this Informant. And that this had been thoroughly considered of to be the fittest way for the establishing of the Romish Religion. And that at the said Time, the said Lord Stafford laid his Hand upon his Head, and prayed God to keep him in his good Mind, and to be faithful to what he had entrusted him in, &c.

And this Informant further saith, That he doubting of the Lord Stafford's Payment, the said Mr. Evers promised him the making good of my Lord Stafford's Promise, &c.

And further saith, that he saw a Letter directed from my Lord Stafford to Mr. Evers, and he read the same, and knows it to be my Lord Stafford's Writing; and that therein was written, that Things went on well beyond the Seas, for the carrying on the Design, and so he hoped it did do here in England, &c.

*Sir Will. Jones.* My Lords, we will examine no further as to Mr. Dugdale, but will conclude with this Witness, and I think he speaks fully to him. The next Witness we called was Dr. Oates, and your Lordships have been pleased to observe, That what Exceptions have been made against him, have not been so much by Witnesses produced, as by opposing one Part of his Testimony to another, what he swore at one Time to what he swore at another: To which we shall give an Answer when we come to sum up our Evidence; for there will be no Need of Witnesses to what is objected against Mr. Oates; but only of Observations. But as to the third Witness Turberville, we have something to answer of Witnesses, and something by Way of making Observation. We will first call our Witnesses.

[Then Mr. Southall desired his Paper again, which the Court told him he should have a Copy of from the Clerk.]

*Sir Will. Jones.* And our first Witness is to this Purpose: It was objected against Mr. Turberville—

*L. H. S.* Have you done with Dugdale? You have forgot to give an Answer to the Objection about the Point of Time when Hobson told him of the Design.

*Sir Will. Jones.* My Lords, that will be when we come to make our Observations; we shall not answer that by Witnesses; when we come to sum up our Evidence, I doubt not but we shall give a sufficient Answer to that Objection. But to go on with what is to be answered by Testimony, your Lordships will be pleased to remember, that Turberville did inform your Lordships, That he had some Converse with my Lord Stafford at Paris, being introduced by some of the Fathers. My Lords, we shall call a Gentleman that happened to be there at that Time, that will tell you, though he did not know my Lord Stafford, yet he knew that Turberville did converse much with an English Lord in that Place where my Lord does



does acknowledge his Lodging to be. He will give you some further Account how *Turberville* went to *Diep* in Expectation of my Lord, and how he had a Message from the Lord, though he did not know my Lord *Stafford*. He will give you a further Account how Mr. *Turberville* was earnest with him to go to *Calais*, and then told him, he might go over with my Lord at that Time. The Use we make of these Particulars we will forbear to mention till we sum up our Evidence. We desire to examine Mr. *Thomas Mort*.  
(*Who was sworn.*)

Sir *Will. Jones*. We desire to ask Mr. *Mort*, whether he knew Mr. *Turberville* at *Paris*, and at what Time.

L. H. S. What say you, Sir?

Mr. *Mort*. Yes, my Lords, I knew him, it is now five Years past since we were in *Paris*. He and I had been intimately acquainted before, we lived in the same Family. I was several Times in Company with him, and many Times in his Brother's Company, which was a Monk, and I heard him say his Brother had an Intention he should be of the same Order. And some Time after that he altered his Resolution, and designed for *England*, and I had such a Design too to go from *Paris*, where I was an Apprentice. And being acquainted with him, I resolved to go over with him, and he told me, his Brother the Monk had introduced him into the Favour of a Lord; as I take it, it was my Lord *Stafford*, as well as I can remember. And that there was a Vessel to come to *Diep*, a Yacht, and we should go thither to go over with my Lord. And Mr. *Turberville* told me, we must make as much Haste as might be, for it were better to be there a Day or two too soon, than too late. We went to *Diep*, and when we came there, the Vessel was not come. And when we had been there a Fortnight, or thereabouts, we were put to a great Deal of Inconveniency, by Reason of our long Stay there: And, I think, if I mistake not, I or some of the Company said, Cursed is he that relies or depends on a broken Staff; aluding, as I believe, to my Lord *Stafford*'s Name. Mr. *Turberville* told me, if we did go to *Calais*, we might go over with my Lord; but how or by what Means he understood the Vessel would be there, and my Lord go that way, I know not. But we did not go thither, we had another Opportunity; there was a small Vessel, whether a Fifth-Boat or a Coal-Vessel I cannot tell, a very little one it was, but we took the Opportunity, and came over in it.

Sir *Will. Jones*. My Lords, We shall make use of it in due Time; we only call him now to prove his Converse with a Lord at *Paris*.

L. H. S. Did you ever see *Turberville* at a Lord's House in *Paris*?

Mr. *Mort*. No, my Lords, not that I can remember; but I think, as near as I remember, I will not be positive, I walked about *Luxembourg-House* while he went, as he said, to the Place where the Lord lodged, I was thereabouts till he came.

L. Staff. In what Street was it?

Mr. *Mort*. Indeed I cannot tell.

Sir *W. Jones*. This Man is very cautious.

L. H. S. Can you tell the Lord's Name?

Mr. *Mort*. I do not remember his Title, but I think it was my Lord *Stafford*.

Sir *Will. Jones*. Pray who were you Servant to? Who were you bred under?

Mr. *Mort*. My Lord *Powis*. I served as a Page to him, when Mr. *Turberville* was Gentleman-Usher to the young Lady, one of his Daughters, since married to my Lord *Mollineux*.

Sir *W. Jones*. Will my Lord please to ask him any Questions? If not, we will go on.

L. Staff. No, not at present.

Sir *Will. Jones*. Well then, my Lords, we desire to call one Mr. *Powell*, a Gentleman of *Grays-Inn*, to tell you when he first heard Mr. *Turberville* speak of this Evidence he hath now given.

(*Mr. Powell was sworn.*)

Sir *W. Jones*. Pray will you give an Account what Discourse you had with Mr. *Turberville* about the Plot, and when.

Mr. *Powell*. About this Time Twelvemonth we discoursed about it, and he told me, that he had much to say in relation to the Plot; but truly he did not name any Particulars to me at that Time.

Sir *Will. Jones*. Where was this, we desire to ask him.

Mr. *Powell*. It was at the *King's-Head Tavern* in *Holborn*.

Sir *Will. Jones*. Are you sure it was a Year ago?

Mr. *Powell*. It was about this Time Twelvemonth.

Sir *Will. Jones*. What was the Reason he did not think fit then to reveal it? Did he tell the Reason?

Mr. *Powell*. I think he gave me a Reason, That he was something cautious, because he feared he might disoblige his Brother at that Time.

Sir *Will. Jones*. Did he give you any further Reason?

Mr. *Powell*. I think he said he was afraid he should not have Encouragement enough, for he said some of the Witnesses had been discouraged, and he was afraid he should be so too.

Sir *Will. Jones*. Now we shall call a few Witnesses to Mr. *Turberville*'s Reputation, which have known him a good while. Mr. *Hobby*.

L. H. S. Was this Time that Mr. *Powell* speaks of, that he did discourse with him, before or after that of *Yalden*?

Sir *Will. Jones*. My Lords, We do not know of any Discourse with *Yalden*; nay, we believe none such was. The Witness speaks of a Year since.

L. H. S. What Time does *Yalden* speak of?

Sir *W. Jones*. February or March last, and this was a Year ago.

L. H. S. This was then before that certainly.

Sir *Will. Jones*. We desire that Mr. *Arnold*, a Member of the House of Commons may be sworn.

(*Which was done in his Place.*)

Sir *W. Jones*. Do you know Mr. *Turberville*?

Mr. *Arnold*. My Lords, I do know him very well, and I have known him these two Years: He came recommended to me from his Grace my Lord Duke of *Buckingham*. My Lords, presently after the breaking out of the Plot, he was sent down into our Country by the Lords of your Lordships House that were of the Committee, and a particular Recommendation from the Duke of *Buckingham* to me, to give him Direction and Assistance to find out a Priest, one *Charles Prichard*, and I think also if I mistake not, one *Morgan*, my Lord *Powis*'s Priest. I spoke with him before he went, I sent Letters down with him, I spoke with him afterwards: He hath been in my Family some Time; he hath behaved himself very well there, and in several other sober Families nearly related to me. I have not heard a better Character of any Man from all Sorts of People, than of him, in my Life.

Sir *Will. Jones*. Did he tell you any Thing of the Plot, Sir?

Mr. *Arnold*. My Lords, I did several Times find by him, that he knew much; having conversed both in *France* and here with Jesuits and Priests. I pressed him oftentimes to discover his Knowledge, and to come in to the Council; but he gave me such Answers why he did not, that I could not answer.

Sir *W. Jones*. What were they, Sir? Pray tell us.

Mr. *Arnold*. That the Witnesses that were come in, were in Danger of their Lives; that they were discouraged, that they were discountenanced; and as long as the Duke of *York* had that Power in the Council that he had, and my Lady *Powis*'s Brother had that Power over these Countries where he lived, (which his Lordship is often pleased to call his Province) he durst not do it for his Life.

(*Then Mr. Hobby was sworn.*)

Sir *Will. Jones*. Do you know Mr. *Turberville*, and how long have you known him?

Mr. *Hobby*. My Lords, I have known Mr. *Turberville* near four Years.

L. H. S. What Account can you give of him?

Mr. *Hobby*. My Lords, my first Acquaintance with him, was at my Brother's House in *Glamorganshire*. When I came there, my Brother shewed him me, and told me he was a very worthy Man, but his Friends had cast him off, because he would not take Orders in the *Romish* Church. He lived at my Brother's above a Year; and when he came thence, my Brother writ a Letter of Recommendation to my Father to receive him there, and do him all the Kindness he could. He came to my Father's, and staid there near Half a Year, or thereabouts, I cannot tell to a Month or so. Since I have known him often in this Town, and been in his Company; and I never knew, nor heard, but that he behaved himself like a worthy honest Gentleman: But as to any Thing of the Plot, I know nothing.

Sir *W. Jones*. We ask you not to that: Where is Mr. *Matthews*?

(*Then Mr. Matthews, a Divine, was sworn.*)

Sir *Will. Jones*. Mr. *Matthews*, pray tell my Lords, whether you know Mr. *Turberville*, and how long you have known him?

Mr. *Matthews*. Yes, my Lords, I have known Mr. *Edward Turberville* for about four Years last past.

L. H. S. Go on, what do you know of him?

Mr. *Matthews*. My Lords, he lived some Time in my Neighbourhood; I never knew him guilty of any ill Action at all, but a Person of a very fair Reputation: He acknowledged himself a *Roman* Catholick, and was pleased to give me the Liberty to talk to him. I found him inclinable to hearken to me, and to those Reasons I offered to him; and I found he had a Mind to quit that Religion, being convinced by the Arguments I gave him; and at several Times he hath since told me, those were some of the great Motives of his coming over from the *Romish* to the *Protestant* Communion.

L. H. S. What were the Motives?

Mr. *Matthews*. One was the Hazard I told him of, in his living in the *Roman* Communion, as to Salvation; another was the Excellency of the Doctrines of our Church, its Principles and Practices.

L. H. S. Did he acknowledge to you, he knew any Thing of the Plot?

Mr. *Matthews*. No, not a Syllable of it.

Sir *Will. Jones*. We don't call him to that Purpose.

(*Then another Witness was sworn.*)

L. H. S. What is your Name?

Witness. *William Seys*.

Sir *Will. Jones*. Pray will you acquaint my Lords, what you know of Mr. *Turberville*.

Mr. *Seys*. I have been acquainted with him these two or three Years, and I never knew him guilty of any ill Action in my Life. I never heard of any Body that could asperse him; but he hath behaved himself like a very honest civil Gentleman.

Sir *Will. Jones*. Where were you acquainted with him?

Mr. *Seys*. Here in *London*.

(*Then Capt. Scudamore stood up again.*)

Sir *W. Jones*. He was sworn before, we desire he may speak to Mr. *Turberville*'s Reputation.

Capt. *Scudamore*. My Lords, I have known Mr. *Turberville* for these three Quarters of a Year, I have been acquainted with him in *London*; he hath been much at my House, and all that while I saw nothing in him, but that he is a very honest Gentleman.

Sir *Will. Jones*. My Lords, I think we have but one Matter more, which we should have mentioned before, but that our Witness was not come: But I hope we shall have the Favour of some honourable Lords that do know the Thing; and I think there are many more that can prove it. My Lord *Stafford*, who is very ancient, it may be, may not remember Matters exactly; I blame him not; Oblivion is the great Infirmary of old Age. He was pleased to say Yesterday, he had so good Health, that he had not been lame, I think he said for these Forty Years; but at last his Page said, for the last Seven Years: And I shall confine our Proof to that Time. My Lords, I think there are some honourable Lords here, that have seen this Noble Lord, that says he was not lame in so many Years, very near about the Time that he was confined and imprisoned, go lame and come lame to the House, and ease himself by holding up his Leg sometimes. My Lords, I do not say, the Circumstance is very material, but only to shew my Lord may forget himself, which I shall impute to his old Age.

L. Staff. I will acknowledge it, if your Lordships please; I did say I had not been lame with the Gout so long, no more I have not. I was troubled with the *Sciatica* many Years, but 'tis above Eight or Nine Years since that; and I took so much *Opium*, that that, and my going to the *Bath*, cured me. I have often come lame to the House, out of Weariness and old Age; but if ever I put my Foot upon a Stool for the Gout, or was ever so lame as to put my Foot upon a Cushion to ease it, I will admit what he speaks to: I'll acknowledge thus much to save Time.

Sir *Will. Jones*. Seeing my Lord is pleased to go off from it, I'll call no Witnesses to it.

L. Staff. I go off from nothing, I was lame three or four Years when the King came in: I went to the *Bath*, and afterwards into *Germany*; and what with *Opium*, and the *Bath*, I was cured, and have not been lame these eight or nine Years. I have not had the Gout in my Foot for these many Years, and I never was so lame to put my Foot on a Stool, to my Remembrance.

Sir *Will.*



Sir Will. Jones. I do not think we shall need to trouble your Lordships more with this Matter; that my Lord was lame some Time, he is pleased to confess. One Witness says, That he put his Foot upon a Cushion; my Lord doth not acknowledge that.

L. Staff. I was never lame at Paris.

Sir Will. Jones. That a Man that is lame does sometimes ease his Foot, is no hard Consequence, I think.

L. Staff. I deny I was lame then; I walked about the Streets of Paris, I desire I may not be misunderstood.

Sir Will. Jones. I must then desire, under his Lordship's Favour, if he will not acknowledge it to be within seven Years, that we may prove it, and falsify his Witness, the Page.

L. Staff. I have gone with a Stick to the House, I acknowledge it, and been lame with Weariness.

Sir Fran. Winnington. The Objection went to the Credit of our Witness, and therefore we desire to answer it: My Lord was not lame, as he says, for so many Years; but if we prove that within less Time my Lord hath been lame, it will take off that Objection from our Witness. And we desire a noble Lord or two of this House may testify what they know. And first the Earl of Stamford; (who was sworn.)

Earl of Stamford. My Lords, I think I have not had the Honour to sit in this House much above seven Years, but long since that Time I have seen my Lord Stafford come lame into the House of Peers, and that is all I can say.

L. Staff. I have come lame with a Stick to the House, I say.

Sir Fran. Winnington. My Lords, we desire that noble Lord, my Lord Lovelace, may be sworn; (which was done.)

Lord Lovelace. My Lords, the Account that I can give your Lordships, is this; I cannot ascertain any Time, but I am sure, and I do declare it upon my Honour, and the Oath I have taken, that I have seen my Lord Stafford lame in the House of Lords within less than these seven Years.

L. Staff. If he goes Home to the Tower, he may see me lame, but never put my Foot upon a Stool.

Sir Will. Jones. My Lords, your Lordships will be pleased to remember, we did call a Witness, one Thomas Launder, and the Account we had of him was, he was gone sick from the Bar, he was very sick indeed; but being just now brought, we desire he may be heard, though it be out of Time: We call him to the Reputation of *Holt*.

(Thomas Launder was sworn.)

Sir John Trevor. Do you declare to my Lords, whether you know Samuel Holt?

Launder. Yes, my Lords, I do.

L. H. S. What do you know of him?

Launder. He is a Smith, my Lord.

L. H. S. What Reputation is he of?

Launder. Indifferent, my Lord.

Sir Will. Jones. What do you mean by that, good or bad? speak plainly.

Launder. A drunken Sot, a Man that will drink, and rant, and tear the Ground, and sing two or three Days or a Week together, and lose his Time.

Sir F. Win. I would ask this Man, whether he was summoned as a Witness upon any Trial in Relation to the Plot?

L. H. S. Were you ever summoned as a Witness about the Plot?

Launder. My Lords, I was summoned concerning my Lord Aston's Trial, and I came up with my Lord Aston's People as an Evidence.

Sir W. Jones. Had you any Offer of Money, and what Sum?

Launder. Yes, my Lords.

Sir F. Win. Acquaint my Lords with it.

L. H. S. Who offered it you? and when? and for what?

Sir Will. Jones. For what was that Money offered you?

Launder. The Money was not absolutely offered me, but I was to have an Horse to ride on, and Money in my Pocket, if I could take off James Ansell, Dugdale's Evidence.

L. H. S. Who came and offered it to you?

Launder. I was sent for by Mr. Fox to Tixall-Hall, and there was my old Lord's Brother for one, and Mr. Thomas Aston, that is, this young Lord's Brother, and Mr. Francis Aston, who is my Lord's eldest Son, were in a Room together, and this Thomas Sawyer that was here, and more were in the Room when they promised all these Things.

L. H. S. If you would do what?

Launder. If I would take my Oath, that this James Ansell was a perjured Rogue.

L. H. S. Did all they make you this Promise?

Launder. Yes, my Lords.

Mr. Foley. It was a Consult together about taking off the Evidence.

Sir Will. Jones. My Lords, we have done with our Witnesses; if my Lord Stafford please to conclude, we are ready to do so too.

L. Staff. What should I conclude? about those Witnesses you have now brought in?

Sir Will. Jones. Your Lordship may please to conclude your Evidence, we are ready to conclude on our Part.

L. Staff. These new Witnesses, must I say what I can say against them presently? I cannot do it, I know very few of them.

L. H. S. Have you any Witnesses here, my Lord?

L. Staff. I cannot possibly have any; for I did not know, nor guess these People would be brought against me; They are Persons I know nothing of. Ansell I have seen four or five Times, I may have seen the Rest, but I do not know them to be able to give an Account of them.

L. H. S. If you have any Witnesses here to support the Credit of your own Witnesses that have been impeached, you may call them.

L. Staff. I have none, my Lords.

L. H. S. Will your Lordship recapitulate the material Parts of your Defence, that the Process may be closed?

L. Staff. I am very unready for it, my Lords. Let me ask Mr. Whitby a Question, if I must have no more Time.

(Mr. Whitby stood up.)

L. H. S. There he is; what would your Lordship have with him?

L. Staff. I do not know the Gentleman.

Mr. Whitby. Nor I your Lordship.

L. Staff. I ask him upon the Oath he hath taken, I know he will speak Truth, Whether he did not some Years ago tell my Lord Aston that is

dead, this Lord's Father, That Dugdale was a Knave, and persuaded him to turn him away, (I say not it is true, but I have heard so) and desired him to tell his Son so, that he might quit-himself of him?

L. H. S. What say you, Mr. Whitby?

Mr. Whitby. My Lords, about three or four Years ago my Lord Aston that is dead (I believe it may be two Years last April) sent for me to dine with him; and when I came thither, he told me, says he, Mr. Whitby, I have sent to you to acquaint you with a Thing, but I do not believe it before I tell it you. What is it? said I. Said he, Stephen Dugdale hath acquainted me, that you have employed Persons upon the Water to destroy my Water; said I, my Lord, I never endeavoured it. He said, he did believe me. Then I told my Lord; said I, Mr. Dugdale is a Dishonour to the Family, upon this Account, because many Times People come for Money, and he will not let them have it, but puts them off, and makes them complain. Says my Lord, my Son is now at Standall, but I will tell him as soon as he comes Home; and if you will bring the Persons that have waited so long for their Money, and made so many Journeys, you shall hear what he will say to it. Within a while my Lord Aston that now is, came down, and I went thither to see what became of it. And I went to the Bowling-Green where my Lord and his Son were; but my old Lord said nothing to me of it, nor his Son neither. Within a few Days my old Lord Aston's Gentleman came down to my House, (one Mr. Ashley) said I, I wonder whether my Lord Aston hath acquainted his Son with what I told him. Says he, he hath, but it signifies nothing; for he will hear nothing against Mr. Dugdale. This I speak upon my Oath, 'tis true.

L. H. S. Your Lordship sees what this Gentleman's Opinion was of Dugdale then, he would hear nothing against him. Will your Lordship conclude?

L. Staff. My Lords, I am mighty unready, and know not which way to turn myself, upon those new Things they have brought; for I knew nothing of it, nor expected any such Thing. But will you be pleased that I may call Simon Wright again? (Who stood up.)

L. H. S. What would your Lordship have with him?

L. Staff. I have nothing to say to him, but to desire him to see this Letter, whether it be of his own Writing or no.

L. H. S. Look upon that Paper, shew it him: (Which was done.)

L. H. S. Is it your Hand?

Wright. This is my Hand. 'Tis Part of that I was hired to do. There is another of a great deal more Consequence than that.

L. H. S. Deliver it in, and read it.

Sir,

June the 14th, 1680.

Clerk. I Can, I bless God, with a safe Conscience declare upon my Oath that Mr. Dugdale hath been unkind to me in taking his Opportunity of my Poverty, by Reason of a private Meeting of us two by his Appointment, he did that Time proffer if I would swear against you, and Mr. Gerard, he would protect me as one of the King's Evidence, and I should not want Money; and in the Hall at Westminster he said, if I did discover it that Day at Mrs. Price's Trial, he would set me in the Pillory. This I have owned to his Face, and shall not go back from this and more, neither for Fear nor Favour. So I rest as you shall find by your Servant,

Sim. Wright.

L. H. S. Is this your Hand.

Wright. Yes, my Lords; this I was advised Word for Word to write.

L. H. S. Who penn'd this for you? Did you pen it yourself?

Wright. No, my Lords, they penn'd it, and a great while I would not set my Hand to it; but Jermin Droyton said I need not fear, I was not to swear against the King.

L. H. S. Who is that?

Wright. He is Butler to Mr. Heveningham.

L. Staff. See what you have under his Hand, I have no more to say to him.

Wright. But by their Persuasion at last I did write it, and a great Deal more than that.

Sir Will. Jones. I desire to ask Mr. Wright whether they would have had him swear this?

L. H. S. Were you desired to swear this?

Wright. No, my Lords, they never put me to swear it; for they told me I was not to swear against the King: But if I would be so kind to make an Affidavit before a Justice of Peace, I might then go where I would into the Country, and I should have Money to bear my Charges.

Sir Will. Jones. Who would have had you swear it before a Justice of Peace?

Wright. Jermin Droyton, and Mr. Longmore; where he is I can't tell, but he told me that Sir James Symons was better able to perform than Dugdale was to promise.

Mr. Serj. Maynard. The same Thing that was done by Redding, he was convicted for it, and stood in the Pillory.

Sir Will. Jones. We desire to know, whether he was ever with Sir James Symons himself, and what he offered?

Wright. I was once with him at the King's Bench; I dined there: After I had written the Paper that was read, he gave me 20s. and said, he hoped I would not go off from what I had said; and he hoped I was sensible his Gratiuity would not be wanting, and was sorry he had not Occasion to use me.

Sir Will. Jones. My Lords, we have done with him; I only observe, that my Lord Stafford was pleased to produce this Paper; he was Master of it, and had it in his keeping.

Sir Fran. Win. Wright says, there is another Paper of more Consequence; I wish his Lordship would produce that also.

L. Staff. I did not know of this till just now it was delivered into my Hands. Did you see Mr. Longmore before this Letter was writ?

Wright. Both before and after, to the best of my Remembrance, and at the Time when Sir James's Trial should have been, at the Sign of the Crown in King-street in Bloomsbury.

L. H. S. My Lord, will you conclude?

L. Staff. My Lords, I desire your Lordships Pardon; I do not know how really to go about it To-night. I will obey your Commands, though I fall down at the Bar. I protest before God, I was all Night so ill of the Cramp, that I had no Repose. If you will have me go on, I will, if you will give me but a little Time to recollect myself.

L. H. S.



L. H. S. God forbid, when your Lordship is to speak upon so great a Concern, and a matter of that Importance as this is to you, you should be put at the end of the Day, and in the midst of all your Thoughts, to sum up your Evidence. I do believe, if you do desire time till to-morrow, my Lords will give it you: And if you would have me move my Lords in it, I will.

L. Staff. One word, I beseech your Lordships—

Sir W. Jones. We do not oppose it.

L. Staff. My Lords, I desire one thing; I am very ignorant in this Matter, and do not understand it; I would desire your Lordships Directions to know in what Method I must proceed.

L. H. S. Your Lordship is to proceed thus, if you please: Your Lordship is to recollect and recapitulate all the Proofs you have made; and you are to enforce them as well as you can, and make such Observations upon them as are for your own Advantage; and this your Lordship must do for the Fact. If there remain a Doubt in Law which you may have occasion to move, Council may be demanded; and if it be considerable and worthy of Debate, you may have Council heard to speak to it. But the Process is closed, no more Witnesses are to be heard: There remains only Observations upon the Fact or Law to be made.

L. Staff. Are no more Witnesses to be heard?

L. H. S. No, I think not: 'tis agreed on both sides all is done: But my Lord, I would not have your Lordship to understand me so, that if so be you have yet any material Evidence, that you think it does concern you to produce, and you have it ready to-morrow, before you sum up the Evidence; I believe then, if you move my Lords, they will let it be heard: Otherwise I think here is an end of Witnesses.

L. Staff. I desire the Paper I gave in, may be returned me.

L. H. S. But in order to this, my Lord, if your Lordship does think you shall use or produce any other Witnesses, it would be of Importance that you would name them now.

L. Staff. Truly, my Lords, I will go hunt for none; and I think I shall have none: only one thing I must beg your Pardon in; which is the only thing I must have witnesses to, to answer what they have said, that my Lord Aston would not come to Account. My Witnesses are very near me. Mr. Lieutenant, some in the Tower, and one Mr. Birch.

L. H. S. My Lord Stafford, bring those to-morrow that you name to-night.

L. Staff. If you please that I may have that paper, Wright's Letter.

E. of Shaftesb. My Lord Steward, I desire that Letter may be kept.

L. Staff. It is a Paper that was given me; and I would return it: if you won't allow me it, I can't help it.

L. H. S. 'Tis desired it may remain where it is: But your Lordship may have a Copy if you please attested by the Clerk. Is it your Lordships pleasure to adjourn?

Lords. Ay, Ay.

L. H. S. This House is adjourned into the Parliament-Chamber.

Then the Lords withdrew in their Order, and the Committee of Commons returned to their House, where Mr. Speaker resumed the Chair.

A Message was sent from the Lords by Sir Timothy Baldwin and Sir Samuel Clark.

Mr. Speaker.

The Lords have sent us to acquaint this House, That they have Ordered William Viscount Stafford to be brought again to his Trial at the Bar in Westminster-Hall, to-morrow Morning at Ten of the Clock.

The Commons adjourned to Eight of the Clock the next Morning.

### THE FIFTH DAY.

Saturday, December 4. 1680.

ABOUT the Hour of Ten in the Mornings, the Lords adjourned into Westminster-Hall, going thither in their former Order into the Court there erected; and Mr. Speaker having left the Chair, the Commons were seated as before.

The Court being sat, Proclamation for silence was made, and the Lieutenant of the Tower commanded to bring his Prisoner to the Bar; which being done, the Lord High Steward began as followeth.

L. H. S. What says your Lordship, my Lord Stafford? My Lords are prepared to hear what your Lordship can say in the summing up of your Defence.

L. Staff. My Lords, I must needs say to your Lordships, That you have given me Favour and Time all that I could demand. But I am a very unfortunate Man in many Things, unfortunate in being brought hither upon this Account; and truly, my Lords, I am very unfortunate, that I had not yesterday, before I went away, the Names of some very material Witnesses, and some that I did not know of, till within this half quarter of an Hour: I humbly offer this to your Lordships Consideration as the State of my Case. 'Tis true, my Lords, I acknowledge I was bound up yesterday to Mr. Lieutenant, and some others that I named; but I humbly tell your Lordships this, That I am informed of some material Witnesses more this Morning.

L. H. S. Are the Witnesses you speak of, any of the Witnesses you named last Night?

L. Staff. No, my Lords; 'tis one of my Lords, a Peer of this House.

L. H. S. How many more have you?

L. Staff. Five or six.

L. H. S. To what Point?

L. Staff. To discredit the Witnesses that have been brought against me; both some of those that have discredited mine, and some that have sworn against me particularly.

L. H. S. There is no end of this Way of Proceeding.

L. Staff. My Lords, I profess to your Lordships, in the presence of God, I do it not for delay, nor did I know of them then.

L. H. S. What say you to it, Gentlemen?

Sir W. Jones. My Lords, I am afraid this Proceeding at this rate will never have an end. If his Lordship have any Witnesses to any material part of his Defence, though he hath bound himself up, I should not be against hearing of them. But if his new Witnesses are

Vol. III.

only to the Reputation of our Witnesses, then perhaps we must have some other Witnesses brought to discredit his; and we not knowing who these new Witnesses of his would be, may need perhaps another Day to bring Testimony against them; so that I know not when the Matter can have an End. Your Lordships know, there is a Rule in the Civil Law, *In testem, testes, & in bis, sed non datur ultra*: And I hope beyond that you will not go. Truly, for my own part, I did not expect any other Witnesses, but those he was pleased to name last Night, in relation to the Matters of Account; if he please to call them, we shall hear them: But for any other, considering it would prolong the Trial to another Day, and this cause hath had four Days already for Hearing, we hope they shall not be admitted.

L. Staff. My Lords, I profess to your Lordships, if I were alone concerned in it, I should not have moved it; but when I consider my Wife and Family are concerned, I hold myself bound by the Duty I owe to God and them, to propose this to your Lordships: I am pressed to it by my Wife just now, since the House came in. I protest before God, for my self, I can look Death in the Face without being afraid; but when I consider in what Condition I shall leave my Wife and Family, it moves me.

(Then he wept.)

I am not concerned at it for my own part, for I know I am innocent, but, I cannot forbear Tears when I consider them; 'tis not for myself, I take God Almighty to witness, that I weep; I could be content to speak a few Words to your Lordships, and submit to your Judgment, and take my Death, if you decree me to it, and not defer it till Monday. But I cannot forbear shewing my Grief when I consider my Wife and Children.

L. H. S. Pray, Gentlemen, consider, Whether it be not a saving of Time, to let my Lord examine his Witnesses; else my Lords must withdraw to consider of his Desire. 'Tis true, in the Practice of Chancery we do examine to the Credit of Witnesses, and to their Credit, but no further; but what my Lords will do in this Case, I know not till they are withdrawn.

Sir Will. Jones. My Lords, we have that Opinion of our own Proofs, and are so desirous of an End of these Proceedings, that rather than we will give your Lordship's the trouble to withdraw, if my Lord will please now to tell us the Number and Names of his Witnesses, we shall not oppose their being heard.

Sir F. Win. If your Lordships please, one Word further: We know well of what Concern this is to my Lord, and no body desires to have him cramped in his Evidence. The Objection did lie fair on our side, it looking like a designed Delay; and yet we are willing to comply, with this Reservation, that if there should be any such Witnesses produced now, as may require an Answer, that we may not be foreclosed of advising with one another about it.

L. H. S. No, by no means. My Lord Stafford, your Desire is consented to upon these Terms, That your Lordship will now name the Persons and Number of the Witnesses you will call.

Mr. Hampden. And the Points to which you will call them.

L. Staff. I humbly thank your Lordships for the Favour, but it is an Impossibility for me to do it; If your Lordships will give me a quarter of an Hour's Time, I will name them; I cannot name some of them; one is my Lord Ferrers, another is one Dr. Taylor, Dr. Watson, Dr. Elliot, and one William Dale.

L. H. S. Now to what Points will your Lordship call these Witnesses?

L. Staff. My Lord Ferrers is to speak his Knowledge of Southall the Coroner, and that is as to Dugdale; my Lord knows that Person. Dr. Watson, and they are to invalidate the Testimony of Dr. Oates: And there is another Man's Name, I forget what it is.

Sir W. Jones. To what Point is he to be a Witness?

L. Staff. 'Tis to Dr. Oates, and the Evidence against me.

Mr. Serj. Mayn. So there will be Pretences made every Moment of some new Witness to put off this Cause.

L. Staff. Under your Lordship's Favour, I scorn to make any Delay. If you think this may not be material, or not fit to be done, I will quit it.

L. H. S. Go on, my Lord.

L. Staff. Will your Lordships be pleased to begin with my Lord Ferrers?

(Who stood up in his Place.)

L. H. S. My Lord Ferrers, your Lordship is called upon by my Lord Stafford, and you being a Witness for the Prisoner, and against the King, your Lordship is not to be sworn.

Lord Ferrers. My Lords, what I have to say concerning that Person my Lord named, Southall, is only upon Hearsay, and upon the Reputation he hath in the Country; for I have no Acquaintance with him, nor do know him at all: But the Reputation that hath been given me of him in the Country, is, That he hath been a very active Man in the late Times against the King, and is counted to be a very pernicious Man against the Government.

L. Staff. Call Dr. Taylor.

Servant. I know not where he is, he can't be found at present.

L. Staff. Then call William Dale in the mean time. My Lords, This same Southall I never heard of; the other Man that drew up the Affidavit, that is Feake, I know; he was named by Southall to join with him in the Examination; I can't tell what he was, I can prove that he is an Attorney, that he was Mayor of Stafford, and proclaimed the King Traitor.

L. H. S. Who was that?

L. Staff. One that drew up the Affidavit of Dugdale, Feake mentioned by Southall.

L. H. S. Who is your next Witness, my Lord?

L. Staff. One William Dale. (Who being called, appeared.)

L. H. S. What is your Name?

Witness. William Dale.

L. H. S. What do you say?

L. Staff. About Dugdale, my Lords, what he knows about his offering him any Money.

Sir Will. Jones. We desire to know where he lives.

Dale. Dugdale never offered me any Money.

L. H. S. Where do you live?

Dale. At Owesley-Bridge.

L. Staff. Pray ask him whether Dugdale persuaded him to swear against my Lord Aston something he knew not.

L. H. S. Did Dugdale ever hire you to swear against my Lord Aston?

Dale. No, he never hired me.

L. H. S. Do you know that he ever hired any body else to swear false?

B b

Dale.



*Dale.* I do not, my Lords.

*L. Staff.* My Lords, I most humbly thank your Lordships for your favour in giving me the Liberty of examining these other Witnesses; I shall trouble you no further, nor give no more Evidence; only one Witness, my Lords, I shall trouble you no further, and that is Mr. Lieutenant of the Tower, to this Point, whether my Lord *Aston* did refuse to come to account with *Dugdale*.

*L. H. S.* Come, Mr. Lieutenant, do you know any thing about Accompts between my Lord *Aston* and Mr. *Dugdale*?

*Mr. Lieutenant.* My Lords, last Summer was Twelve-month *Dugdale* came to the Tower, but my Lord *Aston* would not speak with him, unless I were by; so they brought him to my Lodging, and he shewed me the Books of Accompts: I told them I did not understand Accompts, but if they would have me be by, I would get somebody to be present that did, and have them adjusted. Mr. *Dugdale* said he would come another time, but from that time to this I never heard of him.

*L. Staff.* My Lords, I shall not trouble you with any more Witnesses. My Lords, I have now done my Evidence. I shall, as well as my weak Memory and old Age will give me leave, sum it up, something (as well as I can) of the Evidence given against me, and for me. Truly, my Lords, I am able to do it very imperfectly for want of Understanding, and truly for want of Sleep; but I do not doubt, but that according to the Law, as I am informed it is, since I can have no Counsel in Matter of Fact, or to advise me in any thing of that nature, yet I am also informed by the Law, your Lordships who are my Judges, are my Counsel. And I do not doubt but your Lordships, when you take it into Consideration, will supply any Defects which I shall commit, which I believe will be many. I shall spend your Lordship's time as little as I can; tho' these Gentlemen of the House of Commons believe I desire to protract it, yet I profess before God I do not. And I declare before them all, and your Lordships, I am so satisfied of my own Innocency, that I would never beg a moment's time of delay; and I know your Lordships will take care of the Life of the meanest Subject: And tho' I have had the honour to sit among your Lordships as a Peer, yet I ask not for your Favour, but with your Justice too: I shall therefore sum up my Defence as well as I can. For the first Witness, *Dugdale*, he swore I was at a Consult at *Tixall* in the end of *August* or the beginning of *September*; I have sufficiently proved that in all *August* I was not there, nor till the 12th of *September*. I have proved that his first Oath was, I was there in *August*, and a Man that will swear false in one thing is not to be credited in any. I have made it appear to your Lordships, that upon the 20th of *September* when he says he was in my Chamber, and I sent the Page to call him, that that is false; it was only he desired he might come to me to get leave that he might go to the Race, my Lord *Aston* being angry with him for it. This I conceive is proved sufficiently by two Witnesses, my Man and my Boy, and this I think I have proved as positively as can be done. My Lords, 'tis true, 'tis objected against me, That I had said *Dugdale* was never seen alone with me in my Life, 'tis true; and 'tis true *Ansell* swears he brought a Footman to me, but he swears it was in the Morning, when it was at Supper, and does not say that he was alone with me. My Lords, *Dugdale* swore that he told Mr. *Philips* and Mr. *Sambidge* of the Death of Sir *Edmundbury Godfrey* on the *Monday*, some swore he said it was on the *Tuesday*, but they deny that ever he told it them; and so he is forsworn in that. And, my Lords, whether he be a Man of any great Credit, I think I have proved enough to your Lordships. 'Tis proved by two Witnesses, *Holt* and *Morral*, that he offered them Money to swear, as likewise he did to another, one *Robinson*; whom I do believe, by the Information that was given of him, to be a wicked ill Man, and not to be credited; but being so, my Lords, he was the fitter for *Dugdale's* turn. And yet he had so much Conscience, tho' he was a poor and needy Fellow, he would not swear a Man's Life away for Money. The other two are without Exception, the one they say is an idle Fellow, and t'other a Man but of an indifferent Reputation; how far that will move with your Lordships, I submit it to you. I suppose it is also clear by my Witnesses, that *Dugdale* is a Man of no Reputation, having forsworn himself in several Particulars; and I submit the Credit of all he says to your Lordships upon that.

The next Witness, my Lords, is Mr. *Oates*, whether he be a Doctor or no, I know it not, he would not own it here; he, my Lords, swears that he saw a Commission delivered to me to be Pay-master of an Army to be raised, God knows when, I never heard when, or where, I suppose it was in the Clouds, for I never knew where else. Mr. *Oates* all along before swore only that he believed I was in the Plot, now he swears I was in it, at Mr. *Fenwick's* Chamber, a Man I never saw in my Life, nor heard of till this Discovery. And that he saw Letters subscribed by my Name; but that, my Lords, I conceive is no Evidence at all, for he never saw me write, nor does know my Hand, nor does he pretend to know me then: And when he had told your Lordships he had a Letter of mine, he pretended to look for it, and then said he had lost it, that is, never had it. But besides, my Lords, his Evidence now does not agree with his former: For I do appeal to your Lordships that were in the House then, that he swore the first time, He only saw my Name to Letters; afterwards he swore (that is, some days after he had ended all his Evidence, and knew no more than he had put down then, afterwards he remembers what he knew not before and swears) a Commission he saw delivered to me: So his Memory encreases as he hath time to invent, and perhaps by another time it might be much more. But, my Lords, I think that one particular, his swearing before your Lordship's, as 'tis entered in your Journal, that he had no more to say against any body, and afterwards naming the Queen, and now to me to have a Commission, I conceive, is perfect Perjury. My Lords, Mr. *Oates* told your Lordships, That he had never been a Papist in his Heart, but ever feigned it; truly, my Lords, I cannot possibly give over that Point, That a Man that feigns himself to be a Papist, or any thing that in the Opinion of Protestants is so wicked a thing as that, is fit to be believed, if he shall not heartily repent himself, and own it to God and Man as an ill thing to dissemble so. But yesterday he with a smiling Countenance, and as it were with a Derision, owns that which must be a very great offence to God Almighty, to pretend to be of an Idolatrous Church. I appeal to your Lordships whether he be a fit Witness, I conceive he cannot be thought a Christian, nor to believe in God. I know

many wicked and infamous Persons have done many wicked things, and yet have been Witnesses; but never did any wicked Man own a wicked thing, that he might have concealed, with boasting of it, that ever was credited in any thing: For if he had said I do acknowledge I did dissemble with God and my own Conscience, but I ask God Forgiveness, it was for a good End, and a good Intention, it hath been something, (tho' that could not have atoned for so ill a thing) but shewing no Repentance, but rather an impudent affronting of God Almighty, I think he is not a fit Witness, I appeal to your Lordships and the whole Christian World if he be. I cannot believe your Lordships will condemn me for an Opinion which I will go to my death with, and it stands upon me so to do.

The last Witness, my Lords, is *Turberville*, and he says, In the Year (75) he often discoursed alone with me for a Fortnight together at *Paris*. My Servants he owns he never saw them, and how he could come for a Fortnight together, and not see my Servants, I refer it to your Lordship's Consideration whether it be possible. For I'll tell your Lordships, when I had been a few days at *Paris*, my Landlord came one day to me and said, You do not do well to suffer any body to come to you without your Man be by; for there came Yesterday a *Frenchman* to speak with you, and I do not know him, and he went up straight to your Chamber without any body with him; 'tis a dangerous thing, said he, for I know that *Frenchmen* and People have come up, and been alone with Persons, and put a Pistol to them and made them deliver their Money for fear of their Lives; therefore, pray, said he, do it no more. From that time, which was a few days after I came to *Paris*, the latter end of *October* or the beginning of *November*, no Christian Soul was permitted to come to me without my Servants; how then could he come to me for a Fortnight together, and none of my Servants see him? My Lords, this Gentleman very civilly the next day after he had made an Affidavit against me, would needs mend it; and Sir *William Poulteny* did acknowledge that he made an Affidavit one day, that he came to my Lord *Powis's* in the Year (73) and the next day amended it to (72). Now I humbly conceive, my Lords, a Man that swears one thing to-day, which he forswears to-morrow, is not to be believed: And the truth of it is, as his Brothers prove to your Lordships, he came to my Lord *Powis's* in the Year (71) and so he forswears himself in every thing, and is in no wise to be believed. He swears to your Lordships I writ a Letter to him to acquaint him that I would go by *Calais*, and not by *Diep*; But I have proved I went by *Diep*, and I assure your Lordships I have not been at *Calais*, I think, these twelve or fourteen Years. I conceive these things are very manifest and clear Proofs against him that he hath not sworn one true word. He swears that my Lord *Powis*, my Lady *Powis*, and his Friends, persuaded him to go to *Doway* to be a Friar, but not liking it, he came over again, and was in danger of his Life by them; but the Evidence is sufficiently strong in proof that he afterwards was at my Lord *Powis's* and was well received, that he lay in the House, and was not in the least injured by them. And for his other Relations, his Brother proves he was not ill used by them. They gave him seven Pound to be gone, and trouble them no more. He says, I said he was a Coward; and I'll tell you why I said so, because a Captain, that is now out of *England*, told his Sister so, who told me so; but that is not very material. My Lords, there is one Witness more, *Jabu Porter*, that swears to your Lordships this one Thing, That this *Turberville* swore to him at such an Ale-house, he knew nothing of the Plot. And then, my Lords, there is Mr. *Yalden*, and he is a Gentleman of Reputation, he said in his Company, there was no Trade good but that of a Discoverer; God damn the Duke of *York*, *Monmouth*, Plot and all, for I know nothing of it. Truly, my Lords, whether he got Money by it or no, is known since he hath been a Discoverer, telling what he knew not so many Months ago; and therefore I submit it to your Lordships what he is.

My Lords, these People that swear against me, there is not one of them a Person of any Quality or Condition; and whether they have not rather sworn for Money than the Truth, by Things that are known, and need no Proof, I shall observe when I come to it to argue that Point in Law, Whether a Man that swears for Gain is a credible Witness, or no?

My Lords, I have, as well as I can, summed up that little Evidence that was given against me: I cannot do it better in so short a Time; for indeed I had but a very short Time last Night, and I have not slept; I had the Cramp so much in Extremity, that my next Neighbour heard me roaring out. My Lords, I submit my self to your Lordships, and doubt not but that the Matters charged upon me will appear to your Lordships sufficiently answer'd. And I beseech your Lordships well to consider that one Thing against Dr. *Oates*, his dissembling with God Almighty, and his impudent owning of it. This I do insist upon; and I protest before God Almighty, If I were a Judge, I would not hang a Dog upon such Evidence. My Lords, I have many Points in Law to offer to your Lordships, and when you please I should do it, I'll name them to you.

*L. H. S.* Name them, my Lord; if you have any Doubts in Law, propound them.

*Lord Lovelace.* My Lords, I would not interrupt my Lord, but It hink indeed it is no Interruption, since his Lordship broke off, and was going on to another Point. But I think I see one of the impudentest Things that ever was done in a Court of Justice; whilst we are trying a Person here for a Popish Plot, I do see a professed Papist standing in the Body of your House, and that is Sir *Barnard Gascoigne*.

(Who thereupon went out of the Court.)

*L. Staff.* My Lords, I do conceive I have cleared myself to your Lordships of what I am accused of. My Lords, the Course of my whole Life hath been otherwise; I defy any Creature in the World to say, that I ever used one disobedient or disloyal Word of the King, or did any such Act. I waited on the King that now is, in the unhappy War that is passed, when I was in a low Condition enough as to Fortune, and my Wife and Family were thereby reduced to great Straits, for my Wife and Children lived some five or six Years upon some Plate and Jewels that we had; whereas if I would have come, and been at *London*, and joined with that Party, I could have saved my Estate, and lived quietly as others did. But my Conscience told me, I ought to wait upon the King, and offer him my personal Service, when I could do him no other. I have shewn how the Witnesses have forsworn themselves; I shall now, if your Lordships please, desire



desire your Opinion in some Points of Law. And though perhaps I may name to your Lordships many Things that are impertinent, or not to the Purpose, I beg your Lordships Pardon, 'tis out of the Weakness of my Understanding; and I hope you will not think ill, neither your Lordships nor the House of Commons, if I should, thro' Ignorance, move Things impertinent. The first Point of Law is this:

*First*, I conceive there is no Example or Precedent for it, that Proceedings Criminal ever did continue from Parliament to Parliament, and this is continued to three.

*L. H. S.* Speak out, my Lord, and go on.

*L. Staff.* Secondly, my Lords, I do not question the Power of the House of Commons in the least; but, my Lords, I know they impeach when they find Grounds for it without Dispute: But I question whether any Man, by the known Laws of this Kingdom, in Capital Cases, can be proceeded on, but by Indictment first found by the Grand Jury, and not by Impeachment by any Person, or other Body of Men.

*L. H. S.* Say on, my Lord.

*L. Staff.* Thirdly, my Lords, I conceive there are many Defects in the Indictment or the Impeachment. (Indictment there is none.) There is no Overt-Act alledged in the Indictment or Impeachment, I know not well what it is called. And, my Lords, by the Act of Parliament in 1 H. IV. c. 10. nothing from thenceforth is to be Treason, but according to the Statute of 25 Edw. III. which includes an Overt-Act.

*Fourthly*, My Lords, I desire that I may prove that by Law they are not competent Witnesses, for they swear for Money. But, my Lords, I forgot one Thing to say to your Lordships as to the Evidence, that these Gentlemen did endeavour to prove (I do not speak whether they did or not) a general Plot of the Papists; whether they did or not, I am not concerned in it, for I say they have not proved me a Papist, which I submit to your Lordships: and though any Man may know me so in his private Knowledge, yet they having not given any Proof of it, 'tis not to affect me.

*Fifthly*, There is one Point of Law more, That no Man can be condemned for Treason, as I conceive, by one Witness; and there are not two Witnesses to any one Point. These are the Points of Law; I humbly beg your Lordships Pardon for the Trouble, and desire your Opinion in them.

*Sir Will. Jones.* My Lords, before we make Answer to what my Lord hath said, I do humbly desire, That for the Objection which he hath made against Mr. Southall, proved by a noble Lord of this House (tho' I must observe it was not of his own Knowledge, but by Hearsay, and that Matter of Hearsay contrary to the Act of Oblivion) to the End there may be no Doubt remain of Mr. Southall's Credit, that a noble Lord of this House, and a Gentleman of the House of Commons (who both know Mr. Southall) may be heard to his Reputation.

*Sir F. Win.* My Lord Ferrers knew him not himself, but my Lord Brook and Mr. Gower will give a better Account of him.

(Then the Lord Brook was sworn.)

*Lord Brook.* My Lords, what I have to say concerning this Mr. Southall is, That he hath been often employ'd both by my Brother and my Mother; and they have so good an Opinion of him, that they employ him still; and therefore we take him for an honest Man, and an able Man, or he would not be so much trusted and employed: And I take him to be a very good Churchman; for if he was not, I would not employ him.

*L. H. S.* An honest Man, an able, and a good Churchman, your Lordship says?

*Lord Brook.* He receives the Sacrament four Times a Year.

*Sir Will. Jones.* Then swear Mr. William Leveson Gower, a Member of the House of Commons; (which was done in his Place.)

*Mr. L. Gower.* My Lords, I have been near seven Years of Staffordshire, but did not know Mr. Southall till this Popish Plot was discovered. After that I came acquainted with him (being a Justice of the Peace in that County) in Court, where I found him to be the most zealous Prosecutor of the Papists in that Country, no Man like him. I likewise found several Popish Priests had by his Means been apprehended and imprisoned, and one of them since convicted, who by the way still remains unexecuted in Stafford Gaol. What Opinion some may have heard or had of him formerly, I cannot tell; but this I know, that he hath more than once come to desire my Assistance, that he might prosecute the Papists the most effectual Way upon the Statutes made for that Purpose, and that he did complain to me that he had not met with good Usage elsewhere.

My Lords, I take Opinion to be grounded upon Principles; and I do observe that those of this Country who do believe this Popish Plot, and know Mr. Southall, and are principled for the Preservation of the King, the Protestant Religion, and the Government, do at this Time speak well of him, and those who are not so principled speak otherwise.

My Lords, I was surpris'd when I heard my Name mention'd upon this Occasion: I have told your Lordships all the Matter of Fact that upon the Sudden occurs to me, (with my own Opinion, which I offer with all Submission;) and had I had Notice, I might possibly have recollected more, which I would freely have declared to your Lordships, but this is all that I can now say.

*L. Staff.* My Lords, if your Lordships please, I would say one Word, if you will give me Leave; I am very ignorant, and beg your Lordships Pardon for troubling of you: I humbly desire to know, Whether after the Points of Law are argued, I may speak something, not concerning the Evidence of the Plot, but concerning myself.

*Sir Will. Jones.* My Lords, we shall not oppose the saying any thing he can for himself; but we must conclude, and have the last Word.

*L. H. S.* My Lord, the Gentlemen that are for the House of Commons must conclude. My Lords will give you all the Favour they can, but they must have the last Word.

*L. Staff.* I do not oppose it.

*L. H. S.* Therefore you will do well to say all you have to say together. For the Points of Law, my Lords, will give no Judgment till the Commons have answered them, and they I suppose will first sum up the whole Proofs; then you may say what you have to say, for they must make an End. Gentlemen, will you speak first to the Law?

*Sir Will. Jones.* No, my Lords, first to the Fact.

*L. H. S.* Go on then.

Then Sir William Jones, one of the Committee appointed to manage the Evidence, began to sum up the same as followeth.

May it please your Lordships,

We have now done our Evidence as to Matter of Fact; and that which I have in Charge at this Time, is to remind your Lordships of our Proofs; to answer the Objections that have been made against them; and to make some Observations upon the Whole.

My Lords, The Members of the House of Commons that were appointed for the Service of the Management of this Trial, those of them I mean who began the first Day, made a Division of our Evidence into two Parts; the one that which concerned the Plot in general; and the other what related to this Lord in particular.

My Lords, as to the Plot in general, we did call six Witnesses; I know some of your Lordships have taken Notes, and you have their Names: They were Smith, Dugdale, Prance, Oates, Dennis, and Fenison.

My Lords, because I will save as much of your Time as I can, I will not take upon me to repeat what each Witness said as to the Plot in general; but when I come to the Evidence which immediately concerns my Lord, I must beg your Favour that I may be more particular. I will say thus much for the Proofs of the Plot in general, that there was by those Witnesses so much fully proved, that made it most apparent that there was a general Design amongst the Roman Catholics to introduce their false Religion into this Kingdom, that the Jesuits had several Meetings to that End, that they endeavoured to do it by several Ways, by raising of Arms, by collecting of Monies, and by designing against the King's Life; nay, they had so far advanced their Designs, and were in so much Readiness, as they thought it Time to appoint Officers not only for their Army, but for the Civil Government, as if the Work were already accomplished.

Your Lordships were told by one of the Witnesses of a Lord Chancellor, and of a Lord Treasurer, (Lords now in the Tower yet to be tried;) and you were told also of Officers for the Military Part, a General, a Lieutenant-General, and this Lord at the Bar to be Pay-master of the Army.

I shall, my Lords, desire to take Notice to your Lordships, that this Design, though it was to be finally acted by other Hands, yet it was first contrived, and afterwards carried on by the Priests and Jesuits. You will find them preparing for it, by making Sermons to justify that Doctrine (which I confess this noble Lord denies) of the Lawfulness of killing Kings. You will find the Priests and Jesuits, in their Discourses as well as Sermons, urging and encouraging their Disciples and Votaries, to go on with their Design of killing our King, and giving that common Reason for it, That he was a Heretick, and it were meritorious to take him out of the Way.

My Lords, I take Notice of these Particulars in the general Plot, because it may give great Light to, and add much to the Confirmation of the particular Evidence. And, my Lords, (I think) I may take leave to say, That the Plot in general hath been now sufficiently proved. And if we consider what hath been proved at former Trials (upon which many of the Offenders and Traitors have been executed) what hath been published in Print; and above all Coleman's Letters, written with his own Hand, and for that Reason impossible to be falsified; we may justly conclude, that there is not a Man in England, of any Understanding, but must be fully convinced of the Truth of the Plot in general. I shall spare to mention the Resolutions and Declarations of two Parliaments, and of both Houses in those two Parliaments, without (as I remember) one dissenting Voice, expressing their full Satisfaction of the Reality of the Plot: So that I think now none remain that do pretend not to believe it, but two Sorts of Persons; the one, those that were Conspirators in it; and the other, those that wish'd it had succeeded, and desire it may so still.

But, my Lords, I will be the shorter on this Part; for perhaps it will be objected, You have offered a fair Proof of a general Plot, here are Records, Votes of both Houses, Papers and Evidences printed, and Witnesses *viva voce* to prove it; but what is all this to my Lord Stafford? My Lords, it goes a great Way to him; I do not say to be a convincing Evidence, but to make the particular Evidence against him highly credible.

Your Lordships cannot imagine, that there are such a Store of Lords and great Men amongst that Party (though there be too many) that they should have great Choice for great Offices. Your Lordships hear how the other great Offices were disposed of, and truly I think the Merit of this Lord amongst that Party might very well entitle him to an Office as great as this of Treasurer of War, or Pay-master to the Army. But what is the Evidence of the general Plot (may some still say) to my Lord Stafford? What do you mention the raising an Army? What do you mention the collecting of Money? What do you mention the providing of Arms for? Yes, my Lords, they are very useful, for they give a fair Introduction to prove against this Lord, that he was to have this Office. If it be proved by other Witnesses than those who swore directly against this Lord, That there were Arms provided, that there was an Army to be raised, and the Rest; it proves at least, that there was Occasion for such an Officer as the particular Witness proves my Lord to be.

My Lords, for the other Matter that relates to the Consultations of the Priests and Jesuits, and their Sermons and Discourses, I desire your Lordships to observe that also; which if you do, your Lordships will easily perceive what a great Influence even that Matter hath upon the particular Evidence, and how credible it renders the Testimony of the particular Witnesses. Your Lordships will find, when my Lord was at Tixall (as Dugdale gives you an Account) there was Evers the Jesuit, and other Priests still at my Lord's Elbow, and egging him on to this Business. Your Lordships will find where Oates speaks of him, it is at Fenwick's Chamber, who was a Jesuit, giving him ghostly Council. Your Lordships will find, That at Paris, where Mr. Turberville speaks of him, there were Father Sherborne, Father Nelson, and Father Anthony Turberville. Still the Priests are about my Lord; and when my Lord is among them, or but newly come from them, then he utters the Treason of killing the King. And doubtless this traitorous Purpose of his did arise from their Councils: So that tho' our Witnesses speak of my Lord's Discourses at several Times about



about killing the King, yet they make them flow from one and the same Fountain, the Infatigation of the Priests and Jesuits.

But now, my Lords, to come to the particular Evidence, I think I may say, if ever Evidence was convincing, this is so. We have brought three Witnesses which speak each of them that which is sufficient to prove my Lord guilty; and they speak of Overt-Acts too, as I shall observe anon.

His Lordship was pleased at the beginning of our Evidence to desire that the Witnesses might look him in the Face; and for that he cited two Statutes, I suppose he intended the Statutes of 1 & 2 of Edw. VI. which Statutes, or at least one of them, do say, That there shall be in Case of High-Treason, two Witnesses to accuse, and those two Witnesses brought face to face at the Time of Trial: And my Lord hath had the Benefit of those Laws; he hath had two, nay three Witnesses to prove him guilty, brought face to face before your Lordships; and if these three, or any two of them deserve to be credited, my Lord in this Case is guilty of High-Treason. My Lords, I must beg the Favour of looking upon my Paper of Notes; for the truth is, the Witnesses are so many, and the Proceeding hath held so long, that it is impossible for my weak Memory to retain all that was said.

My Lords, the first Witness we began withal was *Dugdale*; and I know your Lordships did take notice what he swore: but it will be my Duty to remind your Lordships, that he tells you, That he had heard of a general Design of making Preparations to be ready against the King's Death, and this for several Years past. But as to the Matter of hastening the Death of the King, that was but a late Council. He tells you, I think, that about the latter end of *August*, or the beginning of *September* 1678, *Evers* and other Jesuits were at *Tixall*, that there was a Consult then about the King's Death; and that (by the means of *Evers*, who was a very great Man among them, but since fled, and is mentioned in the Impeachment) he was admitted to that Consult, and heard particularly what every Man said; and he does take upon him to say, That at that time the Matter of taking away the King's Life was propounded, and that my Lord, the Prisoner at the Bar, did consent to it.

My Lords, he tells you further, That upon a Sunday-Morning my Lord came from *Stafford* to *Tixall* to Mass: my Lord was pleased to observe, that we do not prove him a Papist; but we prove my Lord came to Mass, and that, I think, is one good Proof of his being a Papist. Besides *Dugdale* swears my Lord did then complain, That they had not the free Exercise of their Religion; that they could not say their Prayers openly: What were they? Not the Prayers of *Protestants*, not those contained in the Liturgy of our Church. He could not complain of any Restraint as to them; but complain he did, that they had not the Free Exercise of their Religion; but he did hope, if Things succeeded well, in a short time it would be otherwise. This is particularly sworn by *Dugdale*.

My Lords, his Lordship was very much unsatisfied, that *Dugdale* was not particular in point of time; he did talk of some Matters to be in *August* or *September*, but could not fix to any Day. But your Lordships will remember, that as to one Particular, and which mainly concerns his Lordship to answer, he comes to a Day, or within a Day; for he swears positively, That upon the 20th or 21st of *September* he was sent for to my Lord's Chamber, the Servants were put out; that there my Lord did propose to him, in express Terms, the matter of killing of the King: He would have him be an Actor in it, and he offered him a Reward of 500*l.* to perform it. For this, which is the most material part of his particular Evidence against my Lord, he is certain 'twas either on the 20th or 21st of *September*; and he tells your Lordships how he comes to remember the time, by a good Token, by the Foot Race that was then to be run; and I do not perceive that my Lord does deny, but rather acknowledge that *Dugdale* was in his Chamber at that time. 'Tis true he does deny some other Circumstances which I shall answer anon. And here I do think *Dugdale* undertakes to swear to that which will amount to an Overt-Act, and a damnable one too, that is the offering 500*l.* to kill the King.

But *Dugdale* (it seems) was not willing to depend upon the Promises of my Lord for so much Money, his Lordship had not that Credit with him; he repairs to *Evers*, and desires to be satisfied from him, whether he might rely upon my Lord for so much Money? *Evers* told him he might be sure to have the Money; and that there was enough in *Harcourt's* and other Mens Hands for the carrying on that blessed Design; and that he should have it thence. I might, my Lords, remember to your Lordships, how *Dugdale* does particularly swear concerning another Discourse he had afterwards with my Lord; That my Lord complained of the great Losses that had been sustained by him and his Friends for the King; how, in particular, my Lord *Asson's* Father had lost 30000*l.* and what Repentments my Lord had of it. He said, That Places of Profit were rather bestowed upon those that deserted the King, and were Rebels and Traitors, than on those that did him faithful Service: And what does he conclude from thence? he is very angry with the King, and does say, that next to the Cause of Religion (which was the strongest Motive with him to take away the King's Life) the King's Ingratitude to his loyal Subjects, was that which did most offend him.

I shall not trouble your Lordships with other particular Matters which were to serve as Encouragements to the Design; as that there was to be a Pardon from the Pope; That my Lord did write a Letter to *Evers*, which was shewn to *Dugdale*, wherein he says, That things did succeed very well abroad, and he hoped they would do so at home. I shall only observe, that *Dugdale's* Evidence, as to my Lord's damnable Design of killing the King, is positive and full. And if this be to be believed (as I hope we shall shew there is no Reason but it should be) then here surely is one sufficient Witness to prove my Lord guilty of the highest Treason.

My Lords, the next Witness we call for against my Lord, was *Dr. Oates*; and I think *Dr. Oates* is not only positive, but he is positive in that which most certainly will amount to an Overt-Act; nay, I think to more Overt-Acts than one. The Doctor tells your Lordships, That having been at *St. Omers* and in *Spain*, he saw several Letters that were subscribed *Stafford*; he did not then know my Lord's Hand, but he saw the Letters, and he tells you the Effect of those Letters. And I remember in one of them there is this Expression, That my Lord (the Prisoner at the Bar) does give Assurance to the Fathers, that he is very zealous and ready to do them Service.

The Doctor tells you, my Lords, That afterwards coming into England, my Lord *Stafford* did write a Letter, I think it was to his Son; but sure I am, the Doctor did, he had the Carriage of it to the Post-house; That he saw my Lord write it; he read the Supercription, and he swears, that the Hand which wrote that Letter, was the Hand which subscribed to all the former. And so then joining the one to the other, it amounts to as good an Evidence as if he had known my Lord's Hand from the Beginning.

But that which comes home to my Lord, is that which *Dr. Oates* saw, and that which *Dr. Oates* heard: And they are these Particulars which I now mention.

First, he saw a Commission directed to my Lord to be Pay-master of the Army, he saw it delivered to my Lord's own Hand, and my Lord accepted it. *Dr. Oates* read the Commission, and he tells you by whom it was signed, *Johannes Paulus Oliver*, a Person substituted by the Pope to issue out Commissions. He tells you the Contents of it, and of this he swears he was an ocular Witness.

He tells you of another Matter he heard my Lord say, as considerable as the other, That when my Lord had received the Commission, my Lord declared, that he was to go down into *Staffordshire* and *Leicestershire*, where he was to put Things in Readiness. What were those Things? He had now a Commission, by Virtue of which, in *Leicestershire* and the other Places, he was to prepare and gather Monies for that Army which he was to pay. So much *Dr. Oates* doth swear he heard from my Lord's own Mouth.

But there is one thing further, which I had almost forgot. He doth swear, that my Lord was privy to, and approved of, the Matter of killing the King: for he doth swear he did hear my Lord say at that time, *He hoped before he returned, honest William (who was Grove that was executed for this Attempt) would have done the Business.* And what that Business was, every Man who hath heard of *Grove's* Treason, must needs understand.

There is but one thing more that I remember of *Dr. Oates's* Testimony. Your Lordships that have a better Advantage to write than we, who are crowded together, may have taken Notes of more; but this one thing I do observe: *Dr. Oates* doth expressly swear, That my Lord bore a very ill mind towards his Majesty; for my Lord did, in his hearing, complain, That the King had deceived them a great while, and that they would bear with him no longer, he should deceive them no more.

My Lords, our third Witness was *Mr. Turberville*, who doth give you an Account, That he being first sent to *Dowry*, and intended to be entered there in one of the Societies, (he was sent by my Lord *Powis* and my Lady *Powis*, and some of his Relations of that Religion, for that Purpose) he did not like the Company, he was not pleased with the Exercises of that Religion, and that with much Difficulty he escaped thence and came for England. But finding he was not well looked upon here, nor well received by his Relations, he went over to *France*: That being at *Paris*, he came into the Company of the three Fathers I named before, *Father Sherborne*, *Father Nelson*, and *Father Turberville*; the last whereof, he tells you, was his own Brother: That by the Means of these Priests he was brought acquainted with my Lord *Stafford*; and doubtless they were able to make him intimately acquainted with my Lord. And it did prove so, for he tells you, after some Time, that in a lower Room of my Lord's Lodging, my Lord proposed to him the Business of killing the King. That he did not at all like it, was very unwilling to undertake it, but my Lord bid him consider of it, and that he should give him his Answer at *Diep*, having enjoined him Secrecy; but my Lord after sent him word he would go by *Calais*; and the Witnesses afterwards went into England, and from thence into the French Army: And this is the Substance of what *Turberville* deposeth.

And, my Lords, I think it will not be doubted by any Man that will consider these three Mens Testimonies, but that here are two Witnesses, if not more, to prove my Lord guilty of Treason.

But my Lord has been pleased against them to make several Objections; some have been by Witnesses which he hath produced to encounter the Proofs that we have offered; and some of them have been by Observations that he hath made upon what hath been said by our Witnesses and his. I will keep to Order as much as I can, and not confound the Order and Method of his Defence.

The Witnesses he first brought were against *Dugdale*, and of them his Lordship was pleased to begin with his Daughter, the Lady Marchioness of *Winchester*, and his Niece Mrs. *Howard*. Your Lordships, I presume, are pleased to observe what they were called to. They did testify, that being at *Wakeman's* Trial, they did hear *Dugdale* swear (says my Lady Marchioness of *Winchester*) that my Lord *Stafford* was to come down into *Staffordshire* in *June* or *July*, and Mr. *Dugdale* was then to receive Orders from my Lord; and he swore (as she was pleased to say) that there was a Consult in *August* at *Tixall*, and my Lord *Stafford* was there present. Mrs. *Howard* (for I put them together) was pleased to say that she was present at that Trial, and there *Dugdale* swore that my Lord *Stafford* did come down in *June* or *July*, and that my Lord was at the Consult in *August*.

My Lords, I will not make Objections neither to the Religion of these Ladies, nor to their Relation to my Lord, though those be Matters that are to be considered. But that which I shall observe to your Lordships, is this, That they do not agree one with another: For my Lady *Winchester* says *Dugdale* did swear that my Lord was to come down in *June* or *July*, and Mrs. *Howard* says, that he swore he did come down then. Now there is a great Difference betwixt swearing an Intention that a Man was to come down, and swearing the very Act that he did come down at that Time. By which your Lordships may observe, how hard a Matter it is for Witnesses that are present at a Trial (especially at a Trial which did not directly, though it might in consequence concern another Person of their Relation) to take Notice exactly of Things.

And truly, my Lords, these Ladies being of that Religion, might have so much Concern upon them for Sir *George Wakeman* the Popish Physician, and in him for other their Friends of that Party, that they might not have so much Liberty of Thought, as to observe exactly all Circumstances sworn to by the Witnesses; and therefore it is no great Matter if they are mistaken in them. But I believe if any one do consult the Print (though it be no Evidence, nor offered as such) he will find no such Thing was at that Time sworn; for it is not so printed, and those that took Notes did not understand it so.

My



My Lords, the next Witness my Lord is pleased to bring, is his Servant *Furness*; and what is it that he testifieth? He saith, that he was with my Lord the whole time that *Dugdale* was in my Lord's Chamber; and he doth not remember that ever *Dugdale* was there but once, and he doth not remember that ever my Lord bid him go out of the Room.

My Lords, It is a very hard Matter for a Man to come thus in the Negative, to remember how often *Dugdale* was there, especially there being no more Occasion to take Notice of it then, than here appears to be, and that after so long a Time. And it is a very hard Matter for a Servant to gain Credit, by saying his Master never bid him go out of the Room in his Life. These things may be done or said, and yet escape the Memory of a Servant of more Age, and of less Inclination to favour his Master, than this Person appears to be of and to have. Therefore I think there will be but a very small Matter made of what he said, no Force at all in it; and I believe your Lordships will give very little Regard to it; but rather believe those Witnesses that swear positively, that they have seen him with my Lord, and speak to a Familiarity at that time between them.

This young Man, *Furness*, was my Lord's Servant, and of his Religion; and it is considerable, whether we have not reason to be afraid that more than ordinary Practice has been used to prepare Evidence on my Lord's Behalf, which I shall have Occasion to speak to when I come to the other Witnesses.

His next Witness, my Lords, was his Boy, *George Leigh*, who is 15 Years of Age now, and was eight Years old when he came to my Lord seven Years ago. And he attests the same thing, and to the same Purpose with the other. And I think I may leave him with the same Answer, for we are nothing more concerned with him than we were with the other. Only one thing I would observe, to shew that his Memory was imperfect; he doth not remember that *Dugdale* was with my Lord at all that Day, which my Lord himself doth acknowledge he was, and the other Witness agrees; so that there cannot be any great Weight laid upon what he saith.

My Lord's next Witness was *Thomas Sawyer*, and he is one of my Lord *Aston*'s Servants, that I desire to observe of him first. And what does he say? He saith, That *Dugdale* went away for Debt. The contrary to which was apparently proved; for we, by our Witnesses, made it manifest, that *Dugdale* went away for the Matter of the Plot; the Fear and Dread he was in upon that Score, and the Circumstance of his being apprehended by the Watch at Night in his Flight, and how he was put to take the Oaths, do manifestly prove this. But he says another thing, which I desire may have no Weight with your Lordships, That *Dugdale* should threaten, that because my Lord *Aston* would not own him for his Servant, he would be revenged of him. Truly, if my Lord *Aston* were here to be tried, it would have some Weight. But to think, if it were true, that he had so sworn, that therefore he would be so wicked as to do Mischief to another Man, that he would be revenged of every Man of that Religion, or of every Man that came to my Lord *Aston*'s House; that cannot be imagined. So I cannot see what great Surety, my Lords, the Prisoner can lay upon it, as to the present Trial, which concerns my Lord *Stafford*.

But, my Lords, I desire to observe, that he says further, That when *Dugdale* went away there was a Discourse of a Plot (this he helps out *Dugdale* in): And that there was a Discourse of the killing of a Justice of Peace. So that certainly it does shew, that *Dugdale* was apprehensive of the Plot. And as to that which he is pleased to say, That *Dugdale* should deny his Knowledge of the Plot, and take Drink, and with Exclamations forswear it; it will be no Manner of Objection at all. For I shall have Occasion to shew hereafter, that *Dugdale* at that time was very far from revealing the Plot he had been so long engaged in; he was in Apprehension of the Danger of his own Life, and *Southall* tells you how and when he revealed it, and by what Inducements he was prevailed upon to do it.

The next Witness my Lord called, was *Philips*, the Minister of *Tixall*; and truly all that I can accuse him of, is want of Memory, and that is no Fault in a Man, that perhaps is very studious and careful in his Employment, as I hope he is. He tells you, That whereas *Dugdale* swore at a former Trial, that he acquainted Mr *Philips* with the Death of a Justice of Peace of *Westminster* on the Monday, that he did not acquaint him with it; that is, he does not remember it, for no Man that swears a Negative, can swear more. But whether Mr *Philips*'s Evidence be of any Consequence to us, we submit to your Lordships Consideration; when we oppose to his want of Memory, two Witnesses that swear he was by when this News was told: And we are told likewise, as a Confirmation of that, by two Gentlemen of Quality, that the Report of such a Thing was spread abroad all over that Country, before it was possible for it to come by the way of ordinary Intelligence. Whether, therefore, what Mr *Philips* testifies, proceeds from any other Cause than want of Memory in Mr *Philips*, I must leave to your Lordships Consideration.

But this I would observe to your Lordships, that when Mr *Philips* was asked by my Lord, whether or no *Dugdale* were a Person likely to perjure himself, he could not say so? Nay, being asked of what Reputation he was of? he said, by some he was very well spoken of, by some but indifferently; but I do not remember that he said he was ill spoken of by any. So I think Mr *Philips* has rather advanced than prejudiced Mr *Dugdale*'s Reputation and Credit.

My Lords, I think I may lightly pass over the three Justices of Peace that were brought to give an Account of *Dugdale*'s Behaviour before them, and not mention them distinctly, because they swear all to the same Purpose, That Mr *Dugdale* was apprehended upon Suspicion of the Plot, that he took the Oaths, that he was invited and urged by them to make a Discovery of the Plot, which he then denied to have any Knowledge of: For all this will be answered, when we come to remind your Lordships of Mr *Southall*'s Testimony.

His Lordship was pleased, in the next Place, to offer to prove *Dugdale* an ill Man, by endeavouring to suborn Witnesses: And in the first Place he called *Robinson*, who testified a very unlikely thing, that Mr *Dugdale* should call him in the Street, and bring him to an House, and offer him Money to swear against my Lord *Stafford*; which Money he had in an Handkerchief, but did not tell him what Particulars he should swear to: Nay, and this after he had told him he could swear nothing. And it does not appear, that *Dugdale* had any Manner of Knowledge of him, or that this Gentleman, *Robinson*, had any Knowledge of my Lord *Stafford*: So that it was a very rash and presumptuous Thing, that *Dugdale* should at-

tempt a Man that he knew not; and a very imprudent Thing, that he should suborn a Witness to swear against a Man that the Witnesses to be suborned did not know. But I shall say no more of him, because I think upon the Account that has been given of him by a noble Earl of this House, and an honourable Member of the House of Commons, if he had said things in themselves probable, he is not in the least to be believed.

My Lord's next Witness upon the same Head of Subornation, was one *Murrel*, a poor Barber; and what says he? He testifies that Mr *Dugdale* did offer him 50*l.* to swear again: Sir *James Symons* and some others. My Lords, Whether this be probable or no, we must leave to your Lordships. We have called Witnesses that prove him a Man of no Reputation, one that runs up and down the Country, a Kind of Vagabond, and I think (upon the Endeavours that have been proved to have been used as to others), it is no very hard Matter to bring a Man of his Condition to say as much as he hath done.

The next Witness is *Samuel Holt*, the Blacksmith; and he tells such a Story, that if it were true, would be some Disparagement to *Dugdale*: And what is that? He says, That *Dugdale* sent a Man and Horse for him, to bring him to the Star in *Stafford*; and there offered him 40*l.* to swear that one *Moore* carried away *Evers*. My Lords, How this Story comes in, I cannot imagine; why Mr *Dugdale* should bear any Ill-will to *Moore*, or what should induce him to intice this Man to swear against *Moore*, or what else was in it, it doth not appear. But no Matter what it was for; we prove against this Man, by two Witnesses, *Rawlins* and *Lander*; by the first, that he is a Man of ill Reputation, very zealous to support the Plot, and cry down Mr *Dugdale*, saying, that he was a Rogue, and all they were Rogues that took Part with him. And by the other Witness *Lander*, that *Holt* did make an Assault upon him, and would have killed him for being ready to appear against my Lord *Aston* at his intended Trial: So that he is a Man that has more Zeal than Honesty: Zeal in no good Matter, namely, to hinder the Truth from coming out against my Lord *Aston*; and therefore we have little Reason to wonder, nay, all the Reason in the World to believe, that he says that which is untrue about Mr *Dugdale*.

My Lords, There was another Witness, Mr *Lydcott*, that said, he was a Fellow of *King's-College* in *Cambridge*. He has offered no Proofs that he was so; and truly it is very improbable he should be so: For I hope Fellowships in the University, especially in one of the chief Colleges (as this is) are bestowed upon more deserving, and less suspicious Persons than he appears to be: A Man that owns himself the continual Companion and Secretary of one so famous in the Popish Party as my Lord *Caslemain* is: A Man that pretends he was never out of his Company; and a Man that owns, that two Years since, he was taking of Notes at a Trial for this Plot, not only for his own Curiosity, but for the Service of his Lord, who was concerned in the Accusation: That this Man should be a Fellow of *King's-College*, seems strange, and till it be better proved, will hardly be believed, nor will he deserve any Credit. It is true, he doth acknowledge himself a Protestant, and to be of the Church of *England*, and educated, as he says, a Presbyterian; but when he was asked, When he received the Sacrament last? I do not remember that he gave your Lordships any Answer.

This Witness says, That he was at the Trial of the five Jesuits; and there *Dugdale* did swear, that he gave Notice to Mr *Philips* and Mr *Sambidge* of Sir *Edmundbury Godfrey*'s Death: And this they would make to be a great Fault in *Dugdale*, because neither *Philips* nor *Sambidge* remember it. Now whether *Dugdale* swore true in that or no, does not depend upon *Dugdale*'s own Credit alone; but you have heard other Witnesses have made it appear, that he did swear true: So that we need not say any thing more to this Witness, nor to *Gifford*, who testifies to the same Purpose; because that Point, as to the Report of the Death of the Justice of Peace, is by other Witnesses clearly proved.

And as to Mr *Sambidge*, I do not wonder much, that he should say he did not hear it, because he could hardly hear what was said to him by the Court, or any of the Officers set near him on Purpose. But my Lords, I desire your Lordships to take Notice, that he was a very angry Witness; he said, he had formerly had a Controversy with *Dugdale*, that *Dugdale* had cited him into *Lichfield-Court*, and had there a Suit against him for a Defamation; and he said that against *Dugdale*, which, unless better proved, must needs make *Sambidge* much suspected: He said, that *Dugdale* was the wickedest Man on Earth; but what Proof he offered of that, or whether he did instance in any one Particular, I leave to your Lordships Memories.

My Lords, There is another Proof relating to Mr *Dugdale*, not out of the Mouth of a Witness, but out of a Paper, which I desire to give an Answer to. It was an Objection the Prisoner at the Bar was pleased to make to *Dugdale*'s Information, taken the 24th of December, 1678, before the Justices in the Country, wherein he had said to this Purpose; Presently after one *Howard*, Almoner to the Queen, went over, he was told by *George Hobson*, that there was a Design, &c. This, saith my Lord, is most impossible to be true: For you say, that immediately after the Almoner was gone away, *Hobson* told you this, whereas *Hobson* went away with the Almoner; and he came not to live with my Lord *Aston* till many Years afterwards.

This my Lord is pleased to offer as a Falsification of *Dugdale*'s Testimony; but, my Lords, I do desire to observe, that this is an Information taken before two Justices of Peace in the Country; and if you look upon it, you will see it was written by a Country Clerk, and not very skillfully done. 'Tis rather short Notes of an Examination, than a compleat Examination. And your Lordships will please likewise to observe, that there is not really an Expression that is clear one way or the other, but capable of two Senses; that is to say, either it may import *Hobson* told him there was a Design ever since the Almoner *Howard* went away; or it may import, *Hobson* told him presently after the Almoner went away, there was a Design. Read but the Words with a different Comma, and it makes the Sense one way or t'other. Now it is plain, *Dugdale* could not intend that *Hobson* told him so as soon as the Almoner went away, because *Hobson* went away with the Almoner. And it was better to his Purpose, that *Hobson* should tell him so after his Return than before, for that shews the Design had been long a carrying on.

Therefore it being a doubtful Expression, that may refer either to the Time he told it him, or to the Matter he told him of; and being taken in



the latter Sense, the Objection faileth; I think this Matter can have no Weight at all in it to falsify a positive Testimony.

My Lords, The next Witness we did call, and which was objected against by my Lord, was Dr. Oates; and truly I must observe, that his Lordship was not pleased to call any one Witness materially to falsify Dr. Oates's Testimony; and I must likewise observe, that Dr. Oates is, in the Material Part of his Evidence, supported by other Evidence.

When Dr. Oates gave Evidence at former Trials, it was the common Discourse of the Men of that Religion, that Dr. Oates had never been in Spain, nor had ever any Credit with the Priests or Jesuits, but was a mean contemptible Person, and that all he said was improbable. But now your Lordships have heard that Dr. Oates, even by the Testimony of Dennis a Popish Priest, (that is so to this Day) was in Spain, was, according to what he saith, brought up in the College of the Jesuits; that he was in such Esteem there, that the Archbishop of Tuam commended him very much in the Presence of Dennis, and spoke of what Expectation there was of him. So that Dennis the Priest doth support Dr. Oates in some Parts of his Evidence. I do not speak of that Part of it which concerns this particular Lord, but of his Testimony touching the general Plot.

There is another Thing wherein Dr. Oates is supported by another Witness, and that is the Esteem and Intimacy he had with the Jesuits. For Mr. Jenison swears, that Dr. Oates was a Man in Esteem among them, that he was at Ireland's Chamber, and had discourse with Ireland, and did appear to be frequently employed by them. And I take these two Witnesses to be a great Support to Dr. Oates, as to the general Matters which he evidenceth of the Plot.

What now doth my Lord object against Dr. Oates? He called no Witnesses against him, but only an Honourable Earl of this House, I think I may name him, the Earl of Berkeley: And that which his Lordship was pleased to testify against him, was;

*Obj.* That being examined at the House of Lords after he had given a long Evidence against many Persons, he was asked this Question, Whether there were any more Persons of Quality he could speak against, or could accuse? and he said no.

*Ans.* First, your Lordships will be pleased to observe, that this was after he had accused my Lord Stafford; my Lord was secured in the Tower long before that, upon Dr. Oates's Testimony, and so he could not exclude this Lord. But that which it is brought for (I suppose) is to make him a Person of no Credit; for after he had said this, he proceeded to an Accusation of the Queen. My Lords, I humbly conceive this may receive a very fair Answer. For,

First, my Lords, I appeal to your Lordships Memories (for, I think, the Matter was before you all, or at leastwise before some of your Lordships), that the Accusation which Dr. Oates made of the Queen was not positive, nor of his own certain Knowledge; but Words which he heard spoken in a Room in which he was not himself, but coming in afterwards, he saw the Queen was there. So it was not positive, but circumstantial Proof, and questionable whether what he testified would amount to the Proof of one Witness.

And I must observe in the second Place, it might not be so clear to Dr. Oates, whether the Queen were a Person capable of an Accusation, so as to be proceeded criminally against; the King and the Queen are to some Purposes but one Person in Law. 'Tis true, some Queens have been tried for Treason; but whether Dr. Oates understood that she might be brought to a Trial, may be a Question.

But that which I rely upon as an Answer, and which I desire may be considered, is, that Dr. Oates had given an Account of a great many Persons, and a great many Things he had sworn against several Persons, some of which were executed, some to be tried; and his Narrative against them, and of the whole Plot, consisted of a great Number of Particulars. Here is a Question comes to the Doctor on a sudden, *Have you any more to say, or can you speak against any other?* 'Tis possible a Man that had said so much, and of so many, might not upon an instant recollect whether he had said all, or against all that he could say: Nay, 'tis easily to be imagined he could not on a sudden comprehend all he had said or could say. Therefore that the Answer of a Man to such a Question, put suddenly to him, having so much in his Mind, and having said so much, should be taken so very strictly, and to hold him as perjured, because he did not at that instant Time remember this Particular of the Queen, I think is a severe Construction.

His Lordship is pleased further to object against Dr. Oates, that he is of no Credit: Why? Because he went to be of the *Romish* Religion, and so was of that Religion which is Idolatry: I suppose his Lordship will not call that Religion Idolatry another Time, and in another Place: But it serves his Lordship upon this particular Occasion, to call it so. But suppose Dr. Oates did, out of Levity, or for want of being well grounded in his own, turn to another Religion, he is not the first Man that hath done so: There have been Men of great Fame in our Church, and of great Learning too, that have changed their Religion more than once. I think he that knew that famous Man Mr. Chillingworth, could not but know he was first a Protestant, and afterwards a Papist, and afterwards a Protestant again: So that unless my Lord could accuse the Doctor of some great Crime or Immorality, it will be hard, that the Matter of changing his Religion should hurt his Testimony. I am sure, it was happy for us he did change; without that, we had not had the first Knowledge of the Plot, nor of many particulars which he could not come to know but by Occasion of that Change.

My Lord was pleased to object, that the Doctor was a Man subject to Passion; and he brought in the Lieutenant of the Tower to speak of some hot Words that passed between them. My Lords, I will allow the Doctor to be a Man of Passion; nay, if my Lord please, a Man that is not of the deepest Reach: But your Lordships will observe, that passionate Men are not often malicious; and that a Man who is not of a deep Judgment, could never have contrived and invented a Narrative, consisting of so many Particulars, and they so coherent, if they were false. And if his Narrative be not true, he must be endued with more Subtlety and wicked Policy, than upon Trial we can find in him. So that what my Lord hath objected as to his Infirmities, is no Diminution to the Truth of what he says, but rather a Confirmation of it.

My Lords, The last Witness whom my Lord endeavoured to impeach

is Mr. Turberville; and against him my Lord thinks he hath a great Advantage: But, my Lords, by that Time I have reminded your Lordships of what hath been already said, and what was before proved in answer to my Lord's Objections against him, Mr. Turberville will stand as clear in this Court, as any of the former Witnesses.

Your Lordships will be pleased to take Notice, That Mr. Turberville was at the Beginning, when he came to the House of Commons, a little uncertain as to Matter of Time: For when he had made in his Affidavit, the Times to be (73) and (76), he craved leave to alter it to (72) and (75). Surely, my Lords, this will be far from being any Imputation to Mr. Turberville; because, first he gives the Reason, how he came afterwards to understand the Time better, by viewing his Papers and Letters; he likewise gives you an Account, and so did Sir William Poulteney, when he did this, the next Morning, before any Man in the World had questioned him upon it. So that it shews the Man's Care and Conscience both, when he is so careful, even in Matters of the smallest Moment, to set things right.

There is no Man that knows the Practice of the Court of Chancery, but knows, that for a Man to mend his Answer after it is sworn in a Point of Time, or other Circumstance, is no Disparagement to him: Nay, to do it, before the other Party did except or take Notice of it, is no Objection, but rather a Reputation to him: And your Lordships will be pleased to take Notice, that one of the Times rectified, is of 7 or 8 Years, the other of 4 Years standing. And I do not think the worse of a Witness that is not positive in a Time, when that Time is so far elapsed.

The next Matter is, That this Man was never with my Lord: How was that proved, for 'tis a Negative? Why, my Lord is pleased to call his own Servants, Furness, and the Boy Leigh; and what say they? They never saw any such Man. My Lords, I desire your Lordships to observe, That Mr. Turberville was introduced by greater Confidants than either of these Servants. Mr. Turberville came in the Company of the Priests, and you hear the Boy deny that he knew Anthony Turberville, but not that he knew Father Turberville; nor doth my Lord himself deny it, nor doth either Master or Man deny my Lord's Correspondency with the other two Fathers. And it might be very easy for Mr. Turberville to come in the Company of the Priests, and the Boy not take particular Notice of him. And 'tis as little an Objection what my Lord says, that Turberville himself said he did not know the Boy: How many are there that come to the Houses of another, and unless they lodge there, or dine there often, do not remember the Servants of the House? And 'tis no greater an Objection to say, the Servants did not know him: The Priests they knew him; they were his Guides; they were the likeliest to gain him Admittance, not only into my Lord's House, but into my Lord's Heart.

My Lords, your Lordships will be pleased likewise to observe, They have also gone about in very little Matters to disprove Mr. Turberville; as that whereas he says, he was not well used by my Lord Powis and his Lady, when he returned from Downey, that he was very well used: And as one Witness (I think *Minehead*) says, he was permitted to lie in a Room near my Lord's Chamber. My Lords, Mr. Turberville does not pretend to say, that my Lord Powis shut him out of Doors; but what Reproaches or unkind Words might pass between them in private, *Minehead* might not hear: So that to say, that he lay in my Lord's House, is no Answer to this Matter. And for the other Witness (his Brother) that speaks of his Kindred's being kind to him, that, under Favour, does not at all disprove him; for, what was the Kindness? His Brother and Sister were so kind as to give him 7*l.* never to see him more; a great Matter, when a younger Brother lies upon a Family, that the trouble of his Stay there is redeemed at the Price of 7*l.* This was a very great Kindness, a Kindness indeed that one would scarce deny to a Stranger, if in Poverty. I mention the least Matters I can remember, because I would have nothing stick with your Lordships.

Then Secretary *Lydcott* (the Fellow of King's-College) was called again; but indeed, my Lords, he was so out in his Arithmetick, so mistaken in the Year, and used the New Stile (the *Romish*) so much more than ours, that it makes me suspect he is not so great a Protestant as he pretends to be. He promised us his Book, which he was not then prepared to produce; but because we do not hear of him, nor of his Book since, we say no more of him.

My Lords, *John Porter*, my Lord Powis's Butler, comes next, and what does he tell your Lordships? Why, that Mr. Turberville came not to Powis House, (it seems he did not appear there) but that he came to a Victualling House hard by; and he telling Turberville he must know something of the Plot, he denied that he knew any Thing. To the same Purpose, or rather to less, and more improbably, does *Yalden* (the Gentleman of *Gray's-Inn*, as he calls himself) testify, who says, that walking in *Gray's-Inn* Walks, he had a Discourse with Turberville; and that he then swore, there was no Trade good now but that of a Discoverer; and damned himself because he could make no Discovery. Truly, my Lords, this looks in itself to be something prepared for the Purpose: It is not probable, that a Man that should use those horrid Oaths, and should have such a Mind to be a Discoverer, should disable himself ever to be so by swearing he knew nothing.

But I will not only answer that Matter, with saying 'tis improbable; but I shall desire your Lordships to remember, that Mr. Powel, a Gentleman of the same House, and of good Reputation, does swear, that Turberville did acquaint him, that he could discover a considerable Matter; and this was above a Year since. And Mr. Arnold, a Member of the House of Commons, does confirm it, that he did several Times acquaint him, that he could make an important Discovery; and gave him several Reasons why he thought not fit to do it at that Time, because of the Dangers which might arise from some great Men; and therefore till he had a more convenient Opportunity, he would not discover. But as soon as the Parliament sat, very early he did begin to discover: So that I shall oppose the Testimony of Mr. Powel and Mr. Arnold, to the Testimony of my Lord Powis's Butler and Mr. Yalden; the latter of whom speaks so improbably, and of a Discourse half a Year ago; whereas Mr. Powel speaks of what Mr. Turberville said above a Year since, and Mr. Arnold of a longer Time.

My Lords, It hath been sometimes objected, that Mr. Turberville was a Stranger to my Lord; and it was too great a trust to commit to a Stranger, too great a Secret for a Stranger to be acquainted with: My Lord's Delig-



of the King's Death was too great a Matter to lodge with one, with whom my Lord had no more Acquaintance than he had with *Turberville*.

Your Lordships will be pleased to observe who they were that did introduce him, and who probably gave the best Character of him; they were the three Priests: And I do not wonder when these Priests had brought my Lord up to such a Purpose, that they should prevail with his Lordship to give Credit to, and deal with a Man that was not very unlike in his Circumstances to attempt such a Business: For your Lordships will observe, he was a Man that was very stout; for against my Lord's Reflection upon him as to Cowardice in deserting the Army, Mr. *Turberville* hath produced the Certificate of his Dismission, which gives him a very good Character. Besides, he was a Man indigent; and therefore I think there could not be a fitter Man chosen for the Purpose, if he had been so void of all Grace as to undertake it; and that Priests having gotten a Man so qualified, as they thought him, were not likely to let slip such an Opportunity.

But, my Lords, to come to that which is the Sum of the Business, and which my Lord lays more Weight on than all the rest; and that is the Affidavit which Mr. *Turberville* swore before the Justices of the Peace (which was, in Effect, what he informed the House of Commons), and in that Affidavit, besides his Alteration of Times (which I have spoken to already) it is objected, that he does say that which is manifestly untrue: For he says my Lord came by the Way of *Calais*, with Count *Gramont*; neither of which my Lord did do.

My Lords, I will not mention the Master of the Yacht, nor the Witnesses from the Admiralty, which make out, that my Lord came from *Diep*, and not from *Calais*. Nor do I deny that my Lord came by himself, and not with Count *Gramont*; and therefore 'tis most certainly true, that what *Turberville* swore, as to those two Particulars, was not true. Yet if your Lordships please to observe the Circumstances, tho' what he swore herein was not true, it will appear a very innocent Mistake.

For in *Turberville's* Affidavit he tells your Lordships, That he came away without my Lord to *Diep*, and came from *Diep* to England before my Lord *Stafford* left *Paris*. Mr. *Turberville* tells you afterwards my Lord came from *Calais* with Count *Gramont*: Mr. *Turberville* could not possibly be thought to speak this of his own Knowledge, because he does in the same Affidavit tell you too, that he came away before my Lord, and had not his Passage with him. So that, my Lords, I desire you would observe, it could be no Design of his to affirm this of his own Knowledge: For if it were, he took a very ill Course to disclose in the same Affidavit that he was absent, and so could not speak of his own Knowledge. And, my Lords, suppose a Man did swear such a Man and he were in such Company, and that he came Home and left the Man there, and that afterwards the Man said such and such Things in that Company; what should I say of this Oath? I might well say the Words of his Oath were not proper, or that he was unwary in expressing himself; but I could not say, nor would any Man justly be able to say, he had a Design to make the World believe he heard him say so, because he swears in the same Breath, he came away before the Words were spoken. If Mr. *Turberville* had understood how strict and nice a Man ought to be in expressing himself in an Affidavit, he would have said (as he had been told) my Lord came to *Calais*; and that Count *Gramont* came with him, as he understood. 'Tis true, he hath not put in those Words; but I beseech you, when the Matter itself will bear it, nay, when 'tis most apparent, that Mr. *Turberville* could have no other meaning than to relate what he was informed by others, and what he could not know himself; what Corruption, what Obliquity can there be in this Oath? All that can be said, is, it was not cautiously worded; but it does certainly disclose so much in itself, that every one that hears it must say, That he did not take upon himself to swear it as of his own Knowledge, because he tells you he was not there; so that it was rather want of Knowledge how to express himself properly, than any Corruption in his Oath, of forswearing himself.

But, says my Lord, how should he come to know this? Why Mr. *Turberville* said, he had a Letter whereby he knew my Lord would come by the Way of *Calais*: But where is that Letter? Is it necessary to keep, or does any Man almost keep Letters of no greater Concernment than this, that my Lord writ him Word how he would go by the Way of *Calais*, and this after five Years, and after he was in the Wars, and where I have heard he was taken Prisoner? To be sure, he was much tumbled up and down from Place to Place. And under all these Circumstances might not such a Letter be lost? But, my Lords, I beseech you, are there not some Proofs that look much this Way, made out by another Witness? Does not Mr. *Mort* tell you something of this Nature? First, he agrees as to the Matter of an English Lord lying about such a Street in *Paris*, he tells you he was with Mr. *Turberville*, and that he himself walked about *Luxembourg-House* whilst Mr. *Turberville* went to speak with that English Lord: He does say, he believes his Name was my Lord *Stafford*, but he is not positive; and the Times which he speaks of do agree with what Mr. *Turberville* deposes. And there is one Thing, which, though I should not mention upon any other Occasion, because it was but a foolish Joke, yet I shall crave leave to speak of it now. He tells you, That one Day, while they were at *Diep* in Expectation of my Lord's coming, and hearing that he went another Way, they had this Piece of minute Wit upon it, *Cursed is he that relies upon a broken Staff*: Whereby, he thinks, was meant the Name of *Stafford*. So then, I beseech you, if *Mort* say true, are not here Footsteps, and a Foundation whereon to ground a Belief, that there was a Correspondence between *Turberville* and my Lord; and that Mr. *Turberville* had an Information, that my Lord would come by the Way of *Calais*? And one Thing more *Mort* says, That *Turberville* told him, if he would make Haste to *Calais*, he might go over with my Lord. And here I would observe, how should Mr. *Turberville* come to know that my Lord went that Way? And how should he tell *Mort* that he might go over with my Lord from *Calais*, unless he had received some such information? Therefore, my Lords, taking into Consideration what is confirmed by *Mort*, and taking into Consideration the whole Scope of the Affidavit, I cannot see that there can be any material Objection against Mr. *Turberville* for saying, that my Lord came by *Calais* in the Company of Count *Gramont*.

My Lords, I have done now with the Witnesses, and I told you, as I went along, (because I would not trouble you with a double Repetition) what Evidence we have given in Contradiction to those Witnesses which my Lord hath brought in order to defame our Witnesses.

But, my Lords, I am to acquaint you, That besides these particular Answers, your Lordships have had Men of very great Credit brought to testify the Reputation of Mr. *Dugdale* and Mr. *Turberville*. As to Mr. *Dugdale*, we have brought Men that have known him a great while; one hath sworn what Opinion even my Lord *Aston* himself had of him: For it seems he lived with so much Credit there, that he would not believe any Ill of him. You have heard from other Witnesses how he did behave himself. It was objected sometimes, Tradesmen were not paid; but what then? can a Man pay without Money? I believe there are some Lords here, whose Stewards are very honest Men, and yet the Tradesmen such Lords deal with are not always readily paid.

He was, as you observe, believed to be in the Plot, and my Lord's Servants say he seemed much troubled about it; he went away upon that account, and was so much concerned, that he burnt his Papers, which I make use of for two Purposes, The one to shew that he did apprehend he was in great Danger; the other to shew what was the Reason why the Letters and Papers he speaks of are not now produc'd; because he look'd upon himself, and them who were then his Friends, to be in such Danger by them, that he burnt them.

My Lords, I know your Lordships will take notice, that there hath been a very good Account given you, how it was that *Dugdale* came to be prevailed upon to make a Discovery of the Plot; it was with great Difficulty; there were indeed Persuasions used by some of his Friends to bring him to it. The Justices, as they themselves have sworn, endeavour'd the same thing, but all without Success. Then the Coroner, Mr. *Southall*, (who tho' he was no great, yet seems to be a very understanding Man) takes him in Hand, and he had the good Fortune to succeed. I call it Good, not only for Mr. *Dugdale*, but for the Nation. I shall not trouble your Lordships with the Particulars of the Arguments Mr. *Southall* used to him, but 'tis plain (if you believe Mr. *Southall*, whose Credit is now supported by an honourable Lord, and by a Member of the House of Commons) that *Dugdale* did at the first Time that he did make a Discovery, depose as much in Substance against this Lord, as now he does. And from thence I desire to make one Observation, and that is this:

'Twas impossible it could be a Contrivance among the Witnesses themselves to depose the same Crimes against this Lord; for Dr. *Oates* never knew Mr. *Dugdale*, till *Dugdale* was brought up, which was long after Dr. *Oates's* Accusation of this Lord; nor could *Dugdale* know what Evidence *Oates* had given here, for *Dugdale* was a close Prisoner in *Stafford* Goal before *Oates* accused this Lord, and long after. And yet the first Evidence *Dugdale* gives against this Lord, doth in Substance concur with that given by Dr. *Oates*. So that since there could be no Intercourse nor Conference between them, but as much Distance as from the Prison-Doors in *Stafford* to *London*, there could be no Contrivance between them, for both of them to accuse this Lord of the same Matters. And this I desire may be looked upon by your Lordships as a Matter of great Weight to support the Credit of the whole Evidence. And *Dugdale* does seem to be a Person of an unquestionable Credit, and every one that hears him must observe, he does give his Evidence with great Modesty, and all Probability of Truth.

There is another thing, my Lords, that I would pray your Lordships to observe, These Witnesses, Mr. *Dugdale* and Dr. *Oates*, do give such an Evidence as is impossible to be given, unless it were true; for other Witnesses when they are put out of the Road, and asked Questions they did not expect, are commonly to seek, and must pump for an Answer, and then answer with great Difficulty and Wariness. But these two Witnesses do not only answer with Readiness when you ask them any Questions, but what is contained in every new Answer doth add a further Probability and Confirmation to what they said before. And I must needs say of them, I think it were impossible for any Men in the World to contrive a Story of so many Particulars, and so consistent in every part of it, and yet the same should be false; and which is more, after so many Trials, not one material Circumstance of what they say contradicted by any solid Proof.

My Lords, There may be other Particulars which I may have forgotten; I know not whether I observed that my Lord objected that we do not prove him a Papist: I hinted something before about his coming to Mass to my Lord *Aston's* at *Tixall*, which is one sort of Proof of his being of the *Romish* Religion. Besides his perpetual Conversation with that Party, and his Endeavours to promote their Religion and Designs, all which have been fully proved: I think also my Lord deserted the House of Peers, for that he would not take the Test appointed by the late Act; your Lordships best know whether he did so or no. But, my Lords, let him, if he will be a Protestant for this time; let that be suppos'd: If he were a Protestant, and should be guilty of the Offences proved upon him, he would not deserve more Favour from your Lordships.

My Lord hath been likewise pleas'd in further Proof of his Innocency to alledge, that after the Plot was discovered, he had seven Posts time to have escaped, and yet never fled. My Lords, 'Tis true he might have fled, so might *Coleman* too; that *Coleman* that left so fatal an Evidence against himself and all his Party under his own Hand, and for that had reason to believe himself very guilty: And so might the Jesuits have escap'd too, but that they had hopes the Oath of Secrecy, and the Means they had used to conceal their damnable Designs, would have been a sufficient Security against revealing it. They had that Opinion of their Priests, and of the Fidelity and Constancy of those that had been seduc'd by them, and recommended by them, that they apprehended nothing less than a Discovery. And those other Persons that were executed, did all stay about the Town after the Plot was discovered, as well as this Lord stay'd in the Country.

My Lord did very much complain, that our Witnesses were not positive in point of Time: I think *Dugdale* was positive enough as to the time of the Offer of 500*l*. but for other Matters, he would not confine himself to a Month: He talk'd of the latter End of one Month, and the Beginning of another,



another, I think he is the more to be believed; for I conceive, unless a Witness hath some notorious Circumstance in his Memory to satisfy him about the Certainty of the Time (such as was that of the Foot-Race, as to the Time of the Offer of 500*l.*) it is rather a Mark of Presumption than of Sincerity for a Witness to be too positive as to the Time. And is there so great a Distance between the latter End of one Month, and the Beginning of another, that a Witness need to be positive as to the very Day? But, says my Lord, You talk of the Beginning; it was the 12th of September ere I came thither. Does not every Man count, that till the Middle of a Month 'tis the Beginning of a Month? Sure in common Speech it is so. Therefore I look upon that as a Matter scarce worth the mentioning; I am sure, not worth the serious answering.

But, my Lords, I must observe thus much, That what my Lord complains of as a Fault in our Witnesses, his own Witnesses are guilty of. For I appeal to your Lordships, when they came to speak of Times, whether they did not talk at a Distance of a Month or Months, and sometimes of Years, and were less certain in Point of Time than ours.

But, says my Lord (for I am still answering his Objections, and you must take them as I find them), here is Mention made by Dr. Oates of Letters, of many Letters; shew me some of those Letters: Shew me the Letter you carried to the Post-house. My Lords, were those Letters written to Dr. Oates? Did they belong to him? Or is it possible that my Lord's Letter delivered by the Doctor to the Post-house, should now be shewn by the Doctor, or that the Letters writ to the Superior of the Society of the Jesuits, should be produced by one that was a Novice of that Society? Does Dr. Oates talk of one Letter written to himself? You will then, I suppose, see no Reason to expect those Letters should be produced by him that were not written to him, and the Custody whereof belonged to others.

My Lords, I must observe to you, that there have been great Endeavours used to invalidate our Testimony; we have had Witnesses called against Witnesses, and my Lord hath had that Advantage to do it, which perhaps was never given in any Case before, and which I hope will never be again. The Evidence hath been printed and published to the World, before it hath been given. I say not that it was not necessary in this Case, which was a National Cause, and the Cause of our Religion; but I do say, it would not be fit to be done in other Cases; for the notifying of the Evidence is the Way to have it falsified and corrupted.

But notwithstanding all these Advantages, my Lords, I appeal to your Lordships Memories, what considerable Contradiction hath been given. It is true, some Witnesses to that End have been brought before your Lordships, but those Witnesses have been rendered incredible by more credible Persons; and I would desire your Lordships to observe, that tho' my Lord hath failed of proving any Subornation in our Witnesses, yet we have proved much Subornation endeavoured by his Agents.

Your Lordships have the Record against Reading before you; and what Reference that hath to the Lords in the Tower, every one does remember, and my Lord is mentioned in that Record. And I might likewise mention the Business of Cellier, and what therein related to the Lords in the Tower. And I'll name but two Witnesses more, that have been attempted upon in this Nature: There was Wright the Barber; all the Applications were made to him that could be; Money given, Letters writ, Insinuations that he was not to swear, he was but to write, and that was easily done; or if he would be so kind to swear it, he should never come into open Court, only go before a Justice of Peace: So that your Lordships will observe by what Steps and Degrees Men were endeavoured to be suborned. And then Launder tells you what was offered to him to perjure himself, how he was brought to Tixall, and what Endeavours were used to make him swear against our Witnesses.

These Things are plain, both by Records and particular Proofs upon Oath. But, my Lords, lest we should want Proof of all, this very Lord (I pity him for it) hath been so unfortunate as to bring that Paper out of his Pocket, which Wright says he had Money to frame, and was to swear to. It seems my Lord had the Command of it, it seems to have been prepared for such a good Time as this, and the producing of this Paper is as full a Confirmation of this Point, as can in Reason be expected.

My Lords, I have been, I fear, too long already; and yet, I fear, I have omitted as many Particulars as I have mentioned.

My Lords, the Evidence is so strong, that I think it admits of no Doubt; and the Offences proved against my Lord and the rest of his Party are so foul, that they need no Aggravation. The Offences are against the King, against his sacred Life, against the Protestant Religion, nay, against all Protestants; for it was for the Extirpation of all Protestants out of these three Nations. I mean not of every one that is now so, but of every one that would have continued so, every one amongst us (if these Designs had been accomplished) must either have turned his Religion, or turned out of his Country, or have been burned in it.

'Tis a Design that appears with so dreadful a Countenance to your Lordships, to this great Assembly, and to the whole Nation, that it needs not any Words I can use to make you apprehend it. If the Matter be fully proved (as I see no Reason to doubt but that it is), I am sure your Lordships will do that Justice to your King and Country, as to give Judgment against these Offenders, which will not only be a Security to us against them, but a Terror to all others against committing the like Offences.

L. Staff. I beg your Lordships to know, whether you will give me Leave to speak a Word? And, my Lords, I shall not speak any Thing but as to a Mistake Sir William Jones hath made in two or three Things. Pray, my Lords, may I put you in Mind of them?

Sir Will. Jones. If there be any Mistake, pray tell us what it is.

L. Staff. First, my Lords, he did omit telling you that Mr. Turberville's Brother did say he came in 71 to my Lord Powis's. Secondly, he says, I have proved myself a Papist, because I have not taken the Test: My Lords, the Test was since I was in the Tower, and whether I will take it or not, I do not yet know, till it be offered me. The third is this, that this Letter was in my Pocket, which I produced to you: My Lords, I knew nothing what was in it, it was given into my Hand as I stood here at the Bar. Fourthly, he said, Hobson did go out of England with the Almoner; he did not so. Another Thing he says, that I said Oates was an infamous Person, because he went to a Church that I said

was idolatrous; I only said, it was so adjudged by Act of Parliament. I find, my Lords, these Things he is mistaken in; and that, my Lords, made me very willing to put you in Mind of them.

L. H. S. Gentlemen, I would ask you, whether you take any Notice of the Points in Law?

Sir Fr. Win. After the Fact is stated, my Lords, we shall.

Then Mr. Powle, also one of the Committee appointed to manage the Evidence, proceeded further in summing up the same.

Mr. Powle. My Lords, The learned Person that spake last, hath left very little for me to say in the summing up of this Evidence: But because this Noble Lord hath been pleased to alledge several Reasons, from whence he would infer at least a great Improbability, that he should be guilty of the Treasons whereof he stands accused, I shall crave your Lordships Patience, that I may give three or four Words in Answer to those Particulars.

My Lords, in the first Place, this noble Lord was pleased to begin, and afterwards to continue his Defence, with making Protestations of his own Innocency: We very well know your Lordships sit now in the Seat of Justice, and whatsoever Credit or Regard your Lordships please to give to the Protestations of a Peer in another Case, your Lordships will proceed here only according to your Proofs and your Evidence (*secundum allegata & probata*), and therefore all we shall say to this, is, that we hope our Proofs are so clear and evident, as will leave no Room to your Lordships to believe this noble Lord's Protestations.

In the next Place, my Lord is pleased to alledge, and withal to lay some Weight upon it, the voluntary surrendering of himself to Justice; and he laid it down as a Rule, that as Flight is an Argument of Guilt, so the surrendering of a Man's self to the Trial of the Law, is an Argument of Innocency.

My Lords, We admit the Rule generally to be true, but in some particular Cases it may be otherwise; for a Man that is not very confident of his own Innocency, may yet be very confident of the Strength of his Party; and whether the Consideration of the Circumstances of Affairs, as they then stood, and the Power and Prevalency of the Popish Party at that Time, might not reasonably create such a Confidence in this noble Lord, we must leave to your Lordships Judgment.

My Lords, We do conceive, that those Persons who contrived Sir Edmundbury Godfrey's Murder, had so great Confidence in the Favour and Protection of some of their Party, that they thought themselves able to outface Justice.

And we verily believe they intended it as an Example, to deter all Men from meddling so much as with the taking an Examination concerning this horrid Plot.

My Lords, I desire to be understood aright in this: I lay nothing of the Death of Sir Edmundbury Godfrey to the Charge of this noble Lord; I only use it as an Argument of the Presumption of the Popish Party at that Time.

My Lords, In the next Place, my Lord Stafford did observe from my Lord Coke, that in the Trials of Treasons we ought very much to guide our Judgments by the Nature and Circumstances of the Fact (the Concomitants and Subsequents, as he termed them) with Reference to the Person accused, whether they were likely to induce or deter him from such an Attempt; and here he was pleased to raise some Arguments from the whole Course of his Life, and did desire your Lordships to consider those Circumstances therein, that might make it improbable or impossible that he should commit a Treason of this Nature.

He desired also your Lordships to remember, that he was descended from an honourable Family, and that his Ancestors were very worthy and very deserving Persons, and such as had often ventured their Lives in Defence of their Country: and here he did likewise mention his own Services to the last King, and our present Sovereign in the late Wars.

It is not my Part, nor will I derogate any thing from the Merits of this noble Lord, much less from the Honour of his Family: But in Answer to this, we shall desire your Lordships to consider, that this noble Lord (however he is pleased to disown it at present) is notoriously known to be a Roman Catholic (as they call themselves), and such we conceive we have sufficiently proved him to be, in the Course of our Evidence: And as there is nothing in the World so much as a misguided Conscience, that can engage the best of Men into the worst of Actions; so we think the Principles of that Religion are such, as are more likely to pervert Men from their Duty and Allegiance, than any other Religion or Persuasion whatsoever.

And if the Zeal of this noble Lord did engage him to endeavour the Establishment of that Religion in this Kingdom, we may easily believe that his Reason did suggest to him the Means by which it must be effected, which could be no other but Blood and Confusion.

My Lords, The last Thing I shall take Notice of, is, what my Lord Stafford was pleased to say in general, as to the Doctrine of killing and depoling Princes, which his Lordship was pleased to call a private Opinion, and not the Doctrine of the Church of Rome.

But by the Way, my Lords, give me Leave to observe, that this noble Lord did upon this Occasion fully own (and I much commend his Ingenuity in it) the Reality of the Gun-Powder-Treason, since we know how much that Party have endeavoured to render it incredible: And as Length of Time hath so fully manifested the Particulars of that execrable Design, that it hath brought such as are of that Persuasion to confess the Truth of it; so we hope this Day's Trial will convince both the Age we live in, and all Posterity, of the Truth and Reality of this present Conspiracy. But to go on with that Point from which I did digress: I am not, I confess, much versed in the Canons and Councils of the Church of Rome; but, my Lords, this I know, the most famous and celebrated Writers of that Church, especially of the Society of the Jesuits, have publicly avowed and maintained this Doctrine. And we know in all Times, when there hath been Occasion to put it in Practice, it hath never failed to have been attempted; and we likewise know, that the Church of Rome and the Pope have always avowed the Acts when they have been done. From all which we may very reasonably conclude, that it is the Doctrine of that Church so to do.



But my Lord is pleased to say, and I admit it for Truth, That a great many private Writers do hold the contrary; I believe it to be so, but I do also believe, that it is the Policy and Artifice of the Church of Rome, to leave this Point of Doctrine in some measure undetermined, that so they may make use of it as the occasion serves; for if it succeeds, then it is owned and justified; if it miscarry, then the Doctrine is but a private Opinion, and the Plot but the Practice of particular Persons that are either desperate or discontented. And I am fully of opinion, that this horrid Conspiracy which is brought this Day in Judgment before your Lordships, wants nothing but Success to canonize it.

My Lords, as to what concerns the Evidence, it hath been so fully stated to you, and the Objections that were raised to invalidate it, so well answered, that I will not trouble your Lordships with any Repetition of what has been said already: All we have further to desire, is, That your Lordships will please to take our Evidence into your Consideration, and to do thereupon what shall be agreeable to Justice.

Mr. Serj. *Mynn*. My Lords, As to the Matter of Fact I shall say nothing but only this, (and I wish it may be spoken with Gratitude to Almighty God) that the Discovery of this Plot is rather the Work of God than Man. It was first his Act, in prevailing upon *Oates* to make the Discovery; and when he stood single almost, what came to support his credit but the Letters of *Coleman*? which were like a Tally to what *Oates* had said, for what *Oates* informs is in a great part made good by his Letters. Then when *Godfrey* was murder'd, how came that Discovery out, but by the voluntary Confession of one engaged in the whole Plot; I mean *Bedloe*? So that tho' these Men had engaged themselves by wicked Oaths, yet their own Consciences witnessing against them in themselves, they could not forbear coming in to testify against themselves. I shall say no more, than that we ought to acknowledge the Hand of God in the Discovery with great Thankfulness; for it is he, and he alone, that out of his own Grace and Goodness hath done it, and thereby preserved the Life of our Prince to us, and in Him us too.

But as to the Matter in Law:

My Lord has been pleased to mention first this, That there is no Overt-Act. I wonder that my Lord should be so much mistaken. When it is charged in the Articles, and proved to his Face he received a Commission, is not that an Overt-Act? He is charged in the Articles of Impeachment with contriving the Death of the King, and being at several Meetings and Consults about the King's Death, and hiring persons to kill the King; and are these no Overt-Acts? Therefore, as to that, my Lord is mistaken.

My Lords, Another Exception that is taken, is, That there is no Indictment. I conceive that an Impeachment of the House of Commons is more than an Indictment. And there cannot be any doubt of that, the Impeachments of the House of Commons having always been received and proceeded on by your Lordships.

But that which is most insisted upon, is, That this Charge that is made against this Lord, was presented in another Parliament. It is true; but under favour, what is once upon Record in Parliament, may at any time afterwards be proceeded upon. It is a sudden Objection, but I conceive it hath been done: In a Case of this nature, when the Life of the King, when our own Lives, and our Nation, and our Religion lies at stake, if there were not a Precedent, I hope you would make a Precedent. But under favour, Reason is for it, the Charge is before you, the Proof is made and we pray you will judge according as the Evidence hath been.

Sir *W. Jones*. My Lords, as to these Matters of Law, I think they are of so little difficulty, that my Lord will not desire to have Counsel assigned him; I am sure his Counsel will not desire to speak to them.

For this last Matter which Mr. Serjeant spoke of, and which was first named by the Prisoner, I desire your Lordships to consider what it is. Says my Lord the Prisoner, there was an Impeachment begun in the Long-Parliament, and this is now the third Parliament in which I am brought to my Trial. It is very true, there was a general Impeachment in the Long-Parliament, the particular one was in the last, and this Lord was pleased to plead in the last. It may be he was not so well advised then as he is now.

But, my Lords, how can this be a doubt, when your Lordships have resolved, and have sent it down to the Commons, and it is there entered in their Book, as the Law and Constitution of Parliaments, that not only Impeachments, but all judicial Proceedings continue from Parliament to Parliament, in the same state that they were in at the rising of the last Parliament.

This is now become the Law of your House, and it is under favour, being so, the Law of the Kingdom; and you having thus declared it, and sent it to the Commons, I hope the Commons had very good reason to proceed upon this Impeachment at this time.

The next Matter is concerning the Overt-Acts; I think there are sufficient Overt-Acts in Proof, and sufficient in the Impeachment. Will any man deny that the receiving a Commission to be Pay-master of an Army is an Overt-Act? Will any deny, that the sending for the Witness, and offering him Money in order to hire him to kill the King, is an Overt-Act? And (which answers to all) will any Man deny that the meeting and consulting of several Men together, about killing the King, and changing the Government, is an Overt-Act?

My Lords, these are all Overt-Acts; and I cannot but think it was without Advice of my Lord's Counsel that he made these Objections: for indeed these several Overt-Acts are laid in the Impeachment as fully as they are made out in Proof.

My Lords, There is another Objection that my Lord is pleased to make, and that is, that there is but one Witness to a particular Fact.

L. H. S. Ay, what say you to that?

Sir *W. Jones*. That, my Lords, is of little weight, with submission; for our Impeachments, and our Proofs run to this, That my Lord had a Design and Intention to destroy the King: This was to be done by force, and this was to be done by secret Assassination. Now if several Witnesses come and prove each a distinct Act, under this Head of killing the King, it is so many Proofs or Witnesses to the Treason.

For, my Lords, if a Man shall intend to kill the King, and shall buy a Knife in one County at one time, and send for a Man out of another County

at another time, whom he shall hire to kill the King, and these distinct Acts proved by several Witnesses; if they concur to the same general Treason, they are all but Parts of that, and so are so many Witnesses to the whole. And so I am sure it was resolved in the Case of others of the Conspirators in the *Old-Bailey*, and before that in the Case of Sir *Henry Vane*\*. But,

My Lords, in this Case here is first a Proof that he accepted a Commission, which I do not use as an Act for the levying of War only, but as a Design to change the Government, and destroy the King. Here is meeting and consulting how to do this wicked Work, I mean to kill the King; that is another Overt-Act. Here is offering Money to one of the Witnesses for that end; that is a third Overt-Act. And there is attempting another of them, tho' not with Money, yet with promises of Reward in general; that is another Overt-Act: All which are to this End, the killing of the King. And I am sure of it, your Lordships cannot but receive satisfaction from my Lords the Judges, that it hath always been so held, that tho' there need two Witnesses to prove Treason, yet there needs no more than one to one Act, and another to another, if the several Acts fall under the same Head of Treason.

Sir *F. Win*. My Lords, I crave your Patience but for a Word or two, and this Noble Lord will have little reason to say his Objections in point of Law are of any weight. I confess he had said a great thing, if it were true, that the Articles of Impeachment did not alledge an Overt-Act; for then indeed they had been apparently defective: But, under his pardon, that is not a Point of Law, but a Point of Fact. Let us therefore resort to the Articles themselves: In the second Article it is alledged, that he, with the rest, did most wickedly and traitorously agree, conspire and resolve to imprison, depose and murder his sacred Majesty, and to deprive him of his Regal State and Government. And then the same Article alledges farther, that they did contrive and consult to effect the Murder of the King, by Shooting, by Poisoning, and by Stabbing. All these Particulars are expressed; so that when my Lord said the Articles were therein defective, all we can say, is, that he was misinformed.

My Lords, There was another Exception taken, That this is the Impeachment of another Parliament. I must not now repeat how this Point was agreed by both Houses at a Conference; but it was then declared, upon search of Precedents in all Ages, That it was the Law of Parliaments, which is the Law of the Land, that if once an Impeachment by the House of Commons were lodged in the House of Lords, tho' that Parliament were dissolved, the Impeachment remained in the same state. It was the Cause of the Commons of England, who only change their Representatives in a new Parliament.

It has been also objected, that this Prosecution ought to have been upon an Indictment: As if an Accusation of the House of Commons, who are the Grand Inquest of the Nation, were not as effectual to bring Offenders to Justice, as the finding of a particular Jury.

My Lords, I should wonder to hear this Objection made, were not my Lord to be easily excused for his knowing the Law no better. None who know any thing in the Law, would have urged such a thing; his Council, I dare say, did not suggest this Matter to him.

It is true, my Lords, when a Peer comes to be tried by way of Commission, or in Parliament when it is not at the Prosecution of the Commons, there an Indictment is first found in the proper County, and brought up before the Peers by *Certiorari*, and upon that they proceed; but whether the Party be a Peer or Commoner, if he be impeached for many Crimes, surely no one can deny, but that by the constant Usage of Parliaments the Lords have proceeded to Trial, and have given Judgment thereupon without an Indictment found: So that this Exception will be of no force at all.

As for the remaining Objection, That there are not two Witnesses to prove any one Overt-Act, the King's Person would be in no manner of Safety, if that Doctrine should be once allowed. Conspiring to kill the King is the Treason laid in the Impeachment, and the several Overt-Acts are so many several Evidences of that Treason. Words themselves, if they signify an Intention to do an Act, and express something to be done *in futuro*, are a sufficient Overt-Act, and a legal Evidence of Treason. Then we prove by another Witness, not Words of Encouragement only, but Offers of Money, and they are both to the same kind of Treason, though not to the same Act, and at the same time. And if there must be two Witnesses to every single Act, the King of England is not only in a far worse Condition than any other Prince, but than any one of his own Subjects. Treasons may be committed every day with Impunity, and unless the Traitors be as great Fools as Villains, he shall never be safe from them, nor capable of punishing them.

I must say it, and I say it with Commiseration to the Condition of this noble Lord, that his Exceptions in Law are as weak as the Answers he has given to our Evidence. We hope no Doubt in Law remains with you, and that we have given your Lordships full Satisfaction of the Reality of the Plot, and a convincing Evidence of the great share which my Lord *Stafford* had in it; and we humbly pray your Lordships Justice.

L. H. S. You do not take notice of one thing that my Lord *Stafford* said this Morning; that is, That the Witnesses are not competent Witnesses, because they swore for Money, and that is fit to be spoken unto; not for the Weight of the Objection, so much as for the Satisfaction of the Auditor.

Sir *F. Win*. My Lords, I had taken a Note of that, but forgot to mention it. If my Lord at the Bar will say they have taken Money to swear, that is purely a Matter of Fact which he ought to prove; and that which is said and not proved, ought to go for nothing: Let him prove his Case to be so, and then we will give him an Answer.

L. H. S. My Lord *Stafford*, If your Lordship can prove that they have had Money to swear, your Lordship urges that which will be material; but if it were only Money to maintain them, that sure will amount to no Objection.

L. *Staff*. My Lords, I submit it to your Lordships, whether Dr. *Oates* and the rest have not had great sums of Money, besides their Charges 10*l.* a-week a-piece. But I desire your Lordships to consider, and I appeal to many of your Lordships, whether it has not been said that there was a Defect in *Coleman's* and *Langborn's* Trials, that they did not plead that; and if they had pleaded it, they must have been acquitted: I will name no body, but I



appeal to your Lordships, whether some of you have not said so. But I desire your Lordships to admit me to plead by my Counsel; if not, I submit it to you. I confess here is a Piece of Law that I never heard of before, that the House of Commons, and your Lordships at a Conference, have adjudged it to be the Law of Parliaments, That Impeachments shall continue from Parliament to Parliament. If you will please to hear my Counsel for me, so; if not, I submit.

*L. H. S.* What would you, or can you prove?

*L. Staff.* My Lords, those things that I have given in to your Lordships, I desire my Counsel may be heard to.

*L. H. S.* Gentlemen, What can you object why he should not have Counsel to argue his objections in Law?

*Sir W. Jones.* My Lords, I do think under favour, if a Prisoner in a Capital Cause do desire Counsel, he must not only alledge Matter of Law to introduce that Desire; but that which he doth alledge must be also a Matter of some Doubt to the Court: For if he do alledge Matter which in itself is not disputable, he shall have no Counsel allowed him. If your Lordships are not satisfied that it is the Law of your House, that Proceedings upon Impeachments do continue from Parliament to Parliament, we cannot answer that, it lies in your Lordships Breasts; it is not what we are to argue, because it is a Matter that concerns the Law and Rules of Parliaments. Is there, my Lords, any doubt of any other Point that is urg'd? Is there any doubt of this thing, whether if one Witness speak to one Point of Fact, and another to another, upon the same sort of Treason, but that these be two such Witnesses as the Law requires? I pray then, my Lords, consider the Consequence of that Doubt: A Man shall talk with twenty Persons about a Design to kill the King, in one and the same Room, one after another, by taking them into a Corner singly; and if ten, or all twenty come to prove it, here is but one Witness to each Discourse. This would be a Matter of dangerous Consequence, but I hope will remain no manner of Doubt with you, nor is it fit to be argued.

As to the hiring of Witnesses to swear, I think that can be no Point of Law till it be so proved in Fact. Doth his Lordship think, that when his Majesty, out of his Grace and Bounty, allows a Maintenance to his Witnesses, that that is an Objection to their Testimony? Doth not every Man allow his Witnesses a Maintenance, and yet it never was thought a thing to take away their Evidence? It may be every one doth not give so large an Allowance as the King, because his Dignity is not so great. But can it be an Objection to the House of Commons? Have we that are the Prosecutors maintain'd them? If his Majesty has been bountiful to his Witnesses, what is that to this Cause of the Commons? If my Lord can prove any thing of Bribery in us, as he has proved for us against himself, it may be an Objection. But till that Fact be proved, I hope there is no ground for a Question in Law; and if there be no Doubt in Law, I hope there will be no need of Counsel.

*L. H. S.* My Lord Stafford, What are the Points you would have Counsel to?

*L. Staff.* To all of them, my Lords.

*L. H. S.* Would you have Counsel to the first Point, to argue what the Law of Parliaments is concerning the Continuance of Impeachments from Parliament to Parliament?

*L. Staff.* My Lords, If you will declare the Law to be as these Gentlemen say, I must acquiesce.

*L. H. S.* Pardon me, my Lord, I do not declare the Law, but ask you whether you would have Counsel to argue that Point?

*L. Staff.* My Lords, I do say there is no Example of it: I know there have been Impeachments, but no Examples of Impeachments continued from Parliament to Parliament.

*L. H. S.* Then in the next place, for I shall propose your Objections to their Lordships by and by, and desire their Judgment in them, do you desire to argue by your Counsel, that every Overt-Act ought to be proved by two Witnesses?

*L. Staff.* I do, my Lords; I desire my Counsel may be heard to all the Points I mentioned to your Lordships.

*L. H. S.* Have you Counsel ready to speak to these Points now?

*L. Staff.* Yes, my Lords.

*L. H. S.* Are they prepared to speak to them now?

*L. Staff.* They are, my Lords.

*L. H. S.* If they be so, what hurt will there be in hearing of them?

*Sir W. Jones.* My Lords, Whether you will hear an Argument from Counsel about the Law of Parliaments, I hope you will please well to consider.

*Sir F. Win.* My Lords, We in the House of Commons do never suffer any Counsel to tell us what is the Course of our House, and the Law of Parliaments: If your Lordships think fit to allow it, 'tis in your own Power; but we who are intrusted with the Management of this Cause by the House of Commons, have no Direction to consent to such a thing.

*L. H. S.* We will hear Counsel, to save time, upon that Point, whether in Proof of a Treason for killing the King, every Overt-Act ought to be proved by two Witnesses.

*Sir W. Jones.* If your Lordships make a Doubt of it.

*Sir F. Win.* And if the Prisoner desire it.

*Mr. S. Mayn.* My Lords, We shall not oppose it; but I shall wonder if any Counsel do maintain it.

*L. H. S.* Are your Counsel ready to speak to that Point?

*L. Staff.* Here they are, my Lords.

[*Mr. Wallop of the Middle-Temple, Mr. Saunders of the same Society, and Mr. Hunt of Gray's-Inn appeared by the Prisoner at the Bar as his Counsel.*]

*Mr. Wallop.* May it please your Lordships, we are here commanded by your Lordships to attend, that if any Matter of Law do arise upon a Case proved, agreed, and judged by your Lordships debatable, then in due time we are to conform ourselves to your Lordships Command, and argue those Points for my Lord the Prisoner at the Bar. But if your Lordships do think that the Points urged by my Lord are not debatable in Law, I have so high an Opinion of your Lordships Judgment, and such a mean Opinion of my own Talent, that I shall not undertake to argue *extempore* in this great Assembly, in a Cause of so high a nature.

*L. H. S.* Look you, Sir, you are of my Lord's Counsel.

*Mr. Wallop.* I am, my Lords; and by the Order of your Lordships do attend here.

*L. H. S.* If you think it is an arguable Point, you will have the Judgment of my Lords afterwards. Will you argue it now?

*Mr. Wallop.* My Lords, I always thought, if a Point be stirred in any Court, and thought disputable, it should be stated and agreed before it be argued.

*L. H. S.* You are to argue for my Lord, and to know the Judgment of the Court afterwards: Would you know our Opinions before-hand?

*Mr. Wallop.* We would know what it is we are to argue, if your Lordships please.

*L. H. S.* Why, if you are provided for it, you are to maintain, that by Law every Overt-Act ought to be proved by two Witnesses; if you are prepared, speak to it, and my Lords will hear you.

*Mr. Wallop.* It is true, my Lords, there have been some publick Resolutions concerning that Point, therefore I shall be the warier what I say in that: But, my Lords, it is a Matter that has been thought of great Import one way or other; but I do profess at this time I am not able to undertake a solemn Argument upon that Point.

*L. Staff.* My Lords, I am so far from delaying this Cause, that I desire it may be argued now.

*L. H. S.* Then you are not ready to speak to it?

*Mr. Wallop.* No, my Lords, I am not for my own part at present; for it is impossible we should foresee what would be the Point: And to apply ourselves to study an unforeseen Case before it be agreed, stated, and judged worthy of Argument, cannot be expected from us. I have always observed it in the *King's-Bench*, if the Prisoner urge any thing, and the Court think it debatable, they first agree and state the Case, then assign Counsel, whom they do not urge to deliver an Opinion presently, but give them time to prepare for it.

*L. H. S.* *Mr. Wallop*, It is not believed that this Point is moved, but by your Advice that are of my Lord's Counsel, and you should be ready to maintain the Advice you give; therefore, if you are so, speak. You have the Protection of the Court for the Counsel you give in Matter of Law, and whatever Advice you give, you should maintain by the Law.

*Mr. Wallop.* Truly, my Lords, it is a Point that has, as I said before, received some Settlement; but whether ever in this Court, or no, I cannot tell. Therefore I did discharge my Thoughts of providing any Argument, till your Lordships should have determined whether you will take the Point upon the resolution in the Courts below to be finally settled and determined.

*Sir W. Jones.* So then it is agreed to be settled in the ordinary Courts.

*L. Staff.* I desire also it may be argued, whether Words are an Overt-Act?

*Sir F. Win.* It seems the Law is with us in case of a Commoner; but whether it be so for a Lord, is the Question.

*L. H. S.* My Lord Stafford, how comes it to pass that your Lordship came prepared with Objections; but not with Counsel ready to argue them?

*L. Staff.* *Mr. Wallop* has given you an Answer, I must stand by that.

*L. H. S.* Is it your Lordships Pleasure that we adjourn?

*Lords.* Ay, Ay.

*L. H. S.* This House is adjourned into the Parliament-Chamber.

*Then the Lords returned to their House in their Order, and the Committee of Commons staid in their Places to attend their Resolutions.*

*In an Hour's time, the Lords returned, and my Lord High Steward being seated upon the Wool-pack, Silence was proclaimed.*

*L. H. S.* My Lord Stafford, My Lords, since they have been withdrawn, have considered of one Point, of that Point, chiefly, which your Lordship did move, touching the Necessity of two Witnesses to every Overt-Act as Evidence of High-Treason, that is the Point you have desired Counsel to speak to, and that is the Point your Counsel desired to know whether it was a doubtful or debatable Point before they would argue it; and hereupon my Lords did withdraw to consider it. And my Lords have directed, That all the Judges that assist them, and are here in your Lordship's Presence and Hearings, should deliver their Opinions, whether it be doubtful and disputable or no.

[*Then all the Judges consulted privately together, and afterwards gave in their Opinions seriatim, beginning with the Lord Chief-Justice North, the Lord Chief-Justice Scroggs being absent.*]

*L. C. J. North.* My Lords, I do here deliver my Opinion, and am clear in it, That if there be several Overt-Acts or Facts which are Evidences of the same Treason, if there be one Witness to prove one such Overt-Act at one time, and another Witness to prove another Overt-Act at another time, both the Acts being Evidences of the same Treason, these are two sufficient Witnesses of that Treason, and will maintain an Indictment or an Impeachment of Treason. I never knew any doubt made of it in any Inferior Court of Justice, and I have known it often resolved.

*L. C. B. Montague.* My Lords, where-ever Treason is to be proved, to every Overt-Act, two Witnesses, as I conceive, are not required. If so be, there are two Witnesses to several Overt-Acts, conducing to a Proof of the same Treason, I think they are Witnesses in the Judgment of the Law, such as the Statute requires.

*Mr. Justice Windham.* I am of the same Opinion with my Lord Chief-Justice North, and my Lord Chief-Baron, That if there be several Overt-Acts, done at several times, tending to the same Treason, these several Acts, being severally proved by several credible Witnesses, tho' but by one Witness at each time to each Act, the said several Acts, being Evidences of the same Treason, these are sufficient Witnesses of that Treason so proved, and will maintain an Indictment, or, as I conceive, an Impeachment.

*Mr. Just. Jones.* My Lords, If several Witnesses speak to the same kind of Treason, altho' they speak to several Overt-Acts, and give Evidence of several times, the one of them speaking to one time, and the other to another time, yet keeping still to the same kind of Treason, they are such two Witnesses as are required by the Statute of Edward III. and this I take to be the constant Opinion of the Courts below.

*Mr. Just.*



Mr. Just. *Dalben*. My Lords, I am of the same Opinion, and I know it hath been many times so resolved: I have been present when Sentence hath passed upon Persons by whom the same Case hath been urged, and it hath been so resolved. And it hath been moved in *Westminster-Hall*, and that was the constant Opinion of the Judges there; particularly in the Case of Sir *Henry Vane*. It was upon solemn Debate resolved, and divers times it hath been held, That the same Treason may be proved by two Witnesses to several Overt-Acts, though one speak of Words or Actions that were spoken or done at one Time and in one Place, and another speak of Words or Actions at another Time and in another Place; these are two good Witnesses in Treason within the Intent of the Law; and if the Law were otherwise, 'twere scarce possible to convict any Man of Treason, and therefore I take it to be very clear.

Mr. Just. *Raymond*. I am of the same Opinion, That where several Circumstances are brought to prove the same Treason, one Witness to each of the several Circumstances is sufficient; and this, I conceive, hath been always the Opinion of the Judges.

Mr. Baron *Atkins*. My Lords, I am of the same Opinion. That there must be two Witnesses in the Case of Treason, is a Matter without question; but there are several Overt-Acts that may contribute to the effecting of that Treason. If a Man designs to kill the King, and buys Powder at one Place at one Time, and a Pistol at another Place at another Time, and promises a Reward to one to assist him to do the thing at a third Place and a third Time; these are several Overt-Acts: But if the Law requires that each be proved by two Witnesses, I do not well see how any Man can be convicted of Treason. In the Case of Sir *Henry Vane*, and others, this very Question was started, but was not thought worthy of Debate: If it should be otherwise, it would touch the Judgments which have been given upon this Kind of Proof; and what would the Consequence of that be, but that those Persons who were executed upon those Judgments have suffered illegally? and therefore I am of Opinion, that it is not requisite there should be two Witnesses to every Overt-Act.

Mr. Baron *Gregory*. My Lords, I am of the same Opinion, it is Treason to conspire the Death of the King: Now each of the Witnesses is a Witness to prove that Treason; the one says, he offered him such a Reward, in such a Place; that is one Witness to prove that he conspired the Death of the King; and another says, that he offered him such a Reward in another Place; that is another Witness that he conspired the Death of the King. For the Party is not indicted upon one particular Overt-Act, but he is indicted for Treason, in conspiring the Death of the King; and each of the Witnesses being to prove that, though they speak to several Acts, they are good Witnesses according to the Law.

Mr. Baron *Weston*. My Lords, I am of the same Opinion with my learned Brethren who have spoke before him.

Mr. Just. *Charlton*. My Lords, I am of the same Opinion; and I think truly it would be the easiest matter for a Man to commit Treason, and escape without questioning, if it should be otherwise. But this is the first Time that I have heard it hath been made a Question, that to the same Treason there must be two Witnesses to every Overt-Act. It hath been adjudged always according to the Law, that to prove Treason there must be two Witnesses, but to an Overt-Act there needs but one.

L. H. S. My Lord *Stafford*, by the uniform Opinion of all my Lords the Judges, there is no colour to doubt the Law in that Point which you desire to argue; so that as to that Point you must rest satisfied, you are not to have Counsel to speak to it: For the rest, I have no Commission yet from my Lords to say any thing.

L. Staff. Will your Lordships give me leave to say one thing to what I have heard? I would answer, if I might, only to one Judge; I think they call him Judge *Atkins*.

L. H. S. Your Lordship may say what you please.

L. Staff. My Lords, I hear a strange Position, I never heard the like before in my Life; and 'tis what he said: If I am in the wrong, I beg your Lordships Pardon, and his too. He told your Lordships the Reason why the Law should be so, was, because else a great many of those Persons that have already been executed, must have been acknowledged unjustly cut off and put to death; that is an Argument I hope will not weigh with your Lordships or any body; for 'tis better that a thousand Persons that are guilty should escape than that one innocent Person should die; much more then, that it should not be declar'd, that such a Judgment was not well given.

L. H. S. Look you, my Lord, where many Reasons are given, 'tis easy to make a Reply to one of the least among many; that was one Reason given, but the true Reason is this: If the Law were otherwise, there would be great Safety in conspiring the Death of the King.

L. Staff. My Lords, I say nothing farther as to the rest, but this stuck with me. I am sorry to hear a Judge should say any such thing; and tho' I am in such a weak and disturbed Condition, I assure your Lordships my Blood rises at it.

L. H. S. Is it your Lordships Pleasure that we should adjourn?

Lords. Ay, ay.

L. H. S. Then this House is adjourn'd into the Parliament-Chamber.

[The Lords withdrew in their Order, and the Committee of Commons went back to their House.]

Mr. Speaker resum'd the Chair.

A Message was sent from the Lords by Sir *Timothy Baldwin* and Sir *Samuel Clarke*.

Mr. Speaker. The Lords have sent us to acquaint this House, that they have ordered *William Viscount Stafford* to be brought again to the Bar in *Westminster-Hall*, on Monday-Morning next at Ten of the Clock.

After which, the House of Commons adjourn'd to Eight of the Clock on Monday-Morning.

#### THE SIXTH DAY,

Monday, December 6th, 1680.

ABOUT the Hour of Eleven in the Morning, the Lords being adjourn'd into *Westminster-Hall*, going thither in their former Order into the Court there erected; and Mr. Speaker having left the Chair, the Committee of Commons were seated as before.

The Court being sat, Proclamation for Silence was made, and the

Lieutenant commanded to bring his Prisoner to the Bar; which being done, the Lord High-Steward began.

E. H. S. Read my Lord *Stafford's* Petition.

To the Right Honourable the Lords in Parliament assembled, the Humble Petition of *William Viscount Stafford*.

Humbly shewing unto your Lordships,

THAT he hath some things to offer unto your Lordships in order to clear himself, which he hopeth to do.

Your Petitioner doth therefore, with all Humility, most humbly beseech your Lordships to give him leave to offer some things unto your Lordships Consideration. And your Petitioner shall ever pray, &c.

STAFFORD.

L. H. S. My Lord *Stafford*, My Lords have been willing, upon your Petition, to come and hear what that is that your Lordship hath to offer: And they would know whether it be Matter of Fact, or Matter of Law. For your Lordships must know, that as to Witnesses the Process is closed.

L. Staff. I do not pretend any more Witnesses, my Lords.

L. H. S. Then, my Lord, what is it that you would say?

L. Staff. My Lords, I did yesterday receive an Order from your Lordships; and upon that and some other Things that I have to trouble your Lordships with, I did petition for this Favour, which I humbly thank your Lordships for granting. If I be impertinent, I shall beg your Lordships Pardon, and I hope you will be pleased to consider my Weakness at all times, especially in this Condition I am now in; but I hope by your Lordships Favour to be in a happier one quickly. For the Matters of Proof, I shall offer not a Tittle; but, my Lords, this Order which I receiv'd does say, That the Lords assembled in Parliament have order'd, that my Counsel shall not be heard touching the Continuance of Impeachments from Parliament to Parliament: But I hope, my Lords, you will please, without offence, to let me offer to your Lordships my own Conceptions about it; which I shall do as briefly as I can.

My Lords, I do not conceive by this Order, that your Lordships say it does or does not continue; you have given no Judgment, as I know of, in it; when you have, I shall acquiesce: But I hope your Lordships will resolve that it does not. And, my Lords, my Reasons for it are two: The first is, Because one of the Managers for the House of Commons, as I take it, Sir *W. Jones*, said these Words, and your Lordships may remember them, That if there were no such Precedent, your Lordships would make a Precedent: Whether you will or no, that I must submit to your Lordships; but then there is none yet. The next thing is, my Lords, this, Whether an Impeachment be to be prosecuted in Parliament without an Indictment? This, my Lords, I humbly hope your Lordships are resolved it ought not. For I see not how truly, my Lords, it can be; by the little Reading which I have had in the Law, I never found any Man prosecuted in a legal Way, but by an Indictment. I may be mistaken, and I beg your Lordships Pardon for troubling you with my Mistakes; but I never read of any that were prosecuted upon an Impeachment: So then, the legal usual Word being Indictment, I hope your Lordships will not alter the Form; for I hope you will keep that great Maxim of your noble Ancestors, *Nolumus Leges Anglia mutare*: And whether this be a Change of the Law or no, I submit it to your Lordships.

A third thing is this; Your Lordships do not think fit that my Counsel shall plead to that Point, whether Words do amount to an Overt-Act; for hearing my Counsel to that likewise I do not pretend: But I hope your Lordships will give me leave to say this, I never heard that Words did amount to an Overt-Act: if your Lordships judge otherwise, I submit; but till then, I hope it shall not conclude me.

There are some other Points which I did offer to your Lordships, and I humbly beseech you to know, whether my Counsel shall be heard to them. 'Tis true, one of them, which was, whether two Witnesses in several Places did amount to a legal Testimony or no, your Lordships did not declare one way or another: If you say you acquiesce in the Opinion of the Judges, I must submit; but till Judgment is given, I beseech your Lordships to give me leave to tell you my weak Thought about it. I did not hear what the Judges said all of them, but as I apprehend, they were all of one Opinion: 'Tis true, one of them that spoke last, I think it was Judge *Atkins*, did say it did amount to a legal Testimony, because else those Juries that have found some guilty upon the same Sort of Evidence should be perjured; but if this were not so, then upon the same Grounds, under your Lordships Favour, those Juries that acquitted some upon such Testimony were perjured: But I must believe it to be otherwise till your Lordships have declared it as your Opinion; for that Reason will not hold; for the same Reason will be for the perjuring the one, as for the perjuring the other. And the same Juries, for the most part, tried those that were found guilty, and those that were acquitted.

L. H. S. Is this all your Lordship will please to say?

L. Staff. No, my Lords, if you would give me leave, I would trouble you a little farther; if it were an offence I would not say a Word. My Lords, I do conceive I am not concerned in the general Plot of the Papists; for I am not proved to be so, and whatsoever I may be in myself, as I conceive, or whatsoever there is of Hearsay, I hope your Lordships will not go upon that, but upon what is proved *Secundum allegata & probata*, and that Common Fame will condemn no Man; if it do, then no Man is safe; but I must say, there is not one Word of Proof offer'd that I am a Papist.

I hope, my Lords, I have clear'd myself to your Lordships, and made my Innocency appear, by making appear the Perjury of the Witnesses, and the Falshood of those things they said against me. Against *Dugdale* I have proved it by two of his own Witnesses; the one was *Eld*, the one was *Whitby*, who says, he had given my Lord *Aspen's* Father warning long ago what a Knave he was. So 'tis clear. For Dr. *Oates* I hope from his Contradictions against himself as well as *Dugdale*, who does contradict himself, at one time *August*, at another time the latter End of *August* or the beginning of *September*: And I hope your Lordships will give no Credit to *Oates's* Testimony; for he said before your Lordships



Lordships he had declared all he knew, ('tis true, I was then accused, but not for having a Commission, as he now swears) and afterwards he accus'd the Queen; so here is *Oates* against *Oates*, and *Dugdale* against *Dugdale*: And for *Turberville*, I have proved by his Affidavit, first he swears one thing and then another; and the Truth of it is, his Brother proved him false in his last Oath, that it was (71,) and not (72.)

My Lords, 'Tis not my Part to make any question, nor do I, whether a Plot or no Plot; for I am not concerned in it: If what I shall say now be impertinent, I humbly beg your Lordships Pardon. My Lords, I have been by the most of my Friends, at least every one that came to me, particularly by my Wife and Daughter that is near me, persuaded to tell all that I knew, and I do here in the Presence of God Almighty declare what I know to be true.

L. H. S. What says my Lord? Speak out.

L. Staff. My Lords, I do believe since the Reformation from the Church of *Rome* to (what it is now establish'd) the Church of *England*, those of that Religion have had several wicked and ill Designs and Plots: I do believe they had a Design in Queen *Elizabeth's* Time, *Babington's* Plot, (that is a long time ago) how far it was to take away the Queen's Life I can't tell, but a Plot it was: And I do believe there was another in her Time, called Earl of *Westmoreland's* Plot, wherein there was a Rebellion in the North, for which some fled and some were executed, that was a very ill Design: As for those Poisonings of her Saddle, and the like, I take them to be but Stories.

In King *James's* Time, in the first Year of his Reign, there was a wicked Plot compos'd by Actors, some of one Religion, some of another; there was my Lord *Grey*, my Lord *Cobham*, my Lord *Brooke*, and other such, they were condemned all of them; some fled, as *Markham* and *Bainham*: those Lords and Sir *Walter Raleigh* were reprieved and kept long in the Tower. But Sir *Walter Raleigh* was afterwards upon that same Judgment beheaded, and the Lords died in the Tower.

My Lords, Next to that was the execrable Treason that I spoke of at first, the Gun-powder Treason: And I protest before Almighty God, I did from my Infancy detest and abhor those Men that were engaged in it; and I do think, and always did think, the Wit of Man nor the Devil's Malice can't invent an Excuse for it. For the Men concern'd, they all acknowledged it, confess'd it, and begg'd pardon of the King, and God, and all good Men for it; that is all I shall say to that now.

My Lords, Since his Majesty's happy restoration, I do conceive, and I think I may safely say it, (for you all know it) he was gracious and good to all Dissenters, particularly to them of the *Romish* Church; they had Conivance and Indulgence in their private Houses; and I declare to your Lordships, I did then say to some that were too open in their Worship, that they did play foul in taking more Liberty upon them than was fitting for them to do, and that brought the Misfortune upon me which I will not name.

My Lords, It was not long ago that your Lordships at your own Bar did allow all the Dissenters from the Church of *England* to give some Reasons to your Lordships why those Laws that were against them should be repeal'd, as well Protestant Dissenters as those of the Church of *Rome*, and why they should have some Kind of Toleration; among whom you did permit those of the *Romish* Religion to appear too, I forget their Names. And I remember particularly one of the Sorts of them, an *Anabaptist* I think, did urge for a Reason, that which is a great Truth, That they held Rebellion to be the Sin of Witchcraft; I believe it is as bad as any Sin can be.

My Lords, That came to nothing at that time; but, my Lords, I believe that after that, all of all Religions had Meetings among themselves to endeavour to get that Toleration which they proposed humbly to your Lordships; there I will never deny, my Lords, that my Opinion was, and is, that this Kingdom can never be happy till an Act of Parliament pass to this effect; it was my Opinion then, and I did endeavour it all I could, that the Dissenting Protestants might have a Comprehension, and the other a Toleration: I acknowledge it to be my Intention, and I think it was no ill one; for if that be a true Copy of the Commons Votes which is in Print, there is some such thing designing there as a Comprehension; and I was of opinion, that it were sufficient that such as were of the Church of *Rome* might by Act of Parliament serve God in their own Houses, and privately in their own way, not in publick, and that for it they should pay something to the King out of their Estates, but truly not much; that they should be severely punished if they or any of them did endeavour to persuade any Subject to their opinion, or did come to Court, or enjoy any Office whatsoever, though it were but that of a Scavenger, but that they should pay their Proportion to all chargeable Offices: That I profess, my Lords, was my Opinion, and I confess to your Lordships 'tis so still. I was in some hopes that it would have been done in that Sessions, because I was afraid it was unlikely to be done at any time else. I confess to your Lordships, I was heartily and cordially against the Test, because it hinder'd those just and honest things that were for the Good of the Kingdom.

My Lords, there was the first or the second Day brought into your Lordships House, the Record of Mr. *Coleman's* Trial; and for the Letters in it, I do, my Lords, declare to your Lordships, I never read one of them before, but I have often read them since they have been in Print; and when I read them first curiously over, my Opinion was and is, That *Coleman's* endeavouring by Money out of *France*, and keeping off the Parliament, to get a Toleration, was that which he could not justify by Law; how far it was criminal, that I do not know; I am not so skilled in the Law; I think it was not justifiable, but he hath paid for it severely since.

My Lords, I do declare that ever since I had the Honour to set among your Lordships, which is now 40 Years, (for in the Year 1640, I was by his Majesty's Favour call'd up a Peer,) I have valued myself upon the Honour of setting with you; and I do declare, when I have sat in this House, when your Lordships have desir'd the King, when it was hot Weather and unreasonable, to put off the sitting of the Parliament, I was never glad of it, but sorry when they were prorogued but for a short time. This I profess is true, and I hope I am no Criminal in it; for I do value the Parliament's setting to be the only Means to keep this Kingdom quiet.

My Lords, 'Tis very true by *Coleman's* Letters, and what I have seen in Print since, I do believe there have been some Consultations for a Toleration; and if I had known as much then as I have since I have been in the

Tower, I had perhaps prevented many things: For, my Lords, I hold *England* to be a great and an happy Body; but it is as other great Bodies are, it may be now, as you know before it was, over-grown or sick; it was then, and I pray God it be not now; but I hold nothing can cure it but that old *English* Physician, the King, your Lordships, and the Commons in Parliament assembled. But if I had known any such Design as *Coleman's* Letters do hint, I would not have continued in *England*.

My Lords, For that damnable Opinion of King-killing, if I were of any Church whatsoever, and found that to be it's Principle, I would leave it. My Lords, this is as true as I can speak any thing in the World; I beg your Lordships Pardon for troubling you with my Impertinencies, and hope you pardon it to my Weakness. My Lords, I do profess before Almighty God, and before your Lordships my Judges, I know no one Tittle nor Point of the Plot; and if I did, I hold myself bound to declare it. For the present I shall say little more, unless the Managers give me occasion; if they will reply, and make any Objections, I desire I may answer them. I know the great Disadvantages I am under, when these Gentlemen, who are great Scholars and learned Men, reply upon me, who have those great Helps of Memory, Parts, and Understanding in the Law, all which I want. And therefore I hope your Lordships will not conclude me upon what they or I have said, but will be pleased to debate the Matter among yourselves, and be as well my Counsel as my Judges.

My Lords, When I offer'd to your Lordships Matter of Law, I did in no wise admit the Matter of Fact——

L. H. S. My Lord, I cannot hear you.

L. Staff. My Lords, If your Lordships please, this Paper may be read.

L. H. S. Deliver your Paper in, my Lords cannot hear.

L. Staff. I cannot deny to your Lordships, that what happen'd to me on Saturday-Night, disturb'd me very much. Every Day since I came hither, there hath been such shouting and hooting by a Company of barbarous Rabble, as never was heard the like, I believe; but it was at a distance most of the time, and so it did not much concern me. But Saturday-Night it was so near and so great, that really it hath disturb'd me ever since; it was great to-day, but at a distance; if it were not thus, I should not offer a Paper to be read: I scarce know what I do or say, considering the Circumstances I am in.

L. H. S. Take my Lord's Paper, and read it.

Sir *Tho. Lee*. My Lords, I desire you will please to consider whether this may not introduce a new Custom by reading of this Paper. As to what my Lord is pleased to say, I am sorry for the occasion that any Disturbance should arise to my Lord from the Rabble, or any one else; I hope his Lordship believes we cannot help, nor do we contribute to that Disturbance. But we desire your Lordships to consider, whether this Practice of having things written down for the Clerk to read, may not introduce a Custom, which may in time grow inconvenient for future Example. I see no great Danger in the particular Instance before your Lordships now, but it is dangerous in such Cases to do any thing that is new in this Court.

L. H. S. All the Matter is, whether it be read by my Lord, who cannot be heard, or read by the Clerk.

Sir *Tho. Lee*. We only oppose it out of fear of making a Precedent, which may be of ill Consequence.

L. H. S. Read it, my Lord, and raise your Voice, for it concerns you to speak out.

L. Staff. (Reading out of his Paper.) My Lords, When I offer'd Matter of Law to your Lordships, on Saturday last, I did in nowise admit the Matter of Fact to be true that was alledged against me, and so I desire to be understood. And I hope your Lordships will not lay the less Weight upon the Testimony of my Witnesses, because they are not sworn; for the Law does not suffer them to be sworn, which is no Fault of mine, nor ought not to turn to my Prejudice.

I must appeal to your Lordships Judgments in point of Fact, how far the King's Witnesses are to be believed against me, considering the whole Matter, and my Counter-Proof.

Next I submit to your Lordships Judgments this Point, That the Impeachment being founded upon the Common Law, and the Statute of 25th *Edw. III.* and not upon the Statute of the 13th of this King, two of the Witnesses, *Dugdale* and *Turberville*, do only swear treasonable Words spoken by me, and not my Overt-Act; for they swear only that I promised them Money and Rewards to kill the King. Now I humbly pray your Lordships Judgment, whether bare speaking of Words be an Overt-Act, and Treason at the Common Law, or upon that Statute; and whether there be more than speaking of Words in a Consult, or otherwise proved by *Dugdale* and *Turberville*, I appeal to you. Then the other Witness, *Oates*, is but a single Witness, who speaks of the receiving of a Commission. This is that I offer to your Lordships now for your Judgments, and then I desire I may have your Opinion in other things.

L. H. S. Is this all your Lordship hath to say?

L. Staff. For the present, my Lords.

L. H. S. You must say all you have to say now.

L. Staff. Is it your Lordships Pleasure to hear Counsel to nothing at all? I did likewise alledge to your Lordships th' other day, That People that swear for Money are not competent credible Witnesses; how far that was proved, or I may prove by my Counsel, I submit to your Lordships.

L. H. S. Look you, my Lord, you have so far receiv'd already the Pleasure of the House: You have rais'd several Questions of Law, Whether every Overt-Act requires two Witnesses to prove it. You have had the Opinion of the Judges, and there is no more to be said in it. As to that, Whether Impeachments continue from Parliament to Parliament; and the other thing, Whether Proceedings may be upon an Impeachment without an Indictment; these are Matters of the Course and Constitution of Parliaments, my Lords will consider of them by themselves, and will permit no Counsel to argue them. For the other Point, That Words are no Overt-Act, that rests for their Opinion in another Case, when it shall come, for they have now no such Case before them.

L. Staff. I humbly conceive there is.

L. H. S. There is a great Difference between bare Words being an Overt-Act, and Persuasion by Promises of Money and Rewards to kill the King, which is a very great Overt-Act.

L. Staff.



*L. Staff.* Is it possible to do an Act by Words? If it be so, I never heard it before.

*L. H. S.* Otherwise Men may promise Rewards to twenty several Persons to kill the King, and then say 'tis all but Words.

*L. Staff.* I say it not, but I humbly conceive the Law says it.

*L. H. S.* What say you, Gentlemen of the House of Commons?

*L. Staff.* My Lords, I have something to say, which I desire to speak first: My Lords, I hope I have cleared to your Lordships that all the Witnesses have sworn falsely against me, and this I have made out by Proofs: I say not much to that. — (*My Lord was searching for his Papers.*) Truly, my Lords, I am confounded with the Noise and other Circumstances: but, my Lords, I shall, if your Lordships please to give me leave, humbly represent my Case to you, how I take it to be in Matter of Fact, (as to my own Condition not any Thing,) how I am now before your Lordships.

I was, my Lords, committed by my Lord Chief-Justice's Warrant, on the 20th or 21st of October, (78.) Friday, 25th of October, I was brought to your Lordships Bar; I was impeached; I do not remember the Day, my Lords, the Beginning of December; in one Parliament Articles exhibited against me; in another Parliament I was brought upon these Articles exhibited, and being called to your Lordships Bar, the Articles were read to me, and I gave in my Answer; that was sometime in May (79.) and in the End of May, the 27th, (if I mistake not, if I do, I desire it may be rectified by your Books) I, with the other Lords, were brought to this Place in order to our Trial. We staid some Time there, and then were remanded by your Order to the Tower, where I continued till November twelve Months after, without having heard any Thing concerning it. So that I was first impeached in one Parliament, Articles brought against me and pleaded to in a second, and now brought to my Trial in a third; and what your Lordships will say upon this, I submit to you; and whether these be Proceedings according to Law your Lordships will judge.

My Lords, I humbly conceive that *Magna Charta* says, That Justice shall be denied nor delayed to no Man; whether it hath not been delayed to me let your Lordships judge. If you say the Prorogation of the Parliament is the Cause of that Delay, I hope your Lordships will give me leave to say, That from the 5th of December to the 30th, when the first Parliament was prorogued, or during the Session of the other Parliament, there was Time enough sure wherein I might have been brought to my Trial; and if these Proceedings be lawful and just, there is no Man living, but may be kept off from Time to Time, till some Accidents happen that their Ends may be gained. I leave it to your Judgment, whether it may be only my Case now, or of some of your Lordships in future Ages, to be accused of Things that you never heard of before, and not brought to justify yourselves, but kept in Prison.

My Lords, There is a Statute, I have forgot where it is, (but such a one I have read) that tho' the King by his Great Seal, or Little Seal, command that Justice should be delayed or denied, yet, however, the Judges shall not obey it, but proceed. So I hope there is no Pretence of Delay on my Part, and the Benefit of that Statute shall not be denied me. And that Statute of the *Great Charter*, which cost so many of your Ancestors their Lives to maintain, I hope you will never go from. Now your Lordships noble Ancestors, amongst other Things, took great Care that Justice should be denied or delayed to none; and this I desire you to take into Consideration.

I am in your Lordships Judgment either to be acquitted or condemned. I hope your Lordships will, and I know you will, lay your Hands upon your Hearts, consult your Consciences and your Honours; and then you will do what is just and equitable, I doubt not.

My Lords, Mr. Oates said I came by the Name of Mr. Howard of Effingham, but that I did to my Letters sign *Stafford*; surely, my Lords, if I was ashamed to own my Person, I should have been as much ashamed to have owned my Name. He says, he saw me take a Commission, and whether that be an Overt-Act, your Lordships are to determine. Upon the whole Matter, I conceive, there is nothing proved against me but Words, nor pretended to, but only by Oates. And whether you will credit a Man that so dissembles with God, as I have told you, I appeal to your Lordships, and beg you to consider of it.

That these Witnesses have sworn for Money, if you send to the Exchequer-Office, and see what Money they have received, you will find by the great Sums that 'tis so; and then I hope you will not allow them to be heard, nor credit any that swear for Gain. I had a Suit in *Westminster-Hall*, that had like to have gone expressly against me, only because one of my Witnesses was to gain 8*l.* if the Suit went for me. But pray consider how much these Men have had. And for the Point, that there are not two Witnesses, I beseech your Lordships give me leave to put you in Mind, That not many Years ago, you passed an Act against Frauds and Perjuries, wherein you were so careful to preserve Men's Estates, that you required three Witnesses to prove a Will of Goods or Lands above 100*l.* and will you allow but one Witness to take away a Man's Life for Words? Though your Lordships will never commit Treason, yet no Man can preserve himself from the Misfortune that happens to me, of being falsely accused.

'Tis true, my Lords, the Managers have given an Answer to the Business of the Money, by saying, The King may give as liberally as he pleases; but to give so great Sums, whereby Men poor before, are now become rich, I think will be an Objection against their Credit.

My Lords, I have said what I do think convenient, though I think much more might be said by an abler Man to your Lordships, for the clearing of himself. I hope I have done it, nay, I am confident I have; and this I have done for the Memory of that Great and Blessed King, who first made me a Peer, that it may not be said he did me the Honour forty Years ago to call me up to this Dignity, and I should fly in the face of his Son in so horrible a Manner as these Men would make me. I owe it to the Honour of my Father and Mother, who, I think I may safely say, were both honourable and worthy Persons: My Father was a learned Man, and a wise Man, as I may appeal to some of your Lordships who knew him well; I say, I owe it to their Memory, and to the Honour of the Family from whence I sprang, which all the World knows that it is. And I should be an infamous Man to dishonour them so much, as to bear their Name, and commit Treason. My Lords, I owe it to my Wife, who hath been a very kind Wife to me as ever Man had: She is a Person at Law to the great Estate of that great and unfortunate Man

*Stafford, Duke of Buckingham*, who was cut off in the Reign of King *Henry the VIIIth*, and all his Estate, if it were not for that Attainder, would have come to her.

I may be impertinent in telling your Lordships what it was; but I do not over say it, when I reckon it would have been at this Day 20,000*l.* a Year, for it was 17,000*l.* a Year in those Days Penny-Rent, besides other Emoluments. This is an extravagant Thing to say, but 'tis true; something thereof does remain to her, which I now enjoy. I owe it to all my Children, especially to my eldest Son, who is a young Man, and I may say, of far better Parts and Hopes than his Father, and whom, I hope, will serve his Country. I owe it to all my Friends and Relations, for I would not have it said after my Death, my Wife was the Widow of a Traitor. I owe it to all these, but above all, I owe it to God Almighty; that when I come to be judged by Him, I may give a good Account of what he hath entrusted me with, that I may not appear as an infamous Man who knows he hath a Body, but not his own, and yet should throw it and his Soul away together. And if I should have committed this execrable Treason, I should have been guilty of my own Murder: First, In the committing a Crime worthy of Death; and then in not confessing, to save my Life. I hold Murder an extraordinary Crime, the worst next to Treason: And I know, if I should not prevent my Death by confessing all I knew, I should have been guilty of Self-Murder, the worst of Murders. I know your Lordships will lay to Heart, what an execrable Thing Murder is, and the Blood of Innocents; and I hope there is none of the House of Commons, but after this Evidence will clear me. I am sure none of them would have me punished for that I am not guilty of. I do not blame these Gentlemen of the House of Commons for prosecuting, nor the first for impeaching; for they had without all doubt, Reasons great enough for it upon what Evidence they had before them, before they knew what the Witnesses were. I know your Lordships will not in the least Point vary from Justice, or the Law of the Land, and I desire you to lay the whole Matter to your Hearts; I have not the least Suspicion of the Partiality of any Man in the House; nay, I profess, if I had an Enemy, and he were not here, I would beg of you that he might come. I have cleared myself before your Lordships, and I hope I shall not be run down by the wicked Rabble; which, where it will end, God knows. It began in the late Times against my Lord of *Stafford*, and so continued till it ended in that most execrable Fact, one of them, that ever was done. A wicked Beginning it was, and it had a wicked End. For since our Saviour's Death and Murder by the *Jews*, never was so execrable a Murder in the World; and whoever had an Hand in it, without an extraordinary repentance, can have no Thoughts of Salvation. I never could serve the King, 'tis true, but in my Desires; and I never deserted him in Thought, Word, or Deed, to my Knowledge, in my Life; much less did I ever contrive or consent to his Death. I do in the Presence of God, Angels, your Lordships, and all Men, declare, I do know no more of the Plot, or any such Thing, than any one here does. That those of the *Romish* Religion had Meetings, I believe, to obtain those Ends that I spake of before: *Coleman* went too far; how far he was criminal in it, I can't tell. Meetings, I say, there were, but I was never at one of them, nor do I know what was done there. I do leave it to your Lordships to do Justice, as I know you will, and with all submission I resign myself up to you.

*L. H. S.* Have you done, my Lord?

*L. Staff.* If your Lordships will not allow me Counsel to argue those Points, I have done.

*L. H. S.* What say you, Gentlemen of the House of Commons?

Mr. Serj. *Maynard*. My Lords, Something that my Lord hath spoken hath been resolved against him, that is, about two Witnesses to each Overt-Act; some things are not to be disputed about the Law and Course of Parliaments; some things were not to be said now, because he had said them before. My Lords, we had concluded our Evidence, and he is pleased to take up the Time with repeating what was said before.

For the other Matters that my Lord is pleased to discourse of, all he says is but his Obligations, and how unreasonable it were for him to do it; the Question is, Whether he hath done it or no? If he hath, his Obligations are an Aggravation of his Crime, not an Excuse. His Relations, his Family, and other Things are nothing before your Lordships now in Point of Judgment, nor is there any Thing new said to Day, that was not said before.

Sir *Will. Jones*. My Lords, I should not add one Word farther, were it not that this noble Lord is pleased upon his Memory, or rather without, to say something of me; and that was, That speaking of the Continuance of Proceedings, I should say, *If your Lordships had no Precedent, I hope you would make one.* My Lords, I do appeal to your Lordships Memory, whether I said any Thing like it; I utterly deny it, nor was there any Occasion for it. For there was no need of urging Precedents, when your Lordships, upon a Conference with the Commons, did declare it to be the Law of Proceedings in Parliament, and did then fortify it with many Arguments. I know, my Lord's Memory is not very good; I'm sure in this he is very much mistaken.

My Lord hath been pleased to complain he hath received much Disturbance, and that the Noise and Shouts have been so great, that they have occasioned some Distraction in him. My Lords, I am sure his Lordship cannot mean us; for I appeal to your Lordships, and all that have heard this Trial, whether he hath received the least Disturbance or Interruption from us, or whether we have not treated him with that Respect that becomes his Dignity, and the Discretion that ought to be in the Managers of the House of Commons. But I must needs say, that his Lordship hath received Distraction from those Friends or Counsel of his that put those many Papers into his Hand; for he hath read one after another that do contain the same Matter over and over again. These, I confess, were sufficient to distract him, or any other that should make use of them. His Lordship hath been pleased to go off from the Matter of Law, to the Matter of Fact; and backward and forward, so that it is impossible to follow him: And as to the Matter of Fact, we shall decline to follow him; for tho' we have not given his Lordship any Disturbance, yet we submit to your Judgment, whether it be regular, or according to the course of Proceedings, when his Lordship hath summ'd up his Evidence, and we that are the Prosecutors have concluded ours, he should



begin that Work again; which, if it should be admitted, we were to reply, and he might rejoin upon us, and so there would be no end of Proceedings.

And, my Lords, I hope, tho' this Lord hath had the Favour to do it, yet it shall not for the future be brought into Example, for it will make Trials endless.

My Lords, For the Matter of Law, there is nothing that deserves an Answer; for tho' the Law does admit the Prisoner Counsel in Matters of Law, yet it must be in things doubtful; and if there be any thing of that in our Case, I submit it to your Lordships. I am sure, I have heard nothing new but what hath been over-ruled already, unless it be a Matter of Law which rises upon the Matter of Fact, and that not proved, to wit, the Corruption of Witnesses. The last Day, all was said by his Lordship he could say, and all said by us that we thought fit to say; and now to begin the same Matter again, I think ought not to be admitted. We shall not follow his Lordship in that way of Proceedings, and hope it shall never fall into Example.

Sir F. Win. My Lords, I have only one Word to say to your Lordships, and that is in relation to the Proceedings of the Commons in this Cause; for if the Cause had not been of an extraordinary Nature, we should have stood upon it, that the Prisoner ought not, after the Prosecutors had concluded, to have taken a liberty of reading and repeating what he had said over and over again. We know, my Lords, there are a Sort of Men in the World, who are willing to lay hold of any Pretences to cavil at our Proceedings; and therefore we have let my Lord take all this liberty, that so his Party might have no colour of Complaint. His Lordship was pleased to say the last Day, that he had not a Witness more to produce, nor a Reason to give, as I understood him; and therefore he must own that we have been very tender to him in all our Proceedings. One thing my Lord insinuates to Day, which I cannot forbear taking notice of as if we had delayed him: which is without cause; we had used all Diligence in preparing ourselves, and were soon ready when the King was pleased to let the Parliament sit, and therefore it can be no Imputation on us: and truly, if my Lord considers the Weight of the Evidence, I fear he will think his Trial comes soon enough now.

L. Staff. My Lords, I desire to be rightly understood in one thing, and 'tis only this; I did not say the House of Commons shouted at me, but the Rabble.

L. H. S. Is it your Lordships Pleasure to adjourn?

Lords. Ay, Ay.

L. H. S. Then this House is adjourned to the Parliament-Chamber.

[Then the Lords withdrew in their former Order, and the Committee of Commons went back to their House.]

Mr. Speaker resum'd the Chair, and a Message was sent from the Lords by Sir Timothy Baldwyn and Sir Samuel Clarke.

Mr. Speaker,

The Lords have commanded us to acquaint this House, that they have appointed William Viscount Stafford to be brought to the Bar in Westminster-Hall to-morrow Morning at Ten of the Clock, to receive Judgment.

[The Commons adjourned to eight of the Clock the next Morning.]

#### THE SEVENTH DAY.

Tuesday, December the 7th, 1680.

ABOUT the Hour of Eleven, the Lords adjourned into Westminster-Hall, going thither in their former Order into the Court there erected; and Mr. Speaker having left the Chair, the Committee of Commons were seated as before.

The Lords being sat, Proclamation was made for Silence; and the Lord High-Steward being seated on the Woolpack, with Garter Principal King of Arms, the Usher of the Black-Rod, nine Maces attending him, with all the rest of the Solemnity, as was at first expressed, took the Votes of the Peers upon the Evidence, beginning at the Puisne Baron, and so upwards, in this order; the Lord Stafford being (as the Law requires) absent.

L. H. S. My Lords, I am an humble Suitor to your Lordships, That you will give me leave to collect your Votes as I fit, for I am not able to stand. (Which being granted, the Lord High-Steward proceeded.)

L. H. S. My Lord Butler of Wotton, Is William Lord Viscount Stafford Guilty of the Treason whereof he stands impeached, or Not Guilty?

Lord Butler. Not Guilty upon my Honour.

[The same Question was put to the rest, whose Names and Votes follow.]

Lord Arundel of Trerice. Not Guilty upon my Honour.

Lord Crew. Guilty upon my Honour.

Lord Cornwallis. Guilty upon my Honour.

Lord Holles. Not Guilty upon my Honour.

Lord Wootton. Not Guilty upon my Honour.

Lord Rockingham. Guilty upon my Honour.

Lord Lucas. Not Guilty upon my Honour.

Lord Ashley. Guilty upon my Honour.

Lord Ward. Not Guilty upon my Honour.

Lord Byron. Not Guilty upon my Honour.

Lord Hatton. Not Guilty upon my Honour.

Lord Leigh. Guilty upon my Honour.

Lord Herbert of Cherbury. Guilty upon my Honour.

Lord Howard of Esherick. Guilty upon my Honour.

Lord Maynard. Guilty upon my Honour.

Lord Lovelace. Guilty upon my Honour.

Lord Deincourt. Not Guilty upon my Honour.

Lord Grey of Werk. Guilty upon my Honour.

Lord Brook. Guilty upon my Honour.

Lord Norris. Not Guilty upon my Honour.

Lord Chandos. Guilty upon my Honour.

Lord North and Grey. Guilty upon my Honour.

Lord Pagett. Guilty upon my Honour.

Lord Wharton. Guilty upon my Honour.

Lord Eure. Guilty upon my Honour.

Lord Cromwell. Guilty upon my Honour.

Lord Windsor. Not Guilty upon my Honour.

Lord Conyers. Guilty upon my Honour.

Lord Ferrers. Not Guilty upon my Honour.

Lord Morley. Not Guilty upon my Honour.

Lord Mowbray. Not Guilty upon my Honour.

Lord Visc. Newport. Guilty upon my Honour.

Lord Visc. Faulconberge. Guilty upon my Honour.

Earl of Conway. Guilty upon my Honour.

Earl of Berkeley. Not Guilty upon my Honour.

Earl of Macclesfield. Guilty upon my Honour.

Earl of Halifax. Not Guilty upon my Honour.

Earl of Feversham. Not Guilty upon my Honour.

Earl of Suffex. Guilty upon my Honour.

Earl of Guilford. Guilty upon my Honour.

Earl of Shaftesbury. Guilty upon my Honour.

Earl of Burlington. Guilty upon my Honour.

Earl of Ailesbury. Not Guilty upon my Honour.

Earl of Craven. Not Guilty upon my Honour.

Earl of Carlisle. Guilty upon my Honour.

Earl of Bath. Not Guilty upon my Honour.

Earl of Essex. Guilty upon my Honour.

Earl of Clarendon. Not Guilty upon my Honour.

Earl of St. Albans. Not Guilty upon my Honour.

Earl of Scarfdale. Guilty upon my Honour.

Earl of Sunderland. Guilty upon my Honour.

Earl of Thanet. Not Guilty upon my Honour.

Earl of Chesterfield. Not Guilty upon my Honour.

Earl of Carnarvon. Not Guilty upon my Honour.

Earl of Winchelsea. Guilty upon my Honour.

Earl of Stamford. Guilty upon my Honour.

Earl of Peterborough. Not Guilty upon my Honour.

Earl of Rivers. Guilty upon my Honour.

Earl of Mulgrave. Guilty upon my Honour.

Earl of Berkshire. Guilty upon my Honour.

Earl of Manchester. Guilty upon my Honour.

Earl of Westmoreland. Guilty upon my Honour.

Earl of Clare. Guilty upon my Honour.

Earl of Bristol. Guilty upon my Honour.

Earl of Denbigh. Not Guilty upon my Honour.

Earl of Northampton. Guilty upon my Honour.

Earl of Leicester. Guilty upon my Honour.

Earl of Bridgewater. Guilty upon my Honour.

Earl of Salisbury. Guilty upon my Honour.

Earl of Suffolk. Guilty upon my Honour.

Earl of Bedford. Guilty upon my Honour.

Earl of Huntingdon. Guilty upon my Honour.

Earl of Rutland. Not Guilty upon my Honour.

Earl of Kent. Guilty upon my Honour.

Earl of Oxford. Guilty upon my Honour.

Lord Chamberlain. Not Guilty upon my Honour.

Marquis of Worcester. Not Guilty upon my Honour.

Duke of Newcastle. Not Guilty upon my Honour.

Duke of Monmouth. Guilty upon my Honour.

Duke of Albemarle. Guilty upon my Honour.

Duke of Buckingham. Guilty upon my Honour.

Lord Privy-Seal. Guilty upon my Honour.

Lord President. Guilty upon my Honour.

Lord High-Steward. Guilty upon my Honour.

Prince Rupert, Duke of Cumberland. Guilty upon my Honour.

L. H. S. My Lords, Upon telling your Votes, I find there are Thirty-one of my Lords that think the Prisoner Not Guilty, and Fifty-five that have found him Guilty. Serjeant, Make Proclamation for the Lieutenant of the Tower to bring his Prisoner to the Bar.

[Which was done, and his Lordship came to the Bar.]

L. H. S. My Lord Stafford, I have but heavy Tidings for you; your Lordship hath been impeached of High-Treason, you have pleaded Not Guilty; my Lords have heard your Defence, and have consider'd of the Evidence, and their Lordships do find you Guilty of the Treason whereof you are impeached.

L. Staff. God's Holy Name be praised, my Lords, for it.

L. H. S. What can your Lordship say for yourself, why Judgment of Death should not be given upon you according to the Law?

L. Staff. My Lords, I have but very little to say; I confess, I am surpriz'd at it, for I did not expect it; but God's Will be done, and your Lordships, I will not murmur at it: God forgive those that have sworn falsely against me. My Lord, I conceive I have something to say for respite of Judgment: I have been at many Trials in my Life, but never saw any Trial where the Party tried did not hold up his Hand, which I was never asked to do: I thought it had been a very material Point in the Law, that by the holding up of the Hand he might be known to be the Person. I have read lately, since I had the Misfortune to be thus accused, Sir Edward Coke upon the Pleas of the Crown; and he says That Misnomer, the not giving a Man his right Name, or Addition, is likewise a just Cause to arrest the Judgment. There is likewise another Question, how far it may be valued I know not; I submit it, as I do all to your Lordships. Tho' I am tried upon the Act of the 25th of Edward III. yet there is nothing more in that Act, than what is included in the Act of the 13th of this King; and I humbly conceive, my Lords, that that Act, and the last Proviso in it, a Peer that is accused and found guilty of the Crimes therein mentioned, is to lose his Seat in Parliament: those are the Words; and since 'tis so put down in the Act, it is so to be understood, and that is all the Punishment. And I humbly demand your Lordships Judgment upon these Points, whether it be so or no.

L. H. S. Has your Lordship any more to say?

L. Staff. No, my Lords, I submit to your Lordships, and desire your Judgment in these Points.

Then the Lords adjourned into the Parliament-Chamber, and the Committee of Commons returned to their own House; and their Speaker having resumed the Chair, the whole Body of the House went with the Speaker to the Bar of the House of Lords, to demand Judgment of High-Treason against William Viscount Stafford, upon the Impeachment of the Commons of England, in Parliament, in the Name of the Commons of England, and of all the Commons of England.

*It don't appear what the misnomer was Lord Stafford said in the last part of his speech in 13. Chas. 2. chap. 1.*

*See in vol. 2. on the first of the trials of Peter for perjury in the State Tri. 40. where it is said that his Lordship was & other Lords were very for this there in the Court of the evidence.*

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The Commons, with their Speaker, went back to their House. Then the Lords took into Consideration what Judgment was to be given upon William Viscount Stafford, and it was moved that he might be beheaded. After some Debate, the Judges were asked, whether if any other Judgment than the usual Judgment for High-Treason were given upon him, it would attain his Blood? The Judges were of Opinion, that the Judgment for High-Treason appointed by Law, is to be drawn, hanged, and quartered; and in the Courts and Proceedings below they can take no notice of any Judgment for High-Treason but that.

Then Sir Creswell Levinz, the King's Attorney-General, desired to be heard on his Majesty's behalf, which the House gave leave for him to be; who said, he knew no other Judgment by Law for High-Treason, but Drawing, Hanging, and Quartering; if any other Judgment were given, it would be prejudicial to his Majesty, and be a Question in the inferior Courts as to his Attainder of High-Treason.

Whereupon their Lordships ordered, That the Lord High Steward do pronounce the ordinary Judgment of Death upon the Lord Viscount Stafford, as the Law hath appointed in Cases of High-Treason.

And a Message was sent to the House of Commons from their Lordships, by Sir Timothy Baldwin and Sir Samuel Clark.

Mr. Speaker, We are commanded by the Lords, to acquaint this House, That their Lordships are going presently into Westminster-Hall, to give Judgment against William Viscount Stafford.

[Mr. Speaker left the Chair.]

The Committee of Commons appointed for the Management of the Evidence against the Prisoner, with the rest of the Commons, went into Westminster-Hall, to the Court there erected; to be present when the Lords gave Judgment of High-Treason against him upon the Impeachment of the Commons of England.

After a short Time their Lordships were adjourned into Westminster-Hall, coming in their former Order into the Court there erected; where being seated, and the Lord High Steward being on the Woolfack, attended by Garter Principal King of Arms, the Usher of the Black Rod, eight of the Serjeants at Arms kneeling with their Maces, the ninth making Proclamation for Silence; which being done, the Lord High-Steward gave Judgment upon the Prisoner as followeth:

L. H. S. My Lord Stafford, THAT which your Lordship hath said in Arrest of Judgment hath been found by my Lords, upon due Consideration had of it, to be of no moment at all. It is no essential Part of any Trial, That the Prisoner should hold up his Hand at the Bar; there is no Record ever made of it when it is done; the only Use of it is to shew the Court who the Prisoner is, and when that is apparent, the Court does often proceed against him, though he refuse to hold up his Hand at the Bar; therefore the Omission of that Ceremony, in this Case, is no legal Exception, as all the Judges have declared.

And as to the Proviso in the Statute of the 13th Year of this King, their Lordships do find that they are in no Sort applicable to this Case, forasmuch as the Proceedings against your Lordship are not grounded upon that Statute, but upon the Statute of 25 Edw. III. And yet if the Proceedings had been upon the latter Statute, the Proviso therein could have done your Lordship no Service at all.

My Part therefore which remains, is a very sad one: For I never yet gave Sentence of Death upon any Man, and am extremely sorry that I must begin with your Lordship.

Who would have thought that a Person of your Quality, of so noble an Extraction, of so considerable Estate and Fortune, so eminent a Sufferer in the late ill Times, so interested in the Preservation of the Government, so much obliged to the Moderation of it, and so personally obliged to the King and his Royal Father for their particular Favours to you, should ever have entered into so infernal a Conspiracy as to contrive the Murder of the King, the Ruin of the State, the Subversion of Religion, and, as much as in you lay, the Destruction of all the Souls and Bodies in three Christian Nations?

And yet the Impeachment of the House of Commons amounts to no less a Charge, and of this Charge their Lordships have found you Guilty. That there hath been a general and desperate Conspiracy of the Papists, and that the Death of the King hath been all along one chief Part of the Conspirators-Design, is now apparent beyond all Possibility of doubting.

What was the meaning of all those Treatises which were published about Two Years since against the Oath of Allegiance, in a Time when no Man dreamt of such a Controversy? What was the meaning of Father Conyers's Sermon upon the same Subject, but only because there was a Demonstration of Zeal, as they call it, intended against the Person of the King? Which the Scruples arising from that Oath did somewhat hinder. To what Purpose were all the Correspondencies with foreign Nations? The Collections of Money among the Fathers Abroad and at Home? What was the meaning of their governing themselves here by such Advices as came frequently from Paris and St. Omers? And how shall we expound that Letter which came from Ireland, to assure the Fathers here, that all Things were in a readiness there too, as soon as the Blow should be given?

Does any Man now begin to doubt how London came to be burnt? Or by what Ways and Means poor Justice Godfrey fell? And is it not apparent by these Instances, that such is the frantick Zeal of some bigotted Papists, that they resolve, no Means to advance the Catholick Cause shall be left unattempted, though it be by Fire and Sword?

My Lord, as the Plot in general is most manifest, so your Lordship's part in it hath been too too plain. What you did at Paris, and continued to do at Tixall in Staffordshire, shews a settled Purpose of Mind against the King, and what you said at London touching honest Will, shews you were acquainted with that Conspiracy against the King's Life which was carrying on here too: And in all this there was a great Degree of Malice; for your Lordship at one time call'd the King Heretick and Traitor to God; and at another Time you reviled him for misplacing his bounty, and rewarding none but Traitors and Rebels.

And thus you see that which the Wife-Man forewarned you of, is come upon you: *Curse not the King, no, not in thy Heart: For the Birds of the Air shall reveal, and that which hath Wings will declare the Matter.*

Three Things I shall presume to recommend to your Lordship's Consideration. In the first Place, your Lordship now sees how it hath pleased God to leave you so far to yourself, that you are fallen into the Snare, and into the Pit, into that very Pit which you were digging for others. Consider therefore, that God Almighty never yet left any Man, who did not first leave him.

In the next Place, Think a little better of it than hitherto you have done, what kind of Religion that is, in which the blind Guides have been able to lead you into so much Ruin and Destruction as is now like to befall you.

In the last Place, I pray your Lordship to consider, That true Repentance is never too late. A devout penitential Sorrow, joined with an humble and hearty Confession, is of mighty Power and Efficacy both with God and Man.

There have been some of late who have refused to give God the glory of his Justice by acknowledging the Crimes for which they were condemned; nay, who have been taught to believe, that 'tis a mortal Sin to confess that Crime in publick, for which they have been absolved in private, and so have not dared to give God that Glory which otherwise they would have done.

God forbid your Lordship should rest upon Forms; God forbid your Lordship should be found among the Number of those poor mistaken Souls, whom the first Thing that undeceives is Death itself.

Perhaps your Lordship may not much esteem the Prayers of those whom you have long been taught to miscall Hereticks; but whether you do or no, I am to assure your Lordship, That all my Lords here, even they that have condemned you, will never cease to pray for you, That the End of your Life may be Christian and Pious, how tragical soever the Means are that must bring you thither.

And now, my Lord, this is the last Time that I can call you my Lord; for the next Words I am to speak will attain you.

The Judgment of the Law is, and this Court doth award, That

YOU go to the Place from whence you came; from thence you must be drawn upon a Hurdle to the Place of Execution: When you come there, you must be hanged up by the Neck, but not till you are dead; for you must be cut down alive, your Privy-Members must be cut off, and your Bowels ript up before your Face, and thrown into the Fire. Then your Head must be severed from your Body, and your Body divided into four Quarters; and these must be at the Disposal of the King. And God Almighty be merciful to your Soul.

Prisoner. My Lords, I humbly beseech you give me leave to speak a few Words; I do give your Lordships hearty Thanks for all your Favours to me. I do here, in the Presence of God Almighty declare, I have no Malice in my Heart to them that have condemned me; I know not who they are, nor desire to know; I forgive them all, and beseech your Lordships all to pray for me. My Lords, I have one humble Request to make to your Lordships, and that is, my Lords, That the little short Time I have to live a Prisoner, I may not be a close Prisoner as I have been of late, but that Mr. Lieutenant may have an Order that my Wife and Children and Friends may come at me. I do humbly beg this Favour of your Lordships, which I hope you will be pleased to give me.

L. H. S. My Lord Stafford, I believe I may, with my Lords leave, tell you one Thing further, That my Lords, as they proceed with Rigour of Justice, so they proceed with all the Mercy and Compassion that may be; and therefore my Lords will be humble Suitors to the King, that he will remit all the Punishment but the taking off your Head.

Prisoner. (Weeping) My Lords, your Justice does not make me cry, but your Goodness.

Then the Lord High Steward broke his Staff, and the Lords adjourned into the Parliament Chamber, and the Commons returned to their House, and the Prisoner with the Ax born before him with the Edge towards him (it being carried contrarily during his Trial) was sent back to the Tower.

His Majesty afterward ordered the Lord High-Chancellor to issue out under the Great Seal of England the following Writs for executing the said late Viscount Stafford; the first being to the Lieutenant of the Tower, to deliver him on the 29th of December 1680, between nine and eleven o'Clock in the Forenoon, at the usual Place without the Tower-Gate, to the Sheriffs of London and Middlesex; and the other being for them then and there to receive him into their Custody, and to lead him to the usual Place upon Tower-Hill, and there to cause his Head to be cut off, and severed from his Body: Which Writs were in Form following:

CAROLUS Secundus Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Rex, fidei defensor, &c. Locumtenenti Turris nostræ London salutem: Cum Willus Vicecomes Stafford, per Communes Regni nostri Angliæ in Parlamento assemblat', de alta proditione necnon diversis aliis criminibus & Offensis per ipsum perpetrat' & commissis, impetit' fuit, ac superinde per Dominos Temporales in presenti Parlamento nostro convent', triat', convict' & debita juris forma attinct' fuit, & morti adjudicat' existit; cujus quidem Judicii executio adhuc restat faciendâ. Cumq; prædictus Vicecomes Stafford in Turri nostra London, sub custodia tua detent' existit: Præcipimus tibi & per presentes firmiter injungendo mandamus, quod in & super vicefinum nonum diem instantis mensis Decembris, inter horas nonam & undecimam, ante Meridiem ejusdem diei, ipsum Vicecomitem Stafford, usq; locum sualem extra portam Turris prædictæ ducas; ac ipsum, Vicecomitibus Civitatis nostræ London & Middlesex, adtunc & ibidem deliberes: Quibus quidem Vicecomitibus nos per aliud breve eis inde direct', per cepimus prædictum Vicecomitem Stafford adtunc & ibidem recipere, ut sint executio Judicii prædicti, modo & forma prout dictis Vicecomitibus London & Middlesex, per aliud breve nostrum prædictum præcipimus: Et hoc nullatenus omittas, sub periculo incumbente; aliquo Judicio, Lege, Ordinatione, seu mandato præantea habit', fact', ordinat', seu dat' in contrarium non obstante. Teste meipso apud Westm. decimo octavo die Decembris, Anno regni nostri tricesimo secundo.

B A R K E R.

CAROLUS Secundus Dei gratia Angliæ, Scotiæ, Franciæ & Hiberniæ Rex, fidei defensor, &c. Vic. London & Vic. Middlesex salutem: Cum Willus Vicecomes Stafford, per Communes regni nostri Angliæ in Parlamento

\* This Attainder was attempted to be reversed in 1 Jac. II. and a Bill for that Purpose passed the House of Lords, but was dropped in the House of Commons.



*assemblat, de alta proditiōe, necnon diversis aliis criminibus & offēsis per ipsum perpetrat & commissis impetit fuit; ac superinde per Dominos Temporales in presenti Parlamento nostro conventi, triatus, convicti & debita juris forma attinet fuit, & morti adjudicati existit; cujus quidem Judicii executio adhuc restat faciendā; Præcipimus vobis, & per presentes firmiter injungendo mandamus, quod in & super viceſimum nonum diem hujus instantis Decembris, inter horas nonam & undecimam, ante meridiem ejusdem diei, dictum Vicecomitem Stafford, extra Portam Turris nostræ London, vobis tunc & ibidem deliberandum, prout per aliud breve Locumtenenti Turris nostræ London directum præcepimus, in custodiam vestram adtunc & ibidem recipiatis, & ipsum sic in custodia vestra existentem, statim usque usualem locum super le Tower-hill ducatis; ac caput ipsius Willi. Vicecomitis Stafford, adtunc & ibidem amputari, ac a corpore suo omnino separari faciatis; aliquo Judicio, Lege, Ordinatione, seu Mandato præantea habito, facti, ordinati, seu dati in contrarium, non obstante: Et hoc (sub periculo incumbente) nullatenus omittatis. Teste meipso apud Westm. decimo octavo die Decembris, Anno regni nostri tricesimo secundo.*

B A R K E R.

There were two Writs to the Sheriffs, both alike *verbatim*, one delivered in London, the other in *Middlesex*.

Whereupon the Sheriffs doubting whether that was a sufficient Authority for them to execute the Prisoner by Beheading only, the Sentence of Death being otherwise given, petitioned the Lords in Parliament to take the Premises into Consideration, and to make such Order as should be agreeable to Right and Justice, as by the following Petition appears.

*To the Right Honourable the Lords Temporal in Parliament assembled; The Humble Petition of Slingsby Bethel, Esq; and Henry Cornish, Esq; Sheriffs of London and Middlesex:*

Sheweth,

THAT your Petitioners have received a Writ under the Great Seal of England, reciting, That Judgment had been given by your Lordships against William Viscount Stafford, for High-Treason, and divers other Crimes and Offences, upon the Impachment of the Commons in Parliament assembled, and commanding your Petitioners to cause the said Viscount Stafford's Head to be sever'd from his Body upon the 29th Day of this Instant December, notwithstanding any Judgment, Law, Ordinance, or Command to the contrary:

That your Petitioners have not as yet received any Command from your Lordships for executing the said Judgment.

May it therefore please your Lordships to take the Premises into Consideration, and to make such Order therein, as shall be agreeable to Right and Justice. And your Petitioners shall always pray, &c.

Upon which Petition, the Lords did declare as followeth:

*Die Martis 21 Decembris, 1680.*

UPON Application from the Sheriffs of London and Middlesex, making some Scruples concerning the Execution of the late Lord Viscount Stafford, which were found by this House to be unnecessary, this House do declare, That the King's Writ ought to be obeyed.

The said Sheriffs likewise made Application to the House of Commons upon the aforesaid Matter, who made the following Resolve:

*Die Jovis 23 Decembris, 1680.*

Resolved, &c. That this House is content that the Sheriffs of London and Middlesex, do execute William late Viscount Stafford, by severing his Head from his Body only.

Accordingly, on the Wednesday following, being the 29th of December, between nine and Ten in the Forenoon, the two Sheriffs, with a considerable number of Gentlemen on Horseback, went to the Tower-Gate, and there demanded William Howard, late Viscount Stafford; when a Gentleman belonging to the Lieutenant of the Tower, told the Sheriffs, That the Lieutenant would wait on them presently, and bring the Prisoner to the Bars: To which the Sheriffs answered, That they must preserve the Privileges and Bounds of the City: An Officer replied, Sir, *We were ordered to draw up two Companies from the Gate to the Bar, and there you are to receive the Prisoner. Sheriffs. Gentlemen, we will preserve the Liberties of the City: And we are come at the Gate to demand the Prisoner; whether the Lieutenant will deliver him or no, we demand him.* And accordingly, he was deliver'd to the Sheriffs between the Gates and the Bars.

Before the Prisoner came, several People were upon the Scaffold, among which were two appointed to write.

The Headſman came up with two Blocks, one old, one new, in a Bag; also the Ax covered with a Cloth. The new Block being taken out, was covered over with Black, and laid upon a piece of Black Bays, about two Yards and a half long, upon which the Prisoner was to stretch himself. Then the Coffin was brought up, being coloured with two Letters, *W. S.* 1680. Then the Prisoner came upon the Scaffold, and asked for the Executioner; upon his appearing, he asked him, If he had received Money for the Cloaths? being answered, No, his Man took out a Purse of Five Pounds, which the Headſman objected against, and the Prisoner gave him two Guineas more. After a short Pause, he stepp'd to one side of the Scaffold, and taking a Paper out of his Pocket, read it as his Speech, (*Which came out the very same Day, before two of the Clock, in Print, as his Speech*) and was as follows:

BY the Permission of Almighty God, I am this Day brought hither to suffer Death, as if I were guilty of High Treason. I do most truly, in the Presence of the Eternal, Omnipotent, and All-knowing God, protest, upon my Salvation, That I am as innocent as it is possible for any Man to be, so much as in a Thought, of the Crimes laid to my Charge.

I acknowledge it to be a particular Grace and Favour of the Holy Trinity, to have given me this long time to prepare myself for Eternity. I have not made so good use of that Grace as I ought to have done,

partly by my not having so well recollected myself as I might have done, and partly, because not only my Friends, but my Wife and Children have for several Days been forbidden to see me, but in the Presence of one of my Warders. This hath been a great Trouble and Distraction unto me, but I hope God of his infinite Mercy will pardon my Defects, and accept of my good Intentions.

Since my long Imprisonment, I have consider'd often, what could be the original Cause of my being thus accused, since I knew myself not culpable, so much as in a Thought; and I cannot believe it to be upon any other Account than my being of the Church of Rome. I have no reason to be ashamed of my Religion, for it teacheth nothing but the right Worship of God, Obedience to the King, and due Subordination to the temporal Laws of the Kingdom. And I do submit to all Articles of Faith believed and taught in the Catholick Church, believing them to be most consonant to the Word of God. And whereas it hath so much and often been objected, That the Church holds that Sovereign Princes, excommunicated by the Pope, may, by their Subjects, be deposed or murdered: As to the Murder of Princes, I have been taught as a Matter of Faith in the Catholick Church, that such Doctrine is diabolical, horrid, detestable, and contrary to the Law of God, Nature, and Nations; and as such, from my Heart I renounce and abominate it. As for the Doctrine of deposing Princes, I know some Divines of the Catholick Church hold it; but as able and learned as they have writ against it: But it was not pretended to be the Doctrine of the Church, that is, any Point of Catholick Faith: Wherefore I do here in my Conscience declare, that it is my true and real Judgment, that the same Doctrine of deposing Kings, is contrary to the fundamental Laws of this Kingdom, injurious to Sovereign Power, and consequently would be in me or any other of his Majesty's Subjects, impious and damnable. I believe and profess, that there is one God, one Saviour, one Holy Catholick Church, of which, through the Mercy, Grace, and Goodness of God, I die a Member.

To my great and unspeakable Grief, I have offended God in many things, by many great Offences; but I give him most humble Thanks, not in any of those Crimes of which I was accused.

All the Members of either House having Liberty to propose in the House what they think fit for the Good of the Kingdom; accordingly, I proposed what I thought fit; the House is Judge of the Fitness or Unfitness of it; and I think I never said any thing that was unfitting there, or contrary to the Law and Use of Parliament; for certainly if I had, the Lords would (as they might) have punished me: So am not culpable before God or Man.

It is much reported of Indulgencies, Dispensations, and Pardons, to murder, rebel, lie, forswear, and commit such other Crimes held and given in the Church; I do here profess, in the Presence of God, I never learnt, believed, or practised any such Thing, but the contrary; and I speak this without any Equivocation or Reservation whatsoever: And certainly, were I guilty, either myself, or knew of any one that were guilty, whosoever that were so, of any of those Crimes of which I am accused, I were not only the greatest Fool imaginable, but a perfect Mad-man, and as wicked as any of those that so falsely have accus'd me, if I should not discover any ill Design I knew in any Kind, and so upon Discovery save my Life, I have so often had so fair Occasions proposed unto me, and so am guilty of Self-Murder, which is a most grievous and heinous Sin; and though I was at last impeached at the Lords Bar, yet I have great Grounds to believe, that I was first brought to Trial, on the Belief, that to save my Life, I would make some great Discovery; and truly so I would, had I known any such thing of any ill Design, or illegal dangerous Plot, either of myself, or any other Person whatsoever, without any Exception. But had I a thousand Lives, I would lose them all, rather than falsely accuse either myself, or any other whatsoever. And if I had known of any Treason, and should thus deny it, as I do now upon my Salvation at this time, I should have no hope of Salvation, which now I have, through the Merits of Christ Jesus.

I do beseech God to bless his Majesty, who is my lawful King and Sovereign, whom I was always, by all Laws human and divine, bound to obey; and I am sure that no Power on Earth, either singly, or altogether, can legally allow me, or any body else, to lift up a Hand against him, or his legal Authority. I do hold, that the Constitution of the Government of this Kingdom is the only way to continue Peace and Quietness, which God long continue.

Next to Treason, I hold Murder in Abhorrence, and have ever done and do; and I do sincerely profess, that if I could at this time free myself immediately, and establish what Religion I would, and what Government I would, and make myself as great as I could wish, and all by the Death of one of these Fellows, that by their Perjuries have brought me to the Place where I am, I so much abhor to be the Cause of any Man's Death, that I would not any way be the Cause of their Murder; how much less would I endeavour the Assassination of his Majesty, whom I hold to be as gracious a King as ever this, or any other Nation had, and under whom the People may enjoy their Liberties, as much as ever any did? And if it please God to grant him Life and Happiness, according as I have always wished and pray'd for, I am morally persuaded, that he, and all his Dominions, will be as happy and prosperous as ever People were, which I beseech God grant.

I do most humbly ask Pardon of the Almighty and All-merciful God, for all the great Offences I have committed against his Divine Majesty; and I know he would not have the Death and Confusion of a Sinner, but that he may repent and live; in that Assurance I hope, knowing he never despiseth a contrite heart; and though I have not so feeling a Contrition as I would, yet I have it as well as I can; and I doubt not but that God will accept of the Good-will.

I do desire that all People will forgive me any Injury that I have done them in any thing, either willfully or by Chance; and I do heartily forgive all People in this World that have injur'd me; I forgive even those perjur'd Men, that so falsely have brought me hither by their Perjuries.

I do now upon my Death and Salvation aver, That I never spoke one Word either to Oates or Turberville, or, to my Knowledge, ever saw them until my Trial; and for Dugdale, I never spoke unto him of any thing, but about a Foot-boy, or Foot-man, or Foot-race; and never was then

alone



alone with him: All the Punishment that I wish them, is, that they may repent and acknowledge the Wrong that they have done me; then it will appear how innocent I am: God forgive them! I have a great Confidence that it will please Almighty God, and that he will, in a short time, bring Truth to Light; then you, and all the World, will see and know what Injury they have done me.

I hope that I have made it appear that I have some Conscience; for if I had none, certainly I would have saved my Life, by acknowledging myself guilty; which I could have done, though I know I am not in the least guilty. And I having some Conscience, make very ill use of it, for I throw myself into eternal Pain, by thus plainly and constantly denying at my Death, the Knowledge of what I am accused of in the least.

I have said thus much in discharge of my Conscience, and do aver, upon my Salvation, what I have said to be really true.

I shall say little of my Trial; and whether it were all according to the known Law, I am too much a Party to say much of it: if it were not so, God forgive him or them that were the Cause of it.

My Judges were all Persons of Honour, who were all as much bound to judge rightly, as if they had been upon Oath upon what was legally proved; and not to vote but according as in their Consciences they were satisfied; and if any of them did otherwise, upon any Account whatsoever, I beseech God forgive them, I do heartily.

I shall end with my hearty Prayers for the Happiness of his Majesty, that he may enjoy all Happiness in this World and the World to come, and govern his People according to the Laws of God; and that the People may be sensible what a Blessing God hath so miraculously given them, and obey him as they ought. I ask Pardon with a prostrate Heart of Almighty God, for all the great Offences that I have committed against his Divine Majesty, and hope, through the Merits and Passion of Christ Jesus, to obtain everlasting Happiness, into whose Hands I commit my Spirit, asking Pardon of every Person that I have done any Wrong unto; I do freely forgive all that have any ways wronged me; I do, with all the Devotion and Repentance that I can, humbly invoke the Mercy of our Blessed Saviour.

I beseech God not to revenge my innocent Blood upon the Nation, or on those that were the Cause of it, with my last Breath. I do with my last Breath truly assert my Innocency, and hope the omnipotent, all-seeing, just God will deal with me accordingly.

His Speech being ended, he deliver'd several Copies signed with his own Hand, to Mr. Sheriff Cornish, and other Gentlemen about him; one whereof, wrote with his own Hand, he sent to the King. He then desired he might have Liberty to pray in his own Way, which being granted, he kneeled down by the Block, and taking out of his Pocket another Paper, he read a Latin Prayer; which done, he gave the Paper to Mr. Sheriff Bethel, and then spoke to the People about the Scaffold to this effect; God blefs you, Gentlemen; God preserve his Majesty; he is as good a Prince as ever govern'd you: Obey him as faithfully as I have done, and God blefs you all, Gentlemen. Then a Minister applied himself, and said, Sir, Do you disown the Indulgences of the Romish Church? To which he answer'd with great Passion, Sir, What have you to do with my Religion? However, I do say, that the Church of Rome allows no Indulgences for Murder, Lying, &c. and whatever I have said is true.

Min. Have you received no Absolution?

Answ. I have received none at all.

Min. You said that you never saw those Witnesses?

Answ. I never saw any of them but Dugdale, and that was at a time when I spoke to him about a Foot-Boy.

Then turning about to his Friends, he distributed among them his Watch, two Rings off his Fingers, his Staff, and his Crucifix from off his Neck; and his Gentleman stripping him of his Coat and Peruke, put on his Head a Silk Cap; and having accommodated his Hair, Shirt and Waistcoat for the Execution, he laid down his Neck on the Block and stretched himself.

The Executioner being demanded by the Sheriffs, Whether he had any Sign, he answer'd, No. Whereupon the Prisoner rose up, and asked, What they wanted: To which it was answered, What Sign will you give?

Answ. No Sign at all: Take your own Time; God's Will be done.

Whereupon the Executioner said, I hope you forgive me: He made answer, I do. Then lying down again, the Executioner at one Blow severed his Head from his Body, save only a small Part of the Skin and Wind-pipe, which was immediately cut off with a Knife. After which, the Headman holding up the Head in his Hand, carried it about the Scaffold, shewing it to the People, and saying, Here is the Head of a Traitor. The Corpse with the Head were put into a Coffin, and conveyed to the Tower, where they were interr'd.

## The Report of the COMMITTEE of the House of Commons appointed to examine the Proceedings of the Judges, made December 23. 1680. 32 Car. II.

THIS Committee being inform'd, That in Trinity-Term last, the Court of King's-Bench discharg'd the Grand-Jury that served for the Hundred of Ossulston in the County of Middlesex, in a very unusual Manner; proceeded to enquire into the same, and found by the Information of Charles Umfreville, Esq; Foreman of the said Jury; Edward Proby, Henry Gerard, and John Smith, Gentlemen, also of the said Jury, That on the 21st of June last, the Constables attending the said Jury were found defective in not presenting the Papists as they ought, and thereupon were order'd by the said Jury to make further Presentments of them on the 26th following, on which Day the Jury met for that Purpose; when several Peers of this Realm, and other Persons of Honour and Quality, brought them a Bill against James Duke of York for not coming to Church: But some Exceptions being taken to that Bill, in that it did not set forth the said Duke to be a Papist, some of the Jury attended the said Persons of Quality to receive Satisfaction therein. In the mean time, and about an Hour after they had received the said Bill, some of the Jury attended the Court of King's-Bench with a Petition, which they desired the Court to present in their Name unto his Majesty for the sitting of this Parliament. Upon which the Lord Chief Justice Scroggs raised many Scruples, and on Pretence that they were not all in Court, (tho' twenty of the Jury had subscrib'd the Petition) sent for them, saying, he would dispatch them presently. The Jury being come, and their Names called over, they renewed their Desire that the Court would present their Petition: But the Chief Justice ask'd, if they had any Bills? They answer'd they had, but the Clerks were drawing them into Form. Upon which the Chief Justice said, they would not make two Works of one Business; and the Petition being read, he said, This was no Article of their Charge, nor was there any Act of Parliament that required the Court to deliver the Grand Jury's Petitions: That there was a Proclamation about them; and that it was not reasonable the Court should be obliged to run on their Errands; and he thought it much, that they should come with a Petition to alter the King's Mind declared in the News Book. The Jury said, They did it not to impose on the Court, but (as other Juries had done) with all Submission they desired it. But the Court refused, bidding the Crier return them their Petition: And Mr. Justice Jones told them, they had meddled with Matters of State, not given them in Charge, but presented no Bills of the Matters given in Charge. They answered as before, They had many before them that would be ready in due time. Notwithstanding which, the said Justice Jones told them, They were discharged from further Service.

VOL. III.

But Philip Ward (the Clerk that attended the said Jury) cried out, No, no; they have many Bills before them; for which the Court understanding (as it seems to this Committee) a secret Reason, which the Clerk did not, reproved him, asking, If he or they were to give the Rule there? The Crier then told the Court, they would not receive their Petition; the Chief Justice bid him let it alone: So it was left there, and the Jury returned to the Court-House, and there found several Constables with Presentments of Papists and other Offenders, as the Jury had directed them on the 21st before; but could not now receive the said Presentments, being discharged. Whereby much Business was obstructed, tho' none of the said Informants ever knew the said Jury discharged before the last Day of the Term, which was not till four Days after. And it further appeareth to the Committee, by the Evidences of Samuel Astrey, Jasper Waterhouse, and Philip Ward, Clerks, that have long served in the said Court, That they were much surprized at the said discharging of the Jury, in that it was never done in their Memory before; and the rather, because the said Waterhouse, as Secondary, constantly enters on that Grand Jury's Paper, that the last Day of the Term is given them to return their Verdict on, as the last Day but one is given to the other two Grand Juries of that County; which Entry is as followeth:

Trinit. 32 Car. II.

Juratores habent diem ad Verdictum suum reddendum usque diem Mercurij proxime post tres Septimanas sanctæ Trinitatis.

Middlesex  
Ossulston  
Hundred.

Being the last Day of the Term, and so in all the other Terms the last Day is given; which makes it appear to this Committee, That they were not in truth discharged for not having their Presentments ready, since the Court had given them a longer Day, but only to obstruct their farther Proceedings: And it appeareth by the Evidence aforesaid to this Committee, That the four Judges of that Court were present at the discharging of the said Jury, and it did not appear that any of them did dissent therein; upon Consideration whereof, the Committee came to this Resolution:

Resolved, That it is the Opinion of this Committee, That the discharging of the Grand Jury of the Hundred of Ossulston in the County of Middlesex, by the Court of King's-Bench in Trinity-Term last, before the last Day of the Term, and before they had finished their Presentments, was illegal, arbitrary, and an high Misdemeanor.

F f

This



This Committee proceeded also to enquire into a Rule of the Court of King's-Bench, lately made against the publishing a Book, called, *The Weekly Pacquet of Advice from Rome*; or, *The History of Popery*: And Samuel Astrey, Gent. examined thereupon, informed this Committee, That the Author of the said Book, Henry Carr, had been informed against for the same, and had pleaded to the Information; but before it was tried, a Rule was made on a Motion, as he supposed, against the said Book: All the Judges of that Court (as he remembers) being present, and none dissenting. The Copy of which Rule he gave in to this Committee, and is as followeth:

*Dies Mercurij proxime post tres Septimanas sancta Trinitatis. Anno 32 Car. II. Regis.*

*Ordinatum est quod liber intitulat. The Weekly Pacquet of Advice from Rome; or, The History of Popery, non ulterius imprimatur vel publicetur per aliquam Personam quancumque;*

*Per Cur.*

And this Committee admiring that Protestant Judges should take Offence against a Book, whose chief Design was to expose the Cheats and Popery of Popery, enquired further into it; and found by the Evidence of Jane Curtis, that the said Book had been licensed for several Months; that her Husband paid for the Copy, and entered it in the Hall-Book of the Company: But for all this, she could not prevail by these Reasons with the Lord Chief Justice Scroggs to permit it any longer; who said, 'Twas a scandalous Libel, and against the King's Proclamation, and he would ruin her if ever she printed it any more: And soon after she was served with the said Rule, as the Author and other Printers were; and by the Author's Evidence it appears, That he was taken and brought before the said Chief Justice by his Warrant above a Year since, and upon his owning he writ Part of that Book, the Chief Justice called him Rogue, and other ill Names; saying, he would fill all the Goals in England with such Rogues, and pile them up as Men do Faggots; and so committed him to Prison, refusing sufficient Bail, and saying, He would Goal him to put him to Charges; and his Lordship observed his Word punctually therein, forcing him to his Habeas Corpus, and then taking the same Bail he refused before: Upon which, this Committee came to this Resolution:

*Resolved*, That it is the Opinion of the Committee, That the Rule made by the Court of King's-Bench in Trinity Term last, against printing a Book, called, *The Weekly Pacquet of Advice from Rome*, is illegal and arbitrary.

And the Committee proceeded farther; and upon Information that a very great Latitude had been taken of late by the Judges, in imposing Fines on the Persons found guilty before them, caused a Transcript of all the Fines imposed by the King's-Bench since Easter Term, in the 28th of his Majesty's Reign, to be brought before them from the said Court by Samuel Astrey Gent. By Perusal of which it appeared to this Committee, That the Quality of the Offence, and the Ability of the Person found guilty, have not been the Measures that have determined the Quantity of many of these Fines; which being so very numerous, the Committee refer themselves to those Records as to the general, instancing in some Particulars, as followeth.

Trinit. 29. Car. II. Upon Joseph Brown of London, Gent. on an Information for publishing a printed Book, called, *The Long Parliament dissolved*; in which are set forth these Words: *Nor let any Man think it strange, that we account it Treason for you to sit and act contrary to our Laws: For if in the first Parliament of Richard the Second, Gomecys and Weston for lack of Courage only, were adjudged guilty of High Treason for surrendering the Places committed to their Trust; how much more you, if you turn Renegadoes to the People that entrusted you, and as much as in you lie, surrender not a little pitiful Castle or two, but all the legal Defence the People of England have for their Lives, Liberties and Properties, at once! Neither let a vain Persuasion delude you, That no Precedent can be found, that one English Parliament hath hanged up another; tho' peradventure even that may be proved a Mistake: For an unprecedented Crime calls for an unprecedented Punishment; and if you shall be so wicked to do the one, or rather endeavour to do (for now you are no longer a Parliament) what ground of Confidence you can have that none will be found so worthy to do the other, we cannot understand; and do faithfully promise, if your Unworthiness provoke us to it, that we will use our honest and utmost Endeavours (whenever a new Parliament shall be called) to chuse such as may convince you of your Mistake: The old and infallible Observation, That Parliaments are the Pulse of the People, shall lose it's Esteem; or you will find, that this your Presumption was over-fond; however, it argues but a bad Mind to sin, because it is believed it shall not be punished. The Judgment was, That he be fined 1000 Marks, be bound to the good Behaviour for seven Years, and his Name struck out of the Roll of the Attorneys, without any Offence alleged in his said Vocation. And the publishing this Libel consisted only in superscribing a Pacquet, with this inclosed, to the East-Indies. Which Fine he not being able to pay (living only upon his Practice) he lay in Prison for three Years, till his Majesty graciously pardoned him, and recommended him to be restored to his Place again of Attorney, by his Warrant dated the 15th of December 1679. Notwithstanding which, he has not yet obtained the said Restoration from the Court of King's-Bench.*

Hil. 29 & 30 Car. II. Upon John Harrington of London, Gent. for speaking these Words laid in Latin thus: *Quod nostra Gubernatio de tribus statibus consistebat, & si Rebellio eveniret in regno, & non accideret contra omnes tres status, non est Rebellio.* A Fine of 1000 l. Sureties for the good Behaviour for seven Years, and to recant the Words in an open Court; which Fine he was in no Capacity of ever paying.

Hil. 31 & 32 Car. II. Upon Benjamin Harris of London, Stationer, on an Information for printing a Book, called, *An Appeal from the Country to the City*, setting forth these Words: *We in the Country have done our Parts, in chusing for the Generality good Members to serve in Parliament; but if (as our two last Parliaments were) they must be dissolved or prorogued whenever they come to redress the Grievances of the Subject, we may be pitied, not blamed, if the Plot takes Effect; and in all Probability it will. Our Parliaments are not then to be condemned, for that their not being suffered to sit occasioned it.* Judgment to pay 500 l. Fine,

stand on the Pillory an Hour, and give Sureties for the good Behaviour for three Years. And the said Benjamin Harris informed this Committee, That the Lord Chief Justice Scroggs pressed the Court then to add to this Judgment his being publicly whipped; but Mr. Justice Pemberton holding up his Hands in Admiration at their Severity therein, Mr. Justice Jones pronounced the Judgment aforesaid; and he remains yet in Prison, unable to pay the said Fine.

Notwithstanding which Severity in the Cases forementioned, this Committee has observed the said Court has not wanted in other Cases an extraordinary Compassion and Mercy, though there appeared no publick Reason judicially in the Trial; as in particular:

Upon Thomas Knox Principal, on an Indictment of Subornation and Conspiracy against the Testimony and Life of Dr. Oates for Sodomy; and also against the Testimony of William Bedloe; a Fine of 200 Marks, a Year's Imprisonment, and to find Sureties for the good Behaviour for three Years. Hil. 31 & 32 Car. II.

Upon John Lane, for the same Offence, a Fine of 100 Marks, to stand in the Pillory for an Hour, and to be imprisoned for one Year. Eod. Ter.

Upon John Tasborough, Gent. on an Indictment for Subornation of Stephen Dugdale, tending to overthrow the whole Discovery of the Plot; the said Tasborough being affirmed to be a Person of good Quality, a Fine of 100 l. Pas. 32 Car. II.

Upon Anne Price for the same Offence, 200 l. Eod. Ter.

Upon Nathaniel Thompson and William Badcock, on an Information for printing and publishing a weekly Libel, called *The true Domestic Intelligence*, or *News both from City and Country*, and known to be Popishly affected, a Fine of 3 l. 6 s. 8 d. on each of them. Trin. 32 Car. II.

Upon Matthew Turner, Stationer, on an Information for vending and publishing a Book, called *The Compendium*, wherein the Justice of the Nation in the late Trials of the Popish Conspirators, even by some of these Judges themselves, is highly arraigned; and all the Witnesses for the King horribly aspersed: And this being the common notorious Popish Bookseller of the Town, Judgment to pay a Fine of 100 Marks, and is said to be out of Prison already. Eod. Ter.

Upon Loveland, on an Indictment for a notorious Conspiracy and Subornation against the Life and Honour of the Duke of Buckingham for Sodomy, a Fine of 5 l. and to stand an Hour in the Pillory. Trin. 32 Car. II.

Upon Edward Christian, Esq; for the same Offence, a Fine of 100 Marks, and to stand an Hour in the Pillory. Mich. 32 Car. II.

And upon Arthur Obrian, for the same Offence, a Fine of 20 Marks, and to stand an Hour in the Pillory.

Upon Consideration whereof, this Committee came to this Resolution: *Resolved*, That it is the Opinion of this Committee, That the Court of King's-Bench (in the Imposition of Fines on Offenders of late Years) hath acted arbitrarily, illegally and partially, favouring Papists, and Persons popishly affected, and excessively oppressing his Majesty's Protestant Subjects. And this Committee being informed, That several of his Majesty's Subjects had been committed for Crimes bailable by Law, although they then tendered sufficient Sureties, which were refused, only to put them to Vexation and Charge, proceeded to enquire into the same, and found that not only the forementioned Henry Carr had been so refused the common Right of a Subject, as is aforesaid; but that George Broome, being a Constable last Year in London, and committing some of the Lord Chief Justice Scroggs's Servants for great Disorders, according to his Duty, he was in a few Days arrested by a Tipstaff, without any London Constable, and carried before the said Chief Justice by his Warrant, to answer for the committing of those Persons aforesaid; and being there, was accused of having spoken irreverently of the said Chief Justice; and an Affidavit read to him to that Purpose, which was falsly (as the said George Broome affirms) sworn against him by two Persons that use to be common Bail in that Court, and of very ill Reputation. Upon which he was committed to the King's-Bench, though he then tendered two able Citizens and Common-Council-Men of London to be his Bail: and he was forced to bring his Habeas Corpus to his great Charge before he came out: When the Marshal, Mr. Cooling, exacted 5 l. of him; of which he complained to the Chief Justice, but had no other Answer, But he might take his Remedy at Law. But the said Marshal fearing he should be questioned, restored him two Guineas of it.

And farther this Committee was informed by Francis Smith, Bookseller, that about Michaelmas was Twelve-month he was brought before the said Chief Justice by his Warrant, and charged by the Messenger, Robert Stephent, That he had seen some Parcels of a Pamphlet, called *Observations on Sir George Wakeman's Trial*, in his Shop: Upon which the Chief Justice told him, he would make him an Example; use him like a Boor in France, and pile him and all the Booksellers and Printers up in Prison like Faggots; and so committed him to the King's-Bench, swearing and cursing at him in great Fury. And when he tendered three sufficient Citizens of London for his Bail, alledging Imprisonment in his Circumstances would be his utter Ruin; the Chief Justice replied, The Citizens looked like sufficient Persons, but he would take no Bail; and so he was forced to come out by Habeas Corpus, and was afterwards inform'd against for the same Matter, to his great Charge and Vexation. And a while after Francis (the Son of the said Francis Smith) was committed by the said Chief Justice, and Bail refused, for selling a Pamphlet called *A New-Year's Gift* for the said Chief Justice, to a Coffee-house; and he declared to them he would take no Bail; for he would ruin them all.

And farther it appeared to this Committee, That the said Chief Justice (about October was Twelve-month) committed in like Manner Jane Curtis, the having a Husband and Children, for selling a Book called, *A Satyr against Injustice*, which his Lordship called a Libel against him; and her Friends tendering sufficient Bail, and desiring him to have Mercy on her Poverty and Condition, he swore by the Name of God she should go to Prison, and he would shew no more Mercy than they could expect from a Wolf that came to devour them; and she might bring her Habeas Corpus,



Corpus, and come out so: Which she was forc'd to do; and after inform'd against and prosecuted to her utter Ruin, four or five Terms after.

In like manner it appeared to this Committee, That about that time also *Edward Berry* (Stationer of *Gray's-Inn*) was committed by the said Chief Justice, being accus'd of selling the *Observations on Sir George Wakeman's Trial*; and tho' he tendered 1000*l.* Bail, yet the Chief Justice said, he would take no Bail, he should go to Prison, and come out according to Law. And after he with much Trouble and Charge got out by *Habeas Corpus*, he was forc'd by himself, or his Attorney, to attend five Terms before he could be discharg'd, though no Information was exhibited against him in all that time. In Consideration whereof, and of others of the like Nature, (too tedious here to relate) this Committee came to this Resolution:

*Resolved,*

That it is the Opinion of this Committee, That the refusing sufficient Bail in these Cases, wherein the Persons committed were bailable by Law, was illegal, and a high Breach of the Liberty of the Subject.

And this Committee being informed of an extraordinary kind of a Charge given at the last Assizes at *Kingston* (in the County of *Surrey*) by Mr. *Baron Weston*, and proceeding to examine several Persons then and there present; it was made appear to this Committee, by the Testimony of *John Cole*, *Richard Mayo*, and *John Peirce*, Gentlemen, and others (some of whom put down the said Baron's Words in writing immediately) that part of the said Charge was to this Effect: He inveighed very much against *Farel*, *Luther*, *Calvin*, and *Zuinglius*, condemning them as Authors of the Reformation, which was against their Princes Minds; and then adding to this Purpose, *Zuinglius set up his Fanaticism, and Calvin built on that blessed Foundation: And to speak Truth, all his Disciples are seasoned with such a Sharpness of Spirit, that it much concerns Magistrates to keep a strait Hand over them; and now they are restless, amusing us with Fears, and nothing will serve them but a Parliament. For my Part, I know no Representative of the Nation but the King; all Power centers in him: 'Tis true, he does entrust it with his Ministers, but he is the sole Representative; and i' faith he has Wisdom enough to entrust it no more in these Men, who have given us such late Examples of their Wisdom and Faithfulness.* And this Committee taking the said Matter into their Consideration, came to this Resolution.

*Resolved,*

That it is the Opinion of this Committee, that the said Expressions in the Charge given by the said *Baron Weston* were a Scandal to the Reformation, in Derogation of the Rights and Privileges of Parliaments, and tending to raise Discord between his Majesty and his Subjects.

And this Committee being informed by several Printers and Booksellers, of great Trouble and Vexation given them unjustly by one *Robert Stephens*, (called a Messenger of the Press) the said *Stephens* being examined by this Committee, by what Authority he had proceeded in that manner, produced two Warrants under the Hand and Seal of the Chief Justice *Scroggs*, which were in *hæc verba*:

Ang. II. *WHEREAS* there are divers ill disposed Persons, who do daily print and publish many seditious and treasonable Books and Pamphlets, endeavouring thereby to dispose the Minds of his Majesty's Subjects to Sedition and Rebellion; and also infamous Libels reflecting upon particular Persons, to the great Scandal of his Majesty's Government: for suppressing whereof, his Majesty hath lately issued out his Royal Proclamation. And for the more speedy suppressing the said seditious Books, Libels and Pamphlets, and to the end that the Authors and Publishers thereof may be brought to their Punishment:

*These are to will and require you, and in his Majesty's Name to charge and command you, and every of you, upon Sight hereof, to be aiding and assisting unto Robert Stephens, Messenger of the Press, in seizing on all such Books and Pamphlets as aforesaid, as he shall be informed of, in any Bookfellers or Printers Shops or Warehouses, or elsewhere whatsoever, to the end they may be disposed as to the Law shall appertain: Also if you shall be informed of the Authors, Printers or Publishers of such Books or Pamphlets as are above-mentioned, you are to apprehend them, and have them before one of his Majesty's Justices of the Peace, to be proceeded against according to Law. Dated this 29th Day of November, 1679.*

To *Robert Stephens*, Messenger of the Press, and to all Mayors, Sheriffs, Bailiffs, Constables, and all other Officers and Ministers whom these may concern.

WILLIAM SCROGGS.

Ang. II. *WHEREAS* the King's Majesty hath lately issued out his Proclamation for suppressing the printing and publishing unlicensed News-Books, and Pamphlets of News: notwithstanding which, there are divers Persons who do daily print and publish such unlicensed Books and Pamphlets.

*These are therefore to will and require you, and in his Majesty's Name to charge and command you, and every of you, from time to time, and at all times, so often as you shall be thereunto required, to be aiding and assisting to Robert Stephens, Messenger of the Press, in the seizing all such Books and Pamphlets as aforesaid, as he shall be informed of, in any Bookfeller's Shop, or Printer's Shop or Warehouses, or elsewhere whatsoever, to the end they may be disposed of as to Law shall appertain. Likewise, if you shall be informed of the Authors, Printers or Publishers of such Books and Pamphlets, you are to apprehend them, and have them before me, or one of his Majesty's Justices of the Peace, to be proceeded against as to Law shall appertain. Dated this 28th Day of May, Anno Dom. 1680.*

To all Mayors, Sheriffs, Bailiffs, Constables, and all other Officers and Ministers whom these may concern.

WILLIAM SCROGGS.

To *Robert Stephens*, Messenger of the Press.

Upon View whereof this Committee came to this Resolution:

*Resolved, That it is the Opinion of this Committee, That the said Warrants are arbitrary and illegal.*

And this Committee being informed of certain scandalous Discourses, said to be uttered in publick Places by the Lord Chief Justice *Scroggs*, proceeded to examine Sir *Robert Atkins*, late one of the Justices of the Common-Pleas, concerning the same; by whom it appears, That at a Sessions Dinner at the *Old Bailey*, (in the Mayoralty of Sir *Robert Clayton*) who was then present, the said Chief Justice took occasion to speak very much against petitioning, condemning it as resembling 41, as factious and tending to Rebellion, or to that Effect; to which the said Sir *Robert Atkins* made no reply, suspecting he waited for some Advantage over him: But the Chief Justice continuing and pressing him with the said Discourse, he began to justify petitioning as the Right of the People, especially for the sitting of a Parliament, which the Law requires, if it be done with Modesty and Respect. Upon which the Chief Justice fell into a great Passion; and there is some Reason to believe, that soon after he made an ill Representation of what the said Sir *Robert* had then spoke, unto his Majesty. And this Committee was farther informed, That the said Sir *Robert Atkins* being in Circuit with the said Chief Justice at Summer Assizes was Twelve-month at *Monmouth*, (Mr. *Arnold*, Mr. *Price*, and Mr. *Bedloe* being then in Company) the Chief Justice fell severely in publick upon Mr. *Bedloe*, taking off the Credit of his Evidence, and alledging he had overshot himself in it, or to that Effect, very much to the Disparagement of his Testimony: And the said Sir *Robert* defending Mr. *Bedloe's* Evidence and Credit, he grew extreme angry and loud, saying to this Effect, *That he verily believed Langhorn died innocently.* To which the said Sir *Robert* replied, He wondered how he could think so, who had condemned him himself, and had not moved the King for a Reprieve for him. All which Matters of Discourse this Committee humbly submit to the Wisdom and Consideration of this House, without taking upon them to give any Opinion therein.

And this Committee proceeded farther to enquire into some Passages that happened at *Lent-Assizes* last for the County of *Somerset*, at the Trial of *Thomas Dare*, Gent, there, upon an Indictment for saying falsely and seditiously, *That the Subjects had but two Means to redress their Grievances, the one by Petitioning, the other by Rebellion*: And found, that though by his other Discourse when he said so, that it appeared plainly he had no rebellious Intent, in that he said, *Then God forbid there should be a Rebellion, he would be the first Man to draw his Sword against a Rebel*; yet he was prosecuted with great Violence: And having pleaded *Not Guilty*, he moved Mr. Justice *Jones* (who then sat Judge there) that he might try it at the next Assizes, for that Mr. *Searle* (who was by at the speaking of the Words, and a material Witness for his Defence) was not then to be had, and an Affidavit to that Purpose was made and receiv'd. But the said Justice *Jones* told him, That was a Favour of the Court only, and he had not deserved any Favour, and so forc'd him to try it presently. But the Jury, appearing to be an extraordinary one, provided on purpose, being all of Persons that had highly opposed petitioning for the sitting of this Parliament, he was advised to withdraw his Plea; and the said Justice *Jones* encouraging him so to do, he confess'd the Words, denying any evil Intention, and gave the said Justice an Account in writing of the Truth of the whole Matter, and made a Submission in Court, as he was directed by the said Justice; who promised to recommend him to his Majesty, but imposed a Fine of 500*l.* on him, and to be bound to the good Behaviour for three Years; declaring, also, That he was turned out from being a Common-Councillor of the Corporation of *Taunton* in the said County, on Pretence of a Clause in their Charter, giving such a Power to a Judge of *Assize*. And the said *Thomas Dare* remains yet in Prison for the said Fine; in which Matter of the Trial aforesaid, this Committee desireth to refer itself to the Judgment of this House.

Upon this Occasion Sir *Francis Winnington* made the following Speech.

Mr. Speaker,

IN the Front of *Magna Charta* it is said, *Nulli negabimus, nulli deferemus Justitiam*, we will defer or deny Justice to no Man: To this the King is sworn, and with this the Judges are entrusted by their Oaths. I admire what they can say for themselves; if they have not read this Law, they are not fit to sit upon the Bench; and if they have, I had almost said, they deserve to lose their Heads.

Mr. Speaker, The State of this poor Nation is to be deplored, that in almost all Ages, the Judges, who ought to be Preservers of the Laws, have endeavoured to destroy them; and that to please a Court-Faction. They have by Treachery attempted to break the Bonds asunder of *Magna Charta*, the great Treasury of our Peace: It was no sooner passed, but a Chief Justice in that Day persuades the King he was not bound by it, because he was under Age when it was passed. But this Sort of Insolence the next Parliament repented, to the Ruin of the pernicious Chief Justice. In the time of *Richard the Second*, an unthinking dissolute Prince, there were Judges that did insinuate into the King, that the Parliament were only his Creatures, and depended on his Will, and not on the fundamental Constitutions of the Land; which treacherous Advice proved the Ruin of the King, and for which all those evil Instruments were brought to Justice. In his late Majesty's Time, his Misfortunes were occasioned chiefly by the Corruptions of the Long Robe; his Judges by an extrajudicial Opinion gave the King Power to raise Money upon an extraordinary Occasion without Parliament, and made the King Judge of such Occasions. Charity prompts me to think they thought this a Service to the King; but the sad Consequences of it may convince all Mankind, that every illegal Act weakens the Royal Interest; and to endeavour to introduce absolute Dominion in these Realms is the worst of Treasons, because, whilst it bears the Face of Friendship to the King, and designs to be for his Service, it never fails of the contrary Effect.

The two great Pillars of the Government are Parliaments and Juries: it is this gives us the Title of Free-born Englishmen: For my Notion of free Englishmen is this, That they are ruled by Laws of their own making,

and



and tried by Men of the same Condition with themselves. The two great and undoubted Privileges of the People have been lately invaded by the Judges that now sit in *Westminster-Hall*; they have espoused Proclamation against Law; they have discountenanced and opposed several legal Acts, that tended to the sitting of this honourable House; they have grasped the legislative Power into their own Hands, as in that Instance of Printing; the Parliament was considering that Matter, but they in the Interim made their private Opinion to be Law, to supersede the Judgment of this House; they have discharged Grand Juries on purpose to quell their Presentments, and shelter great Criminals from Justice; and when Juries have presented their Opinion for the sitting of this Parliament, they have in Disdain thrown them at their Feet, and told them, they would be no Messengers to carry such Petitions; and yet in a few Days after, have encouraged all that would spit their Venom against the Government; they have served an ignorant and arbitrary Faction, and been the Messengers of Abhorrences to the King.

Mr. Speaker, What we have now to do, is to load them with Shame, who bid defiance to the Law; they are guilty of Crimes against Nature, against the King, against their Knowledge, and against Posterity. The whole Frame of Nature doth loudly and daily petition to God their Creator; and Kings, like God, may be addressed to in like Manner by Petition, not Command. They likewise knew it was lawful to petition; Ignorance can be no Plea, and their Knowledge aggravates their Crimes. The Children unborn are bound to curse such Proceedings; for 'twas not petitioning but Parliaments they abhorred. The Atheist pleads against a God, not that he disbelieves a Deity, but would have it so. *Treshian* and *Belknap* were Judges too; their Learning gave them Honour, but their Villainies made their Exit by a Rope. The End of my Motion therefore is, That we may address warmly to our Prince against them; let us settle a Committee to enquire into their Crimes, and not fail of doing Justice upon them that have perverted it; let us purge the Fountain, and the Streams will issue pure.

*The Resolutions of the House of Commons upon the said Report.*

I. THAT it is the Opinion of this House, That the Discharging of the Grand Jury of the Hundred of *Ossulston* in the County of *Middlesex*, by the Court of *King's-Bench* in *Trinity-Term* last, before the last Day of the Term, and before they had finished their Presentments, was arbitrary and illegal, destructive to publick Justice, a manifest Violation of the Oaths of the Judges of that Court, and a Means to subvert the fundamental Laws of this Kingdom, and to introduce Popery.

II. That it is the Opinion of this House, That the Rule made by the Court of *King's-Bench* in *Trinity-Term* last, against printing of a Book, called *The Weekly Pacquet of Advice from Rome*, is illegal and arbitrary, thereby usurping to themselves legislative Power, to the great Discouragement of the Protestants, and for the countenancing of Popery.

III. That it is the Opinion of this House, That the Court of *King's-Bench*, in the Imposition of Fines on Offenders of late Years, have acted arbitrarily, illegally, and partially, favouring Papists and Persons popishly affected, and excessively oppressing his Majesty's Protestant Subjects.

IV. That it is the Opinion of this House, That the refusing sufficient Bail in these Cases, wherein the Persons committed were bailable by Law, was illegal, and a high Breach of the Liberties of the Subject.

V. That it is the Opinion of this House, That the late Expressions in the Charge given by the said Baron *Weston*, were a Scandal to the Refor-

mation, and tending to raise Discord between his Majesty and his Subjects, and to the Subversion of the ancient Constitution of Parliaments, and of the Government of this Kingdom.

VI. That it is the Opinion of this House, That the said Warrants are arbitrary and illegal.

*The Resolutions of the Commons for the Impeachment of the said Judges.*

Resolved, THAT Sir *William Scroggs*, Knight, Chief Justice of the Court of *King's-Bench*, be impeached upon the said Report, and the Resolutions of the House thereupon.

Resolved, That Sir *Thomas Jones*, one of the Justices of the said Court of *King's-Bench*, be impeached upon the said Report, and Resolutions of the House thereupon.

Resolved, That Sir *Richard Weston*, one of the Barons of the Court of *Exchequer*, be impeached upon the said Report, and Resolutions of the House thereupon.

Ordered, That the Committee appointed to prepare an Impeachment against Sir *Francis North*, Chief Justice of the Court of *Common-Pleas*, do prepare Impeachments against the said Sir *William Scroggs*, Sir *Thomas Jones*, and Sir *Richard Weston*, upon the said Report and Resolutions.

Ordered, That the said Report, and several Resolutions of this House thereupon, be printed; and that Mr. Speaker take Care in the printing thereof apart from this Day's other Votes.

Accordingly, Jan. 5. Articles of Impeachment were actually brought in against Sir *William Scroggs*; and the said Articles were ingrossed, and carried up to the Lords by Lord *Cavendish*: But the Parliament being soon after prorogued, this Affair was dropped; however, it was thought proper to remove *Scroggs* from being Chief Justice; which was done with all the Marks of Favour and Respect, being allowed a Pension for Life. But a Parliamentary Censure did not hinder the Court from preferring others, who had been censured a little before; as may appear by these Votes of the House of Commons.

Octob. 29. 1680.

Resolved, That Sir *Francis Withens*, by promoting and presenting to his Majesty an Address, expressing an Abhorrence to petition his Majesty for the calling and sitting of Parliaments, hath betrayed the undoubted Rights of the Subjects of England.

Ordered, That Sir *Francis Withens* be expelled this House for this High Crime; and that he receive his Sentence at the Bar of this House upon his Knees from Mr. Speaker.

( Which he received accordingly. )

Nov. 13. 1680.

Resolved, That Sir *George Jefferies*, Recorder of London, by traducing and obstructing petitioning for the sitting of this Parliament, hath betrayed the Rights of the Subject.

Ordered, That an humble Address be made to his Majesty, to remove Sir *George Jefferies* out of all publick Offices.

\* See Stat. Tri. Vol. VII. p. 479.

CIII. Proceedings in Parliament against EDWARD FITZ-HARRIS, upon an Impeachment for High-Treason, March 25, &c. 1681. 33 Car. II.

ON the 25th of March, 1681, the House of Commons took into Consideration the Affair of *Fitz-Harris*; they began with reading his Examination, taken March 10. before Sir *Robert Clayton* and Sir *George Treby*, which was in Substance as follows.

THE Examinee saith, That he was born in *Ireland*, and was bred, and is a *Roman Catholick*; That he had a Commission, and raised a Company of Foot in *Ireland* for the *French King's* Service, and conducted them into *France*.

That in 1672, going to take his Leave of Father *Gough*, an *English* Priest at *Paris*, he told him, Within this two Years, You will see the Catholick Religion established in *England* as it is in *France*; the Examinee asking how that could be, the King being a Protestant, he answered, If the King would not comply, there was Order taken, and Things so laid, that he should be taken off or killed; That the Duke of *York* was a Catholick, and in his Reign there would be no Difficulty of doing it; That the Father then told him, that the Declaration of Indulgence was for the introducing the Catholick Religion; and that to the same End the War was made against *Holland*, it being a Nest of Hereticks; and that *Madam* came over to *Dover* upon this Design.

That the Examinee, about February 1672, had a Lieutenant's Commission in Captain *Sidenham's* Company, in the Duke of *Albemarle's* Regiment, in the *Black-Heath* Army; and that he knew many of the Officers to be *Roman Catholicks*; and that the Act passing to disable *Roman Catholicks*, he and others of them were forced to quit their Commands; that the common Opinion amongst them was, for the settling the *Roman Catholick* Religion in *England*; but that the Measures being broken, by Means of the Peace with *Holland*, and the Duke of *York* and other Catholick Officers quitting all Commands, and the King failing in his Expectations from them; the *Roman Catholicks* came to a Resolution to destroy the King, as Father *Parry*, Confessor to the *Portuguese* Ambassador, told the Examinee in 1673; who put this Confidence in him, being his Confessor;

and that the same Father repeated the same Discourse to him with more Assurance in 1678; adding then, that the Business then was now near, and he should soon see it done. That about April 1679, the Duke of *Mdena's* Envoy having sworn him to Secrecy, told him, That if he would undertake the killing the King, he should have 10,000*l.* which he refusing, the Envoy said, the Dutchess of *Mazarine* understands poisoning as well as her Sister, and a little Vial when the King comes there will do it; and that upon the King's Death, the Army in *Flanders*, and Parts adjacent to *France*, was to come into *England* to destroy the Protestant Party; and that after that, there should be no Parliaments; and that the Duke of *York* was privy to all these Designs.

That about April 1680, Kelly the Priest, whom he had known above 11 Years, and had sometimes confessed him, owned to him at *Calais*, that he was concerned in the Murder of Sir *Edmundbury Godfrey*; and that the same was done as *Prance* had related it.

That the Examinee had been six or seven Years acquainted with Monsieur *de Puy*, Servant to the Duke of *York*; and that he told him soon after the Murder of Sir *Edmundbury Godfrey*, That that Murder was consulted at *Windfor*; and about that Time said, That the Duke was very desirous to come to the Crown, the King being uncertain, and not keeping touch with them; and that *De Puy* said, there was a Necessity of taking off the King, and that it would be soon done: That the Duke of *York* possessing Part of the Examinee's Father's Estate in *Ireland*, the Examinee being acquainted with Father *Bedingfield*, asked him, How he could give Absolution to the Duke, till he had made Restitution? To which the Father said, That every Penitent was supposed to know his own Sins, and to declare them to his Confessor: To which the Examinee replying with Warmth, But since you know it, you ought to take Notice thereof; the Father answered, Be not angry, for e're it be long you may be in a better Condition.

That in March 1680, he met Father *Patrick* at *Paris*; and talking of Rupture that might be between *England* and *France*, the Father said, That the *French* intended, in such Case, to send Marshal *Bellfonds* into *Ireland*.

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Ireland with 10000 Foot and 2000 Horse, and Arms and Ammunition for 30000 Men to be raised there; and the Father promised the Examinee a Regiment of the Men to be so raised, and the Design was to restore that Kingdom to its former Owners in Subjection to France.

That Father Patrick desired him to send him all the Libels that came out in London; and said, that libelling the King was a thing necessary; in order to distaste and make him jealous of his People; that the Examinee knew Mr. Everard at Paris in 1665, and hath since increased his Acquaintance with him; and that the Opinion of Father Patrick about libelling the King, encouraged the Examinee to concur with Everard, as to the Libel lately written by Everard.

As soon as the Examination was read, Sir John Hotbam moved that it might be printed, to shew the World the devilish Conspiracies of the Papists; which Motion was seconded by Sir William Jones, who said, that People had been prevailed upon to believe the Plot not true, and that that Examination confirmed the Informations of Oates and Bedloe.

Sir Francis Winnington. The treasonable Paper of Fitz-Harris was to have been sent to many Gentlemen, and they to have been seized thereupon, as Traitors in a Conspiracy against the King: All is at Stake, therefore let not our Courage lessen: Let us go to the Bottom of this Business of Fitz-Harris; I move, he may be impeached of High-Treason; and it may be, he will relent and tell you all.

Sir Robert Clayton then said, That when Fitz-Harris his Examination was taken at Newgate, he told him, that he thought he had not dealt ingenuously, unless he would tell what Counsel he had for drawing the Paper; and that he bad him be ingenuous in the whole Matter, and he would come and take his farther Examination; and that Fitz-Harris having promised this, he was removed out of their reach into the Tower.

Whereupon an Impeachment was ordered, and Sir L. Jenkins commanded to carry it to the Lords; and Col. Birch said, that we ought all to give God Thanks for this Discovery of Fitz-Harris, next to the first Discovery of the Plot.

Upon Saturday the 26th of March 1681, the House of Commons being informed that the House of Lords had refused to proceed upon the Impeachment,

Sir Thomas Lee said, That he saw by the Lords refusing the Impeachment, no farther Use of Parliaments; That they would be a Court, or not a Court, to serve a present Purpose.

Sir William Jones's Indictments were brought against the Lords in the Tower, and yet that was no Impediment to their Impeachment in the Lords House; but here is no Indictment or Prosecution brought against Fitz-Harris. We have an Instance fresh in Memory; Scroggs a Commoner, and not indicted at Common Law, yet the Lords without scruple accepted his Impeachment. We find the Lords have determined a great Point; the Lords Spiritual, as well as Temporal, have voted the Refusal of the Impeachment of Fitz-Harris; which we own not in this Judicature, and I hope never shall; and we are denied Justice by the Lords Spiritual, who have no Right to vote. This is a double Act of Injustice: Let us then vote, That the Commons have a Right to impeach in capital Cases; and that the Lords have denied us Justice, in refusing the Impeachment in a Parliamentary way. At a Conference, let us show how unwarrantable the Lords Actions have been; and if the Dissolution of the Parliament follows, it is the Fault of those Men who will not hear our Reasons.

Sir Francis Winnington. This Impeachment is not an ordinary Accusation, but it relates to our Religion and Property; and how the Bishops come to stifle this, let God and the World judge—If the Lords will vote that the Commons shall not impeach him, they may as well vote they shall not be Prosecutors. This is a new Plot against the Protestants, of which Fitz-Harris is accused, and we must not impeach him: In this, the Lords say, we must not hear it—I desire you would come to some Vote: You are willing to discover the Plot, if you could—If our time be short, (as I believe it is) pray come to some Resolution to assert your Right—A little while ago, when the Duke was presented for a Papist, the Grand Jury was dismissed by the Chief Justice. This seems as if the Lords would justify the Judges Proceedings by their own—If no Man doubts our Right, pray vote it.

Sir Robert Howard. This of Fitz-Harris seems to me to be a more dangerous Breath than usual, a Breath fit to be stifled; there is something in this more than ordinary. If there be so sacred a Respect to common Trials in inferior Courts, 'tis strange that the House of Commons should be below a Common Jury—It seems the Lords value Fitz-Harris to keep him from us—If Dangerfield would speak what he knew, nothing of Mercy was too big for him; but they hurry Fitz-Harris away to the Tower, when he began to confess in Newgate: Are you so lost that you have no Mercy left for the Protestant Religion?—We hear that the French Ambassador had a hand in this Plot, which a Jury will not enquire into. I must confess, that by the Carriage of this I have enlarged my Suspicion; for I cannot but suspect unusual Ways—Something depends upon this Man—Sure we must not lay down all Prosecution of the Plot, and that the Protestant Religion shall have no Mercy. Fitz-Harris may merit Mercy by Confession; and if his Breath be stopped by the Lords, I am sorry that People will say, If it were not for the Lords, Fitz-

Harris might have discovered all the Conspiracy, and the Protestant Religion might have been saved.

Mr. Serjeant Maynard then added, We all know what Arts and Crafts have been used to hide the Plot; it began with Murder, Perjury and Subornation: This of Fitz-Harris is a second Part of it; the Lords deny to receive our Impeachment; in effect, they make this no Parliament, if we are the Prosecutors, and they will not hear our Accusation: 'Tis strange, when their own Lives, as well as ours, are concerned in the Plot.—When all is at Stake, we must not prosecute: If this be so, Holland and Flanders must submit to the French, and they over-run all. This is a strange Breach of Privilege, and tends to the Danger of the King's Person, and Destruction of the Protestant Religion.

Sir Thomas Player. This of Fitz-Harris is a considerable Confirmation of the former Plot: I call it the Old Plot, but 'tis still new upon us. When he inclined to discover what he knew, he was fetched to Whitehall, and sent to the Tower; and so we were deprived of all farther Hopes of Discovery; and now they stop his Mouth: I move therefore, that you will declare, That if any Judge, Justice or Jury proceed upon him, and he be found guilty; that you will declare them guilty of his Murder, and Betrayers of the Rights of the Commons of England. Hereupon the House came to these Resolves:

That it is the undoubted Right of the Commons in Parliament assembled, to impeach, before the Lords in Parliament, any Peer or Commoner for Treason, any other Crime or Misdemeanor; and that the Refusal of the Lords to proceed in Parliament upon such Impeachment, is a Denial of Justice, and Violation of the Constitution of Parliaments.

That in the Case of Edward Fitz-Harris, who by the Commons has been impeached for High-Treason before the Lords with a Declaration, That in convenient time they would bring up the Articles against him: For the Lords to resolve, that the said Fitz-Harris should be proceeded with according to the Course of the Common Law, and not by way of Impeachment in Parliament, is a Denial of Justice, and a Violation of the Constitution of Parliaments, and an Obstruction to the farther Discovery of the Popish Plot, and of great Danger to his Majesty's Person, and the Protestant Religion.

That for any inferior Court to proceed against him, or any other Person lying under an Impeachment in Parliament for the same Crimes for which he or they stand impeached, is an high Breach of the Privilege of Parliament.

This Matter, thus agitated in the House of Commons, was countenanced by a Protestation of many Temporal Lords; which was to this Effect:

"That in all Ages it hath been an undoubted Right of the Commons to impeach before the Lords any Subject for Treasons, or any other Crime whatsoever.

"That they could not reject such Impeachments, because that Suit or Complaint can be determined no where else; for an Impeachment is at the Suit of the People, but an Indictment is at the Suit of the King; as, the King may indict at his Suit for Murder, and the Heir, or the Wife of the Party murdered may bring an Appeal; and the King cannot release that Appeal, nor his Indictment prevent the Proceedings in it.

"It is an absolute Denial of Justice, in regard it cannot be tried any where else. The House of Peers, as to Impeachments, proceed by virtue of their Judicial Power, and not by their Legislative; and as to that, act as a Court of Record; and can deny Suitors (especially the Commons of England, that bring legal Complaint before them) no more than the Judges of Westminster can deny any Suit regularly commenced before them.

"Our Law saith, in the Person of the King, Nulli negabimus Justitiam, We will deny Justice to no single Person; yet here, Justice is denied to the whole Body of the People. This may be interpreted an Exercise of arbitrary Power, and have an Influence upon the Constitution of the English Government; and be an Encouragement to all inferior Courts to exercise the same arbitrary Power, by denying the Presentments of Grand Juries, &c. for which, at this time, the Chief Justice stands impeached in the House of Peers.

"These Proceedings may misrepresent the House of Peers to the King and People, especially at this time; and the more, in the particular Case of Edward Fitz-Harris, who is publickly known to be concerned in vile and horrid Treasons against his Majesty; and a great Conspirator in the Popish Plot to murder the King, and destroy and subvert the Protestant Religion.

Monmouth,	Sunderland,	Paget,
Kent,	Essex,	Greys of Werke,
Huntingdon,	Shaftesbury,	Herbert of Cherbury,
Bedford,	Macclesfield,	Cornwallis,
Salisbury,	Mordant,	Lovelace,
Clare,	Wharton,	Crew.
Stamford,		

This Protest was no sooner made upon Monday the 28th of March 1681, but the Parliament was instantly dissolved.

† Which was always to be preferred; and upon Notice thereof, all Prosecutions at the King's Suit were to stop, till the Prosecution at the Suit of the Party was determined.

### Proceedings against EDWARD FITZ-HARRIS in the King's-Bench, upon his Arraignment and Plea to an Indictment for High-Treason, April 27, &c. 1681. Paschæ. 33 Car. II.

ON Wednesday April the 27th, 1681, the Grand Juries for the County of Middlesex were sworn; and after the Charge delivered by Mr. Justice Jones, his Majesty's Attorney-General desired, That some of that Grand Jury which served for the Hundreds of Edmonston and Gore (that for Ossulston Hundred being immediately adjourned for a Week) might be present at the swearing of the Witnesses upon an Indictment for High-Treason, to be preferred against Edward Fitz-Harris, Prisoner in the Tower of London, which was granted; but the Grand Jury being under some Scruples against receiving of the Bill, desired the Opinion of the Court therein; which Mr. Justice Jones alone thought not fit to give, but ordered them to attend next Day when the Court was full.

G g And



And accordingly on Thursday, April 28, the said Grand Jury came to the Bar, and Mr. Michael Godfrey (Brother to Sir Edmundbury Godfrey), who was their Foreman, addressed himself thus to the Court.

Mr. Godfrey. My Lord, I have an humble Request to make to the Court on the Behalf of myself, and another on the Behalf of the Grand Jury for the County of Middlesex, of which I am Foreman. This Gentleman, Mr. Ward, I did beg of when I was sworn, to chuse another Man that was fitter for the Service, as being more experienced, but he would not; and I beg your Pardon, if I should commit any Failure for want of Experience. But I desire, before we proceed upon this Indictment before us, that this same Fitz-Harris may be examined about my Brother's Death, of which I suppose he may know much, because in the printed Narrative he does speak of one De Puy, who was a very active Man about that Murder; and how ill a Man soever he hath been, we do hope he hath so much Truth in him, as to tell what he knows of that horrid Murder. Therefore I pray your Lordship, that you would grant an Habeas Corpus to fetch him before your Lordship to be examined upon that Point before we do proceed; that is all as to myself. My Lord, as to the Jury, we do all of us humbly present this Paper, and desire it may be read in Court.

\* L. C. Justice. † What is it? a Petition?

† Sir Francis Cl. of Crown. It is not subscribed by any Body.  
Pemberton.

Jurors. But we do all own it, my Lord.

L. C. J. What is it? Read it.

Cl. of Crown. We Michael Godfrey, &c. being sworn to serve in the Grand Inquest for the Hundreds of Edmonton and Gore, in this County of Middlesex, &c. and being Yesterday sent for into the Court of King's-Bench, by a Messenger from the said Court, to be present at the swearing of several Witnesses produced on the Behalf of our Sovereign Lord the King, to prove the Truth of some Indictments, then in the Hands of the Clerk of the Crown; and observing, that Sir William Waller, Smith, and others, were sworn to give Evidence against Edward Fitz-Harris, now Prisoner in the Tower, who in the late Parliament at Oxford, was impeached by the Honourable House of Commons, in the Name of themselves, and of all the Commons of England; of which, we the said Michael Godfrey, &c. are Part, and as Jurymen, be his Judges also.

We therefore humbly desire the Opinion of this Honourable Court, whether it be lawful and safe for us, the said Godfrey, &c. (in case an Indictment of the said Fitz-Harris should be brought before us) to proceed to examine any Witnesses in Reference to the said Indictment, or any way to meddle with it, or proceed upon it, notwithstanding the said Impeachment, and Votes pursuant to it by the said Honourable House of Commons? And this being a great Point in Law, and of so great Consequence for us to undertake in a Point of Right not settled by Conference, and remaining yet undetermined in the High Court of Parliament.

We therefore humbly desire the Opinion of this Court upon the whole Matter, Whether legally and safely we may proceed to find the Indictment of Fitz-Harris, or no?

Mr. Godfrey. My Lord, we do humbly desire the Resolution of the Court in this Matter, as a Thing of Weight; for we are between two Mill-stones, as we apprehend it, and shall be ground between them.

L. C. J. Look you, Gentlemen of the Jury, we do not apprehend so.

Mr. Att. Gen. My Lord, be pleased to spare me one Word: This Indictment was tendered to this Grand Jury Yesterday, and this Gentleman was against accepting the Bill, till he had your Judgment, and so were two more; but for all that, the Body of them carried it (all but these three) to hear the Evidence: Whereupon Mr. Solicitor and myself did go on upon the Evidence, and spent some time in opening it to them, and it was all given to them; and truly the Gentlemen did seem to be abundantly satisfied what an horrid Villainy it was, and we did think they would have found the Bill: But it seems they have prevailed to put these Scruples into the others Heads.

L. C. J. Look you, Mr. Attorney, we will now enquire into that. Gentlemen of the Jury, you seem dissatisfied in this Matter, and desire the Opinion of the Court in it, whether you may lawfully proceed to find this Indictment or not? We did hear Yesterday of some Scruples you made to my Brother Jones when you were sworn, and he sat in Court to give you the Charge, which he thought not fit then to answer, but left it till To-day: Truly we would have all things fairly and clearly done, that we may understand how we go all along in this Matter. Your Scruple is this: Here was, you say, an Impeachment offered against Fitz-Harris by the Commons to the Lords, and that Impeachment was of High-Treason, which was not received, and thereupon there was a Vote of the House of Commons that he should not be tried by any other inferior Court: You desire now to know whether you may enquire concerning this Treason, notwithstanding these things that have passed thus?

Mr. Godfrey. Yes, my Lord.

L. C. J. We are very ready and willing to satisfy any of the King's Subjects in any Matters in Judgment before us, that they may see there shall be nothing but fair Proceedings in all Cases: We do tell you it is our Opinion, that notwithstanding any thing of this Matter that you suggest in the Case before you, it is fit for you to enquire upon the Indictment; and you are bound to enquire by virtue of your Oaths, if an Indictment be exhibited to you: You cannot, nor ought to take any Notice of any such Votes of the House of Commons afterwards, if any such there were, for they will not excuse you (who are sworn to enquire of the Matters given you in Charge), in case you do not your Duty; and therefore if you have Evidence enough given you to satisfy you that the Indictment is true, you are to find it. And likewise we ought to proceed according to Justice, in Cases that are brought before us. Neither you nor we can take Notice of these things, in case there be any such as you suggest; nor will they excuse us before God or Man for the Breach of our Oaths, if we should do the contrary. And this we declare to you, not only as our Opinions, but as the Opinion of all the Judges of England. For when we did hear there was a Scruple made by you the Gentlemen of the Jury, because we would make the Way fair and clear, all the Judges did assemble to debate the Matter for your Satisfaction; not that we were dissatisfied at all in it ourselves, but that it might appear to you and the Kingdom, that there is nothing but Fairness used in this Case, as in all others; and all the Judges, Nemine contradicente, were all of Opinion,

that you are not to take Notice of any of these Things; but if the Indictment be exhibited, and you have Evidence enough, you ought to find it. This we have endeavoured for your Satisfaction, to make your Way clear.

Jurors. We humbly thank your Lordship.

[Then the Jury went away, and afterwards found the Bill.]

On Friday, April 29, 1681, Sir Tho. Stringer, the King's Serjeant at Law, moved for an Habeas Corpus, to bring up the Body of Edward Fitz-Harris, to be examined by the Court about the Death of Sir Edmundbury Godfrey. The Court granted the Writ, and said, he should be arraigned upon the Indictment against him, and then they would examine him.

Saturday, April 30, Edward Fitz-Harris was brought with a strong Guard to the King's-Bench Court.

Mr. Serj. Stringer. Your Lordship hath been pleased to grant an Habeas Corpus for Fitz-Harris, and he is brought up, and attends here.

L. C. J. We will send for Mr. Attorney, Brother.

Mr. Serj. Jefferies. I beg this of your Lordship, That you will be pleased to stay a little; I know not how he comes to be brought up here; Mr. Attorney, it seems, says, he knows nothing of it.

L. C. J. Well, well; send for Mr. Attorney, Brother, and hear what he says.

[Which being done, and Mr. Attorney come in, the Prisoner was brought to the Bar.]

Mr. Serj. Stringer. My Lord, I would humbly move he may be brought into Court to be examined before he be arraigned.

L. C. J. Why so?

Mr. Serj. Stringer. My Lord, we would have him examined concerning Sir Edmundbury Godfrey's Death.

L. C. J. What matters it? That may be done after as well as before.

Cl. of Cr. Edward Fitz-Harris, hold up thy Hand.

Mr. Fitz-Harris. My Lord, I have been a close Prisoner these ten Weeks, and have not had the Liberty to see any one in the World: I desire I may have Liberty to see my Friends, and speak with them, before I do answer to any thing.

Mrs. Fitz-Harris. My Dear, plead to the Jurisdiction of the Court; here's a Plea drawn by Counsel for you.

L. C. J. You had best consider well what you have to do.

Mr. Fitz-Harris. My Lord, I desire this Paper may be read by the Clerks.

Mr. Just. Jones. No, no; that cannot be till you have answered to your Indictment.

Cl. of Cr. Pull off your Glove, and hold up your Hand.

Mr. Fitz-Harris. My Lord, I desire Leave to plead to the Jurisdiction of the Court.

L. C. J. You shall have it.

Mr. Fitz-Harris. I desire this Plea may be allowed.

Mr. Just. Dolben. Hear your Indictment first, and plead afterwards.

L. C. J. Look you, Mr. Fitz-Harris, let us thus far direct you: Your holding up of your Hand, and hearing the Indictment read, will not hinder you from any Manner of Plea which you may have to make afterwards; but you can plead nothing before.

Cl. of Cr. Pull off your Glove, and hold up your Hand (which he did). And then the Clerks of the Crown read the Substance of his Indictment to him in English. And then speaking to him, said, How sayest thou, Edw. Fitz-Harris? Art thou guilty of this High-Treason whereof thou standest indicted, and hast been now arraigned, or Not Guilty?

Mr. Fitz-Harris. My Lord, I offer this Plea to be read first, before I answer.

L. C. J. That Plea? Take his Plea: Let us see what it is. We take it to read it now.

Mr. Just. Jones. Not to allow it.

L. C. J. Only to see what it is.

Cl. of Crown reads,

**E**t præd. Edwardus Fitz-Harris in propria persona sua venit & dicit, quod ipse ad Indictament. præd. modo versus eum per Jurator. præd. in forma præd. compert. respondere compelli non debet, quia dicit quod ante Indictament. præd. per Jurator. præd. in forma præd. compert. scilicet ad Parliament. Dom. Regis nunc inchoat. & tent. apud Oxon. in Com. Oxon. 21 Die Martii, Anno Reg. Dom. Caroli Secundi nunc Regis Angliæ, &c. Tricesimo Tertio, ipse idem Edwardus Fitz-Harris per Milites, Cives, & Burgenf. ad idem Parliament. ad tunc & ibid. convocat. & assemblat. de & pro præd. Prodition. Criminibus & Offens. unde ipse idem Edwardus Fitz-Harris per Indictament. præd. modo indicat. existit secundum Legem & Consuetudinem Parliamenti accusat. & impetit. fuit coram Magnatibus & Proceribus hujus Regni Angliæ in eodem Parlamento per Summonition. ipsius Dom. Regis ad tunc & ibid. assemblat. Quodq; impetitio præd. in plenius suis robore & effectu adhuc remanet, sicut per Re ord. inde in Cur. Parliament. præd. remanen. plenius liquet & apparet. Et idem Edwardus Fitz-Harris ulterius dicit, quod si quis in aliquo Parlamento Dom. Regis hujus Regni Angliæ de aliquibus Proditionibus, Criminibus, & Offensis, per Milites, Cives, & Burgenf. ad hujusmodi Parliament. convocat. & assemblat. in hujusmodi Parliament. accusat. & impetit. fuit coram Magnatibus & Proceribus hujus Regni Angliæ in eodem Parlamento per Summonit. ipsius Dom. Regis assemblat. tunc hujusmodi Prodition. Crimina & Offensa de & pro quibus hujusmodi persona in hujusmodi Parliament. accusat. & impetit. fuit in Parliament. Dom. Reg. hujus Regni Angliæ audiri, triari, & terminari debeant, & semper hætenus consueverunt, & de jure debuerunt, & non alibi in aliqua Curia infer. quam in Parliament. Et hoc idem Edwardus Fitz-Harris parat. est verificare, unde non intendit quod Dominus Rex nunc velit in Cur. nunc hic de & pro Prodition. Criminibus, & Offens. præd. responderi, & petit. Judic. si ipse ad Indictament. præd. per Jurator. præd. in forma præd. compert. ulterius respondere compelli debeat, &c. Cum hoc quod præd. Edwardus Fitz-Harris verificare vult, quod Proditio, Crimina, & Offens. præd. in Indictament. præd. per Jurator. præd. in forma præd. compert. specificat. & mentionat. & pro quibus ipse idem Edwardus Fitz-Harris per Indictament. ill. modo indicat. existit, & Proditio, Crimina & Offens. pro quibus ipse præd. Edwardus Fitz-Harris in Parliament. præd. in forma præd. accusat. & impetit. fuit, & existit, sunt unum & eadem Proditio, Crimina, & Offens. & non al. neque diversa, quodq; impetit. adhuc in plenius suis robore, vigore, & effectu remanet.

† See an Account of this Chief Justice in Burnet's Hist. Own Times, Vol. I. p. 501.



L. C. J. Look you, Mr. Fitz-Harris, as for this Pleading here, we use not to receive such Pleading as this without a Counsel's Hand to it.

Mr. Fitz-Harris. I desire your Lordship to assign me Counsel.

L. C. J. Who would you have assign'd Counsel?

Mr. Fitz-Harris. Sir William Jones, Sir Francis Winnington, Sir George Treby, Mr. Williams, Mr. Pollexfen, Mr. Wallop, and Mr. Smith.

L. C. J. Here are a great many you name: we will not enjoin any Counsel to serve you farther than they are willing themselves. As for Sir William Jones, one of them you desire, he does not practise now in Westminster-Hall, and therefore we cannot assign you him unless he please.

Mr. Fitz-Harris. Then I desire Sir Francis Winnington, Mr. Williams, Mr. Pollexfen, Mr. Wallop.

L. C. J. Let them be assign'd of Counsel for him. We do assign you them for Counsel. And now, look you, Sir, you had best consider how you plead this Matter. You will do well to think of it, lest it be more fatal to you than you expect; therefore we will give you time to plead the Matter you rest upon, let it be what it will: We'll give you time to have Advice upon it, and you shall be brought hither again on Tuesday Morning by Rule. And in the mean time things shall stand as they do; Mr. Attorney will consider upon the putting in of your Plea, what is fit to be done upon it.

Mr. Fitz-Harris. My Lord, I humbly desire the Liberty to see my Wife and Friends in the mean time.

L. C. J. Mr. Attorney, why may not he see his Wife, so it be done in the Presence of some Person entrusted by the Lieutenant, to see that nothing be done that is prejudicial to the King?

Mr. At. Gen. I cannot oppose it, my Lord.

Mr. Fitz-Harris. I desire my Counsel may come to me.

L. C. J. Mr. Fitz-Harris, we will admit Counsel to come to you, or else it will do you no good to assign them; all we can do shall be done.

Mr. At. Gen. My Lord, with Submission, I conceive you will not allow any body to come to him, to be alone with him; that would be the Way to prevent the Discovery of the Practices he is accused of: I hope, if your Lordship shew him Favour, you will do the King Justice.

Mr. Fitz-Harris. My Lord, I beg that any of those that have been named may come to me.

L. C. J. Yes, these four. And Mr. Attorney, they are Gentlemen of fair Credit and Reputation in the World; we have no Suspicion that they will do any thing unfairly: what we can reasonably do for any Man in his Condition, we must do.

Mr. At. Gen. My Lord, I am not against that; but I would have all done safely and securely for the King.

Mr. Fitz-Harris. My Lord, I have one thing more to beg; the Time your Lordships have set is so soon, that they cannot come to me perhaps.

L. C. J. 'Tis long enough, Mr. Fitz-Harris.

Mr. Fitz-Harris. If I cannot get them to come to me in that time, what shall I do?

L. C. J. You must do what you can; we can't enjoin them to come to you.

Mr. At. Gen. This Motion of his, I fear, is designed to put off his Trial.

L. C. J. It shall not, Mr. Attorney. It is true, 'tis a busy time, the middle of the Term; but they will sure find time to dispatch this Business within the time we have allotted. On the other side, some time they must have to consider of it: I do therefore tell him, it may be fatal and peremptory to him for aught I know. Indeed if we would insist upon it, we might compel him to be ready presently, but that we will not in this Case.

Mr. Fitz-Harris. Pray, my Lord, give me till Thursday, if you please.

L. C. J. I know it is time enough for Counsel to draw up a Plea between this and Tuesday.

Mr. Fitz-Harris. To-morrow is Sunday, my Lord, and they can't come to me then; so I shall have but one Day.

L. C. J. Mr. Fitz-Harris, 'tis time enough; we must not waste the Term; for as we would shew you all the Favour we can in Equity and Justice, so we must not deny the King Justice neither. And you hear Mr. Attorney say, that these things (if they should delay the Business too long) would be prejudicial to much of the King's Business. It may be, that this dilatory Plea may spend so much time of the Term, that we cannot try it; and therefore if we do give a just Favour, you must not grow upon us.

Mr. At. Gen. Mr. Fitz-Harris knows this Plea hath been well advised on: There went a whole Club to the making of it.

Mr. Fitz-Harris. How should I know? I never saw nor heard of it till now. I have had the severest Measure in the World: I have had no body suffered to come to me.

L. C. J. Do not complain of Severity, Mr. Fitz-Harris. I do not believe any such thing hath been used towards you.

Mr. Fitz-Harris. Pray, my Lord, give me a little longer time.

L. C. J. Mr. Attorney, what if we do this? He giving you the Plea upon Tuesday, he may come upon Wednesday Morning to put it in.

Mr. At. Gen. I cannot oppose it, if your Lordship think fit so to order it.

Mr. Just. Delben. 'Tis fit you should have it to see it, Mr. Attorney, before-hand.

Mr. Just. Jones. And have some reasonable time for Consideration what to do upon it.

L. C. J. Well, delivering of the Plea on Tuesday Morning to Mr. Attorney, we do give you till Wednesday to bring it hither; and then you shall come by Rule again.

Mr. Fitz-Harris. My Lord, I hope I shall have the Liberty to see my Wife this Day.

L. C. J. Yes, at seasonable Hours, when there may be somebody by, to see that nothing be done to the King's Prejudice. And your Wife must do this; she must submit to be searched, that she carry nothing with her that may be prejudicial. And with these Cautions we will admit her to come to you.

Lieut. of Tower. Will your Lordship please to give us a Rule, to let his Wife and Counsel come to him?

L. C. J. We do make such a Rule.

Ch. of Crown. My Lord, we will make it Part of the Rule.

Lieut. of Tower. We desire such a Rule for our Discharge.

L. C. J. Sir, this is our Rule, and we have declared it to this purpose. Then as to your Matter, Brother Stringer, this we will do; Let the

Lieutenant of the Tower keep Mr. Fitz-Harris safely till we return out of the Exchequer, and then we will examine him.

Mr. Serj. Stringer. My Lord, we think it will be a short Business and soon over, if you please to do it first.

Mr. Fitz-Harris. My Lord, I may see my Wife in the mean time, I hope.

L. C. J. Do you insist, Brother, that we should examine him presently?

Mr. Serj. Stringer. My Lord, Mr. Godfrey desires it.

L. C. J. Then we will presently.

Lieut. of Tower. Must his Lady speak with him?

L. C. J. Yes, after he is examined. Lieutenant of the Tower; bring Mr. Fitz-Harris into our little Room, where we will take a Clerk and examine him.

Mrs. Fitz-Harris, to her Husband, (the Court being just risen.) My Dear, do not confess any thing about the Death of Sir Edmundbury Godfrey, nor the Plot, for you will be betray'd: speak only to little things.

[Then the Prisoner was carried away to be examined, and after that to the Tower.]

On Monday, the 2d of May, Sir Francis Winnington and the other three Gentlemen assigned of Counsel for Mr. Fitz-Harris, came to the Bar, and moved the Court for an Explanation of the Rule concerning themselves, and the Business they were assign'd for.

Mr. Williams. My Lord, I am to move your Lordship in a Case, wherein I am, with three others of the Gentlemen that attend this Bar, assigned of Counsel for Mr. Fitz-Harris; and that which I would beg for myself and them, is this: There is one thing we desire may be explained a little in the Rule: I humbly apprehend your Lordship gave Leave to the Counsel, whom you so assign'd to come to Mr. Fitz-Harris, and entrusted them with the Liberty of speaking with him alone; but by the penning of the Rule, we apprehend that the same Restraint is put upon them, that is upon other Persons, to have somebody by at their being with him.

L. C. J. The Lieutenant sent to me on Saturday about it, and I told him it did not extend to you.

Sir Fran. Winnington. We think it may have a Construction either way; but we desire it may be made plain, as you meant it.

L. C. J. We tell you it is plain, and it was so intended.

Sir Fran. Winn. Therefore we taking it that your Lordship pronounced and meant it so, do desire it may be so expressed. We are satisfy'd that it was your Lordship's Intention; we desire the Clerk may make it in plain and intelligible Words. And there is this farther in it, my Lord—

L. C. J. We declare it now to you, it was so meant and intended.

Sir Fran. Winn. My Lord, there is this further in it: We four have met, and we desire as much as may be to expedite this Matter as far as we can, for our own Reputation, and doing our Duty to the Person we are assigned of Counsel for. But truly, so soon as is appointed by your Lordship, it is impossible for us to prepare things so, as to be ready by Wednesday Morning. The Plea I never saw, nor did I ever hear of it, till it was brought and read here; but since that, I have not seen it till this time. The Rules were brought but last Night to our Chambers; there is no Solicitor in the Cause that may attend us. The Indictment I have not seen that we are to plead to, and truly I think the Course is to have a Copy of the Indictment.

L. C. J. We deny that, Sir Fran. Winnington.

Mr. Williams. It is impossible for us then to get ready in this time. I humbly move you will assign some convenient time. I know your Lordship will not put an Hardship upon us that are of Counsel, to plead such a Matter so quickly: 'Tis a Matter of Difficulty, and there are not many Precedents in it; and therefore it will require more Care than ordinary.

Sir Fran. Win. My Lord, We ought to present things to the Court as they are in Fact, that we may not lie under any Reflection from the Court, nor any body else. You made a Rule on Saturday, that I should be of Counsel for him, (which I submit to) but I knew not of this till afterwards. I never saw the Plea, nor any Paper in this Cause as yet: The Rule was left at my Chamber this last Night; and when I saw it, Mr. Williams and we got together in the Hall this Morning: We could not do it till just now, and we come now to wait upon the Court, to acquaint them how the Matter stands. I was not in Court, when you gave your Directions about this Matter; but when I find what the Nature of the Case is, I shall be ready to do my Duty to the Court, and to him who is upon his Life. It is a mighty Cause, it is a Cause that may-be, if we do not acquit ourselves as we ought, have Reflection upon our Posterity, if we do not do it as well as we can. Therefore we desire some reasonable time, that we may have Copies of the Papers and things concerned in this Cause, as the Court shall direct. And we are assured your Lordship is so well acquainted with the usual Method in such Cases, that you will give us all the Favour in it you can.

Mr. Wallop. For my part, my Lord, the Notice I had was but very lately: I was by indeed when this Person Fitz-Harris did desire Counsel, and your Lordship assigned me amongst the rest; but nothing of the Order was brought to me till this Morning: so that I know nothing of the matter less or more, than what I heard upon the reading of the Paper here on Saturday. I do not desire time for time-sake, or for Delay; but we think the Nature of the thing is such, as will require great Consideration, and we desire convenient time to prepare it for the Court.

L. C. J. Look you, Sir Francis Winnington, you must consider here the Nature of your Case: This is an Indictment of High-Treason, and there is nothing I see that is so greatly considerable in the Case, but the Height of the Crime. 'Tis an extraordinary Crime indeed, if he be guilty of it (for I speak not to prejudice your Client, but of the thing itself). 'Tis a Treason of a very high Nature: and then what have we to consider in this Case? We might have taken your Client at advantage here, and it had been no Injustice if we had made him plead immediately as he would stand by it: And we are not to consult your leisure, but your Client's Cause: he hath pitch'd upon you for his Counsel; we have given him three Days time to plead as he will stand by it, Saturday, Monday and Tuesday, and he is to come with his Plea upon Wednesday. We have appointed for Convenience-sake, that you should give a Copy of the Plea to-morrow Morning to Mr. Attorney; but we do not tie you so peremptorily to that Copy, that you may not vary in Words from that Form. Give him but the Substance of the Plea, and we will not tie you to the particular formal Words. Peradventure Mr. Fitz-Harris could not have expected three Days time, in Course of Law, upon such a Crime, to put in such a Plea, when he tells us, he will plead specially to the Jurisdiction of the Court. But we have done it in this Case, to shew, that



that all the Fairness that can possibly be used shall be used. On the other side, we must not spend all our time so, as to let the Term slip for his Neglect of waiting upon you. Therefore if he will delay to send to advise with you, he must suffer for it. Suppose he did not come to you till to-morrow, what can we help it?

Mrs. Fitz-Harris. There is no Solicitor, my Lord, to go to the Council.

L. C. J. Well, we must not spin out the Term to please him: he must take more care; I believe he would by Dilatories be glad to put it off all the Term. If Mr. Attorney gives Consent for more time, well and good.

Mrs. Fitz-Harris. I hope your Lordship will give Leave for a Solicitor; without your Lordship's Leave none will dare to venture. And I had the Rule so very late—

Cl. of Crown. They had it at three of the Clock in the Afternoon, as soon as it could be drawn up.

Mrs. Fitz-Harris. That Copy was brought to the Lieutenant of the Tower, and he sent it away immediately.

Cl. of Crown. Another Copy they had from me that Evening.

Mrs. Fitz-Harris. I never saw my Husband in the Tower till yesterday in the Afternoon, and I am an ignorant Person, and know not what to do in it without a Solicitor. As soon as I could get Copies of the Rule writ out, I carry'd them to these Gentlemen.

Mr. Pollexfen. My Lord, I think it will be very hard upon us that are of Counsel, to be so straitened in Point of Time; for my part, the Rule was left under my Door the last Night, and I had it not till this Morning: It will be a mighty hard matter for us to get the Plea ready, without a Sight of the Indictment. Things must be averr'd to be the same; which we cannot, unless we see what is there alledged. This Man hath been kept close Prisoner, and no body suffer'd to come at him to instruct him; and we have not so much as Copies of any thing that we must make use of. We have no Concernment, my Lord, in this matter, but what is assign'd us by the Court; and we do not know by any Papers, if there be any, how we should put it into Form; and that is it, my Lord, which may lie heavy upon us; if this Man's business should miscarry for want of putting it into due Form, the Blame will be upon us, who are assigned his Counsel. Therefore if your Lordship please, under these Considerations, to give us time and leave to see the Indictment we are to plead to, we may be the better enabled to do our Duty.

Sir Fran. Win. Really, my Lord, I ought to deal clearly with the Court; without a Copy of the Indictment, I know not how we shall be able to plead as we should do.

Mr. Williams. My Lord, I do really move, not in favour of Fitz-Harris, but for my own Reputation: I cannot put my hand to a Plea of this Consequence, without time to consider very well of it; and unless in Truth, I can see the Indictment, and compare the Plea with it, to put it into Form fit for the Judgment of the Court. And if these things cannot be granted, I desire to be excused.

L. C. J. Why, Gentlemen, see what you ask: Where do you find any Precedent of a Man indicted for High-Treason, that would plead to the Jurisdiction of the Court, that had more time given him than is in this Case?

Sir Fran. Win. We do not know what his Plea will be, my Lord, till we have seen it and considered it.

L. C. J. Your Client told us all, and we know all of us very well, that it is to the Jurisdiction of the Court, and can be no otherwise.

Mr. Just. Jones. Any thing else you may give in Evidence upon Not guilty; and it would be considered on your Trial.

Sir Fran. Win. My Lord, it may happen to be not so properly pleadable to the Jurisdiction of the Court; we know not what it will be till we have seen the things necessary to draw it into Form. It is true consequently, it is the Concern of our Client; but the Ground of our Motion at this time is for ourselves. I did apprehend by the Rule, his special Plea was to be admitted, if he tender'd one, let it be what it will: We must consider many things in a Case of this Nature; and at last, whether it will be to the Jurisdiction, or what 'tis, we can't tell as yet. And till we have seen the Nature of the thing, and what is necessary to prepare it for the Court, I cannot venture to give it its proper Term. But our time is so short, if your Lordship will afford us no longer, that we know not how to be ready for it. Your Lordship does speak of Mr. Attorney's being attended with the Substance of the Plea, not tying us to the Form in the Copy deliver'd to him. Mr. Attorney was here upon Saturday, when this matter was first started, and he knew the Substance then: We know not what it is more than by Report. It is a Plea that so rarely happens, that we must be cautious in what Form we put it. 'Tis, as your Lordship hath been pleas'd to say, an horrible Treason that in the Indictment is specify'd. We must not speak, nor do not mitigate the Heinousness of the Crime; nor do we speak it because it is Term-time, and may hinder our other Business: We shall all of us, I am sure, not at all consider our own Time, or Loss in the matter; but it being of so great Weight, we desire reasonable time to do our Duties: we name no time, nor dare do it; we submit that to the Court. But, my Lord, under favour, for the Copy of the Indictment, we do conceive 'tis necessary that we should see a Copy of it; and when the Court is pleas'd to admit the Party to give in a special Plea to the matter he is accus'd of, and assign him Counsel to plead it, I take it to be very rational and consonant to Law, that we have a Copy of the Charge.

L. C. J. Sir Fran. Winnington, for you to come and say these things here, methinks is very strange. I think you can shew us no Precedent, that ever so long time was given to any Man to plead to the Jurisdiction of the Court, nor that ever a Copy of the Indictment was granted in High-Treason; and for you, because of the Greatness of the Treason, therefore to go about to make us believe, that it is more reasonable that a Copy of the Indictment should be granted in this Case than in another; that the Greatness of the Crime should be meritorious, and deserve a Favour of the Court, not granted in other Cases, is a thing extraordinary.

Sir F. Win. I do not press it that way; I pray I may be understood aright. Upon what appeared the other Day, upon the Nature of the Plea, I present it to your Consideration, Whether or no, when you have been pleas'd to admit a special Plea, you will not let us see that which we are to plead to?

L. C. J. No, it was never thought of surely.

Mr. Just. Dolben. No, it hath been constantly denied in Cases of Felony and Treason; and so you will find the Practice to have always been. But I'll tell you what hath been done sometimes; they have granted some Heads out of the Indictment, that should enable the Party to fit his Plea to the Charge; and that was done in Wittypole's Case, upon a Plea of *Auter fois acquit*. They gave him the Times, and some other Circumstances, to fit

his Plea to his Case; but never was there a Copy of the Indictment granted.

Mr. Wallop. My Lord Coke, in his Preface to the Third Report, declares, That it was the ancient Law of England, and so declared by Act of Parliament in Edward III's Time, That any Subject may, for his necessary Use, have access to Records and Copies of them, be they for the King or against the King; and that the Practice to the contrary is an Abusion.

L. C. J. So then, Mr. Wallop, you take it that we are bound when any Man is indicted of Felony or Treason, or any capital Crime, if he say he must have a Copy of the Record, we must grant him a Copy of the Indictment: if you think so, the Court and you are not of the same Opinion.

Mr. Wallop. I inform the Court what I have read and seen, and where 'tis to be found.

Mr. Williams. My Lord, it may be necessary, for aught we know, for him to plead over to the Fact laid in the Indictment, Not guilty, as sometimes it is requisite for the Party to do. Now if we should mistake for want of having what is necessary, and thereby preclude him of the Advantages he might have had if the Plea had been rightly drawn, for aught I know, it will lie upon me for ever. My Lord, I do it merely out of Caution, and for my own Reputation sake: If any legal Advantage should be lost by my Unwariness, it will be a perpetual Reflection upon me; and therefore I am so earnest in this Case. And, my Lord, I can tell you what was done in a Case wherein I was of Counsel; it was not a Case of Treason indeed, but it was Murder, the next Crime to it; it was the Case of King and Thomas. Thomas was indicted of Murder in one County; and found guilty of Man-slaughter; and afterwards was indicted for the same Murder in another County, and being to plead this matter, I did insist upon it, that we ought to have a Copy of the Indictment. There was some Debate about it; but at last we had a Copy, and we alledg'd there; as here, it was impossible to plead without it; and the Cause was removed hither into this Court for Judgment.

Mr. Just. Dolben. The first Indictment you might have a Copy of, for you were to plead the whole Record.

Mr. Williams. Nay, we had a Copy of that to which we pleaded.

L. C. J. Mr. Williams, you tell us, you may peradventure have occasion to plead over when you know 'tis High-Treason that you are indicted of, in framing and publishing a treasonable Paper: Can't you direct your Client to plead over without a Copy? Certainly what you alledge in that, for a Copy of the Indictment, is *Non Causa pro Causa*.

Mr. Just. Jones. What Prejudice will it be to your Client to plead over?

Sir Fran. Win. My Lord, we only offer these things for ourselves, and we hope we shall not be press'd to do such a thing as this, without having reasonable time to consider and deliberate of it, and without having what is necessary in order to it.

[Then Mr. Attorney being sent for, came into the Court.]

L. C. J. Look you, Mr. Attorney, these Gentlemen that were assign'd of Counsel for Fitz-Harris, do move the Court here, and say, they would have longer time to draw up his Plea, for they must make use of several Copies of Papers, and they cannot so soon obtain them, nor find out those Records they must use, or other things as Ingredients to this Plea, in so short a time; and they say likewise, that they desire a Copy of the Indictment. Now, in truth, they ought to have given you notice of this, that you might have been here likewise to hear what they say: If you do consent to give them longer time, we shall be ready to do it: but without it, we shall not be willing to delay it.

Mr. Att. Gen. I think your Lordship and the Court gave them a very just and reasonable Time, when you allowed them four Days; and these Gentlemen are mistaken, if they think they are assigned as Counsel to all Events. They are only to draw up a Plea upon that Matter that is alledg'd by the Prisoner, and to the Jurisdiction of the Court.

Sir Fran. Win. No, my Lord, I beg your Lordship's Pardon: The Rule is to plead the special Matter without more saying.

Mr. Att. Gen. My Lord, under favour, it is as I say, and so is the Course of Law; for the Prisoner ought to acquaint you with the Points he desires his Counsel to be heard to: And in this Case, Fitz-Harris did acquaint the Court before he would plead, that he had something to object to the Jurisdiction of the Court; and so his Wife directed him when she gave him the Paper. I suppose she had other Advice upon it; for she could not draw it up in that Form it was herself; and he did acquaint the Court, he had Matter to plead to the Jurisdiction of the Court, and concluded so in the Paper that was read. And thereupon, according to his Prayer, he had Counsel assign'd him these Gentlemen. I consented to it, as it was just I should but that they should think, that they are to advise him in other Matters; than that Particular upon which they are assign'd, I know they know their Duty better than to offer at any such thing. Now since then there is but one single Point, the Jurisdiction of the Court and nothing else, for they are not to advise in other Matters, I think it was more than strict Justice, nay it was a very great Favour, for all Men ought to be ready to plead such Pleas immediately.

L. C. J. Yes, in strictness, we might have required him to plead, as he would stand by it, presently.

Mr. Att. Gen. The Law is, that he must have all ready, in *Poigne*, to make it appear that what he avers in his Plea is so; therefore you need not to have given him any longer time: but because all the World might see the Court and King's Counsel dealt fairly in this Matter, and did not mean to take advantage of any thing that look'd like a Surprise, I consented to that time that your Lordship was pleas'd to set: And as for the Copy of the Indictment, I know not any Reason they have to desire it; for they are not to advise in that, what Defence he shall make, but only upon this Matter he hath alledg'd.

L. C. J. Look you, Gentlemen, what Mr. Attorney tells you is so, and we do expect that you should conform yourselves to it: We have given you three Days time, which is sufficient for such a thing as this. And Mr. Attorney, we told them thus when we did direct them, That they should deliver you a Copy of the Plea To-morrow Morning. We are not so critical with them, as that we will not receive their Plea, if it be variant in Form from that which they deliver to you. That that we intend by it is this, That they should deliver to you a Plea, the same in Substance as that which they do plead here: If they would alter it in the Form, we can give them leave to do that without any Prejudice.

Mr. Att. Gen. We will never pinch them in Form; I think I have Matter enough.

L. C. J. I tell you truly, I do believe some Friends of his had Counsel to draw up this Plea for him.

Mr. Att. Gen. A great Cabal, no doubt of it, my Lord!

Mr.



Mr. Wallop. My Lord, I desire that Counsel may be assigned in my Place.

L. C. J. We assigned him those that he required, excepting Sir William Jones; and we did not deny to put in Sir William Jones's Name, because we would not assign him, but because he hath declined the Bar, and does not practise here.

Mr. Williams. We do not draw in the Name of Sir William Jones, or decline him: We submit to your Order about ourselves; but we desire that Person that did draw this Plea may be added to us.

L. C. J. If his Wife desire it, and will name him, it shall be so.

Mr. Williams. I desire to be put out, and he put in.

L. C. J. Sir, he understands what he would have, sure! and we can't discharge you upon any such Account.

Mr. Wallop. Here are many Particulars and many Averments, which cannot so suddenly be set right as the Time allotted.

Mrs. Fitz-Harris. My Lord, there is not half those Gentlemen assigned that I writ to my Husband to ask for: I directed him eight.

L. C. J. Who else would you have?

Mrs. Fitz-Harris. There was in the Paper Sir William Jones, his Majesty's late Attorney-General, Sir Francis Winnington, Mr. Williams, late Speaker of the House of Commons, Sir George Treby, Recorder of London—

Mr. Pollexfen. Your Lordship may easily perceive by this Gentlewoman's Carriage, how we are like to be instructed in this Cause, when no Body follows it but she.

L. C. J. Do you desire Sir George Treby should be added?

Mrs. Fitz-Harris. Yes, I do.

L. C. J. Let it be so then.

Mrs. Fitz-Harris. And Sir William Jones; I will do what I can to get him to come.

L. C. J. We will not enjoin him; but if he pleases, we leave him to his Liberty.

Mr. Just. Dolben. Why, Mistress, you are got into the Hands of Gentlemen that are as learned and able in their Profession as you can have; you need no more.

L. C. J. Do you desire Mr. Smith?

Mrs. Fitz-Harris. Yes, my Lord.

L. C. J. Then add him.

Mr. Pollexfen. We desire that there may be Leave for a Solicitor, one that may carry Papers in the Presence of the Lieutenant.

L. C. J. We have Confidence in you, but not in other Persons; therefore we must consider of that: But what think you of it, Brothers? We may permit, I think, one to come from the Counsel to him with that Caution.

Judges. Yes, my Lord.

L. C. J. Let the Papers then be inspected before by the Lieutenant of the Tower, and be from one of the Council; and so they have Liberty to do it.

Mr. Att. Gen. There is no Need of any Papers, my Lord—

L. C. J. Mr. Attorney, do not oppose that: Let them have Liberty to carry any Papers that any of their Counsel, these Gentlemen we have assigned, shall send to him, or any from him to them; so as the Lieutenant may have first the Sight and Perusal of them.

Mr. Att. Gen. There is no great Harm in that, though I see not that they will need any Papers.

L. C. J. Yes, their Plea to the Jurisdiction must arise upon Fact, which may be out of some Papers.

Mr. Att. Gen. You are assigned, Gentlemen, but to one Point, the Jurisdiction of the Court; remember that.

Mr. Pollexfen. Your Lordship is pleased to say, That we may vary in Form from what we deliver to the Attorney-General; and Mr. Attorney is pleased to say, he will not pinch us as to Form: How shall we be secure no Advantage shall be taken of the Form?

L. C. J. 'Tis only as to that Particular. You shall not be tied up to the Form you deliver to him. What Advantages there may be concerning the Form of the Plea you bring hither, we will see shall not be taken.

Sir Fran. Win. Will your Lordship please to afford us no longer time?

L. C. J. When you are to plead to the Jurisdiction of the Court in a Case of High-Treason, and such a Treason as this is, what Reason is there that so much time as is granted already should be given you?

Sir Fran. Win. Shall not we have a Copy of the Indictment neither?

L. C. J. You will offer Things that are not to be granted to you, *ad captandum populum*, that you may say you are hardly used, and mightily frustrated in this Case.

Sir Fran. Win. No, my Lord, we do not offer it for any such End.

Mr. Att. Gen. Gentlemen, remember you have not Liberty to plead any Thing, but to the Jurisdiction of the Court.

Sir Fran. Win. We must submit to what your Lordship orders in it.

[Upon Wednesday the 4th of May, 1681, Edward Fitz-Harris was brought from the Tower to the King's-Bench-Bar.]

Cl. of Crown. Edward Fitz-Harris, hold up thy Hand (which he did): Thou hast been indicted and arraigned for High-Treason; how sayest thou? Art thou guilty of the High-Treason whereof thou standest indicted, and hast been arraigned, or Not Guilty?

Mr. Fitz-Harris. I have made a Plea, my Lord, which I desire may be received and allowed.

Mr. Wallop. May it please your Lordship, I desire to be heard a few Words.

L. C. J. Would you not have the Plea read?

Mr. Wallop. I have but a few Words to say before it be read, if your Lordship please, for ourselves, or at least for myself. According to the best Instructions we have had, we have drawn up this Plea, and I pray it may be entered so. But, my Lord, I humbly conceive we have not had, or for my own Part I have not had those Instructions that were fit to direct me in this Case. It is a special Plea, and of a Matter that rarely happens; and the Nature of this special Plea is, that the Matter contained in the Indictment and in the Impeachment, is one and the same Matter. Now I have not yet seen, nor could I come at a Sight, though I desired it, of the Impeachment, nor of the Indictment: But I humbly conceive, that by the Law, as this Case is upon a special Plea, the Prisoner ought to have a Copy of the Indictment. And I do not say, that every one may demand a Copy of his Indictment to find Faults; but upon a special Plea, and particularly upon this, I humbly conceive he ought to have a Sight and a Copy of his Indictment.

L. C. J. What, would you not have your Plea received?

VOL. III.

Mr. Wallop. Thus, my Lord: If we can have no farther Instructions, nor can by any other Means come to a Sight of these Things, then it is the best Plea we can make in such a Case, and I avow the Plea: But if any Thing should fall out amiss to the Prisoner for want of such a Sight, I pray it may not lie upon me.

L. C. J. Read the Plea.

Cl. of Crown. *Et prædictus Edwardus Fitz-Harris in propria persona sua ven. & dic. quod ipse ad Indictament. prædict. respondere compelli non debet, quia dic. quod ante Indictament. præd. per Jur. præd. in forma præd. compert. scil. ad Parl. Dom. Reg. nunc inchoat. & tent. apud Oxon. in Com: Oxon. vicesimo primo die Martii Anno Regni dicti Dom. Reg. nunc tricesimo tertio, ipse idem Edwardus Fitz-Harris per Milites, Cives & Burgenses in eodem Parl. assemblebat. & ipse ipso. & omnium Com. Angliæ; secundum legem & cons. Parl. de alta Proditione coram Magnat. & Procerib. hujus Regni Angli. in eodem Parl. assemblebat. impetit. fuit; quæ quidem impetitio in plenius suis robore & effect. adhuc remanet & existit, prout per Record. inde in'er Recorda Parliamenti remanens plenius liquet & apparet. Et præd. Edw. Fitz-Harris ulterius dic. quod alta Proditio in Indictamento præd. per Jur. præd. in forma præd. compert. specificat. & mentionat. & alta Proditio unde ipse prædict. Edw. Fitz-Harris in Parl. præd. modo ut prefert. impetit. fuit & existit, sunt una & eadem alta Proditio, & non alia neque diversa; & quod ipse præd. Edw. Fitz-Harris in Indictamento præd. nominat. & præd. Edw. Fitz-Harris in impetitione præd. nominat. est una & eadem persona, & non alia neque diversa: & hoc parat. est verificare, &c. Unde ipse præd. Edw. Fitz-Harris petit. Judicium si Cur. Dom. Reg. hic super Indictamentum præd. versus ipsum ulterius procedere vult, &c.*

Mr. Williams. My Lord, we humbly pray, being assigned of Counsel for this Gentleman, Mr. Fitz-Harris, that this Plea may be received.

L. C. J. Mr. Attorney, have you been attended, according to the Rule of Court. with this Plea?

Mr. Att. Gen. No, my Lord.

L. C. J. What is the Reason of that?

Mr. Att. Gen. Here is no more in effect, than what was offered four Days ago, when Counsel was allowed him. I sent last Night late to them for a Copy of the Plea: Indeed Yesterday at Noon they sent me this Note, That Fitz-Harris intends to stand upon his Plea, that he stands impeached in the House of Peers. I sent to know of them whether they would plead this to the Jurisdiction, or in Abatement, or in Bar: They declared, they would not plead to the Jurisdiction, but now I see 'tis to the Jurisdiction.

L. C. J. It is so; and that he proposed to plead at first.

Mr. Att. Gen. It is true, my Lord; but thus they sent me Word.

L. C. J. And as a Plea to the Jurisdiction, so it concludes.

Mr. Williams. My Lord, we have done all that is possible for us to do in this Case. The Court directed us to attend Mr. Attorney with the Substance, and so we have done; but the Form, we had Liberty to do as we pleased in.

L. C. J. You need not go about to excuse it, that you have not done it; we charge you with nothing.

Mr. Williams. I don't go about to excuse it; we don't take it as a Charge upon us.

L. C. J. All we say is this: If Mr. Attorney had had it, peradventure he might have considered of a Replication by this Time, or what he would do concerning it; but if he hath not had Time, we cannot expect it from him.

Sir Fr. Win. My Lord, I only beg one Word as to Matter of Fact, and 'tis material as to ourselves to urge it. We did send several Messengers to get, if it were possible to be obtained, a Copy of the Impeachment in Parliament. We sent to the House of Lords Clerk to get it; but they that went down, tell us the Clerk is not in Town, or else we had sent Mr. Attorney the whole Plea at that Time.

L. C. J. I only ask the Question, to see whether Mr. Attorney hath had time to think of it.

Mr. Att. Gen. My Lord, I think I need not any time in this Case.

L. C. J. Pray go on, Sir.

Mr. Att. Gen. My Lord, I do pray your Judgment upon it; for 'tis a Plea that is insufficient: Nay, 'tis no Plea to bar you of your Jurisdiction. First, I observe that whosoever will plead a Plea to the Jurisdiction, if he have any Record to plead, must have it in *poigne*, must produce it in the Court, or at least must produce a Copy sworn, that the Court may see there is nothing dilatory in the Case. And for this Matter, it will appear upon Examination to be a plain frivolous Plea; for there is no such Matter depending as this Plea alleges. But I speak of it as a Plea to the Jurisdiction of the Court; and such an one as will plead such a Plea, he must have the Record ready, to shew it to the Court, and by the Course of Law ought to have it ready to assert to the Court, that they have not Jurisdiction: So then 'tis certainly naught. That is the first Thing. Another Thing is this; with Submission, I say, They have pleaded no Record at all, nor any Impeachment at all, as this Case is; for the Notes that I have taken, my Lord, are, They say he was impeached by the Commons *de alta Proditione*; but that is naught. He ought in his Plea to have set forth his Impeachment, and for what Crime particularly; for either an Indictment or an Impeachment *de alta Proditione*, or Felony, or any other Crime, is naught, the Law allows it not. He ought to set forth, and must not aver upon a Record, but set it forth in *hec verba*, or in the Substance of it; and so ought to plead the Record entirely as it is. And for those necessary Averments that cannot otherwise be made, the Law allows of them. But in this Case he cannot come and aver upon this Record; for he hath set forth the Impeachment not as it was, but only barely *de alta Proditione* in general, which the Record must shew, so as the Court may judge of it, and it must not be intended. But as they have set it forth, in this Case there is nothing of Treason specified in the Record averred, that can intend this to be the same; and, My Lord, so are all the Precedents. Whosoever pleads a private Act of Parliament, must plead it as it is, not in general that it is for the same Matter; for I take it then it is naught: And we are in your Judgment, that this is no Plea to the Jurisdiction upon that Point.

L. C. J. Mr. Attorney, Do you think it prudent to argue it this Time, or will you take a Day? Pray consider of that a little.

Mr. Att. Gen. My Lord, I think delay is very dangerous and mischievous in this Case.

L. C. J. We can give you as short a Day as you please.

Mr. Att. Gen. But to satisfy the Court, the Clerk will be ready with the Journals, to shew that the Fact is not as they plead it.

H h

L. C. J.



*L. C. J.* Look you, Mr. Attorney, we must go on in a legal and formal Way, when we have a Plea put in; therefore whether you will not take Time for a Day or two to consider of this Plea: You had the Substance of it, but nothing concerning the Manner of the Pleading; they would not tell you whether they would plead it in Abatement, or in Bar, or how: Therefore whether you will not take time to consider of this Pleading for a Day or two, pray consider with yourself.

[Then the King's Counsel consulted one with another.]

*Mr. Att. Gen.* My Lord, not only for what I have already offered, but for many other Reasons, we can see this can be no way a Plea to the Jurisdiction of this Court; for upon any Impeachment or Indictment, the King hath Election to proceed upon which he will: And if there were ten Indictments for one and the same Thing, if none of them are come to a Judgment the King may proceed upon which he pleases, as in that Case of Ireland Yesterday; though the Party were arraigned and ready to be tried in Ireland, yet the King might, if he pleased, try him here; and the King hath ordered it so to be. But, my Lord, I take it, that this is not only apparently a false Plea, but a frivolous Plea in itself, being to the Jurisdiction of this Court: For there was never any thing of a Crime so great, but this Court of King's Bench, which hath a sovereign Jurisdiction, for Commoners especially, could take Cognizance of it; and I put it upon that, my Lord. Never was such a Plea pleaded to your Jurisdiction; and therefore we pray your Judgment upon it.

*Mr. Sol. Gen.* My Lord, before we come to that which is the Question, if there were such a Plea pleaded to the Jurisdiction as they would have this to be, we humbly pray the Judgment of the Court, whether this be any such Plea at all as can bear any Debate: For it will not be a Question now, how far an Impeachment depending is a Bar to your Jurisdiction? But the Question is, first, whether this be such a Plea? For, my Lord, I do take it, no Man can plead any Record in another Court, any Indictment or Acquittal upon it, by pleading it in this Form as this is pleaded, by saying generally, that such a Time in such a Court, he was indicted for the same Offence, and was acquitted; yet thus this Plea is, and no more. But he that will plead *auter foitz acquit*, must plead that such a time he was indicted in such a Court, and set forth the Indictment and all the Proceedings of that Court upon that Record, and then 'tis proper for Judgment; such a Plea is formal, and requires an Answer, and it will be proper for us to give it an Answer: And when such a Plea is put in, we shall either demur to it, or give it the Answer that it requires of *null tiel Record*. But this does not require any particular Answer, because it sets forth no Record at all that we can answer to: for it is not sufficient to say in general, that he was indicted and acquitted, or impeached, and then averr that it was for the same Offence; but he ought to shew forth the Impeachment, and set forth in the Plea the Record, that upon it you may pass a certain Judgment. Therefore we hope you will set this aside, as not being at all formal, or requiring any Answer to it.

*Mr. Serj. Mayn.* My Lord, If you please to consider in this Case what is the Question, and what not. At present 'tis not the Question, whether if a Man be impeached of High-Treason by the Commons before the Lords, and this Impeachment stands unreversed in the Court of Parliament; I say, 'tis not the Question, whether this Court have Jurisdiction over this Man for that Offence? but the Question is, Whether he hath put in such a Plea before you, as will put that in Question? Under favour, 'tis not sufficient for him that will plead a particular Record, in bar or other way, and make use of it, that he pleaded it in general Terms, but he must set forth that Record as it is; he must not give you the Title only, or say, he was indicted for such a thing generally; but he must set it forth to the Court, that if Issue be taken, the Court may, by comparing the Record with the Plea, judge whether it be the same Matter or no. Now when he pleads he was impeach'd for the same Treason, he must set forth what that was, that it may appear it was for the same Treason; and if that be particularly set forth as it ought, upon *null tiel Record*, the Question will be, Is there such a Record or not? Now if he comes and says he was indicted or impeached, and not for what in particular; the two things that upon the Issue are to be compared, are not made so fit for your Judgment. In our Law, my Lord, if a Man will plead, he need not set forth a general Act of Parliament; but if he will plead a particular Act, he must set forth the Matter of it, to bring his Case under the Judgment of the Court; and whether this be so pleaded or no, we submit it to you.

*L. C. J.* Pray let me speak two or three Words to you: Do you speak it against our receiving of the Plea?

*Mr. Att. Gen.* Yes, my Lord, we hope you will not admit such a Plea.

*L. C. J.* That will be hard. Pray then consider with yourself, whether if it be an insufficient Plea (for we'll say nothing at present to that) and if the Plea be such that no Issue can be taken upon it (admitting it were so), whether you should not demur to it, before you demand our Judgment, that we may have somewhat upon the whole before us to judge upon? And I speak it to you, Mr. Attorney, to this purpose, that you may consider, whether you shall think fit to demur to this Plea, or whether you shall think convenient to take Issue upon it, or to reply to it, that it may come judicially for our Opinion; for in a regular way, if a Plea be admitted, it must be either demurred to, or reply'd to. Pray consider of it in this Case; and we will give you time to consider, if you please.

*Mr. Serj. Maynard.* Under favour, my Lord, if a Plea be apparently vicious when it is upon Record, we need not demur to it, nor take Issue; for else the Mischief will be, we shall admit all that is well pleaded to be true.

*Mr. Serj. Jeff.* My Lord, if your Lordship please, I do confess that according to the usual Course and Practice, if there be a doubt upon a Plea that is read, whereon any Point in Law may arise, you do put the Party to demur or take Issue: but according to the common course of this Court in common Cases, and much more in extraordinary Cases, and especially in capital Cases, and most of all in a Case of High-Treason, such as this, if it do appear to the Court, and your Lordship, that the Plea is in its nature a frivolous Plea, you do usually refuse to admit such a Plea, and give Judgment upon it. Now we would acquaint your Lordship with our Apprehensions in this Case, and we would pray you to consider what the danger may be upon us to demur, if this Plea be frivolous, as it appears to be: For whether an Indictment in this Court, or an Indictment in another Court be for one and the same Offence, and so a bar to the Jurisdiction, we are not so much as admitted into the Question of that, as this Plea is. Whereas according to the course in other Pleas, we pray you would be pleased to see the Inconvenience, if we should be put to demur to it; for then we do admit by this Demurrer, that this Impeachment is for one and the same thing; and we humbly conceive, my Lord, that is a little dangerous. How then will it be possible for you ever to judge, that the Impeachment (which in Fact is otherwise) and the Indictment is for the same thing, unless you will put them to pursue the com-

mon Methods, how it was in the House of Lords, by shewing forth the Record? And what can we do otherwise (it being apparently against the common Form of Pleas, and manifestly for Delay only) than pray the Judgment of the Court, which we hope will be to reject this Plea?

*L. C. J.* Brother Jeffries, you need not be afraid, that you shall be concluded by this Demurrer, that there is such an Impeachment in the Lords House for the same Offence: there will be no colour for it. And Brother Maynard, formerly I confess, when they pleaded Pleas *Ore tenus*, and took their Exceptions *Ore tenus* too, they would demand Judgment of a Plea presently; and so it was in the Bishop of Winchester's Case, 3 Edw. III. where there was an Indictment against the Bishop here in this Court, for going away from the Parliament at Shrewsbury without the Leave of the Lords: There Shurd comes in, and pleads *Ore tenus* this Matter, and says, This is a Thing that concerns the Lords in Parliament, of which they have Cognizance only, and so prays the Judgment of the Court presently, Whether they have Jurisdiction of the Cause or no? And he pleads it in Abatement. There they over-ruled him presently without any more to do, because their Pleadings were not as now they are; now they are grown into a formal Way, all entered upon Record, or at least written in Paper: And what should be the Reason why you should not do according to the common Course of the Court, I leave it to you to consider of it.

*Mr. Serj. Mayn.* It is very true, my Lord; anciently the Course was so, my Lord, and the Law was so too, to plead *Ore tenus*; but pleading in Paper is the same Thing; and the Course of the Court hath been, when they saw it in Paper to be a frivolous Plea, to give Judgment presently: And you have the same Privilege upon this Account, as they had when Pleas were by Word of Mouth. If there be a Demurrer, it may hang longer than is convenient this Cause should do.

*L. C. J.* Do not speak of that, Brother Maynard; as to Delay, you shall take as short a Day as you will.

*Mr. Att. Gen.* I have looked upon all the Precedents, and could never meet with one Demurrer where the Plea was to the Jurisdiction: But I pray your Judgment upon the first Matter, whether whosoever pleads to the Jurisdiction ought not to have the Record in poigne to justify his Plea? In a Plea in Bar indeed it may come in by *Mittimus*, but in a Plea in Abatement, the Party ought always to be ready with those Matters that are to out the Court of their Jurisdiction; and besides, the Court is to maintain their own Jurisdiction, the King's Counsel have nothing to do to assert that, but they ought to avoid all Things that may be to the King's Prejudice, and therefore it ought to be by the Judgment of the Court in this Case set aside. But I do think you will never find a Demurrer that was to a Plea to the Jurisdiction.

*L. C. J.* Pray consider of that.

*Mr. Att. Gen.* But if it appear to be a frivolous Plea in the Form or in the Matter, you will not put us sure to demur.

*L. C. J.* If you do insist upon it, that you won't demur, nor do nothing, we will give Judgment; but we will take Time to consider it, if you won't demur, nor take Issue, or Reply.

*Sir Fran. Withins.* Will your Lordship please to spare me one Word? As it hath been observed to your Lordship, this is a Plea to the Jurisdiction of the Court; and if they do plead a Plea of that nature, the Court always expects the Plea should be substantially good, otherwise 'tis not to be received. Now it is not substantially good here; for it says, that Fitz-Harris was impeach'd of High-Treason: Now such an Impeachment is naught, for no body can be impeached of High-Treason generally. It ought to come and set forth the particular Acts that make up the Treason; for the calling of a Thing so, does not make it so: Therefore they that would plead this Plea, must come and shew that there is an Impeachment that hath such Matter in it as does amount to Treason; so that then it being a naughty Plea in the Substance of it, and the end of it to put this Court out of a Jurisdiction, we hope for that Reason you will not receive it.

*Mr. Sanders.* One Word farther, if your Lordship please, on the same Side, for the King. As for this Plea that he hath pleaded here, if it had had substantial Matter in Law whereupon to ground a Debate, we should not press your Lordship not to receive it, but we must get off it as well as we could; but when it is manifestly pleaded merely for Delay, and it so appears to your Lordship upon the reading of it, and that there is nothing of Substance in it, then we hope you will not receive it, nor put Mr. Attorney to demur to it, or take Issue upon it. Now for the Plea the Case is thus: Here is an Indictment for Treason against Mr. Fitz-Harris, for conspiring the Death of the King, compassing of it, and declaring such his Intention by a venomous Libel. Now he comes and pleads to out this Court of their Jurisdiction; and what does he plead? He says he was formerly impeached of High-Treason in the Parliament, that is all he says concerning the Impeachment; then he does come and make an Averment, without shewing more, that this High-Treason, and that for which he was impeached, is the same; and takes upon himself to judge, whether the Court will or not, and will not submit it to the Court, which certainly is not the right Way of pleading. If Mr. Fitz-Harris should come and plead *auter foitz acquit*, That he had been tried at another Time for the same Offence and acquitted, he should not have said generally he had been formerly indicted and acquitted, and this for the same Thing; but he must have shewed the Record, and then averred upon the Record that it was for one and the same Crime. For suppose in this Case, which would have appeared perhaps to be so, if he had done as he should have done, shewn that there was such an Impeachment, whereby he was impeached of High-Treason, and which Impeachment did charge him with Treason for levying War against the King, and then have made a Conclusion as he does now, with an Averment, that the Impeachment and the Indictment was for one and the same Offence: Under favour, notwithstanding his Averment, the Court would have adjudged them not to be the same; for if so be the Treason do not appear upon the Record to be the same, his Averment will signify nothing; why then his pleading now this insufficiently for want of the Record, will be better for him than if he had pleaded it sufficiently. Why then if he had now pleaded, that there is a Record of the former Impeachment, and set forth the Record, and then averred this was for the same, Mr. Attorney might take Issue either there was no such Record, or said it was another Treason, and traversed it that it was not for the same; and so there would either have been one Trial by the Record, or the other upon the Fact by the Country. But now as he hath made it, this Trial both upon the Record, and upon the Fact, is only triable by the Country, not by the Record. For if Mr. Attorney take Issue that there is no such Record, then all the Record is, that he was impeached for High-Treason, and then a Record of Impeachment for any High-Treason would serve the turn; which if it be not for the same, it ought not: So then the Issue of *null tiel Record* could not be taken. Why then now, my Lord, as to the Fact: If Mr. Attorney take Issue, that it was not the same Treason, then the Record must be tried; that is, whether there



there was such a Record that does contain an Impeachment for the same Treason for which he stands indicted; this, I say, must be tried by the Country. And if he have pleaded it so, that Matter of Record upon Issue must be tried by the Country, for that reason his Plea is naught; and if that be so, then the Court may be satisfied, and 'tis apparently pleaded only for Delay, because he would not come to the principal Matter, and plead Guilty or Not Guilty, which is the Matter of Fact most proper for the Country. I rather hope he is not Guilty than that he is; but if he be Guilty, 'tis the most horrid venomous Treason as ever was spread abroad in any Age. And for that reason your Lordship will not give countenance to any Delay. And therefore we pray the Plea may be rejected, and he may answer over.

Mr. Att. Gen. He hath not pleaded *prout patet per Record*.

L. C. J. Yes, 'tis *prout patet in Rotulis Parliamenti*. He does say that he was impeached of High-Treason by the Commons before the Lords, as appears by the Records thereof amongst the Records of Parliament.

Mr. Att. Gen. I did not truly remember that; but I beg your Pardon if it be so, for I had not a View of the Plea till now; but I am ready thus far to satisfy the Court, 'tis a pure false and frivolous Plea. And then with Submission I offer it to your Consideration, whether you will give any time, or presently reject it.

L. C. J. We will give them no time, that is sure. But the Question is, Whether time should not be taken, not in Favour of the Prisoner, but of the King and of the Court?

Mr. Att. Gen. I am ready to make out, if it were necessary, that there is nothing of all this true; 'tis all Fiction that is pleaded, and nothing in the Record to warrant it: I have a Copy of the whole Journal, and of the Transactions in the House of Lords, the Book is close by and ready to be shewn; but when 'tis a frivolous Plea, I hope there will be no need of that trouble.

L. C. J. But, Mr. Attorney, whether we can take notice of the Journal Book now, you had best consider, as this Case stands.

Mr. Att. Gen. They ought to have it here ready, they ought to have it here in *poigne*.

Mr. Just. Jones. There have been very many good Arguments urged by you, upon which perhaps the Plea will be judged insufficient; but the Question is, Whether you are now in any such Form as we can pass Judgment upon this Plea or no? Therefore it being offer'd to you to consider of it, what you will do in it; sure it is reasonable you should consider of it, and when you are agreed, then you may ask our Judgment.

L. C. J. We cannot put you to it to give a final Answer to bind the King: therefore let it stand as it is; we will consider of it.

Mr. Att. Gen. Then, my Lord, I'll demur immediately.

Mr. Sol. Gen. And we pray they may join in Demurrer immediately.

Mr. Serj. Jeff. If they do not mean it for Delay, now Mr. Attorney hath demurred, I suppose they will join Demurrer immediately.

[Then the Clerk of the Crown drew up a general Demurrer, which Mr. Attorney signed, and it was read in the Court by the Clerk of the Crown.]

Mr. Att. Gen. We pray they may join in Demurrer.

Mr. Williams. My Lord, we that are assigned of Counsel for this Gentleman, the Prisoner at the Bar, (that your Lordship may be satisfied, and all that hear us, that we do not design or desire to delay one Minute in this Cause) do declare, that we will join in Demurrer with them immediately.

[Then the Clerk drew up the Joinder in Demurrer, which being signed by the four Gentlemen of Counsel with Mr. Fitz-Harris, was also read in Court.]

Mr. Att. Gen. My Lord, I pray your Judgment; here is an Indictment for framing a treasonable Libel—

Mr. Williams. My Lord, we hope we shall not be put—

Mr. Att. Gen. Pray, Sir, hear what I pray. My Lord, I desire your Judgment, that the Plea may stand over-ruled for a plain fatal Error in it. This is a particular Indictment for the framing a most pernicious scandalous Libel against the King and the Government, for Treason in that particular; and I think there is no Person does doubt, but that this is a Matter within the Jurisdiction of this Court to try: There is no Difficulty in that. What do they do to out this Jurisdiction? They come and plead, that *Fitz-Harris* was impeached *de alta Proditione*; that's all they plead of High-Treason in general, to out the Court of a Jurisdiction of a particular Treason, for framing a malicious traitorous Libel; and this is a particular Treason upon the Statute of the 13th of this King. Now they have pleaded no particular Treason upon that Statute they were impeach'd for, nor upon the Statute of the 25th of *Edward III.* which hath a general Clause of a declaratory Power, and it may be he was impeach'd upon that, and we shall not intend it otherwise, that being the general Law, the other but a particular Law for this King's Life. Now in all Pleas to the Jurisdiction, they ought to be the strictest and most certain of any Pleas whatsoever. And as I offered before to you, so I do now again, they ought to be ready with the Record to justify their Plea: but this in short I insist upon, that to out a Court of its Jurisdiction for a particular Treason, 'tis not a good Plea, by saying he was impeached or indicted generally of High-Treason, and no Averment can possibly help it. For it appears by the Impeachment 'tis not for the same, and 'tis rather to be intended that it was not; but the Impeachment being general, that they went upon a declaratory Power, in the Statute of the 25th of *Edward III.* which reserves to them the Power of declaring Treason at large, and not upon that which may be tried here in an inferior Court upon a particular Statute: I say, my Lord, they ought to have pleaded it certainly, which they having not done, 'tis fatal; and I pray your Judgment upon it: and I hope they are ready to make good their Plea.

Mr. Sol. Gen. My Lord, that which we do say to it, is, That this Plea is neither good in Matter nor Form; and if it had been pleaded never so formally, perhaps we would have demurred to it: but as now it is pleaded, it is not formal, and therefore we pray it may be over-ruled. The Exception, we take it in point of Form, we think is fatal; for there is no man that pleads an Indictment or an Impeachment in another Court, but must set forth the Indictment in the Plea, which is not done in this Case, and we take that to be fatal to it. For a Man that will plead *auter foitz acquit*, must set forth the Indictment, and all the Proceedings of the Court upon that Indictment; this is the constant pleading in all Cases, and particularly in *Vaux's Case*, the Fourth Report. Whoever will plead *auter foitz acquit*, must set forth the Record, before it will require an Answer to be given to it.

L. C. J. What do you say to it, Gentlemen, for the maintaining of our Plea?

Mr. Williams. This is that we say, my Lord: We hope your Lordship, and the Court, in this Case, will not tie us up presently to come

and argue this Matter. One thing I would mention, because it hath been said there never was such a Precedent; I think, to this purpose, the Precedent of *Elliot's Case* is very full in it. Mr. Attorney is pleased to say, he never found that any Plea to the Jurisdiction did ever require a Demurrer, but was over-ruled or allowed by the Court presently; but that Case is plain to the contrary upon that very Matter: It was an Indictment brought against *Elliot*, for some Misdemeanors committed by him in the House of Commons; this being pleaded to the Jurisdiction of the Court, the Attorney-General at that time said it was not to be received; that was the Matter he insisted on then, that it should be rejected: but the Court did then, as you do now, over-rule the Attorney in it, and put him to demur.

L. C. J. We have done the same for you.

Mr. Williams. Then, my Lord, here is a Precedent that Mr. Attorney hath not seen: Now for Time, the Court in that Case did not tie Counsel up to argue the Plea presently, but gave them time till the next Term. We ask not so hard a thing of the Court, as so long a time in this Case, only here is a Man's Life in question; 'tis indeed for Treason, and so it is of consequence to the King; and there is also the Privilege of Parliament consequently concern'd in it. What time your Lordship and the Court shall think reasonable for us to be ready in, we leave it to your Lordship; we design not to delay at all, only we desire a reasonable time. Your Lordship did in the Case of *Plunket* give him time for his Trial till next Term, which is as high a Treason as this, I am sure.

L. C. J. You would have People think you have strange Measure in this Case, that you have not the same time given to you that was given to *Plunket*: Pray consider, you object these things as tho' the Court were hard upon you, to tie you up in point of time: Is your Case like *Plunket's*? Pray give us leave to clear our Accounts as we go along: He is brought from *Ireland* hither, is indicted for what he did in another Kingdom, and it is by Law he is so indicted indeed; but he being kept close Prisoner, and not knowing what time he should be brought to a Trial, he desires time to send for his Witnesses, who are to be brought over to clear him of the Treason. Could we in Justice deny it him, or could there be a shorter time than next Term, given him, when his Witnesses are in another Kingdom, and it would be a Fortnight or three Weeks before possibly he could have his Witnesses here? This I mention, because you will needs make use of such a Case, that is no more like yours, than any thing that is the farthest different from it; yet you will have the Case to measure with your Case.

Mr. Williams. My Lord, I know it is in the Discretion of the Court; and as your Lordship did what was just for *Plunket*, so you will to this Person: I know you will do what is right to every body: We are Counsel assigned by your Lordship, and we doubt not but your Lordship will be just to us, and give us a reasonable time to argue it.

L. C. J. Look you by the way, Mr. Williams, I must tell you, when we assigned Counsel to Mr. *Fitz-Harris*, we expected that Counsel should consider the Plea, so as to be able to maintain it, when they come to plead it here; for that reason we gave him time to plead it, so as he would stand by it: What needed we else to have assigned him so much Counsel in such a Case as this is, but that he should be ready? And why you should now hope that we will give you a longer time for Argument in such a Case, I see not. Consider, whether in Discretion you think longer time ought to be expected upon such a Plea as this is?

Sir F. Win. My Lord, we will not take upon us to prescribe, nor to mention any time in particular, we leave that to the Discretion and Judgment of the Court; but this, I think, we may pray, according to the Duty we owe to our Client, upon your Lordship's assigning us of Counsel. We could not foresee till to-day, what the King's Counsel would do; whether Mr. Attorney would take Issue upon us of *null tiel Record*, or upon any of our Averments. We could not foresee whether he would demur to us, or not. I know your Lordship will be as favourable to us as you can; not having those Papers, or Sight of those Records that were necessary, and would have expedited this Matter, our time was all spent in forming of the Plea, and we could not prepare particular Matter in Law to defend it. We are as ready as can be expected, and we have been as industrious to prevent any Delay, as any Persons could be in our Condition; therefore, it may be, we have had a general Consideration of the Plea: But now we see where the Doubts do lie upon it; 'tis a Matter of Law pleaded to the Jurisdiction of the Court. I do not indeed love to cite Precedents upon what is plain; but withal, I do not love to say things upon a sudden are plain without Consideration: but this I will say, as 'tis now upon this Demurrer joined, it is a Case well worth our taking care of, and yours too; I must say it with your Lordship's leave. Therefore, if in the Case of my Lord *Hollis*, which was but upon an Information, and that but for a Misdemeanor, and tho' it was a Plea directly to the Jurisdiction of the Court, and certainly they came prepar'd; for they were all at liberty, and had resort to all Papers and Books before the Plea pleaded, which we could not have; yet the Court was pleased to assign them time, and give them a large time, I hope we shall have some reasonable time. I do not speak it, that we should have so long time; but I humbly beseech your Lordship, that we may do our Duty to the Court, and to our Client, that we may have a little time. It is true, it is a great and a horrid Treason; but it is as true, here is the Life of a Man concerned in it: we affect not delay at all, but hope you will not deny us what time is reasonable.

L. C. J. Look you, Ill tell you; you might, if you had pleased, have entitied yourselves better to have had time to speak to the Plea, if you had pleaded over to the Treason; then we could have given you time to have spoken to it, and not delay'd the King at all: but you have thought fit not to plead over. I must confess, I did expect you would have pleaded over, as you might have done, and I thought you would; therefore having not done it, it is in our Consideration, whether we will give you time, and what time we will give you.

Mr. Wallop. It is under your Lordship's Favour, according to the usual Course of modern Practice. I have been an unprofitable Attendant here near forty Years, and, for my part, I did never yet see so swift a Proceeding as this is now; it is as swift as Lightning. It is a very extraordinary thing; we might well conceive, that nothing more should be expected from us than what is usual, and that we should not be put out of the ordinary Proceedings. Anciently indeed, as your Lordship did observe the other Day, they pleaded *Ore tenus*, and then the Proceedings were very quick: now indeed it is otherwise; modern, and what we may call ancient Practice too, hath made an Alteration from that Method: and we humbly pray we may not proceed, but according to the rate of modern Practice. My Lord, whereas they are pleased to call it a frivolous Plea, I believe it is a Plea of the greatest

Import



Import that ever these Gentlemen came here about, whatsoever they are pleased to say. But your Lordship knows the Life of a Man is the greatest Favourite in Law; and that to be a most ancient and wise Rule, *De morte hominis nulla est cunctatio longa*. And since we could not reasonably expect to be thought to come provided in this Case, we humbly pray, that your Lordship will allot us such a reasonable Time as your Lordship shall think fit.

L. C. J. Come, let me propose this to you, Will you plead over?

Mr. Pollexfen. My Lord, I will give you an Answer to that, We cannot do it. When we were together, we did consider, whether if we should plead over, it would not destroy the Plea, and we were of Opinion that it would destroy the Plea: We cannot plead over, but we give up the Jurisdiction. It is as indifferent and light to me, as any Body, to be forced to argue it now; but as to the Matter of it, I believe no Body can say they ever saw many Instances of the like Nature: Therefore, pray, my Lord, let us not go on so hastily with it, for we could not foresee, what since we know, how it would be with us. I did not think they would have demurred; but now 'tis come to that, we must make the best of it. We have pleaded this Plea; if you will not be pleased to give us Leave and Time to be prepared to argue it, you must take it as we are able, since we can't have time to make ourselves able.

L. C. J. Certainly, Mr. Pollexfen, *in favorem vite*, it would not hurt the Plea to plead over.

Mr. Att. Gen. My Lord, if your Lordship pleases to favour me a Word in this Case; I hear several things urged, particularly instancing in modern Practice. If that Gentleman will shew that in any Case the King and the Court were so indulgent to give four Days to plead to the Jurisdiction of the Court, then he will shew me something of modern Practice, which I know not; but if that Gentleman will remember modern Practice in a great Nobleman's Case, for whom he was of Counsel, it was told him, if he would debate the Point of Law, he must do it presently: They never would give him time to prepare for his Argument, there was no such modern Practice then. I would desire him to give me one Instance, that when Gentlemen are assigned of Counsel to plead a Matter to the Jurisdiction, and deal so with the King's Counsel as they have dealt with us, not to let us see the Plea till now; the modern Practice hath been to give them any Time. For them to say, that they could not foresee what we would be at; could they not foresee the Points of Law? Could they not foresee a plain Case? But they do not take off the great Matter, that he that doth plead to the Jurisdiction, ought to have the Record ready in his Hand; but, my Lord, we lay our Thumb upon that which is our Exception; they have pleaded no Impeachment of any Crime, that can appear to be the same with that for which they are indicted, that is the Point. Is there such Difficulty? Did not these learned Gentlemen think? Could they not foresee that we should look into their Plea, that it should be legal? Therefore I did, and do pray your Judgment. If they had pleaded, and set forth the Record truly, as it is, and as it ought to be set forth, in case they would have any Benefit by it, we would have given them another Answer; but if it be done purposely, as it is done with Artifice, I am bold to say, for these Gentlemen know how to plead a Record as it ought to be, and how this ought to be pleaded to, to out the Court of a Jurisdiction of a particular Crime. They say, the Life of a Man is concerned, and so is the Peace of the Kingdom concerned too, in the Life of as great a Traitor as ever was tried in *Westminster-Hall*. For if his Treason had taken Effect, certainly the Kingdom had been very near embroiled in Civil Wars by this Time; therefore the whole Peace of the Kingdom depends upon his Life, and it depends upon the clearing of the whole Matter. And I challenge them again, if they can shew me any Instance of the like Nature. That of *Eliot's Case* that was mentioned, it was an Information; and to Pleas upon Informations there have been Demurrers, but to Indictments found by twelve Men, we do not meet with any Demurrer any where to a Plea to the Jurisdiction. But I pray your Judgment, that he may plead in Chief; for 'tis but a *Respondens ouster*, and if these Gentlemen desire to take Time, I hope you will not delay the King by giving Countenance to such a plain imperfect Plea; for those high Matters they talk of, that will be the Consequence, they can never come in Question upon this Plea.

Mr. Sol. Gen. My Lord, I have but one short Word to that which is now in Question. Our Exceptions to the Plea we offered and opened before; the Question is now, whether they shall have time to argue this Plea? And the Arguments they use for longer time, is, the Life of a Man, and they could not be prepared on a sudden, because they knew not what we would do. For the hasty Proceedings that have been in this Case, which they clamour of, I think they have little Reason to speak so, since that hath been done in this Case that never was done in any other. He hath had three Days Time to consider, whether he will plead to the Jurisdiction of the Court, which never was done to any, and so great a Favour, that he is scarce entitled to any farther Favour. Does any Man believe that they are not prepared? Do not Gentlemen, when they consider of a Plea, consider upon what Grounds they plead? And does not that let them into the whole Matter, where the weak Parts of the Plea are, and what may be objected against it? I am sure that these Gentlemen are of that Consideration, that no Man does believe they would put in this or any Plea, without having considered beforehand what to do. And then, when they have put in a Plea upon great Consideration, no Man is to think that they are unready to maintain it. Our Exception is short, and they do but talk in general Terms that they are unprepared; and they have no Reason to expect this Kindness from the Court, especially since they used Mr. Attorney at this Rate: They gave him not the Plea, but only a Note to tell him they would do that which they said four Days before, and no more. If they had done regularly, they should have brought Mr. Attorney the Plea, and left a Copy with him, and desired him to consider of it. But we do not pretend we are surprized for all this Usage, we see the Plea here, and we see the Faults of it, and we have demurred to it, and tell them our Exception; sure they are better prepared than 'tis possible for the King to be, yet we are ready; and we hope you will grant them no longer Time.

Mr. Serj. Jeff. Will your Lordship be pleased to spare me one Word: I wonder at what Mr. Wallop seems now to urge concerning the Life of a Man that is concerned in this Case; 'tis true, the Life of a Man is concerned, which is a dear Thing to the Law; but certainly the Life of the Government is more dear to the Government, and all Courts of Justice, than the Life of any one single Person: And I am sure this one Person hath done as much as in him lies to strike at the Life of the Government, in case this be true that is laid to his Charge. Now to make this Case like

to *Phaulkon's* the other Day, is strange: I think your Lordship hath given an Account of that: For both he pleaded to the Fact, Not Guilty, as *Plunket* did: We that are of the King's Counsel would in common Charity hope, that he is not guilty; but I am sure, if he be guilty, no Englishman can think that he deserves to live: Why then should we be so fond of a Man's Life, that hath been guilty of such a Fact as this? For Example Sake; surely if that be the Thing in Question, we ought to have speedy Justice executed upon a Man that deserves no Mercy. Your Lordship was pleased to take Notice of another Circumstance in the Case of *Plunket*: He was indicted, he was arraigned, and was to have had his Trial in *Ireland*, and was to fetch his Witnesses from thence; all these Things were in that Case. He desired Time to consider what he should plead; but your Lordship finding an Indictment found against him, according to the Rules of Justice, over-ruled that Matter he suggested, and made him plead Not Guilty, before ever you admitted him to debate any thing of that Fact. And then it appearing to your Lordship to be in another Kingdom, and that it was impossible, in regard of the Hazards of the Winds and Seas, to get over his Witnesses in a little Time, your Lordship gave him Time; but you gave him as strait a Time as could be consistent with the Rules of Justice, and as his Case would bear. Now, my Lord, this being offered in a Case of that Expectation which the Case before you seems to have, we desire the Dispatch of it as much as we can. In case the Man be innocent, God forbid but he should be acquitted; but if he be guilty, God forbid he should live a Minute.

L. C. J. Surely you don't take the Case, Gentlemen, to be a Case of so much Difficulty, as to deserve long Consideration; we did expect truly, that you would have been ready to have maintained your plea.

Mr. Williams. My Lord, we do not desire any long time; be pleased to give us a Day, or two, or three, as you please.

L. C. J. 'Tis said, 'tis in a Case wherein the Life of a Man is concerned; 'tis true, here is the Life of a Man, of whom, till he be found guilty, we ought to have Consideration, as we would of any other whatsoever: For we have no Reason to conclude him guilty till we hear him, and we are to be indifferent till we hear the Evidence; therefore, notwithstanding the Indictment, we ought to weigh his Life as we would another Man's, till he be found guilty. We in ourselves do not see there is any so great Matter of Necessity for Time to consider of this Case; yet I must tell you, since they pray it, Mr. Attorney, we are inclinable to give them a Day or two's Time to consider of it, and see what they can say to maintain this Plea. But then, Gentlemen, if we do so, you must take Notice we will call you to plead presently after our Judgment upon the Plea.

Mr. Williams. My Lord, we have nothing to do with the Fact of this Case; we are only to speak to the Plea.

Mr. Serj. Mayn. Pray how then is your Life in Question upon the Decision of this Plea?

L. C. J. Brother, they do not speak as to this Plea, that it hazards his Life, but the *subjecta materia*, upon the Decision of it, supposing Judgment be against the Plea. Therefore, Mr. Attorney, we do think fit to give him till Friday Morning, and that he shall be brought hither then again by the Lieutenant of the Tower; then we will hear these Gentlemen: And if they do not shew us any considerable Matter to maintain the Plea, they must expect Judgment presently.

Mr. Att. Gen. That certainly will be too long a Time; pray, my Lord, they ought to have been ready now: If they will be pleased to be ready To-morrow Morning, I pray it may go off to no farther time.

Mr. Just. Jones. There is a Necessity, my Lord, I think that it should be so; for there is a long Trial at the Bar here on Friday.

Mr. Williams. That is a very short Time, indeed.

Mr. Just. Jones. You must be ready To-morrow Morning.

Mr. Williams. Unless, my Lord, you will give us a little more Time, you had as good give us no Time.

L. C. J. It seems the Business of the Court is such, on Friday Morning you can't be heard.

Mr. Just. Jones. Either it must be To-morrow Morning or Saturday, and that is *Exchequer-Chamber Day*.

Mr. Sol. Gen. My Lord, I believe they are not in Haste.

L. C. J. Mr. Attorney, We would give them a reasonable Time; but yet we would do nothing that might make unnecessary Delays in this Case.

Mr. Att. Gen. I pray, my Lord, let it be no longer than till To-morrow, and that is more than ever was given in such a Case. I know it was deny'd in my Lord *Stafford's* Case; they would not give the Counsel any Time, but would make them argue presently.

L. C. J. As to that, Mr. Attorney, every Case stands upon its own Bottom.

Mr. Serj. Jefferies. My Lord, we have your Direction for To-morrow Morning.

Sir Fr. Win. No, no, my Lord, we hope not so.

L. C. J. Look you, Gentlemen, to accommodate you, the Court does think fit thus to do: We will be here on Saturday by Seven o'Clock in the Morning. On Friday we can do nothing, for there is a long Trial at Bar that will take up our Time; but on Saturday we will be here by Eight o'Clock sitting, and expect you to be here by that Time: And we cannot afford you then long time to argue in, because it is an *Exchequer-Chamber Day*.

Mr. Att. Gen. If Judgment be against the Plea, they must plead presently then, that we may not lose the Term for a Trial.

L. C. J. You must take Notice of that, by the Rules of the Court they must do it, Mr. Attorney. If our Judgment be against them, the Course of the Court is so, we can't rule it one way or other.

Mr. Serj. Jefferies. But then they ought not to pretend they have no Notice, their Witnesses are out of the Way, and so hinder the Trial.

Mr. Just. Jones. No, No.

Mr. Fitz-Harris. My Lord, I desire I may have these Lords come to me; my Lord of *Essex*, my Lord *Salisbury*, my Lord Mayor, your Lordship, and Sir *Robert Clayton*, to perfect my Discovery. I have something to discover to your Lordship and them.

L. C. J. Your Discovery of what, do you mean?

Mr. Fitz-Harris. Of the Plot, and of the Murder of Sir *Edmundbury Godfrey*.

L. C. J. We did examine you about the Murder of Sir *Edmundbury Godfrey*.

Mr. Fitz-Harris. Your Lordship went away in Haste, before I had told all I could say.

L. C. J. We asked you ten times, whether you had any more to say, and you said, No.

Mr. Fitz-



Mr. Fitz-Harris. My Lord, I was in Confusion and Consternation; I scarce knew what your Lordship said to me.

L. C. J. We were not in haste; we asked you often that Question.

Mr. Fitz-Harris. It was haste to me, because I was not provided of the Questions you asked me.

Mr. Just. Dabben. To some of the Questions we asked you, you answered readily and freely; but to some we could not get a positive Answer by any means.

Mr. Att. Gen. My Lord, he told me he was not in England then, and that he knew no more than what he had discovered.

Mr. Fitz-Harris. Did I say so, Mr. Attorney?

Mr. Att. Gen. Yes, you are the Man.

Mr. Fitz-Harris. I can bring twenty Witnesses, I did not tell you so; and I can bring 500 Witnesses, that I was in Town then.

L. C. J. Lieutenant of the Tower, take your Prisoner, and be here before eight o'Clock on Saturday Morning.

Sir Fran. Win. My Lord, now I desire we may have a Copy of the whole Record.

L. C. J. Not of the Indictment, but of the Plea and Demurrer you may.

Sir Fran. Win. But, my Lord, I hope you will let the Indictment be read upon Saturday, because Mr. Attorney had fixed his Exception upon part of the Indictment, which is the Libel that he calls the particular Treason, and I desire it may be in Court.

L. C. J. It shall be, and if you have any occasion of Reference to it, we will look upon it; we are all upon our Oaths, and must take heed that no Prejudice be done to the King, as well as to see the Prisoner have no unfair thing put upon him.

[Then the Prisoner was carried back to the Tower.]

On Saturday the 7th of May, 1681, Mr. Fitz-Harris was brought to the Bar of the Court of King's-Bench, about eight of the Clock in the Morning.

Mr. Williams. **M**AY it please your Lordship, I am assigned of Council for this Person, Mr. Fitz-Harris, the Prisoner at the Bar.

Mr. Att. Gen. My Lord, if you please, I will only briefly acquaint them with what our Exceptions are, that they may apply themselves to them.

L. C. J. Look you, Gentlemen, I must tell you all our Time is strait enough for this Matter, for we are all of us to be by and by with all the Judges in the Exchequer-Chamber; therefore we pray this of you, we will abridge no Man's speaking what is material for his Client, but we desire you will keep to the Matter, and the Points in Question between you, and save our Time as much as you can.

Mr. Att. Gen. That is the reason, my Lord, why I would lay my Finger upon those Points that will be the Questions between us. Now the Exceptions I take to the Plea are these: This is a Plea to the Jurisdiction of the Court, and some of our Exceptions are to the Form, and one is to the Matter. To the Form, my Exceptions are these: First, We say that the general Allegation that he was impeached *de Alta Proditione* is uncertain, and too general; it ought to have been particularly set out, that the Court might judge, whether it be the same Crime, and it is not helped by the Averment. And the next Exception I take to it, is, here is no Impeachment alledged to be upon Record: I mentioned this the last time, and looking more strictly into it, I find it is so as I said: For they come and make a general Allegation, that *Fitz-Harris*, such a time, was impeached, *Impetitus fuit*, by the Commons before the Lords, *Quæ quidem impetitus in pleno robore existit, prout per Recordum inde, &c.* Now, my Lord, there is no Impeachment mentioned before: And *quæ quidem Impetitus* is a relative Clause, and if there be no Impeachment mentioned before in the Plea, then there is nothing averred upon the Record, to be continued or discontinued; for *Impetitus* does not actively signify the impeaching, or passively the Person impeached, but it signifies the Indictment or Impeachment, that Instrument which contains the Accusation, and which is to be and remain upon Record. Therefore, when they come and say he was impeached, and afterwards alledged, *Quæ quidem Impetitus* remains upon Record, that cannot be good. If a Plea should be *Indictatus fuit*, and afterwards they say *quod quidem Indictamentum, &c.* it cannot be good, for the Relative there is only illusive. These are our Exceptions to the Form. For the Matter of it, it is a Plea to the Jurisdiction of the Court; and, with Submission, there the Point will be, whether a Suit depending, even in a superior Court, can take away the Jurisdiction of an inferior Court, who had an original Jurisdiction of the Cause, of the Person, and of the Fact, at the time of the Fact committed. What Use might be made of it, as a Plea in Bar, might be of another Consideration; but whether this be enough to make it amount to such a Plea, as will take away the Jurisdiction of a Court, that had an original Jurisdiction, that is the Question before you. These are the Exceptions I take, and do insist upon: And I desire, my Lord, the Counsel will apply themselves to these Exceptions, to answer them; and when we have heard what they can say, I hope to give them an Answer.

Mr. Williams. My Lord, I am assigned of Counsel for the Prisoner at the Bar, *Edward Fitz-Harris*, who is indicted here for High-Treason, and hath pleaded a special Plea to the Jurisdiction of the Court: And I must crave leave to state his Case upon the Indictment, the Plea to the Indictment, and the Demurrer to the Plea. And the Case, my Lord, upon the whole Record stands thus: He was indicted this Term, by one of the Grand Juries for this County, of High-Treason. As to the Indictment, it cannot be expected I should state the Parts of it, it being an Indictment I never saw. To this Indictment thus presented, *Fitz-Harris* hath pleaded thus: That he ought not to be compelled to answer to this Indictment, because that before the Indictment was found, at a Parliament he ldat *Oxford* the 21st of *March* last, he was impeached by the Knights, Citizens, and Burgesses of the House of Commons in Parliament assembled, in the Name of themselves, and of all the Commons of *England*, of High-Treason; and that this was before the Court of Lords in that Parliament. He says farther, that this Impeachment is remaining in full Force and Effect before the Lords in Parliament, *prout per Recordum inde int' Record. Parliamenti remanens plenius liquet & apparet.* These are the Words of the Plea: And then he avers, that the High-Treason mentioned in the Indictment, and

the High-Treason specified in the Impeachment, are one and the same: And he further avers, that he is the same *Fitz-Harris* named in that Indictment, and mentioned in the Impeachment. And after the Averments, he concludes, to the Jurisdiction of the Court; whether upon all this Matter, they will proceed any farther against him upon this Indictment; and demands the Judgment of the Court to that Purpose.

Upon this Plea, Mr. Attorney hath demurred generally, and we that are of Counsel for the Prisoner have joined in Demurrer with him. Now in this Case which thus comes before you, for your Judgment upon this Plea and this Demurrer, I take these Things to be admitted.

First, That the Prisoner stands impeached, by the Commons of *England* in Parliament assembled, of High-Treason. Secondly, That the Impeachment thus made by the Commons, in the Name of themselves, and of all the Commons of *England*, before the Lords in Parliament, for Treason, is now in being. Thirdly, which I omitted in the opening of the Plea, that this was done *secund. Legem, & Cons. Parliamenti*; and being so, remains in *plenis suis Robore & Effectu.* And more particularly this Plea does refer to the Record, for the Parts and Circumstances of the Impeachment, *prout patet per Record. inde inter, &c.* So that it does refer the Impeachment itself to the Record, and tells you this is among the other Records of that Parliament: all this is admitted by the Plea. Fourthly, And moreover, that this Treason, for which he stands impeached before the Lords, and the Treason for which he stands indicted before this Court, are one and the same Treason, and no way diverse; and so they are the same numerical Thing, and there is no manner of difference: And that this Person *Fitz-Harris*, now indicted, and the *Fitz-Harris* impeached, are one and the same Person, and no way diverse. And withal, my Lord, it appears plainly upon the Record, that this Impeachment was depending before; the Indictment found for the Parliament was the 21st of *March*, and it appears by the Record this is only an Indictment of this Term. And another Thing I must intreat you to observe, my Lord, it does not appear but that this Parliament is still in being, for any thing to the contrary in the Record, and as I take the Case, then it must be admitted so to be.

So then, I take the Plea to be in Substance thus, though Mr. Attorney was pleased to except to both the Substance and the Form; but in Substance the Case is thus: Here is a Person impeached in Parliament, by the Commons in Parliament, for High-Treason, before the Lords in Parliament, and for aught appears that Parliament still in being, and this Impeachment still depending; then here is an Indictment for that very Treason: whether your Lordship now will think fit in this Court to proceed upon that Indictment, is the Substance of the Case. I shall speak to the Form by and by.

My Lord, By the way I think it will not be denied, but that the Commons in Parliament may impeach any Commoner of Treason before the Lords in Parliament; I take that to be admitted. And I do not find that Mr. Attorney denies it, or makes any doubt of that; for I think that was the Case of *Tresilian* and *Belknap*, who were impeached in Parliament by the Commons before the Lords: I am sure my Lord Chief Justice *Vaughan* does, in his Reports in *Bushe's Case*, say so; and upon that Impeachment of the Commons, one of them was executed, and the other banished, in Parliament. My Lord, I cite it not merrily, but I cite it as Authority. Indeed I do not go so far as to cite the Parliament Roll, it was in the Time of *Richard II.* I have not seen the Roll of late truly, but I am sure it is upon the Roll, and there it is to be found.

Since then Impeachments of Commoners will lie in Parliament, here then, my Lord, will be the Question, Whether this Court may proceed upon an Indictment for the same Offence the Parliament was for? And here I shall distinguish upon Mr. Attorney: He does allow the Parliament to be a superior Court; but admitting that, he says, though it be so; yet the inferior Court having original Jurisdiction of the Person and the Cause, it may proceed notwithstanding an Indictment in the superior Court; and, *ergo*, he does infer that this Court may proceed upon an Indictment, notwithstanding an Impeachment in Parliament.

My Lord, I will compare a little the Case of an Indictment and an Impeachment, and shew how manifestly they differ. I do take the Case of an Impeachment not to be the Case of an Indictment, and so the Principle that Mr. Attorney hath taken is wrong, and the Ground of that Argument wrong. I cannot say it is like the Case of an Appeal, but I may say the Case of an Appeal is like the Case of an Impeachment. For in an Appeal of Murder, though the Indictment be capital, and the same that is given upon Criminals prosecuted for the King, yet it is at the Suit of the Party, as in this Case it is at the Suit of the Commons; and so it is an Intimation of, and analogical to, and bears the Resemblance of an Impeachment in Parliament; I will not compare an Impeachment to an Appeal, but I will say an Appeal imitates an Impeachment. And it is as plain as can be, because Appeals are proper to Courts in *Westminster-Hall*, and it is at the Suit of the Party, the Prosecution and all the Process is *ad instantiam partis*; so is an Impeachment at the Suit of the Commons. An Indictment is found upon the Presentment of a Grand Jury, who are sworn *ad inquirendum pro Domino Rege pro Corpore Com.* and it is a Mistake in the Form, when it is said *& pro Corpore Com.* for it is not for the King and the Body of the County, but for the King for the Body of the County. But now an Impeachment in Parliament is otherwise; it is not in the Name of the King, but in the Name of the Commons in Parliament, and of all the Commons in *England*, wherein it suits with an Appeal, which is at the Suit of the Party; so that it is like an Appeal, and not like an Indictment: An Indictment is for the King, an Impeachment for the People. And as it is in its Nature and Constitution different, so it is in the Prosecution also, for that is by the Commons of *England*, they are the Prosecutors in effect; but now in all Indictments they are prosecuted always by the King's Attorney, or by some Person in the Name of the King. We are now arguing upon the Methods and Forms of Parliament, therefore I must crave leave to insist upon those Methods more particularly. The Commons they bring up the Impeachment to the Lords, the Commons they prosecute the Impeachment, they manage the Evidence upon the Trial; and when the Lords have considered of it, and have found the Fact, the Commons come and demand Judgment, and Judgment is given at the Prayer of the Commons, and no otherwise, and there are no Proceedings by the Attorneys. Indeed there have been Attempts by Attorneys to prosecute Persons in Parliament, by



exhibiting Informations in the Parliament; but what Success they have had, I leave to them to consider that are concerned, and have read the Rolls of Parliament. But it is not safe to alter the old Ways of Parliament, therefore I take it under Correction, that it is out of the Road of Comparisons, when they will compare an Indictment and an Impeachment together; for they do not agree, but differ extremely.

I would then offer you some Reasons why this Court ought not to proceed upon this Indictment. I take it, it does not become the Justice of this Court to weaken the Methods of Proceedings in Parliament, as this Court will certainly do: For if you will admit this to be the Course that I have opened, your Proceedings will alter it. When there is an Impeachment depending in Parliament for Treason, if your Lordship will admit there may be an Indictment here afterwards in this Court, and Proceedings in this Court upon that Indictment, it is to alter the Method of Parliament Proceedings, and to subject the Method of their Proceedings there to the Proceedings of this Court; and what the Mischief of that will be, I must leave to your Lordship. As I opened it before, the Methods of both Courts are different, and their Proceedings very much vary, I think, I need not trouble your Lordship with that; we all know it very well in the main. Indictments in this Court are to be tried by a Jury, where a Verdict must be given presently: There is but very little Time for giving the Evidence, or for making Observations for the Crown, or for the Publick; and in order to bring it to the Trial, there must be an immediate Plea of Guilty, or Not Guilty. Now if the Proceedings of Parliament were so sudden, there might be a great Surprise, and great Offenders pass unpunished, because the Prosecutors had not greater Time to inspect the Records that might be of avail in the Case: Therefore in Parliament it is quite otherwise; there is Time for Deliberation and Consideration, there are many References, and many Examinations, which are Matters of Deliberation and Consideration, which take up a great deal of Time; but here you are straitened not only in Time, but bound up to strict Rules, and so are straitened in your Methods and Forms of Proceedings, as Mr. Attorney would here tie us up to the Forms of little Courts: But it is not fit that the Justice of the Kingdom, and High Court of Parliament, should be cramped by the Methods of an inferior Court, and a Jury. So you will then subject the Methods of Proceedings in Parliament to the Courts in Westminster-Hall, and what the Consequence of that will be, is worth the Consideration.

Another Reason I would humbly offer, is this, my Lord: The Parliament is the Supreme Court certainly, and this Court is every way inferior to it, and it will be strange that that Supreme Court should be hindered by an inferior: For the highest Court is always supposed to be the wisest; the Commons of England in Parliament are supposed to be a greater and a wiser Body than a Grand Jury of any one County. The Peers, who are the Judges in that Court, are supposed to be the wisest Judges, as the Commons the wisest Inquest. Will the Law of England now suffer an Examination, Impeachment and Prosecution for Treason, to be taken out of the Hands of the greatest and wisest Inquest in England? And will the Law of England suffer the Judicature upon this Prosecution to be taken out of the Hands of the wisest and greatest Judicature, and put it into the Power of a smaller Number of Judges, or of an inferior Jury? I do think it does not stand, my Lord, with the Wisdom of the Government.

Another Thing is this, my Lord, the common Argument in any extraordinary Case, there is no Precedent for this Way of proceeding; it is my Lord Coke's Argument in his Comment upon Littleton, Fol. 108. and in the 4th Inst. Fol. 17. in his Comment upon the High Court of Parliament. And he takes occasion to speak it upon the Account of that Precedent, the Case of the Indictment against the Bishop of Winchester, and of that against Mr. Plowden; and he says, This was never practised before; therefore it ought not to be: So he infers, and puts a black Mark upon it, by saying it is a dangerous Attempt for inferior Courts to alter or meddle with the Law of Parliaments. For the Words I refer myself to the Book, I dare not venture to repeat them upon my Memory. So in this Case, in regard that it never was done from the Beginning of the World till now, the 33d Year of this King, I may say, it being without Precedent, there is no Law for it.

My Lord, there is another Mischief that will certainly follow upon this, and that too runs upon this Comparison of an Appeal and of an Indictment. In the Case of an Indictment, it is in the Power of the Prince to pardon that Indictment, to pardon the Punishment, and to pardon the Offence; but in case of an Impeachment, I take it to be otherwise, as it is in the Case of an Appeal. And, my Lord, if your Lordship will take this Case out of the Power of the Parliament, and bring it into this Court, where the Offence may be pardoned, you do by that Means subject that Offence, and that Method of Proceedings, which would make it, without Consent of the Party prosecuting, not pardonable by Law, to a Pardon: And this may be of dangerous Consequence to the Publick, that Crimes that are heinous and great in themselves, mighty bulky Crimes, fit for the Consideration of a Parliament, be they never so great, never so dangerous to the Government, yet should, by giving this Court a Jurisdiction, and possessing it of these Causes, expose them to the Will of the Prince; and so those Crimes, which are unpardonable by Methods of Proceedings in Parliament, would become pardonable by Prosecution in this Court.

Now, my Lord, for my Authority, that Impeachments are not pardonable, I would only hint a little to compare it to the Case of an Appeal, as *Pawyn and Corbet's Case* in 3 *Croke, Hill. 38 Eliz. fol. 464.* There was an Appeal of Murder; upon which he is found guilty of Manslaughter, and not guilty of the Murder. Then there was a Pardon pleaded of the Burning in the Hand, or of the Punishment: It is not plain in the Book, whether the Pardon was after the Verdict, or before (that I cannot be clear in); but however, there was a Question whether the Queen could pardon the Burning in the Hand; however, it was there allowed: But there was an Exception, my Lord Coke, who was then Attorney-General, took, that the King could not pardon, if it had been an Appeal of Homicide; and he concurred with the Court in that Opinion. But that Appeal being for Murder, and the Verdict of Manslaughter, they passed over the Question, for this Reason that I have mentioned, That the Appeal was not for Manslaughter, it was for Murder; and if he had been found guilty of the Murder, it was not in the Power of the King to pardon him, it being at

the Suit of the Party: So the Opinion of that Book is, and of the then Attorney-General.

Thus I have stated the Thing, and the Consequences of it, and it is not fit for me to dwell upon it: You will consider of it, I am sure.

Another Thing I would say, is this: If your Lordship should meddle with this Way of Proceeding, it will invert the Law in another Thing; for it is a Principle with us, That no Man's Life is to be put twice in Danger for one and the same Thing. I will then put the Case thus: If your Lordship should proceed upon this Indictment, and this Person should be acquitted upon it, I am in your Lordship's Judgment whether that Acquittal will bind the Lords in Parliament; if that will not bind them, but they may still proceed on the Impeachment, then you invade that common Right which every Englishman by the Law ought to have preserved to him, that no Person ought twice to be brought in question for one and the same Thing. And so, my Lord, you make a Man to run the Risk of his Life twice, by indicting him in this Court, where, though he be acquitted, he may be called to an account again, if the Law be so. And if the Lords in Parliament should be of Opinion, for they are the Judges of that Case, that the Acquittal will not be binding to them, then a Man's Life is brought in question twice upon the same Account.

My Lord, I now come to this, the Time, how unreasonable a Thing it is, and how dangerous to the Government: I take it to be a critical Thing now at this Time to make such Attempts as these are. There are Lords now that lie under Impeachments of Treason, the highest Treason, I think, that ever was contrived; and upon this Impeachment one Lord hath been convicted and executed. Suppose upon the Dissolution of that Parliament that impeached the late Lord Stafford, there had been an Indictment against him for one and the same Treason: And by the same Reason that this Court may proceed, his Majesty may appoint a High Steward to try by a Jury of Peers. For the Court held before the High Steward, is as much a Court as any Court in the Kingdom, except that of Parliament. I say, suppose the King had appointed a High Steward, and that Lord High Steward had proceeded against my Lord Stafford, I think my Lord Stafford had been alive at this Day. For in the Case of Treason your Lordship knows there must be two Witnesses; and I am sure there came in fresh Testimony against my Lord Stafford after the second Parliament after the Impeachment. I appeal to those noble Lords that are here, if it were not so; and had it not been for that fresh Testimony that came in afterwards, possibly my Lord Stafford might have been alive at this Time. And the Lords in Parliament, as I have observed in the Beginning, when they find an high Crime before them, when they find such a general contagious Design to subvert the Government, and yet they cannot come to cut off the principal Agents in this Design, because perhaps there may not be two Witnesses in strictness of Law at the first, it is the Wisdom of a Parliament to deliberate and to take Time. The good Queen was used to say, Truth was the Daughter of Time, and Time would produce Truth, *Veritas filia temporis.* If then there had been any such hasty Proceedings, as in this Case, I doubt my Lord Stafford had been now alive. Now then for these Lords that are now in the Tower, if your Lordships do go on in this Way, do you not open such a Gap, as may be a Ground to deliver them by the same Justice (I speak it under Correction here, and I only offer it to your Judgment, for I have not had many Hours to consider of it; but your Lordship will think well of it before you give any Judgment) by the same Justice the other Lords may be tried by another Court? This I offer in point of Reason, that this Proceeding will be very hard, and is an imprudent Thing, if not an illegal Proceeding. My Lord, I am sure it will have this Effect, it will stir up a Question between the Jurisdiction of this Court and the Court of Parliament: For in all Probability, if this Person should be acquitted, the Commons and the Lords will look into it. They are a Court that make a Survey of the Proceedings of all other Courts; and they will examine this Proceeding, or at least may do. And if he be found guilty, here is the Power of the Commons in Impeaching, and the Jurisdiction of the Lords in Trial and Judgment, taken away by an inferior Court to them, and so stir a Question between this Court and that highest of Courts, the Parliament. And what will be the Consequence of that? The Judgment of that Question will be in the Superior Court, for there is no middle Court between this Court and the Parliament to judge of it; therefore I submit it to your Lordships.

These are the Things which I offer to your Lordship in point of Reason, whereof some go to the Prudence of the Thing, some to the Reason, and some to the ill Consequences that may happen upon it, and I think many to the Illegality of the Act. And now this being said in the general, I come to the particular Exceptions made by Mr. Attorney as to the Form of our Plea.

He was pleased to say, that this Plea was a plain frivolous Plea, which is his Exception in general; and he gave you three Reasons for it at first, and does now insist upon the same for Substance.

One was this, and he insisted upon it at this Time, This Plea does not set forth any Record of an Impeachment, nor the particular Matter of it, so as this Court may judge of the Reason of it; for he compares it to the Case of a Plea of *autre foitz acquit*. If a Man hath been indicted and acquitted, he may plead it in another Court that hath Jurisdiction of the Cause, if he be again indicted for the same Matter: But, my Lord, first of all, I take this Plea to be well pleaded in Form; and, in the second Place, if there be any Informality or Defect (which I do not take it that there is, but if there were any such Thing), I take it it is of another Consideration, which the Court will deliberate before they give their Judgment on.

But I say in the first Place, I take it to be a very good Plea, and that it is good according to the Pleading of *autre foitz acquit*. In pleading of a general Act of Parliament, we need not set forth the Act, but refer to the Record; and that will depend upon the Method of Impeachments in Parliament, which I am of Opinion, being the general Law of Parliaments, this Court ought to take Cognizance of. In the Case of *autre foitz acquit*, there is first an Indictment proceeding of the Court upon the Plea, a fair Trial, and a fair Acquittal, and a Record of all this Matter. If now this Person comes to be indicted again for the same Offence, there is a Record for him to plead that will shew forth the whole Matter; and if he does not plead that Record, 'tis his own Default.



But in this Case here is no such Record to plead, and there is the Mistake upon which Mr. Attorney has gone all along. And you must in this Case be governed by the Rule and Method of Parliament, which is this: The Commons, in the Name of themselves, and of all the Commons of England, impeach such a Person, and they bring up this Impeachment to the Lords in general, and there they have Liberty to present Articles in due Time, after due Consideration, which ought not to be done hastily. All this is no Record, such as may be had in the Case of *auter foitz acquit*: For first, the Impeachment of the Commons is no Record; when 'tis brought up to the Lords, there is only an Entry into the Journal of the Lords, that such a Day such a Person came from the House of Commons, and impeach'd such a one. And you are not to expect the same strict Method, and Form of Proceeding, as in other Courts, the Courts in *Westminster-Hall*, or inferior Courts. Your Lordship in this Case must be govern'd by such Proceeding as is in Parliament, and must take it as it is; and we have said enough, and as much as can be in our Case. We have not indeed set forth an Indictment, a Plea, a *Venire facias*, &c. for there is no such Proceeding in Parliament; but there was an Impeachment by the Commons, in the Name of themselves and of all the Commons of England, before the Lords, that it is *in pleno robore & effectu*, and that it was *secundum legem & consuetudinem Parliamenti*, prout patet inde inter Record remanen. &c. And here is enough. For when we refer you to a Record, that is as much as if we had set forth the Record itself; for we tell you there is such a Record, and we point you to the Place where you may find it. So we take it, 'tis a very full Plea; and if not, 'tis as much as any Man can plead in such a Case, though it be not pleaded particularly.

And, my Lord, that your Lordship is to judge in this Case according to the Methods of Parliament, I depend upon the Authority of my Lord Coke; I will repeat you some of his Words: Speaking of the Law of Parliaments, he says, and he borrow'd it out of *Fleta*, That this High Court of Parliament *propriis suis Legibus & Consuetudinibus subsistit. Et ista lex ab omnibus querenda, à multis ignorata, & à paucis cognita*. But he tells you, and certainly he says true in it, Whoever will

be learned in the Law of Parliaments, must repair to the Rolls of Parliament: And give me leave to cite his Opinion, which, I hope, may be of great Weight with this Court: It is in the Fourth Institute, fol. 15. he says, For any thing mov'd or done in the House of Commons, it ought to be determined, adjudged and discuss'd by the Course of Parliament, not by the Civil Law, nor yet by the Common Laws of this Realm, used in more inferior Courts, which was declared so to be *secundum legem & consuetudinem Parliamenti*, concerning the Peers, and the like, *patri ratione*, for the Commons; and that stops this Court in our Case: For so it is said in this Plea, which is the Matter you are to be governed by, that it is *secundum legem & consuetudinem Parliamenti*. He tells you further, there is no Notice to be taken of any thing said or done in the House of Commons, but by the Report of that House, and every Member thereof hath a judicial Place; he takes it out of *Henry VII.* and so the Book is expressly.

And he goes on; This is the Reason that Judges ought not to give any Opinion of Matters of Parliament; because it is not to be decided by the Common Laws, but *secundum legem & consuetudinem Parliamenti*. So he tells you, you are bound by the Methods of Parliament; and I need not press the thing much after his Authority; for he was learned in Parliament Matters.

But I would crave leave to mention a Case that was lately in this Court, and that was the Case of my Lord of *Shaftesbury*, who was brought by *Habeas Corpus* to this Court, and upon that *Habeas Corpus* it was thus returned, That he was committed by Order of the Lords in Parliament, there to remain during the Pleasure of the King and of the House of Lords; and this for an high Contempt committed in that House. Upon this Return we insisted that my Lord might be bail'd, because it was uncertain, the Pleasure of the King, or the House of Lords; and upon reading the Order, there is no Crime express'd, but only in general for an high Contempt. I speak it not for the particular Case's sake, but to apply the Reason of it to our Case; the Reason then given by the Judges, Mr. Justice *Jones* will please to remember it (for it was particularly declared by him) why they could not bail my Lord, was this; he was pleas'd to say, We in this Court take notice of the Court of *Exchequer*, and other Courts in *Westminster-Hall*; and it would be strange if we should not take notice of the Course of Parliament, and House of Lords. And if you are bound so to do in other Cases, you are bound to do so in this. And if without pleading you take notice of the Course of those Courts, you will also take notice of the Law of Parliaments, and Customs of Parliaments. And (that I may make use of it to our purpose in this Case) we need not particularly say, *secundum legem & consuetudinem Parliamenti in hoc*, instancing in this, and that, and t'other Particular: But the Court is to look into it, without my pointing to the particular Law of Parliament. So that, my Lord, here is ground enough before the Court, and I know the Court will look into it, before they give Judgment.

The second Exception is this, That it is not said in the Body of the Plea, that *Fitz-Harris* is impeach'd for this Treason; but it comes in only in the Averment. Now, my Lord, as to that, we must pursue the Impeachment as it is in the Lords Journal. 'Tis for Treason generally there, and 'tis said to be *secundum legem & consuetudinem Parliamenti*, which goes to all, and there is a Record of it among the Records of Parliament, and Mr. Attorney hath confessed it by the Demurrer.

And that this is the same Treason, we do aver in Fact, which also is confessed by the Demurrer; and your Lordship will see by the Records and Forms of Entries in Parliament (that I may not repeat Things over and over again) that this is the Course and Method of Parliaments.

Mr. Attorney hath fancied an Exception of Grammar, an Adjective for a Substantive; but I take it to be as well as any Man can plead in this Case. For what says the Prisoner? The Knights, Citizens and Burgeesses in Parliament assembled, d'd impeach me; which Impeachment is still in Force before the Lords. I take it to be as plain as can be. If they did impeach me, then there was an Impeachment; it can bear no other Sense.

My Lord, another Exception, and which was thought a strong one the other Day, and strongly urged, is, That the King may chuse his Court,

and they compared it with the other Courts: But there is the Mistake that runs all along in this Case. 'Tis no doubt, the King may chuse his Court for his own Action and Suit; but the Impeachment is an Impeachment of the Commons, and their Suit is to be try'd no where else but in Parliament. And the Case that was the other Day cited by Mr. Attorney, for this Purpose, is true of the Person that was arraigned for Treason, and hath been indicted and arraigned in *Ireland*, and he may be arraigned and tried here, there is no Question of it; but to say, therefore, that this is a Consequence from that Rule, that therefore he will chuse whether he will proceed in Parliament upon the Commons Impeachment, and put a Stop to the Proceeding of the Parliament, by proceeding in this Court; I take to be a great *non sequitur*.

My Lord, I have offered these Reasons, as to the Form of the Plea to maintain it. Now as to the Precedents, I would a little speak what hath been done in the like Case, where this Court hath taken hold of Causes, and the Prosecution of the Court hath been stopp'd by Pleas to the Jurisdiction, and what hath been done upon those Pleas. What Doom they have had, I will hint some of them to you.

There was a Case mentioned by your Lordship the other Day, the Bishop of *Winchester's* Case, 3 Ed. III. I dare not say I have looked upon the Parliament-Roll; but my Lord Coke tells us, he hath recited the Record, *de verbo in verbum*: In the 2d Institute, fol. 15. there are all the Proceedings. It was not an Indictment, for my Lord Coke contradicts that, and says, it was a Declaration: There the Record at large sets forth, that the Bishop of *Winchester* was attached to answer the King; for that whereas at a Parliament held at *Sarum*, it was ordained, *per ipsum Regem ne quis ad Dom. Parliament. summonitus ab eodem recederet sine licentia Regis*. And that this Bishop, in Contempt of the King, *recessit*, without leave of the King. I think, 'tis rather an Action than a Criminal Proceeding: What says the Bishop to this? He comes, and says, *Si quis deliquerit erga Dominum Regem in Parlamento aliquo, in Parlamento debet corrigi & emendari, & non alibi in minore Curia quam in Parlamento, &c.* What becomes of this Plea? 'Tis strange there should be such an Inhibition, that no Man should depart without leave of the King, and the Bishop be punished for it; we do not find any Judgment was given, nor would they venture to do it. My Lord Coke hath a Mark upon it; for this very Reason, it looked as if there was a Design to weaken the Parliaments, by bringing their Proceedings into *Westminster-Hall*, but they would not do it; they would give no Judgment for the King; but for aught appears, the Plea stood.

Then there is the other Case of Mr. *Plowden*, and many more in *primo & secundo Phil. & Mar.* where a great many of them, some whereof were Burgeesses, and they submitted, but he did not. The Information there is this, that these Persons were summoned to the Parliament, and departed from thence without the leave of the King and Queen, though it was prohibited by them that any should depart: Most of them submit to a Fine; and if it had rested there, it might have turned to the Prejudice of the Commons as an Example.

But Mr. *Plowden*, he pleads as one that understood himself, and the Power of Parliaments, and their Proceedings very well, and considers the Time to have pleaded in: Says he, I continued in the Parliament from the Beginning to the End of the Parliament; but he relies not there; but he brings a Traverse full of Pregnancy; and if our Plea be faulty, theirs was an hundred times as faulty, *absque hoc*, That he, the said *Edmund Plowden*, the said Day and Year, during the said Parliament, without Licence of the said King and Queen, and the Court aforesaid, did contemptuously depart, in Contempt of the said King and Queen, and their Commandment and Inhibition, and to the great Detriment of the Common-Weal and State of this Kingdom, &c. All these Things he pleads, which your Lordship knows to be a very ill Traverse; and yet this Case continued all the time of that Queen, and the Court would never give Judgment in it. This was in *primo & secundo*; and yet it appearing upon the Face of the Information, that it was a Case that concerned the Commons, the Court would not give Judgment for or against the Commons as long as the King and Queen lived.

There is a later Case, and that is *Elliot's* Case, 5 Car. There is an Information against my Lord *Hollis*, Sir *John Elliot*, and many more; and there is a Plea put in to the Jurisdiction of the Court; I have a Copy of my Lord *Hollis's* Plea, and 'tis in a manner as faulty as *Plowden's* Plea: but the Court in that Case does not go upon the Insufficiency of the Plea, but gives Judgment generally that this Court had a Jurisdiction; the Assault happened in Parliament, and the Words were spoken there; and upon the Demurrer, they gave Judgment upon the whole Matter. What became of that Judgment? We know very well it was reversed, 19 of this King. And pray observe the Proceedings in the Reversal of that Judgment. Judgment was given against my Lord *Hollis* and the rest of the Gentlemen of the House of Commons, though there was no Prospect of a Parliament, yet they were obstinate, and would not plead; for they thought the Judgment to be a very hard Judgment; and this being a Plea in Abatement, Judgment was given for want of a Plea over. It may fall out in this Case, that this Person may be obstinate, and not plead over, if you should give your Judgment against this Plea. In *Elliot's* Case they were fined severely, and they continued under this Judgment in Prison, and in Execution for the Fine a great while; and they were delivered by what I cannot indeed justify in all it's Proceedings, I mean the Long Parliament; but what was done in 19 of this King, I think is good Authority, which none can say but was a Parliament as useful to the King and Kingdom as ever could be. In that Parliament the Commons examined this Judgment, I speak because I have it in my printed Book; 'tis in *Croke Car.* I confess, it is not in the first Impression; but it is in the Second Edition, which I have, and these are the Expressions in it.

L. C. J. What Case is that?

Mr. *Williams*. It is in *Croke Car.* 181. 604. but the Reversal was in 19 of this King.

L. C. J. Was the Judgment given, do you say, 19 of this King? Can a Case of that Time be reported in *Croke*?

Mr. *Williams*. I don't say so absurd a Thing. If your Lordship will have Patience to hear me, I'll tell you what I say. My Book, which is the 2d Impression of *Croke*, reflecting upon that Case in 5 *Caroli*, does publish the

Votes



Votes of the House of Commons about, and the Reversal of the Judgment, in the 19th of this King. There the Proceeding is this; Information is given to the House of Commons, that there was such a Case published, which did derogate much from the Privilege of Parliament, invading the Liberty of Speech; and the House of Commons considering the Consequence, ordered the Book to be sent for and read, and taken into Consideration and debated; and upon Debate, the House came to this Resolution, That the Judgment against *Elliot* and others is an illegal Judgment; and against the Freedom and Liberty of Speech: And this Vote they send up to the Lords, where it is confirmed and resolved in Agreement with the Vote of the Commons: And by the Way, in Answer to a Paper that is commonly spread about by the Name of *The Observer*; I say, the Commons came to a Resolution, and pass a Vote, which is not indeed a Law; and when they have done that, they may transmit their Opinions to the Lords, and desire them to concur: Then the Lords and Commons have a Conference upon it, and at the Conference the Commons Reasons are delivered, which the Lords take up with them to their House, and debate them. Then they come to a Resolution to agree with the Commons. Afterwards, upon this Resolution of both Houses, they go regularly to work, by Writ of Error to reverse the Judgment. And if it should fall out in this Case, that your Lordship should give Judgment against the Plea, and this Person should be obstinate, and not plead over, and thereupon your Lordship give Judgment of Death upon him; it may come to be a very hard Case, if a Writ of Error should be brought in Parliament, to reverse this Judgment; and it should be reversed when the Party is dead. Therefore it will be of great Consequence in this particular.

My Lord, I'll mind you of one old Case, it was 20 Ric. II. A Person \* there presents a Petition to the Commons in Parliament; and it seems there was something suggested in the Petition, which did amount to High-Treason, as there may be some Petition or some Complaint against a great Minister that may contain an Insinuation, as it were, of High-Treason; he was indicted out of Parliament for High-treason, and was found Guilty, and by the Grace of the Prince he was pardoned: But because the Commons would not lie under that Precedent of an Invasion of their Privilege, though he was a Person without Doors that prepared that Petition, and no more Hurt done to him but the Prosecution, he being pardoned, the Judgment was voided.

L. C. J. Where is that Authority?

Mr. Williams. 20 Ric. II. Ro. Parl. 12. And you will find it in the Argument of *Selden's Case*, published in *Rushworth's Collections*, Appendix to Vol. I. Fol. 47, and 48.

And now, my Lord, I have done with the Substance of the Case, with my Reasons for the Matter and for the Form. In this Case, here is the Life of a Person before you; here is the Right of the Commons to impeach in Parliament, before you; here is the Judicature of the Lords to determine that Impeachment, before you; here are the Method and Proceedings of Parliament before you; and how far you will lay your Hands upon this Case, thus circumstantiated, we must submit to you: But I hope you will proceed no further on the Indictment.

L. C. J. Pray, Gentlemen, let us a little direct you not to spend our Time about that which is not to the Purpose, or that is not in the Case: Here is nothing of the Commons Right to impeach in Parliament before us, nor of the Lords Jurisdiction, nor the Methods of Parliament in this Case: They are Things quite foreign to the Case and the Matter in hand; which is, whether this Plea, as thus pleaded, be sufficient to protect the Prisoner from being questioned in this Court, for the treasonable Matter in this Indictment before us. Therefore you ought not to spend Time in Things that are not before us to be considered, being out of the Case; for we have nothing to do with any Privilege of Parliament, or of either of the Houses here at this Time.

Mr. Just. Jones. And, Gentlemen, there is nothing at all here of any Fact done in Parliament that can be insisted on here; nor is there any Complaint against Mr. Fitz-Harris for any thing he hath done in Parliament. All Mr. Williams's Precedents run to that; but this is for a Thing done without Doors.

L. C. J. We speak to you to come to the Point, which is the Duty of all Courts to keep Counsel to the Points before them. The sole Matter before us is, whether this be a good Plea to ouster this Court of a Jurisdiction, which otherwise unquestionably we have of this Matter?

Mr. Williams. It is a hard Matter for the Bar to answer the Bench, my Lord.

Sir Fran. Winning. My Lord, I shall pursue your Direction as well as my Understanding will give me leave, and save your Time as much as I can; but the Court having assigned us of Counsel, you will give us leave to use our Discretion, keeping as near as we can to the Points of the Case, and to the Pleading. But if upon the Reasoning of this Case, other Parliament-Cases fall in, I hope you will give me leave to cite them for maintaining our Plea. The Plea here is to the Jurisdiction, and consists of two Parts. First, Matter of Record, which is, that an Impeachment is depending in the House of Lords (for so it must be taken upon the Pleading, as I shall manifestly prove:) The second is Matter in *pais* (viz.) the Averment, that the Impeachment and Indictment are for one and the same Treason: and the Plea is made up of these two Parts, together with an Averment that the Person is the same. The King's Attorney hath been pleased to demur generally to us, and I am sure that if our Plea be well and formally pleaded, all the Matter of Fact is confessed by the Demurrer.

Mr. Attorney did, to my Apprehension, make but one Objection the other Day, and he still insists upon it, that here is a Record too generally pleaded, and they compare it to the common Case of an *auter foitz acquit*, upon another Indictment; but I hope to make it evidently appear, that it is in no fort a parallel Case. The Matter which I conceive is confessed by the Demurrer, is, that there is an Impeachment by the Commons of England of High-Treason against *Fitz-Harris* lodged in the House of Lords, *secundum legem & consuetudinem Parliamenti*: And that the Treason for which he was impeached, is the same Treason contained in the Indictment, to which the Prisoner hath now pleaded. Upon this Matter of Fact, so agreed, the general Question is,

Whether an Impeachment for Treason, by the House of Commons, and still depending, be a sufficient Matter to ouster the Court from proceeding upon an Indictment for the same offence: My Method will be shortly to speak to these Things.

L. C. J. Pray let us give you some Direction; that is not the Question, nor can come in Question in the Case: You mistake the Points of the Case.

Sir Fran. Winning. Why, my Lord?

L. C. J. The Question is, Whether you have pleaded sufficient Matter here to ouster us of our Jurisdiction? It is to no purpose to put Questions in the Case, that are not in it.

Sir Fran. Winning. My Lord, I know the Case is very nice and tender on all Sides, and therefore may very well bear an Interruption; however I express my self, my Meaning is the same with your Lordship's. The Method that I shall proceed in, will be this: I will suppose the Case before you had been of an Impeachment, containing the special Treason for which he is now indicted. I will shew in the next Place, that as it is now pleaded, it is as available as if the Impeachment in the House of Lords had mention'd the particular Treason. I shall then give some Reasons why it is so, and mention one or two Precedents that have not yet been cited. Two of the King's Counsel did agree, that they would not make a Doubt of the Plea, if there had been a particular Impeachment; and therefore I would, by considering what would be the Reason of that Case, apply it particularly to the present Case. The House of Lords is a superior Court to this: and is agreed to be the highest Court of Record in the Kingdom, *Plowden* 389. *Co. Lit.* 109, 110. 9 *Co. in Prefat.* And then I am within the common Rule of Pleading, according to the Differences taken in *Sparrie's Case*, 5 *Co.* 61, and 62. That a Suit first commenced in an Inferior Court, cannot stop a Suit in a Superior Court, though subsequent; but a Suit in a Superior Court may be pleaded, to stop the Proceedings of one that is Inferior. And though it may be objected here, that the Parliament is determined and dissolved, and so there would be a Failure of Justice; yet this Objection is of no Force: For if once the Suit be well commenced in the Superior Court, it cannot after go down to the Inferior. And what is begun in one Parliament may be determined in another; so is the Case 4 *Edward III. n. 16.* of the Lord *Berkeley*, and those that were accused for the Death of *Edward II.* And though it was objected there, as hath been here, that by this Means there might be a Stop of Justice, by the Dissolution of the Parliament; yet the short and true Answer is, That it is in Law to be presumed, Parliaments will be called frequently, to consider of the Business of the Kingdom, and redress Grievances, according to the several Statutes made for that Purpose, 4 *Ed. III. cap. 14.* 36 *Ed. III. cap. 10.* I shall labour this no farther; but taking it as the common Rule of Pleading, that a Record in a Superior Court may be pleaded to stop a Proceeding in an Inferior; I shall come to prove that this Record is well pleaded, and could not be otherwise, unless Mr. Attorney would have had us plead what is false, this being the Truth of the Case. For the Commons did impeach Mr. *Fitz-Harris* generally of Treason, as it is the Course of Parliaments for them to do; and in our very Plea we alledge, that he was impeached *secundum legem & consuetudinem Parliamenti*; and so Mr. Attorney hath confessed by the Demurrer: And if they may prefer an Impeachment in general, according to the Law and Custom of Parliament; why then so far it must be allow'd, that we have pleaded well that he was impeached of Treason. It is very true, my Lord, if a Man will plead generally that he was indicted of High-Treason, it would be ill; because the Court cannot take it otherwise than he pleaded it; and such a general Indictment would be altogether void, and therefore no Averment could make it good, or supply that Generality and Uncertainty.

But an Impeachment generally for Treason, is good and warranted by the Law and Course of Parliament, and so confessed by the Demurrer. And so your Lordship will take it to be, and will give Credit, that all is regular in the Proceedings of that High Court. You will presume, even in the Ecclesiastical Courts (as my Lord *Coke* says, in the 4th Report) that all Things are rightly done, when they have a Jurisdiction; *a fortiori* you will believe the greatest Court in the Kingdom does proceed regularly. My Lord *Coke* in the 4th Inst. Fol. 14, and 15, does say, what the Law and Course of Parliament is, the Judges will never intermeddle with. They always leave it to the Parliament, who are the superior Judges, and are to determine the Matters before them. For they take notice, that the Course of a Court is the Law of a Court, as it is in *Lane's Case* in the 2d Report in the Case of the *Exchequer*. And therefore, if a general Impeachment is *secundum legem & consuetudinem*, which is confessed by the Demurrer in this Case, then you must take it for granted, that the Parliament proceed rightly, and that such a general Impeachment is sufficient in Law. There is a famous Case that strengthens what I say, 11 Ric. II. di. Rot. Parl. par. 2. the Case of the Lords Appellants. You will find it also cited in *Rushworth's Col.* Part 1. in the Appendix, Fol. 51. *Tressilian* and others were appealed against for Treason, and both the Judges of the Common and of the Civil Law were by Direction of the King called to advise of that Matter. And they did all declare, that the Proceedings in that Case were neither agreeable to Common Law, nor Civil Law. But the Lords in Parliament said, it did not belong to the Judges of the Common Law or Civil Law to guide them; but that they ought to proceed according to the Course and Law of Parliaments (which are the Words of our Plea), and that therefore no Opinion of theirs should ouster them of their Jurisdiction, or alter the Course and Method of their Proceedings. My Lord, this Case is very remarkable; but I will go a little farther: The Judges in all Ages have been so far from taking upon them to judge of the Laws and Customs of Parliament, that they have denied to answer when their Advice has been demanded, and insisted upon it, that they were not proper Judges of such Matters, as in 31 Hen. VI. Rot. Parl. N. 26. For there, among other Things, the Judges were demanded, whether the Speaker of the House, during the Adjournment of Parliament, might be arrested: They desired to be excused from giving any Opinion: For, said they, in this great Matter they ought not to interpose, it being a Matter of Parliament.

In the Great Council *primo & secundo Jacobi*, about the Union of both Kingdoms, the Judges refused to give their Opinions upon several Questions put to them; desiring to be excused, for that such Things did not belong to



them, but were Matters fit for Parliament only. My Meaning is, to infer from hence, that since it is pleaded here to be according to the Law and Course of Parliaments, and Mr. Attorney hath acknowledged it, that now your Lordship is foreclosed from further meddling with this Case, it appearing upon Record to be a Matter whereof you cannot judge.

But the Objection is, that admit the Impeachment should be taken to be according to the Course of Parliament, yet it is so general, that the Court cannot judge upon it: I answer, that it is evident the Impeachment was not for nothing; it is most certainly to be presumed, that such a Body of Men as the House of Commons would not impeach a Man for no Crime. *Fitz-Harris* avers by his Plea, that it was for the same Treason, for which the Jury have found this Bill against him. Now this Averment makes the Matter as clear to the Court, as if the Impeachment had mentioned the particular Treason.

Every Day's Experience shews, that Averments, which are consistent with the Record, are good, and are of Necessity to clear the Fact to the Court; so that the Judges may give a Judgment upon it. If the Defendant will plead a Recovery in a formal Action, in bar to an Action of Debt, or other Action; it is not enough for him to set out the Record; he must aver also, that the Causes of the Action are the same, and that it is the same Person who is mentioned in one Record, and in the other Records; and this shews, that the most special and particular are of no Use without Averments.

My Lord, there is a Case that I find directly to this Purpose, which goes further than the Case I did but now put, and that is, 26 *Affix. Pl. 15*. It is also mentioned in *Stamf. Pla. Cor. 105*, where a Man was indicted for the Murder of *J. S.* and he pleads a Record of Acquittal, where he was indicted for the Murder of *J. N.* But he avers, that *J. S.* in this Indictment, is the same Person with *J. N.* in the other Indictment; and that was adjudged a good Plea, and the Party was acquitted, though the Averment there seemed to be a Contradiction to the Record. This makes it clear, that if an Averment may consist with the Record, the Law will allow it. In *More's Rep. 823. Pl. 1112*, the King against *Howard*, it is said, that if an Act of Parliament be certified into Chancery, no Averment lies to say this is no Act of Parliament, because the Commons did not assent to it; but if it appears in the Body of the Act, that the Commons did not assent, as if it was ordained by the King and Lords, and without mentioning any Assent of the Commons: there it may be aver'd to be no Act; for this being a Matter consistent with the Record, is avorable: And so it is agreed in 33 *H. VI. Fol. 18. Pilkinton's Case*.

Now Mr. Attorney has his Election here (as it is in all such Cases) either to plead *Null. tiel. Record.* and then we must have produced it; and if we had fail'd, it had been against us, as to the whole Plea. Or if he would not deny the Record (as indeed he could not) he might have taken Issue upon our Averment, that it was not for one and the same Offence; but he has demurred, and thereby confessed there is such a Record, and confessed the Averment to be true, that he was impeached for the same Crime, and that he is the same Person. And now it is plain to your Lordship, that I stated the Question right at first.

My Lord, I shall cite you one Precedent out of *Rast. Ent. Fol. 384* and 385, where a Man was indicted and acquitted before certain Justices, and being indicted *de novo*.—

*L. C. J.* It is Title *Gaol-Delivery*, is it not?

*Sir F. Win.* Yes, my Lord, it is. And he pleads that he was indicted *coram aliis Justiciariis*, for the same Felony, and upon this Plea the Entry is made, *Quia testatum est hic in Cur. in prefatos Justiciarios*, that the said Party was acquitted of the Felony, in Manner and Form, as he had alledged in his Plea. Therefore it is adjudged, that he should be discharged, and go without Delay. My Lord, I do not altogether rely upon this Precedent for Law; but I find it in that Book.

Now, my Lord, I shall offer some Reasons in general. First, that when once the Commons in Parliament, in the Name of themselves, and of all the Commons of England, have lodg'd an Impeachment against any Man, it seems to me against natural Justice, that ever any Commoners should afterwards come to try or judge that Man for that Fact. I speak this, because every Man in England that is a Commoner, is a Party to the Accusation; and so we have pleaded by such an Impeachment, a Man is subjected to another Sort of Trial: *Magna Charta* says, That every Man shall be tried by his Peers, or by the Law of the Land. And by the Law of the Land, there are several Sorts of Trial, some by Juries, others not by Juries. This is one of those Sorts where the Trial is by the Law of the Land, but not by his Peers: For it would be hard that any Man should come to try or give Judgment upon a Person who hath been his Accuser before; and in Effect hath already given his Judgment that he is guilty, by the Accusation of him, and so stands not indifferent. By this Means the Trial by Jury is gone; and the Lords, who are the Peers of the Realm, are Judges in Point of Fact, as well as Law. Here is an enormous Offence, against which all the Nation cries, for so they do in the Impeachment. Then, says the Law, it is not fit that you should try him, who are Parties; but the Lords are the proper Judges, they shall try him *per testes*, and the Commoners may come in as Witnesses, but not as Judges.

My Lord, another Reason is this, that if an Appeal of Death, or any other Appeal were depending before the Statute of 3 *H. VII. cap. 1*, the King could not proceed upon an Indictment for the same Fact; because the King, as the common Parent, does only take Care that such Offenders should not go away with Impunity; but the Preference was given to the Person more particularly concerned, and the King's Indictment must stay till the Year and Day were out, to see whether they will proceed in their Suits. And so says my Lord Chief Justice *Hales*, in his Pleas of the Crown, 2442, 45. Then *a minori ad majus*, does the Law so regard the Interest of the Wife or the Heir, &c. in their Suit, and has it no regard to the Suit of all the Commons of England? For manifestly, an Impeachment is the Suit of the People, and not the King's Suit.

That's the 2d Reason; another Reason I shall urge, is that which was touched by Mr. Williams. Suppose this Man should be try'd here, and be acquitted; is it to be presum'd that he can plead this Acquittal in bar to the Impeachment before the Lords? My Lord, I believe there is no considering Man in England, that has regard either to the Jurisdiction of Parliament, or to the Nature of the Suit, will affirm, that it would be a good

Plea; and that he could bar the great Court of the Kingdom from proceeding against him, by saying he was acquitted by a Jury in *Westminster-Hall*, after the Suit was first well commenced in that Court.

My Lord, I say, with Reverence to the Court, that should you proceed in this Trial, it may fall out, that contrary to a fundamental Rule of Law, a Man shall be twice put in Danger of his Life for one Offence, which by the Law he cannot be; and therefore I urge that as a Reason, why you cannot proceed here on this Indictment.

My Lord, I will now mention two or three Precedents, which will prove that this Impeachment is according to the Course and Law of Parliaments, though it may seem needless, after the King's learned Counsel have agreed to it.

My Lord, I shall first mention the Case of *Michael de la Poole, Rot. Par. 18 or 28 H. VI. n. 18*. He was a very great Man, and came to the House of Lords voluntarily, and said, there was a Rumour that he was guilty of horrible Things.

*L. C. J.* Where did you take this Case, out of *Cotton*? It is mentioned there; but I have seen a Copy of the Roll.

*Sir Fran. Win.* Yes, my Lord: Thereupon the Commons pray he may be committed upon his own Confession; and that the thing being debated in the House, the Lords said, We know not what was meant by those Words, *horrible Things*; it may import only Misdemeanors: If it had been said Treason, we had known how to have proceeded thereupon: And thereupon within a few Days after, the Commons came and accused him of Treason. And there it is said, that the Course of Parliament is to find out the Truth by Circumstances, and such Degrees as the Nature of the Thing will bear, and they are not confined to the strict Rules of other Courts. I will not cite any more antient Cases, though there are many to be found of general Impeachments: For we are not disputing what is the Right and Course of Impeachments, which is confessed, upon the pleading: But we have had several Cases of late; the Earl of *Clarendon* was impeached generally, and the Commons took Time to bring in their Articles; and I have had the Experience in three or four Parliaments, wherein we have been pretty well busied with Impeachments, though we have had no great Success in them, that though the Commons may, if they please, carry up particular Articles at first; yet the Law and Course is, for the Lords to receive the general Impeachment, and the Commons say, that in due time they will bring in their Articles. So it was done in the Case of the five Popish Lords; some particular Member was appointed to go up, and impeach them of High Treason in general; and in that Case, though the Parliament was dissolved before any Articles were sent up, yet afterwards, in the next Parliament, the Articles upon the former Impeachments were sent up, and received, and my Lord *Stafford* since executed, upon his Conviction upon that Impeachment: Yet Indictments were exhibited against them, before ever any Impeachment was sent up by the Commons, and Preparations were made for their Trials. But from that Day to this, there hath been no Attempt to try them upon their Indictments, though there have been several Intervals of Parliament.

Our Case is stronger than that of the Lords: For in the Case at the Bar, the first Suit was in the House of Lords by the Commons, whilst in the other Case the first was the Suit of the King, by Indictment; and yet by a subsequent Impeachment that was stopped, and the Lords continue yet Prisoners in the *Tower*. Our Time hath been so short, that we could not see the Copies of Orders, which we might otherwise have made Use of, for maintaining this Plea: We sent to the House of Lords, but the Officers were out of Town, and we could come at the Sight of nothing there. We have been told the Opinion of the Judges was delivered at Council concerning these very Lords, that the Impeachments being lodged in Parliament, no other Prosecution could be against them, till the Prosecution of the Commons was determined. So far the Courts below have always been from meddling with the Jurisdiction of Parliament, that even many times in Questions upon Acts of Parliament, they have gone up to the Parliament, to know what was meant by it. And I remember it was said by the Court in that Case of my Lord of *Shaftesbury*, where it was agreed by all, that the Commitment was too general, for it was only for a Contempt, whereas the Crime ought particularly to appear in the Warrant; that it being in a Case of Commitment by the Parliament (at least while that Parliament was continuing) they ought not to meddle with it, nor could they enquire into the Formality of the Warrant.

My Lord, I must mention one Thing touching the Case of my Lord *Hollis*, which was cited by Mr. Williams, and I have but a word to add: It is in the Appendix to the first Part of *Rushworth's Coll.* and also in *Croke, Car. fol. 181*. It was there pleaded to the Jurisdiction of this Court, that it was a Matter done in Parliament: In our Case it is pleaded that an Impeachment is depending in Parliament; that was but a Prosecution for a Misdemeanor, this is a Case of High-Treason. It fell out in that Case, the Court here did adjudge, that the Information did lie; but upon a Writ of Error it was agreed by the Lords unanimously, that the Judgment was erroneous, and that the Parties should be restored to all which they had lost, by reason of it: But if this Man should lose his Life by your Judgment, what Help would there be upon a Writ of Error? The Danger of such a Thing requires great Consideration; and it would be of fatal Consequence, if the Lords should hereafter adjudge that this Court had no Jurisdiction.

As for Mr. Attorney's Objection to day, that we have not set forth actually, that there was any Impeachment; I do confess I was a little startled at it; for the Words of the Plea are, That *Edward Fitz-Harris*, by the Knights, Citizens and Burgeesses, was impeached; which Impeachment is in Force. I do not know how in the World we could have thought of more express Words, than to say, he was impeached; and that that Impeachment is in full Force, as appears by the Record.

For the other Objection, the other Day (for we would mention all, how little soever they deserve an Answer) that the King may chuse in what Court he will sue; it is agreed, when it is at his own Suit: But this is not so, but at the Commons Suit, and can be no where else prosecuted, than where it now depends. This is the Method and Course of Parliaments, we say; and that the Method and Course of Parliaments is the Law of the Land, your Lordship will take Notice that it is so.



To conclude, as this Plea now stands, the Demurrer confessing the Matter of it, it cannot be over-ruled, without deciding whether the Lords can proceed upon such general Impeachments, and whether the Commons can impeach in such a general Way. We submit the whole to your Judgment: It is a Case deserves great Consideration, as being of great Weight and Moment; and highly concerns the Jurisdiction of the Lords, the Privileges of the Commons, and the Rights of all the People of England.

Mr. Wallop. May it please your Lordship, there are in this Plea three principal Parts upon which it turns, which are expressly alledged. First, That *Fitz-Harris* before the Indictment was according to the Law and Custom of Parliament impeached of High-Treason, and this I humbly conceive is confessed by Mr. Attorney upon the Demurrer. The second, Thing is, That this Impeachment, be it as it will, general or particular, does remain in full Force and Virtue. This is plainly alledged and demurred to, and so confessed by Mr. Attorney; for all Things well alledged and pleaded, are confessed by the Demurrer. The third great Point and Hinge upon which it turns, is this, That the High Treason, mentioned in the Indictment, and the High Treason for which he was impeached in the House of Lords, is one and the same Treason. This we have plainly averred, and this Mr. Attorney hath likewise by his Demurrer plainly confessed, as we humbly conceive.

For the two former Points there is no Difficulty in them, and therefore I shall pass them over. 'Tis this third Matter which I take to be the only Point in the Case; and if we have well averred it, and can by Law be let into such an Averment; then I hope your Lordship and this Court will not pretend to go on in this Case. They object, and say, because he is impeached of High-Treason generally, without naming any particular Treason, that cannot be averred to be the same, and a Demurrer does never confess the Truth of that which by Law cannot be said; but if it may be said, and is said plainly, then the Demurrer confesses it.

My Lord, I humbly conceive this Matter is well averrable, and we have taken a good Averment. I grant that a repugnant and an impossible Averment cannot be taken, as to aver a Horse to be a Sheep, which is apparently repugnant and impossible; and in that Case a Demurrer can never confess the Truth of that which appears impossible to be true. But, my Lord, if there be no Impossibility, nor Repugnancy, nor Contradiction in the Averment between the Matters that are averred to be the same, as there is not between that which is but generally expressed, and that which is more especially alledged; where all may well stand together, and the one includes the other, and needs only some farther Explanation; it is not only allowable to aver it, but most proper, and in such Case only necessary. For, *quod constat clarè non debet verificari*, in this Case it is not necessary that it should appear to the Court upon the View of the Indictment and Impeachment, that the Matter contained in both, is the same; but it is sufficient, that it be proveable upon an Issue to be taken. And so much is admitted by the Judges in *Sperry's Case* Co. 5. Rep. 51. That if there be convenient Certainty which may be put in Issue, it is sufficient, and consequently not necessary to appear at the first, but upon the Event of the Issue afterwards to be tried. And if they intend it otherwise, I confess I understand them not. It is true, it must appear to the Court, either at the first opening, or upon an Issue subsequent to be found. And, my Lord, if this Matter may appear at first or at last, and the Thing is possible to be proved, then we are well enough. In *Corbet and Barne's Case*, in the first *Croke*, Fol. 520, a Battery supposed to be in London, and a Battery supposed to be in *Hertfordshire*, were averred to be one and the same Battery, which naturally is impossible; yet being transitory, and therefore supposable to be done in any County, such an Averment is allowable, though it seem'd contradictory, and could not appear to the Court by comparing the several Declarations to be any way the same. And there being a Demurrer for that Cause in that Case, the Truth of the Averment was rul'd to be confess'd by the Demurrer, and so here by the Demurrer, the Truth of the Suggestion, that the Treason in the Impeachment, and the Treason in the Indictment, is one and the same, is confess'd.

By taking this Averment, we offer them here a fair Issue, an Issue of Fact triable by a Jury, wherein the Attorney-General might have join'd with us, if he had pleas'd; but refusing that, and having demurr'd, and thereby confess'd what we have alledged, it must be taken to be true, as if found by a Jury. And, my Lord, that this Matter is properly averrable and triable, I think it is plain; it being a Question of Fact, which is properly triable by the Country: And if they had taken Issue upon that, we might have gone to a Jury, where the Matter would have been easily prov'd. For upon Evidence given, the Jury might fairly take into Consideration the reading of this very numerical Libel set forth in the Indictment, and the particular and special Debates of the House of Commons thereupon. And that upon those very Debates the House voted that *Fitz-Harris* should be impeach'd for Matters contain'd in that Libel. And that upon those Votes the Impeachment was carry'd up to the Lords. This is Evidence sufficient, that the House of Commons did intend to accuse him of the same Treason contain'd in the Indictment; which proves the Issue, that is, that the Treason contain'd in the Impeachment, is the same with that contain'd in the Indictment. Neither is this to put the Intention of the Mind, or secret Thoughts of the Heart in Issue, which is against the Rules of Law; but to put them into a Way of Proof, which well stands with the Rules of Law, which upon the general, or other collateral Issue, may well be enquir'd of by the Jury. As in an Action, *quare canem mordacem defendens scienter retinuit*. Here [*Scienter*] is not directly issuable, but it is proveable, and must be prov'd upon the general Issue. So in the present Case, the Intention of the Commons upon the Issue offer'd by us, and refused by the Attorney-General, might, and ought, and would have been prov'd; and without Doubt, found by the Jury. Neither is this general Impeachment such a notional Thing as the other side would pretend; but it is as if they should say, We do charge him to have committed certain Crimes that are Treason. Now whether the Crimes they say he had committed, and for which they impeached him, are the same with those for which he is indicted, is a good and proper Issue. And if it appears to the Court to be the same, you will certainly yourselves take off your Hands from those Proceedings. This is all I shall say as to the Averment. And if we can well get over that, I take it, all the rest is well enough.

But again, they say, the Impeachment is too general, and no Man shall be put to answer to such a general Accusation.

And I say so too, neither shall *Fitz-Harris* be put to answer to it without special Articles; yet he cannot quash the Impeachment for this Cause, as he might the Indictment; which shews the Difference betwixt an Impeachment and an Indictment, which always contains the special Matter, and without which it might be quash'd and made no Record. But here by the Law of Parliament such general Impeachments are held good: and Articles are usually brought in afterwards, and after those additional Articles, which cannot be in the Course and Way of Indictment; and therefore we must take the Impeachment as we find it; and since it stands against us as a Record, though 'tis general, we may, and must plead it in the same Generality; having no Way to make it on Record, as we have in case of such a general Indictment.

So then this being an Impeachment according to the Course of Parliament; it is well lodg'd in the House of Lords, where it only ought to be tried, and we must plead it as we may, and as we find the Case to be. And having averred the Crimes to be the same, we have done what we could, and therefore enough.

And that a general Impeachment without Articles is a Bar to any Indictment for the same Matter, was resolv'd by all the Judges, as I am inform'd in the Case of the Lords in the Tower, who were all indicted for Treason, either in the King's Bench, or before Commissioners of Oyer and Terminer. And afterwards [5 Dec. 78.] generally impeached before the Lords in Parliament; and no Articles exhibited till 3 April 79. And yet in the mean time it was resolv'd at the Council Table by all the Judges there attending, that after the general Impeachment before Articles, they could not be proceeded against upon those Indictments, though the Parliament wherein they were impeached was dissolved.

And that was a stronger Case than this of *Fitz-Harris*: for there the inferior Court was first possess'd of the Cause, and yet the general Impeachment clos'd up the Hands of the Court. But in this Case, the superior Court, the Parliament, was first possess'd of the Cause, which cannot be taken out of their Hands by the inferior Court.

There is a farther Difference betwixt an Impeachment in Parliament, and an Indictment; that in an Indictment which is always as particular as Articles upon an Impeachment, you cannot plead *autre foitz* arraigned; but you must plead either *autre foitz* convict or acquit, as appears in Sir *William Wisshpole's Case*, Chron. 1. 105. But in an Impeachment in Parliament, the other Side will acknowledge, that after Articles exhibited, there can be no proceedings upon an Indictment for the same Offence, although the Defendant in the Impeachment be neither convict, nor acquit. Otherwise you may bring back all the Lords in the Tower to the King's-Bench to be tried, which Mr. Attorney will not, I suppose, attempt.

And it is observable in the Case of Sir *William Wisshpole*, That to avoid the Doubt that the Party there should not be questioned, both upon the Coroner's Inquest, and the Indictment of Murder; it was rul'd by the Court, that the first should be quash'd as insufficient: So careful were the Judges to avoid the double Vexation, in a Case compared with this, of no great Import.

I shall say no more to the Case, but only observe how scrupulous the Judges have been to touch upon a Case, where they had the least Suspicion of Jealousy that the Parliament had, or pretended to have a Jurisdiction, or were possess'd of the Cause. I am sure I could never get any thing by any Labours of mine in those Cases. But upon all such Motions they were so aware of what might be the Consequence, that they would always worship afar off, and would never come near the Mount, they would ever retire when they came but near the Brink of this Gulph.

Now, my Lord, if you retain this Cause, in Consequence you charge yourselves with the Blood of this Man; wherein, if you proceed regularly, and according to Law, all is well. But however, by over-ruling his Plea, you take upon you his Blood one way or other; through which you must wade to come at the Cause. And whether it be advisable to come at it upon these Terms, I leave it to your Lordship's Wisdom to consider.

Mr. Pollexfen. My Lord, I shall not make any long Argument, there hath been so much said before me. But I would fain come to the Question if I could; for I must confess, after all, I cannot see what the other Side make the Question. Mr. Attorney was pleas'd to say, that both for the Matter and Form, he objected against our Plea. But if for the Matter it be admitted to me, that an Impeachment in Parliament for the same Matter will out this Court of Jurisdiction; I will say nothing at all of it, for I apprehend that is not then in Question.

L. C. J. No, not at all.

Mr. Pollexfen. Then the Matter seems to be agreed, and only the Manner and Form of the Plea are now in question. And for the Manner, they except to it in these Particulars. First, they say, it is not alledged that there is any Impeachment upon Record; now I confess, Form is a subtil Matter in itself, and it is easy for any Man that reads other Men's Words and Writings, if he will, to make what Construction he will of them, even *Nolimus* to be *Volumus*; but I know the Court will not do so. But for an Answer to the Objection, I think it is as strongly and closely penn'd as I can tell how to pen any thing, he was impeached, *Quæ quidem Impetitiō*, &c. What can that *quæ quidem* signify, but the Impeachment that was just mentioned before? But what they mean by this, to say, this is not the same Impeachment, when the Words are positive that it is the same, I must confess I cannot fathom.

My Lord, there was another Thing spoken the last Day, but they have not mentioned it now; if there be any thing stirr'd in it, I hope your Lordship will be pleas'd to hear us before you give your Judgment in it. That it was not said to be *sub pede sigilli*; but I know they won't insist upon it, therefore I say nothing to that.

But the great Question now is, whether or no this be not too general, the alledging that he was impeached in Parliament, and not saying how or for what Crime; though there be an Averment afterwards, that it is for the said Crime? Whether this be not so general, as that therefore this Plea should be naught?

First, For this of the Averment, I take it with Submission, let the Crimes be never so particularly specified in the Record that is pleaded, and



in that upon which the Party is brought in Judicature, yet always there must be an Averment; and that Averment is so much the substantial Part of the Plea, that let the Matter never so much appear to be the same without an Averment, it would be naught; and it must come to be tried *per pais*, whether the Offence be the same or not: For if a Man plead one Indictment for the Murder of J. S. to another Indictment for the Murder of J. S. though they bear the same Name, he must aver they are one and the same Person. For else *non constat* to the Court; but there may be two J. S's. Therefore all Averments are still the Substance of the Plea, to bring the Identity of the Matter into Judgment, and are to be tried by the Country: So then the Objection to the Generality is not an Objection to the Substance, but rather an Objection to the Form on their Side; because the Substance is alledged in the Plea, that it is for the same Treason: Which Substance, if Mr. Attorney had thought not fit to have demurred to, but taken Issue on, must have been tried *per pais*.

Having thus spoken to the Averment, my Lord, let me speak to the general Allegation that he was impeached for Treason, and not saying particularly what the Fact was.

My Lord, if they admit the Law, that an Impeachment in Parliament does suspend or take away the Jurisdiction of this Court, then they have admitted a great Part of the Fact, and then the Matter in question will be, what Impeachment in Parliament it is that will take away the Jurisdiction of the Court, and there can be but two Sorts; the one at large, where the whole Offence is specified; the other not at large, but only in general Words, The Knights, Citizens, and Burgesses in Parliament assembled, in the Name of themselves, and of all the Commons of England, do impeach such an one of High-Treason. Now, my Lord, if so be such Impeachment in Parliament be a good Impeachment, then have we, I think, the most plain Case pleaded that can be, as plain as the Fact that this is an Impeachment in Parliament; and then this Court is outed of its Jurisdiction.

They that have gone before, have said, which I must pray your Lordship to remember, that the Court and we are to take notice of the Proceedings in other Courts, as other Courts are bound to take notice of the Proceedings of this; then I would suppose in other familiar Cases, there is generally (as it is true in *Sperry's Case*) the Writ or Declaration, which does in all civil Causes set forth the Particularity of the Thing in question, yet in some Cases we are sure it does not do so; but the Course and Practice of some Courts admit general Proceedings. Now wherever that is so, the Party cannot mend himself by making their Course otherwise than it is: For he must not say it is more particular than the Course of the Court does make it. Therefore he hath no other Way by the Law to bring his Matter on, and help himself, but by an Averment that it is the same. I will suppose a Case of such a Nature as this; A Man brings an Account in London upon *Concessit solvere*, and he does not particularize in the Court any Thing what or how his Debt did arise; but after he brings another Account or Delivery, a special Declaration in an Account of Debt: shall not I, because the first Declaration is in general Words, aver that this is the same Matter that he sued for by the *Concessit solvere*, which he now sues for in this particular Declaration? Or, suppose a Man in this Court does bring an Account for divers Wares and Merchandizes sold, and does not express any Particulars, but that he was indebted, in general Words, for Wares sold; and afterwards becomes and brings another Account, and says, it is for such and such Wares; so much for Cloth, so much for Wine, &c. though his first Declaration be in general, not expressing what the Wares were, and the last is particular; shall not I come and plead in Abatement to the second Declaration, that the first and second were for one and the same Thing? Suppose again an Indictment of Barretty be found against a Man, which is an Offence that is only general, and hath no Particulars alledged in the Indictment; should not a Man that is the second Time indicted, come and say, this is one and the same? My Lord, under favour, in all these and such like Cases, the Law must be governed by its own Proceedings, and take notice of the Nature of the Things depending before the Court. And if so be, upon Consideration of the Nature of the Thing, there is as much of Certainty set forth as the Case will admit, and is possible to be had, we must permit the Party to plead as he can, and help himself by the Averment.

Then, my Lord, the Question is, whether an Impeachment generally in Parliament, without particularly setting forth for what, be a good Impeachment there or no? If they say it is not, then the Bottom of the Plea is naught, and all is quite gone; but if they say it is, then I have pleaded my Matter as it is. For I cannot say, that that is particular, or make that particular that is not; and I have done all that is possible for me to do in my Case. I have pleaded what is in the Record; and as it is in the Record, from which my Plea must not vary, and I have averred it is for the same Matter, and you have confessed it by the Demurrer.

My Lord, I would not intangle the Question; but I must confess, I cannot see how they can extricate themselves out of this Dilemma, if they do admit a general Impeachment is a good Impeachment. Then there are fresh Instances of this considerable in the Case, as that which hath been particularized of the Lords in the *Tower*, and of the Opinion in February of the Judges in their Case. For in the Beginning of December were those Lords indicted; and after on the 5th of December, the House of Commons taking it into their Consideration, that there was a Commission going out for an High-Steward, with an Intent to bring them to Trial before the Peers; they purposely to have the Carriage and Prosecution of his great and horrid Treason, and take off the Prosecution upon the Indictment, do impeach the same Lords, and there the Impeachment is just the same as this in our Plea of High Treason; but not of any particular fact, adding, only of other Crimes and Misdemeanors, which is as general as can be. Now, my Lord, the Judges did take so much Notice of it, that though the Parliament was dissolved before the particular Articles were carried up to set forth the particular Offence; yet in February following (some of the Judges are here, and they will rectify me (if I be mistaken) their Opinions being asked about it at the Council-Board, upon the Petition of the Lords, to be either bailed or tried; they were of Opinion, that this Impeachment, though thus general, was so depending in Parliament, that they could not be tried. So that I think the Proceedings in Parliament are of that Nature, that if you will meddle with what they

do, you will take Notice of their Method of Proceedings, as you do of other Courts.

Why then, my Lord, if this be so, how is it possible for us to do better? We have pleaded as our Fact is an Impeachment of High Treason, what would they have had us to do, or wherein is our Fault? What would they have had us said? We were impeached of any High Treason, so and so particularizing, how can that be? There is no such Thing. Then they would have said, *Nul. Tiel. Record*; and we must have been condemned for failing in our Record: Then indeed we had been where they would have had us. But having done according to our Fact, if that Fact be such as in Law will out this Court of Jurisdiction, I see not how it is possible we should plead otherwise, or what Answer they will give to it.

My Lord, I will meddle as little as I can with what hath been said, they have mentioned that it is a Case of an high Nature, and this Impeachment in Parliament they will look upon it as the Suit of all the People of England; why then, my Lord, this must needs be agreed to me, if this Impeachment in Parliament be in the Nature of an Appeal, surely an Appeal does suspend the Proceedings upon an Indictment for that Fact: Which is the Case expressly in my Lord *Dyer*, *Fol. 296*. *Stanley* was indicted of Murder, and convicted; after he was convicted, and before any Judgment, the Wife of the Party murdered brought her Appeal; then came they and moved for Judgment: No, said the Court, here is an Appeal brought, and they could not go to Judgment till that Appeal was determined. So the *Stat. of 3 H. VII. Cap. 1.* and *Vaux's Case 4 Report, Fol. 39*. An Appeal of Murder the Party convicted before Judgment, the Petitioner in the Appeal did die. Then an Indictment brought, and this Conviction pleaded in Bar of that Indictment, and adjudged to be a good Plea; but then there was a Fault found in the Appeal, upon which the Conviction on the Appeal was void in Law, and they went on upon the Indictment. This is to shew, that if this be of the Nature of an Appeal, then ought this Suit first to have its Course and Determination, before your Lordship proceed on this Indictment.

But, my Lord, whether it be of this Nature or no, is a Matter we know were under great Controversy; and whether your Lordship will interpose in that great Question, or whether it comes in Judgment under this Question, you will do well to consider: For it is a Matter of Parliament, and determinable among themselves, not in the Courts below, nor have ever inferior Courts taken upon them to meddle with the Actions of the superior Courts, but leave them to proceed according to their Laws: And if that be done in any Case, there will be as much Regard had in this great Cause to the Court of Parliament as in others.

Besides the Authorities cited out of my Lord *Coke* and others, I would cite one more, and that is *Cotton's Records*, 5 H. IV. *Fol. 426*. the Earl of *Northumberland's Case*. He comes and confesses himself to be guilty of an Offence against his Allegiance, the King delivered his Petition to the Justices, and would have them to consider of it; no, said the Parliament, it is Matter of Parliament, and the Judges have nothing to do with it: the Lords make a Protestation to this Purpose, and then they went on themselves, and adjudged it to be no Treason. There is only that one Record more which has been often cited, and that is, *Rot. Parliamenti 11 R. II. Pars 1. N. 6*. in this Parliament the Lords Spiritual and Temporal claimed the same Privilege. My Lord, I only offer these Things, with what my Lord *Coke* says hath been formerly thought Prudence in the Judges to do.

So that I hope, that if the Matter be good, the Form is as good as the Matter can be put into, and therefore we hope you will allow us the Benefit of it.

Mr. Attorney. May it please your Lordship, I am of Counsel in this Case for the King, and notwithstanding what hath been said, I take it, with Submission, that this Plea is a naughty Plea, as a Plea to your Jurisdiction, and there is no Matter disclosed therein that we can take a good Issue upon.

The great Substance of the Arguments of these Gentlemen assigned of Counsel for the Prisoner, is against the Prisoner. For the great Matter of their Arguments was, lest this Gentleman should escape (which Arguments in several Instances they have used to support the Plea) but the Prisoner pleads this Plea to the Purpose that he might escape. Therefore if these Gentlemen had taken Instructions from him, surely they would have used Arguments to the same Purpose that he might escape.

My Lord, they object we have admitted here that there is an Impeachment depending, that we have admitted it is for the same Matter, and that we have admitted the Parliament to be in being; but no Fact is admitted that is not well pleaded. Indeed if that be admitted that the Parliament is still in being, then it goes very hard with us; and if not so admitted, the whole Force of Mr. *Williams's* Argument falls to the Ground. But I say, my Lord, with Submission, to this Matter, that the Beginning, Continuance, Prorogation, Adjournments, and Dissolution of Parliaments, are of publick Cognizance, and the Court *ex Officio* will take Notice of them, so that they need not be averred. And so is the 41 of the Queen, the Bishop of *Norwich's Case*. A private Act of Parliament was pleaded, and the Day of the Parliament mistaken; there was a general Demurrer, and it was resolved that it was naught, and Judgment given against the Bishop, though no Exception was taken in particular, because the Days of the Beginning and Ending of Parliaments are of publick Notice; and the Judges take Notice, when a Parliament is in being, and when not. That's a sufficient Answer to that Matter.

Then for those many Cautions that have been given you, what a difficult Thing it is for two Jurisdictions to interfere, Mr. *Fitz-Harris* is much concerned in that Matter, who hath forfeited his Life to the Law as a most notorious Offender that certainly deserves nothing but Punishment; yet he would fain live a little longer, and is much concerned that the Judicature of Parliament should be preserved. If it be not Law, he shall not be oppressed in it; but if it be Law, *fiat Justitia*. Certainly no Consideration whatsoever ought to put Courts of Justice out of their steady Course; but they ought to proceed according to the Laws of the Land.

My Lord, I observe it is an unusual Plea, and perhaps they had some Reason to put it so. It concludes, *si curia procedere vult*, I wonder they did not put in *aut debeat*, that is the usual Form of such Pleas; for you have no Will but the Law, and if you cannot give Judgment, you ought not



to be pressed in it; but it being according to Law that great Offenders and Malefactors should be brought to condign Punishment, we must press it, whatsoever the Consequences are. And if we did not take it to be the Interest of all the Kingdom, and of the Commons too as well as of the King, my Lord, I should not press it; but it is all their Interest that so notorious a Malefactor that hath certainly been guilty of Treason in the highest Degree; and that for the utmost Advancement of the late Popish Plot, should not escape, or the Truth be stifled, but brought into Examination in the Face of the Sun, that all Men may see what a villainous Thing hath been attempted to raise up the whole Kingdom against the King: But they say, if it be not Law, you will not proceed, it ties your Hands. But, with Submission, they have not given you one Instance to make good what they say. Many Things have been, that a Plea depending in a superior Court is pleadable to the Jurisdiction of an inferior Court: for, my Lord, that is it we put upon them to shew: If it had been pleaded in Abatement, it would have had its Weight, and been considered of, as in *Sperry's Case*, where it was no Plea to the Jurisdiction.

Put the Case it had been a good Impeachment, and he had been arraigned upon it and acquitted; if he had afterwards come to be indicted in this Court, and the Prisoner will not plead this in Bar but to the Jurisdiction of the Court, it would not have been a good Plea; but he had lost his Advantage by mispleading. If then an Arraignment, and an Acquittal, or Conviction thereupon, is not a good Plea to the Jurisdiction; then certainly an Impeachment depending singly cannot be a good Plea to the Jurisdiction. This Court hath a full Jurisdiction of this Case, and of this Person, both of the Crime and of the Party, who is a Commoner; and not only to find the Indictment, but to proceed to Justice; and this you had at the Time of the Fact committed. For certainly, we need not put Cases for to prove that the *King's-Bench*, especially since the Statute for trying Treason beyond the Seas, hath an universal Jurisdiction of all Persons and Offences. Pray then what is it that must out this Court of their Jurisdiction? For all the Cases that have been, or can be put about Matters which are not originally examinable in this Court, make not to the Matter in question: there, it is true, the Court may be by Plea outed of its Jurisdiction; as at Common Law, where a Fact is done *super altum mare*, and so pleaded, that puts it out of the Court's Jurisdiction; and that was my Lord *Hollis's* and Sir *J. Elliot's Case*, and so that was my Lord *Shaftesbury's Case* too, the Fact was done out of their Jurisdiction, and that may be pleaded to the Jurisdiction, because they had no original Jurisdiction of the Fact; but where the Crime and the Person were absolutely within the Jurisdiction of the Court, and the Court may originally take Cognizance of it, as this Court had of the present Case, I would fain know what can out that Jurisdiction less than an Act of Parliament: I will be bold to say, the King by his Great-Seal cannot do it; nor can an Act of either House, or both Houses together without the King, out the Jurisdiction. To say, their Proceedings ought to be a Bar, that is another Case, the Party hath his Advantage, and may plead it in Abatement or Bar, as the Case requires: For if there had been an Acquittal or Conviction, the Party could not plead it to the Jurisdiction. Therefore for those Cases they put, when you come to examine the Reason of them, you see how they stand, *viz.* that the Court had no original Jurisdiction.

My Lord *Shaftesbury* was committed by the Lords for a Crime in that House; a Contempt to that House; he is brought here, and it appears to be a Commitment in Execution. My Lord, that was out of your Jurisdiction; and if you had bailed him, what would you have done? would you have bailed him to be tried here? No, you could not do it, and therefore you proceeded not in that Case. And so in the other Cases: for there is not one of their Cases that have been cited of the other Side, but where it was out of the Jurisdiction of the Court originally, and not at all within it. As for the Case of the five Lords in the *Tower*, because they say it will have a mighty Influence upon them, and they put the Case, that there was in *December* an Indictment, and afterwards an Impeachment from the Commons; and they cite some Opinion, given at the Council-board, which I hope these Gentlemen will not say was a judicial Opinion, or any way affects this Cause: But for that, my Lord, I observe, the Lords took care that these Indictments should be all removed into the Lord's House; so they did foresee that the King might have proceeded upon the Indictments, if they had not been removed thither. But our Case now is quite another Thing: For those Lords were not fully within your Jurisdiction. You cannot try a Peer of the Realm for Treason; and besides, the Lords have pleaded in full Parliament, where, by the Law of Parliament, all the Peers are to be their Judges; and so you cannot out them of that Right. And the Reason is plain, because thereby you must do them an apparent Prejudice; they having pleaded there, all the whole Peerage are their Triers. But upon Trial before Commissioners, they must have but a select Number of Peers to be their Triers. But in none of those Cases hath any Judicial Opinion been given: For the Case of 11 R. II. first cited by Sir *Fran. Winnington*, and then by Mr. *Pollexfen*, a Declaration in Parliament, That they proceeded according to the Law of Parliament, and not according to the Common Law, nor according to the Practice of inferior Courts; that will be nothing to our Purpose at all, that was in Case of the Lords Appellants. A Proceeding contrary to *Magna Charta*, contrary to the Statute of *Edw. III.* and the known Privilege of the Subject. But those Proceedings had a Countenance in Parliament; for there was an Oath taken by all the Lords in Parliament, that they would stand by the Lords Appellants. And thereupon they would be controuled by none, and they would not be advised by the Judges, but proceed to the trying of Peers and Commoners according to their own Will and Pleasure. And between that Time of 11 R. II. and 1 H. IV. see what *Havock* they made by those illegal Proceedings; and in 1 H. IV. you will see, that these very Lords were sentenced, except one or two of them who were pardoned; and then it was expressly resolved by Act of Parliament, that no more Appeals of that Nature, nor any Appeals whatsoever, should be any more in Parliament. And if so, these Gentlemen had best consider how they make an Impeachment like an Appeal: For in that Statute, it is said, there shall be no more Appeals. And the Petition upon which this Act is founded, runs thus: They pray that no Impeachment or Appeal may be

in Parliament. But when the King came to make the Grant, he grants only for Appeals, and principally to out those Lords Appellants who were condemned by that very Parliament. So that it is a very pretty Matter at this Time of Day to liken an Impeachment to an Appeal.

But, my Lord, the other great Point is this. There is nothing at all certainly disclosed to you by this Plea; therefore there is nothing confessed by us, only the Fact that is well pleaded: therefore I shall come to consider what is said by them, as to the Form of it. They say, my Lord, that they have pleaded it to be *secundum Legem & Consuetudinem Parliamenti*; and if that be sufficient, let them have said what they would, that would have healed all. But I say, my Lord, with Submission, they must disclose to you what is the Law and Custom of Parliament in such Case, or else you must take it upon you upon your own Knowledge, or you cannot give Judgment. It is very well known what this *Lex & Consuetudo Parliamenti* is; no Person versed in the Records, but knows it, that by Course of Parliament a Message goes up with a Declaration to impeach the Party generally; and then after there are Articles or a Bill of Impeachment produced. Now till that be produced, sure there is no Counsel of the other side will say, that ever the Party can be called to answer. And because these Gentlemen do pretend to urge their Knowledge herein, I would observe there are three Things to be considered of the Parliament; the Legislative Part, the Matters of Privilege, and the Judicial Part proper to this Case. For the Legislative Part, and Matters of Privilege, both Houses do proceed only *secundum Legem & Consuetudinem Parliamenti*; but for the Judicial Part, does any Man question, but that in all Times they have been guided and directed by the Statutes and Laws of the Land? And have been outed of a Jurisdiction in several Cases, as by the Statute of 4 *Edw. III.* and 1 *H. IV.* And the Lords in all Writs of Error, and all Matters of Judgment, proceed *secundum Legem Terræ*; and so for Life and Death. And there is not one Law in *Westminster-Hall*, as to Matters of Judgment, and another in the Court of the Lords above. But I will not trouble your Lordship any further to pursue these Things. But it is not sufficiently disclosed to you, that there is any such Thing as an Impeachment depending there; it is only alledged, that he was impeached, and so much the News-Book told us, that he was impeached: but to infer from thence that there was an Impeachment carried up and lodged for the same High Treason, is no Consequence. And then it is alledged, *Quæ quidem Impetitus*, when no Impeachment is before set forth, but only that he was impeached generally. And as I observed before, a Person might go up with a Message to impeach, but that cannot be said to be an Impeachment to which the Party is compelled to answer; it must be an Impeachment on Record, and appearing on the Face of the Record for what Crime it is; and so they ought to have set it forth.

Now that this is too general that is alledged here, I take it the Books are very full. When a Record is pleaded in Bar or in Abatement, the Crimes ought to be set out to appear the same, and so, my Lord, are all the Precedents of *Coke's Entries* 53, *Holderst's* and *Burgh's Case*, and *Watt's* and *Bray's Case* in 41 and 42 of *Queen Eliz. Coke's Ent.* 59. *Wroth's* and *Wigg's Case*, 4 *Rep.* 45. and in *Lewes* and *Scholastica's Case*, and *Div's* and *Manning's Case*. The Record must be set out, that the Court may judge upon it; and the Record must not be tried *per pais*, but by itself. But for what they say, plead it never so certainly, there must be an Averment, it must be so it is true; but that is for another Purpose than they urge it. The Reason is, because if it be for another Fact that he hath committed, he may be indicted again, though it be of the same Nature; but whether of the same Nature, or not of the same Nature, is the Thing must appear upon the Record pleaded, because the Court must be ascertained, that it was sufficient for the Party to answer to it; for if it were insufficient, he may be again proceeded against: As if an Indictment be pleaded which was insufficient, though the Party pleads an Acquittal or Conviction upon it, it will not avail him; for the Court will proceed on the other Indictment. And so is the Resolution in *Vaux's Case*, and in *Wigg's Case*; though there was a Judgment given of Acquittal, yet he was tried again. So that, my Lord, that is one great Reason why it must appear, that the Court may judge whether it be sufficient for the Party to answer. And you have now that here before you; if this be such an Impeachment as they have pleaded it, as this Person could not answer to by any Law of Parliament or other Court; then it is not sufficient to out you of your Jurisdiction. And I do think, that by no Law they are, or can be compellable to answer to a general Impeachment of High-Treason. And to give you Authority in that, there are many might be cited, as the Cases of my Lord *Stafford*, and the other Lords in the *Tower*, and so is the ancient Course of Parliament: With Submission, I will be bold to say, the Impeachments are all so, that ever I met with. And it appears by them, that they all conclude *contra Coronam & Dignitatem Regis*, in the Form of Indictments, laying some Overt-Acts and the special particular Crimes for which the Person is impeached, as Overt-Acts for Treason required by the Statute of 25 *Edw. III.* And I hope they will not say, that without an Overt-Act laid in the Impeachment, the Impeachment can be good. If then this be so general that it cannot make the Crime appear to the Court, and is so insufficient, that the Court cannot give Judgment, I take it you will go on upon the Indictment, which chargeth him with a particular Crime.

My Lord, Mr. *Pollexfen* does put the Case of *Barretrie* where such Averment is allowable; but that is a special, certain, and particular Crime, but High-Treason is not so; there are Abundance of special Sorts of High-Treason, there is but one Sort of *Barretrie*, and there are no Sub-divisions; therefore there is nothing to be averred but the special Fact that makes that *Barretrie*.

Then there was another Authority out of the Book of *Affizes* cited by Sir *Fran. Winnington*, and greatly relied upon. A Man is indicted for the Murder of *J. S.* and afterwards for the Murder of *J. N.* the former was pleaded to the second, with an Averment that it is the same Person; that is but according to the common Form of Averments, to be of Matter of Fact. For if *J. S.* was known, as well by the Name of *J. N.* as of *J. S.* the Indictment was for the Murder of the same Person, and there it is pure Fact averred. But where it is essential, as this Case is, that the particular Treason do appear; to say, that it is the same particular Treason, and to say, that



Matter of Fact averred shall enlarge a Record, I think, is impossible to be found any where. And of all the Cases that I have seen or heard, I confess none of the Instances comes up to it: For the Case in *Moor, King, and Howard*, cited by Sir Francis Winnington, that is an Authority as expressly against him, that nothing can be more: For if there be an Indictment for Felony in such a particular Act, and then he is indicted again, he cannot come and plead a general Indictment of Felony, and then aver 'tis for the particular Felony, and so to make the Fact enlarge the Record, and put Matter of Record to be tried by a Jury.

Mr. Wallop was of Opinion, that upon this Averment the Jury may try the Fact. What a pretty Case would it be, that a Jury should judge upon the whole Debates of the House of Commons, whether it be the same Matter or no: For those Debates must be given in Evidence, if such an Issue be tried. I did demur with all the Care that I could, to bring nothing of that in Question; but your Lordship knows if they have ever so much in particular against a Man, when they come to make good their Impeachment, they must ascertain it to a particular Crime; and the Overt-Acts must be alledged in the Impeachment, or else there is another Way to hang a Subject than what is the King's Highway all over England. And admit there was an Intimation of a Purpose to impeach, a Message sent up, and any Judgment given thereupon, pray consider what may be the Consequence as to the Government; a very great Matter depends upon this: If there be any Record of that Parliament, then is the French Act gone: For so is the Resolution in 12 *Jacobi*, where the Journal-Book was full of Proceedings; yet because there was no Judgment passed, nor no Record of a Judgment in a Writ of Error, they adjudged it no Session; but if any Judgment had been given, then it had been otherwise. So that the Consequences of these Things are not easily seen, when Men debate upon touchy Matters.

But that which is before your Lordship is this Point upon the Pleading, and I conceive I have answered all the Precedents they have cited; therefore, my Lord, I take it, with Submission, there is nothing of that Matter before you concerning an Impeachment depending before the Parliament; but whatsoever was done, 'tis so imperfectly pleaded, that this Court cannot take any Notice of it.

Mr. Sol. Gen. My Lord, I shall endeavour to be short, and shall confine myself (because I am tender of your Time) to the Point in Question; which is, Whether this Plea be sufficient in Point of Form? There have been many Things said on the other Side, which I must crave Leave to take Notice of, so far only as to shew they are not in Question before you. Those are what relate to the Matter of the Plea; for they argue 'tis good both in Matter and Form: And from the Matter of the Plea they have taken Occasion to debate, whether a Commoner may be impeached? Whether this Court hath Power to judge of the Privileges and Course of Parliament? None of which Questions will arise upon our Case now. Therefore I will not now debate, whether *Magna Charta*, that hath ordained that every Man shall be tried by his Peers, and the Statute of 4 *Edw. III.* which says, That the Lords shall not be compelled, nor shall have Power to give Judgment upon a Commoner, have sufficiently secured the Liberty of the Subject from Impeachments. Nor is it the Question before your Lordship, whether you shall judge of any Matter that is a Right or Privilege of Parliament; here is nothing before you that was done in Parliament; but this is an Indictment for High-Treason, committed by *Fitz-Harris* in this County. Now, my Lord, as that is not the Question, neither will it be the Question, Whether an Impeachment depending in the House of Lords against a Commoner, by the House of Commons, will bar this Court of Jurisdiction? For though they have entered upon it, and debated it at large, and seemed to obviate the Objections made to that if it had been a Question; as by the saying that the King hath no Election, because this is not the Suit of the King, but the Suit of the Subject: I will not now *ex insinuatione* argue that Point; but I will humbly offer a few Things to your Lordship's Consideration, and I shall take my Hints from them. They say, the House of Commons are the grand Inquest of the Nation, to enquire of Treasons and other High Crimes, and they make these Presentments to the House of Lords. Now when such a Presentment is made, 'tis worthy Consideration, whether it be not a Presentment for the King; for an Impeachment does not conclude as an Appeal does, but *contra Ligeantiae suae Debitum, & Coronam & Dignitatem Domini Regis*; so far 'tis the King's Suit. In an Impeachment the Witnesses for the Prisoner are not sworn, the Prisoner hath not Council for his Life in Matter of Fact, as in Cases of Appeal, at the Suit of the Subject he hath. The King may pardon part of the Sentence, it was done so in *Rich. the 1st's* Time, and it was done so lately in my Lord *Stafford's* Case; but take it for a Supposition that it is the Suit of the People, yet that cannot preclude the King from his Suit neither; for at Common Law before the Statute of 3 *Hen. VII.* where a Man had an Appeal for Murder, the King had not his Hands tied up, not to proceed upon the Indictment: It had been used so, I do agree, and so 'tis recited, that it had been used so, in the Statute of 3 *Hen. VII.* but there was no positive Law for it, nor could it have been pleaded in Bar or an Indictment, that the Indictment was within the Year, but the King used to stay out the Year in Favour of that Suit. But since the Statute, the Use is otherwise; and the Reason why they proceed immediately is, because now an Acquittal or an Attainder upon the Indictment is no Bar to the Appeal, but the Party may go on in his Appeal. I mention this, because the Consequence which they urge as such a dismal one, will be nothing; which is, What if he should be acquitted here, he could not plead *autrefois acquit*, so would be twice brought in Jeopardy for the same Offence. For it is the same in all Cases of Appeals, a Man comes in Jeopardy twice if he be indicted within the Year, and attained or acquitted within the Year, it is no Bar to the Appeal. But this is not like the Case of an Appeal for Murder neither; for though it hath been used discretionally in the Court to stay the Suit of the King, and to prefer the Suit of the Subject, it was then because the Subject had the first and nearest concern, as the Son in the Death of his Father, and it did mostly concern him to prosecute it. The King is concerned as the Fountain of Justice only, to bring Offenders to condign Punishment; but the nearest Damage, and the first to be preferred, was that of the Party who had lost his Relation. Now the Reason of that turns quite contrary here: For as in that Case

the Subject had the nearest Concern in the Loss of his Father, and so was best intitled to the Suit; so in this Case that very Reason will have the King's Suit to be preferred: For there is no Treason but against the King, and in Treason against himself, the King has the nearest Concern, and the Wrong is primarily and originally to himself. And the Subjects Damage is but a Consequence of that, as all hurt to the King must needs hurt the People. So the King's Suit is to be preferred here, as the Subjects was in the other Case.

Now for the Objection that has been made, That if you try this Man, upon the same Reason you may try the Lords in the Tower. Their Case is different, as hath been already observed by Mr. Attorney; and that which has been done by the Lords in that Case, to me does rather seem to imply, that this Trial may be in this Case. For if the Lords after an Impeachment brought up against the five Lords in the Tower, and after the special Manner in the Articles which does ascertain upon what they do proceed, have thought fit notwithstanding to remove the Indictment by *Certiorari* into Parliament (for so it was in Fact) that no Prosecution might be upon them; then certainly they thought the King's Court might proceed without doing so.

My Lord, I will mention no more upon this Matter; but leave it to your Lordship's Consideration: But as to the Form of the Plea, I do conceive, with Submission, 'tis not a formal Plea.

We know here of no Form of pleading an Indictment, but what does set forth the Indictment particular; the Precedents are so, 'tis so in *Vaulx's* Case, and all the Precedents that I have seen: So is the Precedent in *Raft. Ent.* where in an Appeal the Defendant waged Battle, the Plaintiff replies he was formerly indicted, he sets forth the Indictment particularly. All the Precedents are so, and the Law-Books resolve it must be so; as *Wroth and Wigg's* Case, where the Defendant in an Appeal of Murder by the Wife pleads, that he was indicted for Manslaughter before the Coroner of the Verge, and Coroner of the County, for killing the Husband at *Shepperton*, in the County of *Middlesex*, and had his Clergy with Reference to the Record, and the usual Averments; with this farther, that he averred that *Shepperton* at the time of the Indictment and Death was within the Verge. To which the Plaintiff demurred, and Judgment for the Plaintiff. Now two Things are resolved by this Judgment.

1. That 'tis necessary to set forth the whole Record of the Indictment, or otherwise they ought not to have given Judgment for the Plaintiff, by reason the Indictment was sufficient, as 'twas pleaded, in that it did not say that *Shepperton* was within the Verge, which was necessary to entitle the Coroner of the Verge to a Jurisdiction, because being pleaded with Reference to the Record upon *Nul tiel* Record pleaded, and the Record thereupon brought in, that Defect might have been cured.

2. That no Averment of Fact can supply that which should appear upon Record, therefore the Averment that *Shepperton* was within the Verge, did not mend the Matter, though confessed by the Demurrer as much as it is in this Case, that 'tis the same Treason.

But they say, there is a Difference between this Case and those which I have put; for that 'tis the Course of Parliament (of which your Lordships must take Notice), to impeach general; so they could not have pleaded otherwise than they have done, unless they had pleaded it otherwise than the Cases were: This Reason holds rather the other Way; for if in any Case such a general Way of pleading with Reference to the Record were to be admitted, it were in case of an Indictment, because the Court knows there is no Indictment but what does particularly set forth the Felony, which when produced, is capable of being applied: But here if the Record be brought in, 'twill no more ascertain the Matter of the Impeachment, than the Plea does already. And whereas they say your Lordship is bound to take Notice of the Course of Parliament, so your Lordship will take Notice too, that 'tis not the Course of Parliaments to try any Man upon such a general Impeachment. I never heard of any Man (I speak it with Submission to them that know better) that was brought to plead Not Guilty, upon a general Impeachment of High-Treason; that is, upon the Commons bare saying, We do impeach such an one of High-Treason. I know none that ever was brought to answer that general Accusation.

And now, my Lord, as the Plea is nought for not setting out the Record, so is the Averment, with Submission, insufficient too. For though he does aver, That the Treason in the Indictment, and the Treason for which he was impeached, are one and the same, and not divers affirmatively and negatively; yet as this Case is, he ought to have said, That the Treason for which he is indicted, and the Treason mentioned in the Impeachment, is one and the same: For if he was impeached generally for High-Treason without Mention of Particulars, it is impossible to be reduced to a Certainty: So 'tis an Averment of a Fact not capable to be tried.

First, Because, with Submission to these Gentlemen that have said it, the Debates of the House of Commons are not to be given in Evidence, and made publick to a Jury: Nay, they are not always possible to be reduced to a Certainty, as the Circumstances may be; for they do not always particularly resolve upon what Particulars they will accuse before they go up, but a general Allegation serves the Turn: So that such Averment is not triable *per pais*, because as the Case may be, it may not be capable of any Certainty from the Debates of the House of Commons.

Another Reason is, because, by this Way of pleading, Proceedings may be staid for Treason, though subsequent to the Impeachment, which no Man yet has pretended to say: For suppose now a general Impeachment lodged, and a Treason afterwards committed by the Party, I think no Man will say, that the House of Commons, when they bring up their special Matters, cannot make even this subsequent Treason an Article upon that Impeachment; neither can it be said that such Averment as this is, upon such Plea pleaded to an Indictment here below, would be repugnant, because there is no time at all laid in the Impeachment as 'tis here pleaded, nor no Time when the Impeachment was brought up; so that it cannot appear to the Court, whether the Treason in the Indictment be subsequent or not: The Consequence of which is, we must try whether the House of Commons, upon this general Impeachment, did intend to proceed to try him for a Fact committed after the Impeachment carry'd up. My Lord, this would be to affirm,



that a Man once impeach'd in Parliament shall never be tried for any Offence; it would be like that *Privilegium Clericale*, which they made use of to exempt themselves from Punishment for all Offences.

But, my Lord, we do think upon the whole Matter, without entering upon the Debate, whether a particular Impeachment lodg'd in the House of Lords does preclude the King from his Proceedings, we have a good Case upon this Plea; for that is not a Question necessary to be resolv'd, though it be not granted by the King neither. But the Question is, Whether this be a formal Plea, and whether here be sufficient Matter set forth upon Record to bring that other Matter into question, and tie up the Hands of the Court?

Mr. Serj. Jefferies. My Lord, there hath been already enough spoken in this Case. I shall desire only to offer one Word to that single Point, viz. the Informality of the Plea; which I take to be the sole Question in this Case: For to argue, whether because there was no Bill pass'd, or Decree made in the House of Lords (though the Articles had been carry'd up) the Impeachment did not fall to the Ground by the Dissolution, I conceive altogether improper; for I think it does not affect the Question: Though I desire to take Notice that Sir Fr. Winnington, Mr. Williams, and Mr. Wallop were all Mistaken: For there were no such Concessions made by any of the King's Counsel the other Day, as they alledge; because we did not think it to be the Question, and therefore made no Discourses about it.

But, my Lord, I desire first to take Notice of a Case or two that hath been cited on the other Side; and then I shall apply myself to that which is the Question before you at this Time. They cite the Case of the Lords in the Tower as a Judgment for them, which seems to be a Judgment against them: For by the Lords granting a *Certiorari* to remove the Judgments into Parliament, they seem to be of Opinion, that notwithstanding they were impeach'd before the Lords, yet there might have been Proceedings below upon those Indictments, had they not been remov'd; and there they remain to this Day. Nay further, to those Impeachments they have pleaded to Issue, which is read for a Trial: But in the Case at Bar, there only is an Accusation, without any further Proceeding thereupon.

And as to the Case of my Lord Shaftesbury, that makes strongly for us as I conceive. Mr. Justice Jones's Opinion was taken Notice of by Sir Fran. Winnington, that they would not meddle by any Means with Matters depending in Parliament: But I must remember, he then gave this Reason for his Opinion, because the Parliament was then in being. And I must humbly put your Lordship in mind, that the whole Court did then declare, That if the Parliament had been dissolved, they would have said something more to that Case. I do not say, that they would have given such or such a Judgment; but I attended at the Bar at that Time, and I appeal to the Memory of the Court, if the Court did not then make such a Declaration.

But now to the Question: Without all Peradventure, the Cases cited by Mr. Pollexfen are true. If I bring a general *Indebitatus assumpsit* for Wares, sold and delivered, and after bring a particular *Indebitatus assumpsit* for such and such Wares, naming the Particulars, the Party may come and plead in Bar, and aver it is for the same Thing; and it is a good Averment, because there is sufficient Matter set forth in the Record to support such an Averment: For the Doubt is only, whether the particular Goods mentioned in the second, be not the same that were intended under those general Words (Goods and Merchandizes) in the first.

But suppose there had been only an Account brought, and no Declaration put in, could then the Defendant have pleaded such a Plea with such an Averment, when there was not sufficient Matter of Record set forth in their Pleading, whereby the Court might be able to give a Judgment, or put it into a way of Trial, whether it was for the same or not?

And is it not so in this Case? there being but a bare Accusation: For I still keep to the Informality of the Pleading, and I take it not to be such a dangerous Case, as these Gentlemen of the other Side do pretend, for you to determine it. For I am sure it will be better for the Court to answer, if ever they shall be required, that they have performed their Duty, and done Justice according to their Consciences and their Oaths, than ever to be afraid of any Threats or Bugbears from the Bar.

For would not they, by this Manner of Pleading, put upon your Lordships a Difficulty to judge, without any thing contained in the Impeachment to guide your Judgment, whether the Prisoner be impeached for the same thing Thing for which he is indicted? May not the Treason intended in this Impeachment be for clipping or coining of Money? for it is generally said to be only for High-Treason. How comes this then to be help'd, so as to be any way issuable, and be tried? Shall it be by that Way which Mr. Wallop laid down, that if Mr. Attorney had taken Issue, the Jury must have tried the Question by having the Debates of the House of Commons given in Evidence? Certainly that cannot be, my Lord. If there were but one Sort of Treason, there might be some Colour for this Sort of Pleading; but there are divers Kinds of Treasons, and how is it capable to be tried? Who can prove the Intentions of the House of Commons, before they are come to a Resolution? and therefore cannot be given in Evidence, or be regularly brought into Judgment.

Therefore we rely upon the Informality and Uncertainty of the Pleading only; and meddle not with the Question, whether an Impeachment in the House of Lords supercedes an Indictment in the King's Bench? For we say, they have not pleaded it so substantially, as to enable the Court to judge upon the Question: And therefore we pray your Lordship's Judgment, that the Plea may be over-ruled.

Sir Fran. Withins. My Lord, there has been so much of your Time already taken up by those Gentlemen that have argued before me, that I shall be very short in what I have to say.

The Question is not at this Time, how far forth the Commons in Parliament may impeach or not impeach a Commoner, before the Lords in Parliament, or where the Lords may admit or not admit of such Impeachments? That is not the Case here, as I humbly conceive, nor will I meddle with it: I shall only speak to the Validity of the Plea according to Law. Now, I say, that this Plea of the Prisoner as thus pleaded, cannot be good to out this Court of Jurisdiction: For first, The Prisoner cannot be admitted to make the Averment in this Plea, that the Treason men-

tioned in the Impeachment in Parliament, and that contained in this Indictment, is the same; for if, as the Gentlemen that argued on the other Side, urg'd, that this Court must take Notice of the Proceedings and Law of Parliament, then you will take Notice that no Person is there tried upon a general Impeachment of Treason. Special Articles are always first exhibited: In this Case then either the House of Commons have carried up special Articles against the Prisoner to the Lords in Parliament or not; if the House have done it, then the Plea might have been pleaded better by setting forth the Articles (which is part of what they say on the other Side, that it could be pleaded no better,) for then it would have appeared plainly whether the Treason were the same or not. If the Articles are not carried up, shall it lie in the Mouth of any particular Person to say, what Articles the Commons in Parliament would have carried up? Shall any single Person be admitted to say, what the House would have done, before the House itself says it? In Cases of Impeachments, it lies in the Discretion and Judgment of the Commons upon Debate to exhibit what Articles they in their Wisdoms shall think fit; and sure it shall never come, that any particular Person shall limit them to this or that particular Treason before-hand; no surely.

Now suppose in such a Case as this, after such a Plea pleaded, the Commons upon Deliberation should carry up Articles quite different; such a Plea then would appear to be a stark Lie, and the pleading and allowing of it, an apparent Delay of Justice. So that I conceive, my Lord, the Prisoner shall by no Means be admitted (nor indeed can it be, to aver the Intention of the House of Commons, which cannot be tried) before they have declared it themselves; and therefore I conceive the Plea to be naught for that Reason.

But, my Lord, I conceive that the Prisoner's Plea is ill for another Reason, because the Court in this Case, by any Thing expressed in this Plea, cannot discern nor take notice whether it be the same Treason or not.

Now the Reason why the Record, as this Case is, ought to be alledged specially, is because the Matter contained in it may plainly appear to the Court, and then by that Means the Court might judge whether it be the same Treason or not. Now Treason generally alledged in the Impeachment, is the Genus, and the particular Treason mentioned in the Indictment is only a Species, and the Averment in the Plea is, that the Genus and the Species is the same; which is absurd, and if allowed, tends to hood-wink and blind the Court, instead of making the Matter plain for their Judgment.

Plea ought to be plain and certain, because the Court, upon them alledged, is to judge either of Men's Estates or Lives; and for that Reason the Matter ought to come plainly and fairly before them, that Wrong may be done to neither Party by Reason of the Obscureness or Doubtfulness of the Allegation: If therefore the Hoodwink be brought instead of a Plea, it ought not to be allowed. And therefore for these Reasons (for what I have farther to say, has been already said by others) I conceive it ought to be over-ruled. I humbly submit it to the Court.

L. C. J. You have done your Arguments, Gentlemen, on all Sides?

Counsel. Yes, my Lord.

L. C. J. Look you, Gentlemen, I'll tell you, you have taken up a great Part of our Time. We never intended, when we assigned four Counsel to Mr. Fitz-Harris, that they all should make formal Arguments in one Day, it is the first time that ever it was done; but because it is as you press it in a Case of Blood, we were willing to hear all you could say, that you might not afterwards say, but that you were fully heard on all Sides. But in Truth, I must tell you, you have started a great many Things that are not in the Case at all. We have nothing to do here, whether the Commons House at this Day can impeach for Treason any Commoner in the House of Lords; we have nothing to do with this, what the Lords Jurisdiction is, nor with this Point, whether an Impeachment in the Lords House (when the Lords are possessed fully of the Impeachment) does bar the bringing any Suit, or hinder the Proceeding in an inferior Court: But here we have a Case that rises upon the Pleadings; whether you have brought here before us a sufficient Plea to take away the Jurisdiction of the Court, as you have pleaded it, that will be the sole Point that is before us: And you have heard what Exceptions have been made to the Form, and to the Matter of your Pleading. We do ask you again, Whether you think you are able to mend your Pleading in any thing, for the Court will not catch you, if you have any thing wherein you can amend it, either in Matter or Form? If you will let us know it, we shall consider of it; but if you have not, if you abide by this Plea, then we do think it is not reasonable, nor will be expected of us in a Matter of this Consequence to give our Judgment concerning this Plea presently. All the Cases cited concerning Facts done in Parliament, and where they have endeavoured to have them examined here, are nothing to the Purpose at all. For plainly, we do not assume to ourselves a Jurisdiction to enquire of such Matters: For Words spoken, or Facts done in the Commons-House, or in the Lords, we call none to question here, nor for any Thing of that Nature, which takes off most of the Instances you have given; but our Question is barely upon the Pleading before us, Whether we have a sufficient Pleading of such an Impeachment as can foreclose the Hands of the Court? And as to that, we shall take some reasonable Time to consider of it; we will not precipitate in such a Case, but deliberate well upon it before we give our Judgment. Take back your Prisoner.

Mr. Att. Gen. Before he goes away, we hope you will set a reasonable Time, as short as you can, to have him come again, for your Judgment.

L. C. J. Mr. Attorney, we can send for him when we please, to come hither by Rule; you see this Business is come on in the busy Part of a Term, and it is impossible for the Court to attend nothing but this, we will take some reasonable Time.

[Then Fitz-Harris was carried back to the Tower.]

On Tuesday, May 10. Mr. Attorney moved the Court to appoint a Day for their Judgment on the Plea, and for Fitz-Harris to be brought up, which they appointed to be the next Morning.

And accordingly on Wednesday Morning, May 11, he was brought from the Tower to Westminster-Hall.

Mr. Att. Gen. My Lord, I pray that Fitz-Harris may be brought to the Bar.

L. C. J.



L. C. J. Where is the Lieutenant of the Tower? Bid him bring Fitz-Harris to the Bar, (which was done.)

Mr. Att. Gen. My Lord, I pray your Judgment on the plea.

L. C. J. Mr. Fitz-Harris, you have been arraigned here for High-Treason, and it is for endeavouring and compassing the King's Death, and other Treasons, specially mentioned in this Indictment; you have pleaded here to the Jurisdiction of this Court, that there was an Impeachment against you by the Commons of England in Parliament, before the Lords, for the Crime of High-Treason; and you do say, that that Impeachment is yet in Force; and you do say, by way of Averment, that this Treason whereof you are now indicted, and the Treason whereof you were impeached by the Commons of England, before the Lords, are one and the same Treason. And upon this the Attorney-General for the King hath demurred, and you have joined in Demurrer: And we have heard the Arguments of your Counsel, whom we assigned to argue it for you; we have heard them at large, and have considered of your Case among ourselves; and upon full Consideration and Deliberation concerning your Case, and all that hath been said by your Counsel, and upon Conference that we have had with some other of the Judges, we are three of us of Opinion, that your Plea is not sufficient to bar this Court of its Jurisdiction; my Brother Jones, my Brother Raymond, and myself, are of Opinion that your Plea is insufficient, my Brother Dolben not being resolved, but doubting concerning it. And therefore the Court does order and award, that you shall answer over to this Treason.

Cl. of Crown. Edward Fitz-Harris, hold up thy Hand.

Mr. Fitz-Harris. My Lord, I desire I may have Liberty to advise with my Counsel before I plead.

L. C. J. Mr. Fitz-Harris, when you proposed a Difficulty you had in a Matter of Law, the Court were willing to assign you Counsel; because it is known you cannot be a fitting Person to advise yourself concerning the Law. But as to this, we cannot assign you Counsel; it is only a Matter of Fact, whether you be guilty or not guilty. Therefore in this Case you can't have Counsel allowed to advise you.

Mr. Fitz-Harris. My Lord, I desire, before I plead, or do any thing of that Nature, that I may make an End of my Confession before your Lordship, and some of the Privy Council.

L. C. J. Look you, Sir, for that you have trifled with us already; you pretended you had some Scruples of Conscience, and that you were now become another Man, and would reveal and discover the whole of this Design and Plot, that you are said to be guilty of here: But you have trifled several Times concerning it, and we can say nothing concerning that now; we must now have your Plea: If afterwards you have a Mind to confess and be ingenuous, you may do it; but now you must either plead, or not plead.

Mr. Fitz-Harris. My Lord, I have some Witnesses a great way off, and I desire Time to have them ready for my Defence.

Cl. of Cr. Edward Fitz-Harris, hold up thy Hand (which he did); thou hast been indicted of High-Treason; upon that Indictment thou hast been arraigned, and hast pleaded to the Jurisdiction of this Court. To which Plea his Majesty's Attorney-General hath demurred, and thou hast joined therein: And upon the whole Matter, this Court, upon mature and considerate Deliberation, is of Opinion, that thou oughtest to answer over. How sayest thou, art thou Guilty of the High-Treason whereof thou hast been indicted, and hast been arraign'd, or not Guilty?

Mr. Fitz-Harris. Not Guilty.

Cl. of Cr. Cul. Priſt. &c. how wilt thou be tried?

Mr. Fitz-Harris. By God and my Country.

Cl. of Cr. God send thee a good Deliverance.

L. C. J. Now if you have any thing to move, do it. We could not hear your Motion till you had pleaded; for the Method of the Court must be observ'd.

Mr. Fitz-Harris. I have some Witnesses at a Distance, my Lord.

L. C. J. Where are your Witnesses?

Mr. Fitz-Harris. I have one Witness in Holland, a very material one; that I am much concerned to have for my Life.

Mr. Juſt. Jones. What is his Name?

Mr. Fitz-Harris. His Name is Steward, my Lord.

L. C. J. Look you, Mr. Fitz-Harris, I'll tell you, reasonable Time is allowed to all Men to make their Defence in; but when a Man is in Holland, I know not what Time you will take for that.

Mr. Fitz-Harris. What Time your Lordship thinks fit for a Man to return from thence hither.

L. C. J. Look you, Mr. Attorney, why should not we allow Mr. Fitz-Harris Time for his Trial till next Term?

Mr. Att. Gen. I think he hath not offered any thing to entitle him to it: He doth not tell us, and I would fain know what the Witnesses will prove.

Mr. Juſt. Dolben. It may be, Mr. Attorney, he will confess what it is that Witnesses can prove.

Mr. Att. Gen. For the whole Proof in a Case of Treason lies on our Side.

L. C. J. Commonly, and *prima facie*, it does so; but there may be some Things that the Prisoner may give in Evidence for himself that may be material for him to urge for his Defence.

Mr. Fitz-Harris. My Lord, I know not whether it be safe for me to tell what he can say.

Mr. Juſt. Jones. Then you reserve it wholly in your own Judgment, whether he be a material Witness, or no?

Mr. Fitz-Harris. If my Lord Chief Justice pleases, I will acquaint him in private with it.

Mr. Att. Gen. I never saw any good Effect of these private Proceedings. If he have any thing to offer, he may do it publicly, in the Face of Justice: And therefore I desire he may be tried this Term; for he hath had a whole Term's Notice, and Time enough to consider what Persons are material Witnesses for him.

Mr. Juſt. Jones. Unless he do shew good Cause to the contrary, he must be tried this Term.

Mr. Att. Gen. And, my Lord, where it is in the same County where the Fact was committed, there is the less Reason to stay; Criminals in High-Treason, the Fact must be plain and evident against them.

L. C. J. Look you, Mr. Attorney, peradventure he hath been made depend upon his Plea, and hath been advis'd so to do.

Mr. Fitz-Harris. Yes, my Lord, and have been close Prisoner, and not allowed to speak with any body.

L. C. J. If so, then it may be a Surprise upon him.

Mr. Fitz-Harris. My Lord, I have been allowed nothing to prepare for my Defence.

Mr. Sol. Gen. My Lord, he ought to be provided for his Trial this Term. I do not know, my Lord, what Witnesses he can pretend to have; the Fact was done in *Middlesex* here, and the Proof of the Circumstances of that Fact do arise here; and I do not know what Surprise he can complain of. As to the Witness he tells you of, that is in *Holland*, he doth not tell you to what Purpose he is a Witness; so that you may know whether it be material or not. I know very well, my Lord, in the *Old-Bailey*, when the Priests did urge it, that they had Witnesses beyond the Sea in other Countries, they were not suffered to delay their Trial upon such a Pretence. We must submit it to your Lordship's Discretion: But we suppose it will not be a precipitous Proceeding, he having Notice of his Trial all this Term.

L. C. J. Mr. Attorney, truly, since he pretends he is surprised, and hath depended upon his Plea, and hath Witnesses that require some Time to fetch, we think it reasonable that he should have till the next Term; and we will defer it till then. We are all of that Opinion, (especially it being such a little Delay) to enable him to have what Witnesses he doth pretend to have.

Mr. Att. Gen. My Lord, I never desired in this Case, nor in any other, nor ever shall do, that Justice be precipitated. I know these open and fair Trials proceed with such equal Steps to all Parties, that we need not be hasty; and therefore, if your Lordship be of that Opinion, I submit to it, so it be the first Week of the next Term.

L. C. J. The first Week it cannot be.

Mr. Att. Gen. Within the first seven Days, I mean.

L. C. J. The first *Thursday* in the Term. And take Notice, Mr. Fitz-Harris, that is the Day appointed for your Trial.

Mr. Fitz-Harris. I desire Liberty to see my Wife, and have a Solicitor in the mean time.

L. C. J. I will tell you, for that, Mr. Fitz-Harris, the Court would never deny any thing of that nature to any one in your Condition and Circumstances; but your Wife makes an ill use of the Liberty we granted her: And if she do make an ill use of it, then the Court must restrain her, and hold their hands over her. If we were satisfy'd she would use the Liberty lawfully, and not abuse it—

Mr. Fitz-Harris. My Lord, I am sure she will use it lawfully hereafter, and make no ill use of it.

L. C. J. Look you, upon her good usage of it, if she will fairly demean herself, and not abuse it again, we are willing to take off the last Rule, and she shall have the same Liberty she had before that Rule.

Mr. Sol. Gen. With this, if your Lordship please, we desire there may be some other Judge of her Prudence besides herself, and the Lieutenant of the Tower be by.

Mr. Fitz-Harris. My Lord, I desire I may have a Solicitor; for he was never allowed to come and speak to me, though I had a Rule for him.

L. C. J. Look you, as to your Counsel now, which was the main Reason why you prayed a Solicitor, we cannot allow you them any more; for now we are come to a Matter of Fact only, and we cannot by the Rules of Law allow you Counsel. Therefore what need you have of a Solicitor, I cannot tell; his business before, was to go from you to the Council, and from them to you, which is ceased now. But this, Mr. Attorney, if he have a desire to see Papers, and would send for any Papers that concern his Defence, so as they contain no new Treasonable Matters and Contrivances, he ought sure to have them; and if he have Papers at his House, or any where else, which he desires to make use of in his own Defence, being inspected by the Lieutenant, to see that there be no Matter of evil contained in them, he may have one to do that for him without any Danger.

Mr. Sol. Gen. I do not oppose it, my Lord; but I desire that all Caution may be us'd that can be; for this Solicitor of his is a Lawyer, and writes Tracts of Law: But any thing material for his Defence I am not against.

L. C. J. Mr. Attorney, you need not fear any harm will be that ways: For he is not to speak with him alone.

Mrs. Fitz-Harris. I hope his Solicitor may come to him to take Instructions how to send for his Witnesses.

Mr. Juſt. Jones. You can tell how to do that, surely, without a Solicitor.

L. C. J. Just as the last Rule was, let there be another Rule made: For he must have all just Advantages to enable him for his Defence.

Mr. Fitz-Harris. I hope I shall have a Rule of Court to make my Witnesses appear.

Mr. Juſt. Dolben. That you may have without a Motion.

L. C. J. We will give you any thing that will enable you to make a fair Defence.

Cl. of Cr. He shall have *Subpoena's* for his Witnesses.

L. C. J. Then, Mr. Fitz-Harris, you must expect no other Notice. You must take notice now, that upon the first *Thursday* in the next Term, you are to receive your Trial here. Take the Prisoner back.

Mr. Att. Gen. In order to his Trial, I desire the Sheriff may bring in the Freeholders Book to the Clerk of the Crown, to strike the Jury.

L. C. J. Mr. Attorney, we will consider of that, how far can we do that, and the Course of the Court shall be observed. But I doubt how we can.

Mr. Att. Gen. That is the Practice in Trials at the Bar.

L. C. J. In civil causes, but not in Criminal, that I know of.

Mr. Att. Gen. We have reason to desire it; because we are afraid of some Practice in this Cause, and fear there may be some odd Carriage in the Return of them.

Mr. Fitz-Harris. May I not see my Wife before I go hence?

L. C. J. With all our Hearts; she may go to you, and with you, Sir, if you please: We will not hinder you of her Company, so she carry herself fairly.

Then the Lieutenant took back his Prisoner.



*The Trial of Edward Fitz-Harris†, at the King's-Bench for High-Treason, June 9. 1681.*  
Trin. 33 Car. II.

ON Thursday 9 June, 1681, Edward Fitz-Harris was brought to the Bar of the Court of King's-Bench; and the Court being sat, proceeded thus:

Mr. Thompson. My Lord, I moved you the other Day, that before Mr. Fitz-Harris's Trial, he might give such Evidence as he had to give against Sir John Arundel and Sir Richard Beiling, concerning the Death of Sir Edmundbury Godfrey, before he be convicted of Treason; and we understood that it was the Direction of the Court, that we might move it this Morning before Conviction, that he might declare upon Oath here in Court what he knows of that Matter against those Gentlemen: For after he is convicted, I believe it will be too late for us to think of it. Mr. Godfrey hath a great Deal of Reason to desire what I now move, that his Brother's Murderers may be prosecuted; and we hope, all the Favour that can be granted in such a Case, will be granted unto us: For there hath been a Design of late set on Foot, to make it be believed, that Sir Edmundbury Godfrey murdered himself, notwithstanding that clear Evidence that hath been already given of this Matter, and notwithstanding that several Persons have been convicted and attainted upon that Evidence. So that these Gentlemen think themselves obliged to prosecute the Matter as far as they can, and beg of your Lordship, that what can be done for them may. And particularly, that he may perfect his Discovery against the two named at his last Examination before the Grand-Jury; and that his Examination about them may now be taken by the Court.

L. C. J. Look you, Mr. Thompson, that that you moved before, had some Reason in it, that he might be examined, and give Evidence to a Grand-Jury, and we told you he should; but if there be never a Grand-Jury sworn yet, who can he give Evidence to? Would you have us take his Examination, and afterwards give it in Evidence to the Grand-Jury?

Mr. Thomp. My Lord, I only say, then 'tis our hard Hap that he is not examined before a Grand-Jury.

L. C. J. But do you think it is fit for you to move this now?

Mr. Thomp. My Lord, I understood it was permitted me by the Court the other Day, to move again; and I move by the Direction of my Client, and I submit it to your Lordship.

L. C. J. You know it cannot be granted. Go on, and swear the Jury.

Fitz-Harris. My Lord, I beg that my Wife and Solicitor may be by, to help and assist my Memory.

L. C. J. Let your Wife be by you, if she please, and if you think 'tis any Advantage to you, with all our Hearts; if she will, let her go down to you.

Cl. of Crown. Cryer, make an O Yes: Whoever can inform, &c.

Mr. Att. Gen. My Lord, I know not what the Effect of this may be; if his Wife be instructed to instruct him, that ought not to be permitted, with Submission: Suppose she should come to prompt him (and for certain she is well documentiz'd) that your Lordship won't suffer.

Mr. Serj. Jeff. My Lord, she comes prepared with Papers in her Hand.

Mrs. Fitz-Harris. I won't shew them without my Lord's Permission.

L. C. J. If she brings any Papers that are drawn by Council, prepar'd for him, without doubt 'tis not to be allowed.

Mrs. Fitz-Harris. No, no; 'tis only my own little Memorandums.

L. C. J. Whatsoever is written by her Husband, for Help of his Memory in Matter of Fact, let her do it.

Fitz-Harris. My Lord, I humbly beg my Solicitor may be by me too.

L. C. J. We allow of no Solicitors in Cases of High-Treason.

Cl. of Cr. Edward Fitz-Harris, hold up thy Hand (which he did): Those good Men which thou shalt hear called, and personally appear, &c.

Fitz-Harris. My Lord, I desire they may be distinctly named as they are in the Pannel, that I may know how to make my Challenges.

Mr. Sol. Gen. My Lord, I must humbly offer it to your Lordship's Consideration, for the Precedent's Sake, Whether any Person can assist the Prisoner as to Matter of Fact?

L. C. J. Yes, and 'tis always done to take Notes for him to help his Memory.

Mr. Serj. Jefferies. But, my Lord, I would acquaint your Lordship what is the Thing we find in this Case; here is a particular Note given in to the Prisoner of the Jury, pray be sure to challenge such and such, and don't challenge the rest. God forbid but his Memory should be helped in Matters of Fact, as is usual in these Cases; but no Instructions ought to be given him, sure. And, my Lord, the Example will go a great Way; and therefore we are in your Lordship's Directions about this Matter.

Fitz-Harris. My Lord, I hope 'tis but just, for I have had all the Disadvantages in the World. I have been kept close Prisoner, and have not been permitted to have any one come to me, to help me in my Preparation for my Trial.

Mr. Att. Gen. My Lord, I pray your Judgment in Point of Law; I doubt not you will do the King right, as well as the Prisoner; I could not get a Copy of the Pannel, till last Night about four o'Clock: Here is prepared a Copy, with Crosses and Marks who he should challenge, and who not; and truly, my Lord, since I had the Pannel, upon looking over it, I do find the Sheriff hath returned three Anabaptist Preachers, and I know not how many Fanaticks: And since there are such Practices as we find in this Case, we doubt there may be more; and therefore I pray she may be removed.

Mrs. Fitz-Harris. I will not be removed.

Fitz-Harris. Is it fit or reasonable for me, that I should stand here without any Help?

Mr. Att. Gen. In Case you be guilty of this, you deserve no great Favour.

Mrs. Fitz-Harris. Surely the Court will never suffer the King's Council to take away a Man's Life at this Rate.

L. C. J. Mrs. Fitz-Harris, you must give good Words: And if you will not be modest and civil, I promise you we will remove you presently.

Mrs. Fitz-Harris. If you do remove me, that is the worst you can do to me: What should I come here for, without I may help my Husband?

L. C. J. If she do bring him Instructions to except against such and such Jury-men, she does misbehave herself, and must be removed.

Mr. Att. Gen. This Paper that we speak of is a Copy of the Pannel; and there are particular Marks, a great many.

Mr. Sol. Gen. A Woman hath a very great Privilege to protect her Husband; but I never yet knew that she had Liberty to bring him Instructions ready drawn.

Mrs. Fitz-Harris. My Lord, the Lady Marchioness of Winchester did assist in the Case of my Lord Stafford, and took Notes, and gave him what Papers she pleased.

L. C. J. Sure 'tis no such huge Matter to let a Man's Wife stand by him, if she will demean herself handsomely and fairly.

Mr. Att. Gen. It is not if that were all; but when she comes with Papers, instructed, and with particular Directions, that is the assigning him Counsel in Point of Fact.

L. C. J. Let her stand by her Husband, if she be quiet: But if she be troublesome, we shall soon remove her.

Fitz-Harris. 'Tis impossible I should make my Defence without her.

Mr. Serj. Jefferies. I see it is a perfect formal Brief.

Mrs. Fitz-Harris. Must he have nothing to help himself?

Fitz-Harris. In short, the King's Council would take my Life away, without letting me make my Defence.

Mr. Att. Gen. I desire not to take any Papers from him, if they be such as are permitted by Law.

Mr. Sol. Gen. My Lord, his Innocency must make his Defence, and nothing else.

Mr. Serj. Jeff. My Lord, we are in your Lordship's Judgment, whether you will allow these Papers.

L. C. J. Let us see the Paper.

Fitz-Harris. My Lord, I will deliver them to my Wife again.

L. C. J. Let it be so.

Cl. of Cr. Call Sir William Roberts (who did not appear): Sir Michael Heneage.

Sir Michael Heneage. My Lord, I am so ill, I cannot attend this Cause.

L. C. J. We cannot excuse you, Sir Michael; if there be not enough besides, 'tis not in our Power to excuse you.

Sir Michael Heneage. I must suffer all Things rather than lose my Health.

L. C. J. Well, stand by, till the rest are called.

Cl. of Cr. Sir William Gulston, Nicholas Rainton, Charles Umphreville (they did not appear): John Wildman.

Mr. Att. Gen. My Lord, I desire he may be asked, before he be called to the Book, whether he be a Free-holder in Middlesex?

Major Wildman. I am a Prosecutor of this Person; for I was a Parliament-man in the last Parliament; and I dare not appear, my Lord, for fear of being questioned for Breach of the Privileges of the Commons.

Mr. Att. Gen. My Lord, I pray he may answer that Question, whether he be a Free-holder in Middlesex?

Major Wildman. I pray to be excused, upon a very good Reason; I was one of them that voted the Impeachment against this Man.

Mr. Att. Gen. Are you a Free-holder of Middlesex, upon your Oath?

L. C. J. Look you, Major Wildman, you are returned upon a Pannel here, you have appeared, and your Appearance is recorded; you must answer such Questions as are put to you; 'tis not in your Power to deny.

Major Wildman. I beg the Excuse of the Court, I cannot serve upon this Jury.

L. C. J. If you be no Free-holder the Law will excuse you.

Major Wildman. Perhaps there may be some Estates in my Name that may be Free-holds; perhaps I may be some Trustee, or the like.

Mr. Att. Gen. Have you any Free-hold in your own Right in Middlesex?

Major Wildman. I don't know that I have; if it be in the Right of another, or as Trustee, I take not that to be a Free-hold.

Cl. of Cr. Call Thomas Johnson.

Mrs. Fitz-Harris. Let him be sworn, there is no Exception against him.

L. C. J. Hold your Peace, or you go out of Court if you talk again.

Mrs. Fitz-Harris. I do not say any thing that is any harm, my Lord.

Cl. of Cr. Swear Tho. Johnson: You shall well and truly try, &c.

Fitz-Harris. My Lord, I pray the Clerk may not skip over the Names as they are returned.

Cl. of Cr. Sir, I call every one as they are in the Pannel; and don't do me wrong.

L. C. J. It may be he does not call them as they are mentioned and set down in the Pannel, for all have not appeared; but calls those whose Appearance is recorded.

Cl. of Cr. I have called them as they are here set down.

L. C. J. Well, let them all be called for; may be they will appear now that did not appear before.

Cl. of Cr. Maximilian Beard.

Mr. Beard. My Lord, I desire to be excused, I am very infirm and very ancient, Threescore and Fifteen Years of Age, at least.

L. C. J. Why did the Sheriff return you? If you be of that Age, you should be put out of the Free-holders Book. But stay, you are here impanneled, and have appeared; if there be enough, we will excuse you.

Mr. Just. Jones. He ought to have Witnesses of his Age; and if he would not have appeared, he might have had a Writ of Privilege for his Discharge in regard of his Age.

L. C. J. Well, we will set by him; if there be enough besides, we will spare him.

Cl. of Cr. Isaac Honeywood (he did not appear): Lucy Knightly (who was sworn): Henry Baker.

Mr. Att. Gen. My Lord, I challenge him for the King.

Fitz-Harris. My Lord, why should he challenge him? I desire to know the Law, whether the two Foremen should not try the Challenge, and not the Court or the Council.

Mr. Serj. Maynard. If the King challenge, he hath time to shew Cause till the Pannel be gone through; the Law will have the minus suspecti; but if there want any thing, the King must shew good Cause.



Cl. of Cr. *Edward Probyn.*  
 Mr. Att. Gen. I challenge him for the King.  
 Cl. of Cr. *Edward Wilford* (was sworn.)  
 Fitz-Harris. My Lord, must not Mr. Attorney shew his Cause now?  
 L. C. J. Look you, Mr. Fitz-Harris, either side may take their Exception to any Man; but the Cause need not be shewn till the Pannel is gone through, or the rest of the Jurors challenged\*.  
 Cl. of Cr. *John Kent* of *Stepney.*  
 Mr. Kent. My Lord, I am no Free-holder.  
 L. C. J. Then you cannot be sworn here upon this Jury†.  
 Cl. of Cr. *John Willmore.*  
 Mr. Att. Gen. We challenge him for the King.  
 Fitz-Harris. For what Cause?  
 Mr. Serj. Jeff. We will shew you Reasons hereafter.  
 Cl. of Cr. *Alexander Hefey* (was sworn:) *Giles Shute.*  
 Mr. Att. Gen. Are you a Free-holder, Sir?  
 Mr. Shute. No.  
 Mr. Att. Gen. Mr. Whitaker is got near him, and he tells him what he is to do, my Lord.  
 Fitz-Harris. Here is the Lieutenant of the Tower between me and him.  
 Mr. Serj. Jeff. But the Bar is no fit Place for Mr. Whitaker, he is not yet called to the Bar.  
 Cl. of Cr. *Martin James.*  
 Mr. Att. Gen. Are you a Free-holder, Sir?  
 Mr. James. Yes.  
 Mr. Att. Gen. Then swear him, (which was done.)  
 Cl. of Cr. *Nathanael Grantham.*  
 Mr. Att. Gen. Are you a Free-holder, Sir?  
 Mr. Grantham. No.  
 Cl. of Cr. *Henry Beiling.*  
 Mr. Att. Gen. Are you a Free-holder, Sir?  
 Mr. Beiling. Yes.  
 Fitz-Harris. Then I challenge him.  
 Cl. of Cr. *Benjamin Dennis.*  
 Mr. Att. Gen. Is he a Free-holder?  
 Mr. Dennis. No.  
 Mr. Att. Gen. My Lord, you see what Practices here are, most of the Jury are no Free-holders.  
 Cl. of Cr. *John Preston*, (did not appear:) *John Viner* of *White Chappel.*  
 Mr. Att. Gen. He hath fetched them from all Corners of the Town here, yet not all of them Free-holders neither.  
 Cl. of Cr. Swear Mr. Viner, (which was done.) *William Withers*, (was sworn:) *William Cleave*, (sworn:) *Thomas Goffe* (sworn:) *Abraham Greaves.*  
 Mr. Att. Gen. Ask him if he is a Free-holder?  
 Mr. Greaves. No.  
 Cl. of Cr. *Henry Jones.*  
 Mr. Att. Gen. Is he a Free-holder?  
 Mr. Jones. No.  
 Cl. of Cr. *Ralph Farr.*  
 Mr. Att. Gen. Ask him the same Question.  
 Cryer. Are you a Free-holder, Sir?  
 Mr. Farr. Yes.  
 Cl. of Cr. Then swear him, (which was done.) *Samuel Freebody.*  
 Mr. Att. Gen. Are you a Free-holder, Sir?  
 Freebody. Yes.  
 Mr. Att. Gen. Then swear him, (which was done.)  
 Cl. of Cr. *Gilbert Urwin* of *Covent-Garden* (did not appear.) *Edward Watts* of *Westminster.*  
 Mr. Att. Gen. Are you a Free-holder, Sir?  
 Watts. Yes.  
 Mr. Att. Gen. Then we challenge you for the King.  
 Cl. of Cr. *John Bradshaw* of *Holborn* (did not appear:) *Isaac Heath* of *Wapping* (no Free-holder:) *Edward Hutchins* of *Westminster.*  
 Mr. Att. Gen. We challenge him for King.  
 Cl. of Cr. *John Lockier* of *Westminster.*  
 Mr. Att. Gen. Are you a Free-holder?  
 Mr. Lockier. Yes.  
 Mr. Att. Gen. Then swear him.  
 Cl. of Cr. Count these. *Thomas Johnson.*  
 Cryer. One, &c.

The Names of the Twelve sworn, are these:

<i>Thomas Johnson,</i>	<i>Martin James,</i>	<i>Thomas Goffe,</i>
<i>Lucy Knightley,</i>	<i>John Viner,</i>	<i>Ralph Farr,</i>
<i>Edward Wilford,</i>	<i>William Withers,</i>	<i>Samuel Freebody, and</i>
<i>Alexander Hefey,</i>	<i>William Cleave,</i>	<i>John Lockier.</i>

Cl. of Cr. *Edward Fitz-Harris*, hold up thy Hand. Gentlemen, you that are sworn, look upon the Prisoner, and harken to your Charge.

Fitz-Harris. My Lord, I humbly beg Pen, Ink, and Paper.

L. C. J. Let him have Pen, Ink, and Paper.

Cl. of Crown. You shall have them presently; (which were given him.)

HE stands indicted by the Name of *Edward Fitz-Harris*, late of the Parish of *St. Martin's* in the Fields, in the County of *Middlesex*, Gent. for that he as a false Traitor against the most illustrious, and most excellent Prince, our Sovereign Lord *Charles the Second*, by the Grace of God King of England, Scotland, France, and Ireland, his natural Lord; not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance, but being moved and seduced by the Instigation of the Devil; the Love, and true due and natural Obedience, which a true and faithful Subject of our said Sovereign Lord the King, towards him our said Sovereign Lord the King, should, and of right ought to bear, wholly withdrawing; and with all his might intending the Peace and common Tranquillity within this Kingdom of England to disturb, and War and Rebellion against our said Sovereign Lord the King to stir up and move; and the Government of our said Sovereign Lord the King, within this Kingdom of England, to subvert; and our said Sovereign Lord the King from the Title, Honour, and Regal Name of the Imperial Crown of his Kingdom of England to depose and deprive; and our said Sovereign Lord the King to Death and final Destruction to bring and put, the 22d Day of February, in the 33d Year of the Reign of our

Sovereign Lord *Charles the Second*, now King of England, &c. and divers other Days and Times, as well before, as after, at the Parish of *St. Martin's* in the Fields, in the County of *Middlesex*, traiterously did compass, imagine, and intend the Killing, Death, and final Destruction of our said Sovereign Lord the King, and the ancient Government of this his Kingdom to change, alter, and wholly to subvert, and him our said Sovereign Lord the King, that now is, from the Title, Honour, and Regal Name of the Imperial Crown of his Kingdom of England to depose and deprive, and War and Rebellion against our said Sovereign Lord the King, to stir up and levy within this Kingdom of England. And his said wicked Treasons and traiterous Compassings, Imaginations, and Purposes, aforesaid to fulfil and perfect, he the said *Edward Fitz-Harris*, as a false Traitor, together with one *Edmond Everard*, a Subject of our said Sovereign Lord the King, did then and there traiterously assemble himself, meet and consult, and the same his Treasons and traiterous Compassings, Imaginations, and Purposes, then and there to the said *Edmond Everard*, in the hearing of divers other Subjects of our said Sovereign Lord the King, openly, maliciously, traiterously, and advisedly speaking, did publish and declare: And to persuade and induce the said *Edmond Everard*, to be aiding and assisting in his said traiterous Compassings, Imaginations and Purposes, he the said *Edward Fitz-Harris*, as a false Traitor, maliciously, advisedly, and traiterously to the said *Edmond Everard* a great Reward then and there did offer, and promote to procure. And for the further compleating of his Treasons aforesaid, and to incite the Subjects of our said Sovereign Lord the King, as one Man, to rise, and open Rebellion and Insurrection within this Kingdom of England to raise, against our said Sovereign Lord the King, and our said Sovereign Lord the King from the Title, Honour, and Regal Name of the Imperial Crown of his Kingdom of England to cast down and depose, he the said *Edward Fitz-Harris*, as a false Traitor, a certain most wicked and traiterous Libel, the Title of which is in these English Words following, The true Englishman speaking plain English, traiterously, maliciously, and advisedly, in Writing to be made and expressed, did then and there cause, procure and publish; in which said Libel the said most wicked Treason, and traiterous Compassings, Imaginations and Purposes aforesaid, of him the said *Edward Fitz-Harris*, to excite and persuade the Subjects of our said Sovereign Lord the King of this Kingdom of England, against our said Sovereign Lord the King to rise and rebel; and our said Sovereign Lord the King from the Title, Honour, and Regal Name of the Imperial Crown of this his Kingdom of England to deprive and depose, in writing are expressed and declared amongst other things, as followeth: If *James* (meaning *James Duke of York*, the Brother of our said Sovereign Lord the King) be conscious and guilty, *Chs.* (meaning *Charles II.* now King of England) is so too, believe me (meaning himself the said *Edward Fitz-Harris*) both these (meaning our said Sovereign Lord the King, and the said *James Duke of York*) are Brethren in Iniquity, they (meaning our said Sovereign Lord the King and *James Duke of York*) are in Confederacy with Pope and French to introduce Popery and arbitrary Government, as their Actions (meaning the Actions of our said Sovereign Lord the King, and *James Duke of York*) demonstrate. The Parliament's *Magna Charta* and Liberty of the Subject are as heavy Yokes they'd as willingly cast off, for to make themselves (meaning our said Sovereign Lord the King, and the said *Duke of York*) as absolute as their Brother of France. And if this can be proved to be their Aim (meaning our said Sovereign Lord the King, and the aforesaid *Duke of York*) and main Endeavour, why should not every true Briton be a Quaker thus far, and let the English Spirit be up and move us, (meaning the Subjects of our said Sovereign Lord the King of this Kingdom of England) all as one Man to Self-Defence? Nay, and if need be, to open Action, and fling off those intolerable Riders? (Meaning our said Sovereign Lord the King, and the said *Duke of York*.) And in another Place in the said most wicked and traiterous Libel are contained, amongst other things, these false, seditious, and traiterous Sentences in these English Words following. *J.* and *C.* (meaning the said *Charles* our Sovereign Lord the King, and his said Brother *James Duke of York*) both Brethren in Iniquity, corrupt both in Root and Branch, as you (meaning the Subjects of our said Sovereign Lord the King) have seen, they (meaning our said Sovereign Lord the King, and the said *Duke of York*) study but to enslave you (meaning the Subjects of our said Sovereign Lord the King) to a Romish and French-like Yoke. Is it not plain? Have you (meaning the Subjects of our said Sovereign Lord the King) not Eyes, Sense or Feeling? Where is that old English noble Spirit? Are you (meaning the Subjects of our said Sovereign Lord the King) become French Allies, to suffer any Load to be laid upon you? And if you (meaning the Subjects of our said Sovereign Lord the King) can get no Remedy from this next Parliament, as certainly you (meaning again the Subjects of our said Sovereign Lord the King) will not; and that the K. (meaning our said Sovereign Lord the King that now is) repents not, complies not with their Advice, then up all (meaning the Subjects of our Sovereign Lord the King) as one Man. O brave Englishmen! Look to your own Defence ere it be too late, rouse up your Spirits. And in another Place in the said most wicked and traiterous Libel are contained, amongst other things, these false, seditious, and traiterous Sentences in these English Words following; to wit, I (meaning himself the said *Edward Fitz-Harris*) will only add, that as it is the undoubted Right of Parliaments to make a Law against a Popish Successor, who would prove destructive to our Laws and Liberties; so it is their undoubted Right to dethrone any Possessor that follows evil Counsellors to the Destruction of our Government, (meaning the Government of this Kingdom of England.) And in another Place in the said traiterous Libel, are contained these English Words following: Then let all (meaning the Subjects of our said Sovereign Lord the King that now is) be ready; then let the City of London stand by the Parliament with offers of any Money for the maintaining of their Liberties and Religion in any extreme Way, if parliamentary Courses be not complied with by the King; (meaning our said Sovereign Lord the King) against the Duty of their Allegiance, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c. and against the Form of the Statute in this Case made and provided.

Upon this Indictment he hath been arraigned, and thereunto hath pleaded, Not Guilty; and for his Trial hath put himself upon God and his Country, which Country you are, &c.

Cryer. Make Proclamation. O yes, if any one will give Evidence, &c.

Mr. Heath. May it please you Lordship, and you Gentlemen of the Jury, this is an Indictment of High-Treason against *Edward Fitz-Harris*, the Prisoner at the Bar; and the Indictment sets forth, that the 21st of February, in the 33d Year of the King, at *St. Martin's* in the Fields, he did compass

\* Here the Chief Justice did not shew the same Favour to Fitz-Harris, which he afterwards shewed to Count *Coningsmark*, in directing him how to make the King shew Cause, by challenging all the rest, Vol. III. p. 465.

† In Lord *Russell's* Trial No Free-holds were not allowed to be a good Challenge; and several, though no Free-holders, were admitted to be sworn on the Jury. The like Colonel *Sidney's* Case.



and imagine the Death of the King, and to raise War and Rebellion within this Kingdom. And the Indictment does set forth, that for the Accomplishment of this, he did meet and assemble with one *Edmond Everard*, and several others, and did discover this his traitorous Purpose to the said *Everard*, and did persuade him to aid and assist therein; and offered him great Rewards if he would do so. It further sets forth, That for the further perfecting of this treasonable Imagination of the said *Edward Fitz-Harris*, he did frame and make a treasonable Libel, and the Title of the Libel is, *The true Englishman speaking plain English*; and in that treasonable Libel, are these treasonable words contained, *If James be guilty* (meaning the Duke of York) *Charles* (meaning the King) *is so too, &c.* And the several words that have been read to you in this Indictment, are contained in the said Libel, which I shall not repeat. To this Indictment he hath pleaded, Not guilty; if we prove it upon him, you are to find him Guilty.

Mr. Serj. *Maynard*. May it please your Lordship, truly 'tis a sad thing to consider how many have been found guilty of Plotting against the King, but none have gone so far as the Prisoner at the Bar: For they designed only his Death; but this Person would have carried on his Treason by a means to slander him while he was alive, and thereby to excite the People to such a Rebellion as you have heard. I shall add no further words; the thing is not aggravatable, 'tis so great an Offence in itself; but we will call our Witnesses, and go to our Proof.

Mr. Att. Gen. My Lord, Yesterday you had here the Primate of Ireland, who was found guilty for a notable High-Treason in Ireland: You have now this Day before you one of his Emisaries, who is come over into England, and who has here committed one of the most execrable Treasons that ever was brought into a Court of Justice; I must needs say, that it will appear to all the Auditors this Day, that here is the highest Improvement of the Popish Plot, and aggravated with such Circumstances, as shew they have out-done themselves in it. Hitherto those Cases that have been brought into Judgment before you, have been the Attempts upon the Life of the King, in Instances of either Shooting, Stabbing, or Poisoning: I say, hitherto they have gone no further than to practise these Things, and that by Popish Hands, they have kept the Plot amongst themselves; but now they have gone one step further, that is, by attempting to poison all the Protestants of England as much as in them lies, that they should by their own Hands destroy one another, and their lawful Prince; that is the Treason now before you; and I take it, with submission, they can go no further. For 'tis impossible to arise to a higher piece of Malice and Villainy than to set the People's Hearts against their Prince, and to set them together by the ears one against another. This we shall prove, in the Course of our Evidence, to be the Design of the Prisoner at the Bar. The general Design hath been opened to you out of the Indictment to kill and destroy the King, and to depose him from his Government; and we shall charge him with all those several Overt-Acts, which I shall open to you: First, Several Meetings to consult about this Matter at *Gray's-Inn* and several other places; which, my Lord, I think there is no question to be made, but is an Overt-Act to make High-Treason. We shall go further, and shew that these Designs he had to depose the King, and raise his People against him, he does declare openly to Mr. *Everard*; which is another Overt-Act within the new Statute. We shall, my Lord, go further yet, and prove the great Rewards he hath offered to Mr. *Everard* for joining with him, and being assisting to him in this Affair, part in ready Money, and part in annual Pension. And there your Lordship will find where the Spring is, from whence all these Mischiefs arise, some foreign Power; but the Papists, the Priests are at the Bottom of it, they are the Persons that set him on, and these must draw in a great Person beyond Sea, who must reward this Gentleman for being a Partner in this Plot. And we shall prove some Money paid in Hand. But then, my Lord, that which was the Effect of this Consult, is the framing this pernicious Libel; for so give me leave to call it.

My Lord, the Indictment is modest, but when you come to hear the Libel itself read, you will find it so; and it was not Prudence, that so vile a thing should appear upon Record. And truly, I believe in a Protestant Kingdom 'tis the first Attempt of this Nature that ever was: For, my Lord, it is to defame the whole Royal Family, 'tis to stain their Blood, and to make them vile in the sight of the whole Kingdom, and of all Posterity. My Lord, this Libel in its Particulars chargeth that most excellent and innocent Person, our late and never to be forgotten Sovereign King *Charles I.* to be the Author of the Irish Rebellion; it charges our present Prince with the Exercise of Arbitrary Government, to be a Papist, to be a Person that deprives his Subjects of all manner of Liberty, and Property; in express Terms, it charges him with this, than which nothing can be more false: For there is none of his Subjects, I think, but must say, that our most gracious Prince, for the Time he hath reigned, may vie with the best 20 Years of any of his Predecessors, for the preserving the Liberty and Property of the People, for giving us Peace and Plenty all our Time, for the permitting and securing to them the free Current of the Law, and for securing their Civil and Religious Rights.

My Lord, when we have gone through the Evidence about the Contexture, and this Libel is read and produced, we shall prove the Design of it, and how it was framed, and the Eyes of the World will be opened, and you will see that this was no Intention, no Engine framed to trap, or ensnare any private Person, or as it was secretly bruited abroad, to be put in such Men's Pockets; but a piece of the greatest *Machiavellian Policy* that ever was invented and prepared for a publick Press, as a Catholick Poison to infect all the King's Subjects, and excite them one against another.

And we shall prove that this Person, in the several Methods that I have opened, hath proceeded to accomplish his traitorous Designs of dethroning the King: Nay, he hath said, 'tis resolved among them, now that nothing else will do it but the poisoning the Hearts of the People with Hatred to their King, and Malice against one another. And when we have proved the Matter fully, through all the Parts, we must leave it to the Jury, who, I question not, will do themselves, and all other Protestants Right, as well as their Prince. We shall now go to our Evidence, and first we will call Mr. *Everard*; but, my Lord, I would only first observe to you, that this Gentleman, Mr. *Fitz-Harris*, and Mr. *Everard*, were both employed in the French King's Service, and there acquainted together. Mr. *Everard* came early off, and became a Protestant, leaving the French King's Ser-

vice, because he found their several Plots and Designs upon England. Then comes Mr. *Fitz-Harris* to him, and because he looked upon Mr. *Everard* not to be rewarded according to his Merits, invites him over, with telling him those things that the Witness himself will tell you, back again to the French Interest.

Then Mr. *Everard* was sworn.

*Fitz-Harris*. Look me in the Face, Mr. *Everard*.

Mr. *Everard*. I will, Sir.

Mr. Att. Gen. Will you acquaint my Lord, and the Jury, how you came first acquainted with the Prisoner; and then tell the several Passages between you.

Mr. Sol. Gen. Tell your whole Knowledge of this Matter.

Mr. *Everard*. My Lord, I came acquainted with Mr. *Fitz-Harris* beyond Seas, when we both were in the French King's Service, and upon Conference with him of late, especially about the beginning of February last, he renewed his Acquaintance, though at several Times before we had several Discourses, whereof I did not take much notice: But in those Meetings in February last, and in those Visits he paid me then, we had several Discourses tending to represent the Disadvantages and Sufferings I sustained, for adhering to the Protestant and English Interest; and besides comparing in the other Balance, what Advantages I might expect if I would re-ingratiate myself into their Interest.

L. C. J. What Interest?

Mr. *Everard*. The French and the Popish Interest. And there was an Opportunity in my Hands, wherein I might be serviceable to myself and others; and he told me there were several Persons, among whom were some Parliament-Men, that did adhere to the French Interest, and gave an Account to the French Ambassador of every Day's Proceedings: And as I was looked upon to be the Author of a Kind of Pamphlet, that was called, *An Answer to the King's Declaration, concerning the Duke of Monmouth*; therefore I should be fit to serve them, especially to make such another Pamphlet to reflect upon the King, and alienate him from his People, and his People from him. Whereupon I told him I would do any thing that was for my true Interest, but I did conceive with myself, that that was none of it. He appointed a Time when we should meet again; but I sent him a Note, I could not meet possibly that Day, which was Monday, as I remember the 21<sup>st</sup> of February: However he was impatient, and came to me, and told me he would give me Heads and Instructions tending to that Pamphlet I was to write, to scandalize the King, and raise a Rebellion, and alienate the Hearts of the Kingdom, and set the People together by the Ears. Upon this he gave me some Heads by word of Mouth: As soon as I parted from him, I met with one Mr. *Savile* of *Lincoln's-Inn*, and as soon as I met with him, I acquainted him with what was passed, and told him I wished rather than ten Pound I had met him sooner, half an Hour before. Why, what is the occasion, says he? Why, said I, there is a Person that hath had such and such Discourse with me, and one of his main Errands, amongst others, is for me to write a scandalous Libel reflecting upon his Majesty and the Government. And upon this I said, Mr. *Savile*, I shall not confer with him any further, unless I have somebody by to witness what he says; he speaks most commonly French, and sometimes English, and therefore it must be one who understands both the Tongues well. So we went into the City together that Afternoon to one Mr. *Crow*'s, who is a Silkman in *Queen-street*; said we, Sir, you are a moderate impartial Man, and understand French, we desire you will be present to over-hear some Proposals that are made to me tending to set our Country together by the Ears, and he comes from a Popish Party. Mr. *Crow* said, he would be willing to undertake any thing to serve the Protestant English Interest, but he would not undertake to speak French so well as to be able to understand all nice Passages, and Words that might be proposed. And then Mr. *Savile* and I went to Mr. *Smith*, a *Durham*-Gentleman, and made him the same Proposal I had made to Mr. *Crow*, desiring him that he would come and over-hear our Discourse, and I would place him in a fit Place. Mr. *Smith* assented to the Propositions, and said he would. Mr. *Smith* asked me what Day and Time we were to meet; I told him, To-morrow at six or seven o'clock at Night at my Chamber in *Gray's-Inn*: But further, he said, we must have other Witnesses, for one Witness would not be sufficient; so we went to the *Exchange* Coffee-house, and there we met with Sir *William Waller*, to whom we made the same Proposal, that since we must have some that understood French, and keep the thing secret, till it were time to have it come out, he would please to undertake it. Sir *William Waller* promised to come, but failed the first Meeting, which was to be on the Tuesday; then we went to another French Merchant, who was proposed by Mr. *Savile*, but he was not within: So then we must rely upon one Witness for that Meeting. Mr. *Fitz-Harris*, was to meet me about two o'clock at my Chamber in *Gray's-Inn*, where Mr. *Smith* and Mr. *Savile* were to meet likewise, and they came first to the Tavern just at the Corner of *Fuller's-Rents*, which hath a Prospect into the Court: And from thence I saw Mr. *Fitz-Harris* in the Court pointing to another Gentleman that was with him, up to my Chamber, and he was walking suspiciously up and down. Then I went out of the Tavern, and came up to my Chamber, and after a little while Captain *Fitz-Harris* came up to my Room; I placed him in another Room, where my Wife was, and shut the Door to, whilst I sent word to Mr. *Smith* to come into the outer Room and shut himself into my Closet. There was Mr. *Smith* in the Closet, and there was an Hole or two for the purpose made through both the Planks of the Boards and Hangings, but the Hangings hung over the Hole that it might not be discerned by Mr. *Fitz-Harris*; and he could raise it, and then see who was in the Room, and hear their Words; for I placed my Chair towards the Closet, which had an Angle outwards, and now and then I did stand against the Hole, and now and then sat, to give Mr. *Smith* Advantage, and to give Mr. *Fitz-Harris* no Suspicion. When we were so placed, Mr. *Fitz-Harris* asked me what I had done as to the thing proposed, this Libel that I was to draw up; I said, I was busy, and had not been able to finish it; but here are some Heads of it, said I, and shewed him half a dozen Lines drawn up together; and when I had read them, Sir, said I, is this your Mind? Yes, said he, but I must add much more than this is to it. Then Mr. *Fitz-Harris* proceeded to give me further Instructions; and so repeated what Instructions he had given me before, that the King and all



the Royal Family must be traduced to be popishly and arbitrarily inclined from the beginning, that King *Charles I.* especially had an hand in the *Irish* Rebellion, and that likewise King *Charles II.* that now is, did countenance the same, as did appear by his promoting those very Officers that were in the *Irish* Rebellion, *Fitz-Gerald*, *Fitz-Patrick*, and *Mont-Garrat*, which should be named in the Libel. Besides that, the Act made at the King's coming in, forbidding any to call the King Papist, was merely to stop People's Mouths, that they should not call him a Papist, when he should incline to further Popery, and did intend by his Actions so to do. And besides his adhering so closely to the Duke of *York's* Interest, was to be another Argument of it, his hindering the Duke of *York* from coming to his Trial, and to be proceeded against by the Parliament, and hindering the Officers that were put in by the Duke of *York* from being cast out. Another Argument was, because those Privy Counsellors and Justices of the Peace, that did adhere to the Protestant Interest, were turned out of all places of Trust; and besides, he said, it did appear to the People consequently, that the King was conscious to himself, that he was as guilty as his Brother, and was as much a Papist as his Brother, and it was in the People's power as well to depose a present Popish Possessor, as a Popish Successor; and that the People must be stirred up against him, and encouraged to blow the Trumpet, and especially that the City and Common Council must be encouraged to stand by the Parliament: And seeing the King was such, that no hopes was to be had of the Parliament at *Oxon*, they were bound to provide for themselves, and to advance some hundreds or thousands of Pounds to the Parliament to settle the Protestant Religion without the King, if Parliamentary Ways would not succeed. These were some of the Instructions.

*Mr. Att. Gen.* Did he say any thing that Day about a Reward you should have?

*Mr. Everard.* He spake in the general about a Reward, but he spoke more fully to that the Day after; he did not then come so much to Particulars: Then some part of those Instructions I writ in my Table-Book, which is produced here, and others of them in another Scroll of Paper. He then desired to know of me when the Scheme of this thing would be ready; said I, you may come to-morrow; I will, says he, come about six or seven a-clock in the Evening. In the mean time I writ a Letter to Sir *William Waller* in French, which I sent by a Porter, and therein I said, Sir, you have missed a great Opportunity of rendering a great Service to the King, by not coming to see me when you were expected; for the Person, the French Emisary whom I spoke of to you, hath proposed very scandalous seditious things to be written, and therefore I desire you not to fail, as you tender the King's Interest, to come to my Chamber at six a-clock at Night. Sir *William Waller* received my Letter, and came thither accordingly; I placed Sir *William Waller* in another Room, and I placed my own Chair at a narrow Table near the place where Sir *William Waller* was, and there through the Wainscot and Hangings we made a slit, whereby Sir *William Waller* might see into the next Room where *Mr. Fitz-Harris* and I sat: But before I placed him there, I shewed Sir *William Waller* two Copies of the Instructions for the Libel drawn up. Said I, Sir, here are two Copies which are both the same, and I desire you to counter-mark them, that you may know them again, and thereby see what Alteration will be made; for here are no Blots now, and by that you will find the Alteration. Sir *William Waller*, while my Back was turned, counter-marked those Copies. I went into the next Room, and I had not been long there, but *Mr. Fitz-Harris* came in; I placed the Table near the Alcove, where Sir *William Waller* was, within his hearing and seeing. *Mr. Fitz-Harris* asked me what I had done in the business: Sir, said I, here are two Copies of it, pray, will you see how you like it? So he took one, and I took the other.

*Mr. Serj. Jeff.* My Lord, I must interrupt this Gentleman, for I see they continue to give the Prisoner Papers.

*Fitz-Harris.* 'Tis only a Paper of the Names of my Witnesses.

*L. C. J.* Go on, Sir.

*Mr. Everard.* My Lord, Captain *Fitz-Harris* did read one Copy of this Pamphlet, and did amend it; he did add some things, and struck out other things: Then said I, is this, Sir, according to your liking? Yes, says he, but I must add something, for it is not yet full enough; but says he, this must be fair copied out; for 'tis not fit for the French Ambassador's Confessor to read, who should present it to the Ambassador. Upon this I told him it should be done against the next Day; but in the mean time I told him, Sir, these are very treasonable Things, and this a very treasonable Project. Oh, said he, the more treasonable the better, and that will do the effect better. What is that, Sir, said I? That is, says he, to set these People together by the ears, and keep them clashing, and whilst they are so in clashing, and mistrusting one another, the French shall gain *Flanders*, and then, said he, we shall make no Bones to gain *England* too. But, Sir, said I, you spoke of some Recompence for me, what shall I have for venturing this? Why, says he, after this Libel is delivered up, and that hath gotten you their Confidence that you are trusty, then I will gain the French Confessor, who is very shy, and may so well be, because one of the Confessors of an Ambassador hath been already trappan upon such an occasion. Therefore he is very wary, but he must have an assurance under your hand, which he shall have by this Libel; and then in a few Days you shall have forty Guineas, and a monthly Pension, which shall be some thousands of Crowns; for my Master the French King is not a Niggard as to these Things. The Spanish Ambassador is so very niggardly and penurious a Man, that he cannot keep a Table; but said he, you shall be well rewarded by the French King; and be not discouraged by the Danger, for I am in as great Danger as you. After some such Instructions, and Encouragements, that *Mr. Fitz-Harris* gave to go on in the Work, he departed; and I cannot well call any thing to mind of more Particulars; but upon Questions asked me, perhaps I may. But then at that time, or the next time, Captain *Fitz-Harris* gave me half a Sheet of Paper; for I told him I may chance to forget part of your Instructions, therefore pray write what is your Mind; and in that Paper he writ down, that it was in the People's power to depose a Popish Possessor, as it was to oppose a Popish Successor, and certain other treasonable Heads: The half Sheet of Paper is to be produced in the Court, under his own Hand, which he hath confessed, besides other treasonable Instructions, that he gave me by word of Mouth. But he at that time departed, and came the next Day to have a Copy of the treasonable Libel writ out fair, and promised me to meet at the Boarded-House, where we usually met in *Holborn* at *Mr. Fashion's*; and

I did there come and deliver him a Copy of this treasonable Libel, and he said I should hear in a few Days from him, and should have a Recompence; and this should be but as an Entrance-Business; for I should be brought into the Cabal, where several Protestants and Parliament-Men came to give an account to the Ambassador, how things were transacted: But to-morrow, said he, I cannot go to receive the Libel back again, for I am to go to *Knight's-bridge*.

*Fitz-Harris.* Where there?

*Mr. Everard.* To my Lord *Howard's*; for, said he, you have seen his Son often with me. My Lord *Howard* is very civil to me, he was my Father's Lawyer.

*Mr. Att. Gen.* Will you ask him any Questions, *Mr. Fitz-Harris*?

*Fitz-Harris.* Did you write this Libel?

*Mr. Everard.* Yes, by your Instructions I did.

*Fitz-Harris.* Do you believe I had any traiterous Intention in it?

*Mr. Everard.* Yes.

*Mr. Serj. Jeff.* You said, the more Treason, the better, *Mr. Fitz-Harris*.

*Fitz-Harris.* Were you put upon this to trapan others?

*Mr. Att. Gen.* 'Tis no Trapping to ask them to come, and hear you give him those Instructions, sure.

*Fitz-Harris.* But I ask him this Question, *Mr. Attorney*; Was he put upon it to trapan others?

*Mr. Everard.* Can you mention any Person that I was to trapan?

*Fitz-Harris.* Were you put upon it to trapan the Protestant Lords, and the House of Commons?

*Mr. Everard.* No, I was not.

*Fitz-Harris.* Is this the same Libel that was read in the House of Commons, upon which I was impeached?

*Mr. Everard.* Yes, I believe, *Mr. Fitz-Harris*, it was.

*Mr. Att. Gen.* *Mr. Everard*, because he puts you upon it, and to satisfy all the World, I ask you upon your Oath, Did any Person whatsoever put you upon this to trapan other Persons, or to put it into their Pockets, as 'tis reported?

*Mr. Everard.* I was put upon it by none but *Mr. Fitz-Harris*, of whom I asked, what will be the use of this? Said he, we shall disperse them, we know how.

*Mr. Att. Gen.* Did he tell you in what manner?

*Mr. Everard.* No, he did not tell how.

*Mr. Att. Gen.* To whom was it to be delivered?

*Mr. Everard.* I was to deliver it to *Fitz-Harris*, who was to deliver it to the French Confessor, and it was to be drawn in the Name of the Non-confessors, and put upon them.

*Mr. Serj. Jefferies.* What Religion is *Mr. Fitz-Harris* of?

*Mr. Everard.* He was always looked upon to be a Papist.

*Fitz-Harris.* When did you see me at Mass?

*Mr. Att. Gen.* Hath he not owned himself so?

*Mr. Everard.* He hath owned himself at several times to be a Papist.

*Mr. Sol. Gen.* What did he say to you about your being a Protestant, and what cause you had to turn to the Popish Religion?

*Mr. Everard.* He said, I was under great disadvantages, and had much loss by leaving them, I had better have adhered to their Interest still. He had this Discourse with me at several Meetings, and gave me several Visits, some at my Chamber, some at *Gray's-Inn* Walks, sometimes at the house with black posts in where we talked of several things.

*Mrs. Fitz-Harris.* I am sorry he kept such a Rogue as you are Company.

*L. C. J.* Officers, take her away, if she can't hold her Tongue, and give better Language.

*Fitz-Harris.* She will speak no more, my Lord.

*L. C. J.* Stand still then, and be quiet.

*Mr. Att. Gen.* What was your Discourse at the Ale-House.

*Mr. Everard.* To give Instructions to set the People together by the ears; and one most effectual Means was by scandalizing and libelling the Government, and especially the King.

*Mr. Jones.* Did any body else assist you in drawing the Libel?

*Mr. Everard.* There is at the latter end of the Libel a Paragraph that was taken out of another Book; there was a scandalous Libel that was brought by the Woman that carries Paper-Books about, and out of that, to make short Work, and out of *The Character of a Popish Successor*, in which he said were many things material, he would have some of the Expressions of this Libel taken: So I copied some of the Queries out of that Paper, which was said to be a Letter intercepted to *Roger L'Estrange*, and that Day that I was under Examination before *Mr. Secretary Jenkins*, that Libel lay before him upon his Table. He asked me if I had seen that, I told him yes, for I had copied in that Paper that was the Libel, those Queries; and then, said he, here is a Warrant to be given out against *Curtis* for it.

*Mr. Serj. Jefferies.* After such time that you had carried him the Copy that Sir *William* had marked, and he amended it, did you shew it Sir *William Waller* presently?

*Mr. Everard.* Yes, immediately; and I asked him, Sir, says I, is there any Alteration? Yes, said he, I see Alterations, and shew'd them one. Do you know the Difference of Hands, said I? Yes, said he, I do, and suppose will give you an Account of it.

*Mr. Johnson.* My Lord, I humbly beg *Mr. Everard* may be asked, who those Parliament-men were that were to concur with the French Ambassador in this Design?

*L. C. J.* Did he name any Parliament-men?

*Mr. Everard.* No, he did not, he said, I should know them hereafter.

*L. C. J.* Then he did not name any?

*Mr. Everard.* No, he did not.

*Mr. Att. Gen.* Then swear *Mr. Smith*. (Which was done.) Pray, Sir, will you look about, and give an Account what you know.

*Mr. Smith.* Will you have an Account how it came first to my knowledge?

*Mr. Att. Gen.* Yes, the whole, from the bottom to the top, from the beginning to the end.

*Mr. Smith.* I remember, about the 22d or the 21st of Feb. either one or the other, *Mr. Everard* and one *Mr. Savile* came to my Chambers, and told me the same Design that *Mr. Everard* hath repeated before, and that there was an *Irish* Gent. an Officer of the French King's Army, that was to manage the thing; he was one that could speak French very well, and they desired me to be concerned in it, because I understood French. Upon this



this I told him, I would willingly undertake such a Business, if I thought there were any convenient place in the Room where I might hear, and see, undiscovered. After he had told me, as he has before told your Lordships, that it was to make a Difference between the King and his People, and to misrepresent the King, as I shall inform you by and by. I went to his Chamber after we had spoke to Mr. Crow, who would not undertake to speak French so well as to be capable of understanding all; but at last we met Sir William Waller, who undertook the Matter. I walked immediately after Dinner to the Chamber, and saw the Conveniences, and the next Night we expected Sir W. Waller; but he not coming that Night, I went into the Closet myself till Fitz-Harris came according to the Appointment. When Fitz-Harris came, there were two Chairs set, one Chair next the Closet where I stood, and another opposite against me; that opposite against me, was that where Mr. Fitz-Harris sat, and Mr. Everard was next close to me, and I looked out through the Hole, and I heard there were some little Discourses about the Business in hand. At last Mr. Everard stands up, and goes to the Side-board, and brings a piece of Paper, about half a Sheet, as I think, with him; and he read it, which was a seditious kind of Paper, which I shall tell you of by and by: And he asked him in French, whether this were agreeable or no; to which the Gent. answered, it was well, but something must be added to it. Upon this, Mr. Everard took out his Note-book, and read some things therein, and then Mr. Everard desired him to instance what Heads he would have more than were there. To which Fitz-Harris replied, that he would have him to represent the King as a Papist, which might be demonstrated by several Reasons: First, his adhering to the Duke of York, and peremptorily resolving to espouse that Interest. The second Reason was, the preferring such as were the Duke's Creatures, both at Sea and Land, and keeping in Office those that were preferred by the Duke, known Papists; and this was also another Reason to prove that Head of the Instructions, that the King after his Restoration procured an Act to be made, that it should be Treason for any to call him Papist; and this was only that he might the better, and with more ease, introduce Popery into England. He charged likewise King Charles I. to be a Promoter of the Irish Rebellion, and that Charles II. furthered and approved it; that is another Instance. That the Parliament at Oxford was only a Sham to delude the People, and that such a King was not not to be trusted with such a People, neither as to their Lives, Liberties, or Religion; but that the People must provide for themselves in time, and blow the Trumpet boldly. Another Instance was, as it was the undoubted Right of the People to make laws against, and to oppose a Popish Successor, so they might depose a Popish Possessor. To this Effect was the Substance of what was said.

Mr. Att. Gen. Did he name a Reward that Mr. Everard was to have?

Mr. Smith. There was a Reward mentioned, but I don't remember any Particulars.

Mr. Att. Gen. Did he tell who set him on work?

Mr. Smith. He said, if they did but set England together by the Ears, the French would get Flanders, and at length prevail here, and Mr. Everard should get an Interest in the Common-Council, and make it his Business that they should make a kind of an Address to the Parliament, and promise to stand by them with their Lives and Fortunes in opposing Popery, and Arbitrary Government, and if Parliament-ways failed, to assist in another way; and if the King hindered the Duke of York to come to a legal Trial, that then they should take other Courses.

Mr. Att. Gen. What did he desire from Mr. Everard, when he seemed to boggle at his Instructions?

Mr. Smith. Mr. Everard said, he would do these things, yet he was in great Danger; why, says Mr. Fitz-Harris, so am I, and a great many more. What other Conference was between them, I know not, for I never saw them together after.

Mr. Serj. Jefferies. Look you, Sir, is this the same Person?

Mr. Smith. Yes, I did know him to be the same Person that Night he was taken.

L. C. J. You could see him where you were?

Mr. Smith. My Lord, I saw him clear enough, there were three Candles lighted, and I was as near to him as I am to your Lordship.

L. C. J. You were not in the Room?

Mr. Smith. I was in a little Closet close by.

Mr. Att. Gen. You know nothing of the Paper of Instructions?

Mr. Smith. I remember he told me of such an one, but I was not there the second Night.

Sir Fran. Withins. Mr. Everard said they were Treasonable things, what then said Fitz-Harris?

Mr. Smith. He said, the more Treason was in them, the better.

Mr. Serj. Jefferies. And the Particulars were to set the People together by the Ears, and to bring in the French King.

Mr. Smith. It is all one in Terms.

Mr. Serj. Jefferies. How was it?

Mr. Smith. That the King and the People should be set at variance, then the French King would fall upon Flanders and Holland, and afterwards would take England in his way, and make no bones of it.

Mr. Serj. Jefferies. Will you ask him any Questions, Mr. Fitz-Harris?

Fitz-Harris. Do you believe that I did it with a treasonable Intention?

Mr. Smith. Sir, I am not to judge of that, I am not of your Jury, nor to answer any such thing.

Fitz-Harris. What do you think, Sir, pray?

Mr. Smith. You could have no good Design to bring about by any such Matter (I think) as this Paper is.

Fitz-Harris. Is this the same Paper that was read in the House of Commons?

Mr. Smith. Sir, I was not of the House of Commons, I don't know what was read there.

Mr. Johnson. Mr. Everard did seem to hint at a Design amongst some Protestant Lords, and Parliament-Men, and others, Dissenters from the Church of England; I desire to know whether Mr. Smith heard those Words?

L. C. J. That was not the first Night.

Mr. Smith. I did not hear it.

L. C. J. Look you, Mr. Johnson, Mr. Smith was not present at the second Meeting, then Sir Will. Waller was there, it was only the first Night Mr. Smith was there, and he speaks to that. Therefore as to the Alteration of the Copy, and some other things, he tells you that was done the second

Night, and then was the Discourse concerning the French Confessor, and those other things which you mention.

Mr. Att. Gen. I believe the Jury misapprehend Mr. Everard in that too.

L. C. J. It was only what Fitz-Harris told him.

Mr. Att. Gen. But I see the thing sticks with the Jury; therefore, I would fain ask Mr. Everard this Question, Did you declare any such thing, or was it Mr. Fitz-Harris that told you?

Mr. Everard. Mr. Fitz-Harris told me, that several Parliament-men were joined with the French Ambassador to give him an account of things, but he told me besides, that it must be drawn up as it were in the Name of the Non-Conformists, to father it upon them; yet when there was one word in it, Thou, as if it were in the Quakers Name; no, says he, it must not be so, but it must be under the Name of all the Non-Conformists, that it may be common to all the discontented Party.

L. C. J. So you must take the Sense of this right, Gent. It is not, Mr. Everard tells you, some Parliament-Men and Lords were engaged in this business, but Mr. Fitz-Harris's Design was to engage Everard, and he urged what he could to encourage him to it. So that the Arguments he used were, that some Lords and Parliament-Men were engaged in this, to encourage him to go on.

Mr. Johnson. 'Tis true, my Lord, so that here does appear there was some other Interest than the French Interest in this matter, if what Mr. Fitz-Harris said was true.

Mr. Att. Gen. Fitz-Harris said so, to engage him.

L. C. J. Look you, Mr. Johnson, we do all verily believe and hope, there was no such thing as that any Lord, or any of the Commons of England were so engaged; it was his Interest, as Mr. Fitz-Harris took it, to mention it so, to engage this Gentleman.

Mr. Everard. I did not say Lords.

L. C. J. What did you say then?

Mr. Everard. Parliament-Men in general.

Mr. Att. Gen. Then swear Sir William Waller, (which was done.)

Sir Fran. Withins. Pray, Sir William, will you give an account of what you know of this matter.

Sir Will. Waller. My Lord, the last time I was here in this Court, being summoned to give in my Evidence, I did make some difficulty of it, upon the account that this Person was impeached by the Commons of England in Parliament; but Mr. Justice Jones having declared the Law required me in such a Case to give in my Evidence, I am now ready to give it in, and shall do it as briefly as I can.

L. C. J. Well, Sir, pray go on.

Sir Will. Waller. My Lord, upon the 22d or 23d of Feb. last, Mr. Everard met me in the City, and told me, he had a business of very great concernment to discover to me; whereupon, my Lord, we went into a place where we might conveniently discourse together; and he told me, in short, that Mr. Edw. Fitz-Harris, that unfortunate Gentleman at the Bar, had been with him several times, and endeavoured to engage him in a Business, which would in effect turn all into Confusion in England, and render the King very odious in the sight of his Subjects. Many things he did there tell me, and earnestly pressed me to join in this Design, to endeavour the Discovery of it. I was indeed at the first shy of meddling with it, being no way in the Commission of the Peace, and so not liable to engage in a Business of that Nature; but I was afraid to discourage Mr. Smith, who voluntarily and ingenuously offered himself for the Service of his King and Country: But I did not go that Afternoon, being willing to hear whether the Business went on, and was likely to come to any thing. The next Morning Mr. Everard writ to me this Letter (plucking out a Paper.)

Mr. Just. Dolben. Read it, Sir.

Sir Will. Waller. My Lord, in effect it was for to let me know, Mr. Smith hath been with him the Night before, and that according as they had laid their business, Mr. Fitz-Harris did indeed come, and had some Discourse in the hearing of Mr. Smith several things beyond what they had acquainted me with, things of the highest nature imaginable; and therefore he earnestly pressed me, as I tendered the Welfare of my King and Country, that I would not fail to come that Afternoon to be an Ear-witness of the treasonable Practices that were in hand. I looked upon myself then obliged to go, and did, according to the Directions he gave me, go about three of the Clock in the Afternoon to a Tavern at the lower end of Fuller's Rents near Gray's-Inn, and there we were to discourse further of the Business. I had not been there long, but I looked out of a back Window, and spied Mr. Fitz-Harris with another Gent. in a brown-coloured Suit, walking just before Gray's-Inn Door. I don't know the name of the Court, but there I saw them walking, but in their going, he frequently looked up at Mr. Everard's Chamber, and pointed at it. When he was gone, I told him, it may be Mr. Fitz-Harris may come sooner than the Hour appointed, therefore I think it will not be amiss to go without further delay to your Chamber, and see what Convenience there may be to lie secret, where I may be both an Eye and an Ear-witness. I went to his Chamber, and when I came into the Room, there was a little Closet, which I thought not so convenient for me, and I rather chose to look about if I could find another place more convenient. In short, in the next Room I found by my Candle there was a Door, and Hangings over it. I turned up the Hangings there, and in the Door there was a Crevice, which I opened a little with my Knife, and ripped a Hole in the Hangings which looked into the Room where the Gent. was to be. And before Mr. Fitz-Harris came, Mr. Everard had given me a large Account, much after the same manner that he hath given in his Testimony here, and he shewed me two Papers. I took the two Papers, and gave them a private Mark, that I might know them again; and withal we placed a Table and a Chair ready against Mr. Fitz-Harris's coming in, and agreed that he should be placed so, as that through the Hole I might have a full Sight of him: But left by an Accident he should be removed from thence, I desired Mr. Everard to ask him three Questions. The 1st was, Whether he had not married a Daughter of one Captain Finch, whose Father was killed in his Majesty's Service? The 2d was, Whether, as he read over the Paper, it was drawn up according to his Instructions? And the 3d was, Who was the Person that should recompence Mr. Everard for running so great a Hazard? According to these Instructions, the Table being placed, and every thing in order, about seven o'clock, or between six and seven, Mr. Fitz-Harris came in, and being sat down, he began to ask some Questions; amongst others—

[Then some Complaint was made by the King's Council, of Papers given Mr. Fitz-Harris.]

Fitz-Harris. Pray, My Lord, I beg that Paper may be given to my Wife again.



Mr. Att. Gen. I pray it may be given to the Court.

Mr. Serj. Maynard. I pray it may be read.

Mr. Sol. Gen. 'Tis not the Duty of a Solicitor to bring Papers, he was only appointed by the Court to run of Errands; he is not to advise or furnish with Matter of Defence.

Mr. Serj. Jefferies. My Lord, this is an Offence committed in the Face of the Court, therefore we pray the Person that hath done it may be committed.

Mr. Just. Dolben. It is nothing but the Resolutions of the House of Commons; give it him again.

L. C. J. If Mr. Whitaker lies there to trouble the Court, we shall find another Place for him.

Mr. Sol. Gen. My Lord, Mr. Whitaker hath done his Duty now, and what Service your Lordship appointed him; so I think he may be sent away, for here is no more Business for him.

Sir Will. Waller. Mr. Fitz-Harris came in, I think it was between six or seven o'Clock, and coming there, he sat himself down in the Chair prepared for him; and Mr. Everard, according to the Instructions I had given him, did ask him several Questions; but Mr. Fitz-Harris did ask him first, Whether he had finished the Paper according to some Instructions he had given him? Mr. Everard produced two Papers, the one was the Copy of the other, as I counted. Mr. Fitz-Harris had one given into his Hand, and the other Mr. Everard had. Mr. Everard, after he had read a little in it, did ask, whether this was drawn up according to the Instructions Mr. Fitz-Harris had given? He answered, It was exactly according to the Instructions he had given him. After he had read a little further, says Mr. Everard to him, This is a Business of a very dangerous Consequence, what Reward shall I have for running so great a Hazard? He told him again thus: Sir, says he, I think I run an equal Hazard with you; for you have a Paper under my Hand, which will render me liable to Danger. And then he went on and read further; and if Mr. Attorney will please to let me see the Paper, there is one particular Clause in it that I took special Notice of.

Mr. Att. Gen. Would you have the Libel, or the Paper, Sir William?

Sir Will. Waller. The Libel, Sir; (which was given him.) There was one Passage in it which I remember, and it was this (speaking of the King's preferring Persons that were engaged in the late Irish Rebellion) the Paper was first (prefers) but says Mr. Fitz-Harris, in French, it must be (has promoted:) Several Passages of this Nature I heard him alter, and I saw him alter with his Pen. For after such Time as Mr. Fitz-Harris was gone out of the Room, I went immediately into the Room where Mr. Everard was, and took Notice of the Paper, and the Ink upon the Paper was hardly dry.

Mr. Att. Gen. Look upon that, that is the original, and the other the Counter-part.

Sir Will. Waller. Here is the Mark (then pointing to the Bottom of the Paper.) These two Papers I marked both together, and this is the Paper, Sir, was mended. I do remember it more particularly, for this Paper I had in my own Custody, and signed it afterwards.

L. C. J. Well, go on.

Sir Will. Waller. He was asking him, Pray, Sir, said he, what Reward shall I have? Why, says Mr. Fitz-Harris, you shall be very well paid, you shall not need to fear, you shall have all Manner of Encouragement. This Business will bring a considerable Advantage to you, and you shall be otherwise preferred than what you were in the French King's Service. Says he, You cannot but know how you have been slighted and neglected, notwithstanding the Service you have done; and the French Ambassador is the Person that is to recompence you for your Pains; and he spoke of forty, but truly I did not hear whether it were Guineas, or what it was, that he should have for present Payment; and I heard him speak something of a Pension, he named three Thousand Crowns, but whether annually, or how, I cannot tell. Pray, Sir, said he, what shall I do in this Case, for I do not know, I am but in a low Condition, and have Occasion for Money? Why, says he, the French Ambassador will supply you, and you shall certainly, as soon as the Paper is perfected, have your Reward; and, says he, there are a great many more that we have employed in Businesses of this Nature, to create Misunderstanding between the King and his People, by which Means the French will easily over-run Flanders and the Low-Countries, and then England will become an easy Morfel. And this is the Substance of what I remember.

Fitz-Harris. Do you believe I had any such Design as Treason in it?

Sir Will. Waller. I cannot say any Thing to that, I only speak to Matter of Fact.

Mr. Att. Gen. Did he declare he had many more employed in the Service?

Sir Will. Waller. Yes, he did say so. And said he, there are two Parliament-Men that frequent my Lord Shaftesbury's, who my Lord does not suspect, that do come and found him, and then go and acquaint the French Ambassador with all they can discover.

Fitz-Harris. Is this the same Paper, by the Oath you have taken, for which I was impeached by the Commons in Parliament?

Sir Will. Waller. Yes, 'tis a Copy of the same Paper, and that Paper I did read in the House.

Mr. Att. Gen. 'Tis the original.

Mr. Johnson. My Lord, I desire to ask Sir W. Waller one Question: Sir, you have heard the Indictment read, then pray tell us, whether this very Libel be expressed in the Indictment according to what was delivered in the House of Commons?

Mr. Att. Gen. You shall hear that by and by yourselves: For you shall hear the Paper read to you with the Indictment.

Sir Will. Waller. This is a Copy of that Paper.

Mr. Johnson. (Foreman of the Jury.) Does Mr. Fitz-Harris stand impeached by the House of Commons upon the same Treasons mentioned in the Indictment?

Sir Will. Waller. Yes, Sir.

Mr. Att. Gen. Upon the same Treasons?

Sir Will. Waller. Upon this treasonable Paper he does. For as soon as ever I had communicated this Paper to the House, and I had made Report of the treasonable Transactions of Mr. Fitz-Harris, the House immediately proceeded to the Impeachment.

Mr. Sol. Gen. Does the Impeachment mention that Paper; or what particular Treason he was impeached upon?

Vol. III.

Sir Will. Waller. I know nothing of that. But upon this Paper that Impeachment was grounded, that is all I can say.

Mr. Sol. Gen. That this Libel was spoken of in the House of Commons, is true; but it does not appear upon the Impeachment, that he was impeached for that Libel.

L. C. J. Have you any more Witnesses?

Mr. Att. Gen. Yes, we have to other Matters. But we desire to let them alone till the Libel be read.

Mr. Johnson. My Lord, we beg we may have the Comparison of the Libel with the Indictment.

Fitz-Harris. I would ask Sir William Waller one Question more upon his Oath, whether he had any Design of trepanning me, or any Body else in this Thing?

Mr. Sol. Gen. Had you any Design to trepan the Prisoner, or any Body?

Sir Will. Waller. No, Mr. Fitz-Harris, indeed not I.

Fitz-Harris. I looked upon you always as a Person that was my Enemy.

Mr. Att. Gen. What, because you were a Papist?

Fitz-Harris. No, it was upon another Account, I appeal to Mr. Just. Dolben.

Mr. Just. Dolben. What do you appeal to me for?

Mr. Serj. Jefferies. Have you known Mr. Fitz-Harris before, Sir William?

Sir Will. Waller. Yes, many Years.

Mr. Serj. Jefferies. What Religion was he reputed to be of?

Sir Will. Waller. A Roman Catholick.

Fitz-Harris. I am not bound to continue so always.

Mr. Jones. Shew your Conversion.

Mr. Att. Gen. Pray let the Libel be read.

[Then the Paper was produced.]

Mr. Att. Gen. Sir W. Waller, and Mr. Everard, is that the Paper?

Mr. Everard. This is the Paper.

Mr. Att. Gen. Is it interlined with his own Hand?

Mr. Everard. Yes, for there are the Words (have promoted) that I said before, he altered.

L. C. J. Gentlemen, pray mark this now, you will hear the Clauses contained in the Indictment read, and you shall hear this Paper read, and then yourselves shall be Judges, whether it does contain them, yea, or no.

Mr. Johnson. We desire to see it at the Bar.

Mr. Att. Gen. Here is a Copy of these Clauses, you may examine it by that.

Mr. Serj. Maynard. 'Tis not the whole Libel, but only some Clauses of it he is indicted for.

L. C. J. Yes, Brother: But what they desire is only to see whether so much as is contained in the Indictment, is also in the Libel.

Mr. Att. Gen. Pray swear Mr. Astrey, then; (which was done.)

L. C. J. Look you, Gentlemen, this is one that is intrusted with the Affairs of the Crown; he is now sworn, and I ask him this Question for your Satisfaction: Mr. Astrey, are the English Sentences that are in the Indictment also comprized in the Libel?

Mr. Astrey. My Lord, I did examine this Indictment with the Libel at Mr. Attorney General's Chamber as well as I could, and they are in terminis the same; the Words in the Indictment, and the Words in the Libel.

Mr. Johnson. My Lord, if all be not in the Indictment that is in the Libel, then perhaps there may be some Connection with what is antecedent, something to explain those Clauses the Indictment mentions, so that they may bear another Construction. Therefore we would have all read.

Mr. Serj. Maynard. It must be all read to them.

L. C. J. Yes, Brother, it shall be wholly read them, though it need not be expressed *de verbo in verbum* in the Indictment; yet for their Satisfaction it shall be wholly read to them.

Mr. Sol. Gen. These Gentlemen are very cautious, I perceive.

L. C. J. Look you, Gentlemen, if you will attend the Court, we will give you what Satisfaction we can; pray, Mr. Solicitor, give them Leave to speak to the Court: What you desire, Gentlemen, is reasonable enough, that you may hear the Libel, to see whether these are not Clauses taken out of a Paper, which may have another Import in the Paper than they have when they are taken out; that is your Meaning.

Mr. Johnson. Yes, my Lord.

L. C. J. To that Intent you shall hear the Libel read distinctly; you shall have the very Clauses of the Indictment by you, that you may look upon them.

Mr. Att. Gen. The other Part of the Libel will do it.

L. C. J. Pray, Mr. Attorney, don't direct me, they shall have the Indictment whilst Mr. Astrey reads the Libel, that they may see the Import of the Words. You do not apprehend it aright: Mr. Johnson does not desire to see, whether Mr. Astrey read right, but whether those Clauses in the Indictment are of the same Import in the Indictment, that they are in the Libel; therefore they must have a Copy of the Indictment whilst Mr. Astrey reads the Libel: And Mr. Astrey, pray mark those Clauses, when you come to them, for you will find they are dispersed up and down the Libel.

Mr. Astrey. I do not swear to that very Paper; but I believe you will find they are rightly taken out of the Libel in the Indictment.

Mr. Att. Gen. This is the Copy of the Indictment-Clauses.

Cl. of Cr. reads. Friend, I thank thee for the Character of the Popish Successor—

[Then one of the Jury, having the Copy in his Hand, and not finding it exact, desired a true Copy.]

Sir Will. Waller. Here is a true Copy of it, which I took myself, and read in the House.

[Then the Libel was read through, which was as follows:]

The true Englishman speaking plain English, in a Letter from a Friend to a Friend.

I Thank you for the Character of a Popish Successor which you sent me, wherein our just Fears, and the Grounds of them, are justly set out. But I am in greater Fear of the present Possessor; why do we frighten ourselves about the Evil that is to come, not looking to that which is at Hand? We would cut off the budding Weeds, and let the poisonous Root lie still; we would stop the Channel of our Evils, and let the Fountain still run: My meaning is this; can Pylades know and act all these



these bloody Conspiracies, and not impart them to his dear *Orestes*? If *James* be conscious and guilty, *Charles* is so too: Believe me, these two Brethren in Iniquity, they are in Confederacy with Pope and French, to introduce Popery and arbitrary Government, as all their Actions demonstrate. The Parliament, *Magna Charta*, and Liberty of the Subjects, are as heavy Yokes which they would cast off to be as to be as absolute as their Brother of France; and if this can be proved to be their only Aim and Endeavour, why should not every true Briton be a Quaker thus far? Let the English rise, and move as one Man to Self-Defence, to open Action, and sling off their intolerable Riders. Blow the Trumpet, stand on your Guard, and withstand them as Bears and Tygers. And since there can be no trust given to this goodly Couple of Popish Brethren, nor no Relief expected from a Parliament; trust to your Swords in Defence of your Lives, Laws, Religion, and Properties, like the stout Earl of old, who told a King, that if he could not be defended by *Magna Charta*, he would be relieved by *Longa Spada*.

Yet to convince the World, that this *Scottish* Race is corrupt, Root and Branch, and Popish from the very beginning, be pleased to consider these Reasons following:

The Grand-Father of these Men, *James the Scot*, was of no Religion at the bottom, but entred by a Pretence of a sham Plot of the Papists against his Life, whilst really he colloqued with the Popish Party under-hand; his Mother, his Kindred and Companions were French, and Papists; when come into England, he wrote to the Pope with great Submission, yet afterwards thinking it for his Purpose to cajole the Parliament, and write against the Pope and Cardinals, he sends a Scot's Bird to blind the Eyes of the Vatican Keeper with Money, and to steal his Letters from off the Roman File, and then he crows as boldly as an unsuspected Harlot for the Protestant Religion and Interest.

That Man's Son, *Charles the First*, held a secret Correspondency with the Pope, calling him his dear and holy Father, as is to be seen in his Letters recorded in *Rushworth's Collections*: Were not his Wife and Courtiers Papists? Did he not countenance and promote the Rebellion in Ireland? As the Irish Grandees and his very Commissions testify and declare, was there not a Popish Plot, and an universal Conspiracy of the Papists discovered to him and his Confessor *Laud*, and did they not piously stifle it, lest they should have discovered the Nakedness of their Mother Church? Whilst that goodly Protestant Prince pretended to relieve the poor besieged Protestants at *Rochel* by his confident *Buckingham*, did he not hold Correspondency with the French Cardinal how to betray them for a Sum of Money? (which his Obstinacy with his Parliament made him stand in need of.) But they who so ill approved themselves to be Heads of the Protestant Church, *Charles* and *Laud*, did they not lose their own Heads by a manifest Judgment of God? And was not the false Heart of their Emisary *Buckingham*, found out by an Assassin's Knife?

But to come nearer to our Purpose, these two goodly Imps of our Days are stark Naught, arrived at the Height of Wickedness, and of professed Arbitrariness and Popery.

As for *James* he was a Papist whilst he had a Regiment in the French, and afterwards in the Spanish Service beyond Seas. And as for *Charles*, he was reported, ere he came into England, to have been reconciled to the Church of Rome in one of the French King's Country-Houses; and since they came in, how have they wheedled and played fast and loose in their Profession of Religion, as Occasion and their Affairs required? Have they not all along maintained secret Correspondency with France and Rome? As *Coleman's* Letters may sufficiently instruct such who have not seen more secret Memoirs.

But let us come to examine their Actions, which are a better Proof of their Hearts: Were not the Duke's Servants and Confidants all Papists? Witnesses his *Talbots*, *Patricks*, and other Irish Teagues. Were not the Duke and such of his Creatures as were known Papists, promoted to all publick Offices of Trust, both at Sea and Land? Witnesses *Bellasis*, now a Traitor in the Tower. Did not *James*, by *Coleman*, *Throgmorton*, and others, hold open Correspondency with the Pope and Cardinals? And could *Charles* be ignorant of all this? Nay, he liked all so well, that he hardly employed any about him but Papists, as *Clifford*, whom he made Treasurer; or employed any abroad but Persons of the same Stamp. Witnesses *Godolphin*, whom he sent Ambassador into Spain, as he did others elsewhere; what more obvious than that, though the Duke's Treachery against the Kingdom and Protestant Religion be fully made out, and the People and Parliament seek to bring him to a legal Trial, yet *Charles* obstructs Justice, and will not suffer it? How can this be, but that he is joined in Will and in Deed in all the Duke's Villainies, and that he is afraid to be discovered and found out to be a Papist, and a Betrayer of his People and the Protestant Religion? If he was heartily concerned for our Religion, would he not oppose a Popish Successor, who would infallibly overthrow it? Can there be any Thing more evident, than that he continues the Duke's Adherents, and those who were advanced by him in all Offices of Trust? And hath he not turned out of his Council the most zealous Protestants, such as *Shaftesbury*, *Essex*, and others, and introduced in their Rooms other mere Tools, or those that are popishly and arbitrarily affected? Hath he not modelled all the Sheriffs and Justices throughout England, in Subserviency to a popish Design? Was not Sir *William Waller*, and Dr. *Chamberlain*, and divers others turned out of the Commission in and about London, merely for being zealous Prosecutors of Priests and Papists? Doth not *Charles* all he can to hinder the further Detection of the popish Plot? And doth he not to his utmost discountenance the Discoverers of it, and suffer them to want Bread? And doth he not in the mean Time plentifully encourage and reward *Fitzgerald* and all the sham Plotters? Whereas *Dangerfield* had 8l. a Week whilst a Forger of Plots against the Protestants, he is cast off with Scorn, and in Danger of his Life, since he laid open the Popish Engineers. Is not *Charles* so much in Love with his Popish Irish Rebels, (therein treading in his Father's Steps) that he promotes *Mongarret*, *Carlingford*, *Fitz-Patrick*, and others who were the Heads of the Rebellion, to Honours and Preferment; though *Charles* took the Covenant and a Coronation Oath to preserve the Protestant Religion, yet hath he not palpably broken them? He made large Promises and Protestations at *Breda* for the allowing a perpetual Liberty of Conscience to Non-conforming Protestants, but he soon forgot them all: To what end was the Act, which was made soon

after his Restoration, prohibiting any to call him Papist, or to say he was popishly inclined, and render such as should offend, guilty of a Pre-munire; but to stop the People's Mouths whenever he should act any Thing in Favour of Popery, as he was then resolved to do?

Is it not manifest therefore that *Scotch Oaths*, *Breda Promises*, Protestant Profession, Liberty of Conscience, War with France, saving of *Flanders*, is all in Jest to delude Protestant Subjects? Is it not apparent that breaking of Leagues, Dutch War, Smyrna Fleet, French Measures to favour their Conquests, Loss of Ships, War in *Christendom*, Blood of Protestants, relieving of Popish Traitors, is all in Earnest, and done in favour of Popery? And are not his fair Speeches, his true Protestant Love to Parliaments, just Rights, and English Liberties, his pretended Ignorance of the Plot, and his hanging of Traitors to serve a Turn but in mere Jest? Are not his great Debaucheries, his whoring Courtiers, popish Councils, cheating Rogues, hellish Plottings, his saving of Traitors, his French Pensioners, his Nests of Whores, and Swarms of Bastards, his Macks, his Cut-throats, his horrid Murderers, his Burning of London and the Provost's House too, his sham Plotting, his suborned Villians, his popish Officers by Sea and Land, his Strugglings for a popish Successor, his Agreements with France, his frequent Dissolutions of Parliaments, his buying of Voices, his false Returns, all of them Designs to ruin us in good earnest, and in favour of arbitrary Government? And is it not in order to this blessed End that you see none countenanced by *Charles* and *James*, but Church Papists, betraying Bishops, tantivy Abhorers, barking Touters, popish Scribblers to deceive the People, and fix the Popish Successor's illegal Title? Are not Jesuits Counsels, French Assistance to conquer Ireland, subdue Scotland, win Flanders, beat the Dutch, get their Shipping, be Masters of the Seas? And are not facing a Rebellion, the letting the Plot go on, the endeavouring to retrieve the Popish Cause by getting a Popish Pensionary, abhorring Parliaments, who shall betray their Country, enslave Posterity, and destroy themselves at last, Means only to save a popish traitorous Successor, and a present popish Possessor? *James* and *Charles* are Brethren in Iniquity, corrupt both in Root and Branch, and who study to enslave England to a French and Romish Yoke, is not all this plain? Have you not Eyes, Sense, or Feeling? Where is the old English noble Spirit? Are you become French Asses, to suffer any Load to be laid upon you? And therefore if you can get no Remedy from this next Parliament, (as certainly you will not) and if *Charles* doth not repent and comply with it, then up all as one Man. O brave Englishmen, look to your own Defence ere it be too late; rouse up your Spirits, remember your Predecessors, remember how that the asserting of their Liberties, justified both by Success and Law, the War of the Barons against wicked Counsellors who misled the King. And will you now let that go which cost them so dear? How many oppressing Kings have been deposed in this Nation, as appears in Records referred unto in that worthy Patriot's History of the Succession; were not *Richard II.* and *Henry VI.* both laid aside, not to mention others, and was there ever such a King as this of ours? Was not King *John* deposed for going about to embrace the Mahometan Religion, and for entering into a League with the King of Morocco to that Purpose? Though Mahometism and the King of Morocco were no such Enemies to our Rights and Liberties, as Popery and the French are. Is it not Time then that all should be ready? Let the City of London stand by the Parliament, for the maintaining of their Liberties and Religion in an extreme Way, if parliamentary Ways be not consented unto by the King, let the Counties be ready to enter into an Association, as the County of York did in *Henry the Sixth's* Time.

*L. C. J.* Gentlemen, now you have heard it read, and you may observe there is nothing in this Paper can extenuate or mitigate the Clauses, but abundance to make them more horrid and exceedingly aggravated.

*Mr. Att. Gen.* Then call *Mr. Saville*, who was the Person *Mr. Everard* did meet with, and acquaint with this Business (but he did not appear.) Then call Sir *Philip Lloyd* and *Mr. Bridgman*. My Lord, the next Piece of Evidence we shall give, is this; Sir *William Waller* and *Mr. Everard* do both say, that he gave part of his Instructions under his own hand; we shall produce the Paper, and prove he acknowledged it to be his own Hand.

[Then the Paper was produced.]

*Mr. Att. Gen.* Who writ that, Sir?

*Mr. Everard.* *Mr. Fitz-Harris*.

*Mr. Att. Gen.* Are those the Instructions he gave you to frame this Libel?

*Mr. Everard.* These are part of the Instructions, my Lord; the other part I took in my Table-Book before *Mr. Smith*.

*Mr. Att. Gen.* We will prove it by other Witnesses, Sir *Philip Lloyd*, and *Mr. Bridgman*.

*Mr. Bridgman* sworn.

*Mr. Att. Gen.* Did the Prisoner acknowledge that to be all his own Hand-writing?

*Mr. Bridgman.* Yes, my Lord, *Mr. Fitz-Harris* did acknowledge it to be all writ with his own Hand.

*Sir Philip Lloyd* sworn.

*Sir Fran. Withins.* Look upon that Paper, Sir, (which he did.) Did *Mr. Fitz-Harris* acknowledge it was his Hand-writing?

*Sir Philip Lloyd.* Yes he did; and that I might bear testimony of it the better, I writ with my own Hand on the back of it, that he did so.

*Mr. Att. Gen.* Read it.

*Cl. of Cr.* reads, After this sham Meeting of the Parliament at Oxford, which nobody expects any Good of, it will be necessary, &c.

*Mr. Sol. Gen.* These Words are likewise in the Indictment.

*L. C. J.* When was that given to you, *Mr. Everard*? for—*Mr. Fitz-Harris* it seems owned it before the Lords in the Council, but *Mr. Everard* swears of the Delivery of it; what time was it?

*Mr. Everard.* It was either Monday or Tuesday.

*L. C. J.* In February, was it not?

*Mr. Everard.* Yes, and I asked Captain *Fitz-Harris*, according to *Will. Waller's* Queries, whether he had given Instructions according to what he would have contained in the thing? Yes, said he; but have not enough under my own Hand to do it by?



Mr. Serj. Maynard. My Lord, we have done our Evidence, we will leave it now to hear what the Prisoner will say for his Defence.

L. C. J. Mr. Fitz-Harris, if you have any thing to say for your Defence, this is your time to do it.

Fitz-Harris. Yes, my Lord, Dr. Oates, I desire, may be called.

Mr. Att. Gen. If you have any Witnesses, name them.

Mrs. Fitz-Harris. Yes, yes, Dr. Oates? and ask him what he heard Mr. Everard say.

L. C. J. What say you to Dr. Oates? here he is.

Fitz-Harris. Pray, Doctor, what have you heard Mr. Everard say about this Libel since I was taken?

Dr. Oates. My Lord, after this Business was talked of abroad, having heard that Sir William Waller and Everard had made the Discovery, I did discourse Mr. Everard about the Business, and about the Libel. He told me he wrote the Libel, and when I would not believe it, the Man was a little angry that I would not believe it: And then I told him he was a Man very unfortunate in speaking; for he spoke but badly. He said, though he was unfortunate in his Tongue, yet he was as fortunate in his Pen, and that he took a great deal out of the intercepted Letter to Roger L'Estrange: and I then asked him what the Design of it was, he told me, it was to be printed, and to be sent about by the Penny-Post to the protesting Lords, and the leading Men in the House of Commons, and they were to be taken up as soon as they had it, and to be searched, and to have it found about them. I then asked him if there were any other Persons concerned in it, besides those publicly talked of; he told me the Court had a hand in it, and the King had given Fitz-Harris Money already, and would give him more if it had success. This he told me at Oxford, and before he went thither, and after.

Fitz-Harris. Mr. Sheriff Cornish, I do beg you say what his Majesty told you, when you came to him from me, when I was in Newgate.

Mr. Sheriff. I do not know what you call me for, Mr. Fitz-Harris.

Fitz-Harris. I desire you to acquaint the Court what the King said to you when you came to him from Newgate from me.

Mr. Sheriff. My Lord, I shall desire your Lordship's Opinion in this Matter, whether it be seemly or decent for a Subject to declare what Discourse his Prince is pleased to have with him?

L. C. J. Look you, Sir, if you give any Evidence, give it. We are not to direct any Witness whether they shall give their Evidence, or not.

Mr. Att. Gen. Mr. Sheriff, you ought to do it openly, if you give any; therefore pray let us hear you.

Mr. Sheriff. My Lord, I cannot remember what was said relating to this particular Matter. There was a great deal his Majesty was pleased to discourse with me concerning things of several kinds and natures; my Memory may fail me; but if Mr. Fitz-Harris please to ask as to any particular Matter.

Fitz-Harris. What the King said when you came from Newgate to him, to acquaint him that I would make a Discovery: Did he say I was employ'd by him, and received any Money, and what for?

Mr. Sheriff. My Lord, I do remember something of that kind. When I was giving his Majesty an account that I found the Prisoner at the Bar in a Disposition to make a Discovery, his Majesty was pleased to tell me, he had often had him before him and his Secretaries upon Examination, and could make nothing at all of what he did say or discover to them; and his Majesty was pleased likewise to say, that he had for near three months before acquainted him, that he was in Pursuit of a Plot, a Matter that related much to his Majesty's Person and Government: And the King did say, in as much as he made great Protections of his Zeal for his Service, he did countenance and give him some Money. I know nothing more.

Mr. Att. Gen. Did the King ever declare that he saw Fitz-Harris in his Life, or that he ever was in his Presence?

Mr. Sheriff. Yes.

Mr. Att. Gen. Ay, but before his appearing at the Council-Table, did the King ever say he saw him, or before he was arrested for this Fact?

Mr. Sheriff. Yes, his Majesty was pleased to say about three Months before, he came to him, and pretended he would discover a great Plot to him.

L. C. J. Have you any other Questions to ask Mr. Sheriff?

Fitz-Harris. No. Where is Colonel Mansel?

Dr. Oates. My Lord, I desire that if the Prisoner have any more Questions to ask me, he may do it; because the Croud is great, and I would go out.

Fitz-Harris. Sir, I have many more Questions to ask you, I desire you would please to stay.

L. C. J. You must stay if he have any more Questions to ask you. Here is Col. Mansel, what say you to him?

Fitz-Harris. Colonel, what did you hear Sir William Waller say, after this Discovery was made?

Col. Mansel. That which I heard Sir William Waller say, was this: I had occasion to speak with Sir James Hayes, and enquiring for him, I found he was at the Dog-Tavern; so I went up, and found in the Company Sir William Waller, and another Gentleman, one Mr. Hunt, and some more. After the rest of the Company were gone, and only Sir James Hayes, Mr. Hunt, myself, and Sir William Waller left, Sir William was giving an Account of this Business, and said the King, when I had acquainted him with it, told me I had done him the greatest piece of Service that ever I had done him in my Life, and gave me a great many Thanks; but I was no sooner gone from thence, but two worthy Gentlemen gave me an account, that the King said, I had broken all his Measures, and he would have me taken off one way or another.

Fitz-Harris. Did he say any thing, that it was a Design to put the Libel upon the Protestant Lords and the House of Commons?

Col. Mansel. There was that said.

L. C. J. What was said? Don't come with your imperfect Discourses here; but if you give Evidence, tell what was said.

Col. Mansel. Sir William Waller said, that the Design was against the Protestant Lords, and the Protestant Party.

Mr. Serj. Maynard. I do not doubt that it was against the Protestant Party.

Mr. Att. Gen. Recollect yourself: Was it against the Protestant Lords, or the Protestant Party.

Col. Mansel. He said, the Protestant Party.

Mr. Att. Gen. So say we.

Fitz-Harris. Did he not say it was another sham Plot, Sir, against the Fanatics, and the House of Commons? Where is Mr. Hunt?

[Mr. Hunt appeared.]

Mr. Hunt. What would you have with me, Mr. Fitz-Harris? I never had any Conversation with you in my Life.

Fitz-Harris. No, Sir; but what have you heard Sir William Waller say concerning my Business?

Mr. Hunt. My Lord, I would rather I had lost my Hearing for that Time, than have heard it to repeat it. Sir William Waller did tell me, at the Dog-Tavern, where was Sir James Hayes, and Colonel Mansel by, after he had read over the Libel to us, there was a great deal of Company more; but he only gave us the Curiosity to see what the Libel was: And when he had read it, he did tell us, that the King gave him particular Thanks for that good service he had done him in detecting Fitz-Harris; but he said he was told by two Gentlemen that had heard the King speak it, who were of undoubted Credit, that the King was in an extreme Passion, bestowed many hard Names on him, and said, he would give any thing in the World to take him out of the World; that he was an insufferable Vexation to him, and that he had broken all his Measures. And he said the same things again, in the Presence of Sir Philip Harcourt, and my Lord Radnor's Son Mr. Roberts, at Capt Hall's Chamber, in Pembroke-College in Oxon.

Mr. Att. Gen. What did he say about the Prisoner?

Mr. Hunt. This was about the Libel of Fitz-Harris, that the King gave him particular Thanks about that Business: And afterwards the King did express great Passion, in some short Time after he was gone: And he did say he was informed by two Witnesses, that heard the King say it, he knew not what to do with him, he broke all his Measures.

Fitz-Harris. Did he not say, this was a Design against the Protestants?

Mr. Hunt. He did say it was a Design to contrive these Papers into the Hands of People, to make them Evidences of Rebellion; and that was his Apprehension of the Thing. And he said further (for I am a Witness here, and must speak all my Knowledge) that he had another Plot which he had traced near to a full Discovery, a more horrid Plot than this or Dangerfield's; for he said, this was the Counterpart of Dangerfield's Plot. I hope he will not deny it, if he be asked, here he is, and upon his Oath; I am not, and I desire not to take Credit unsworn, but am willing to give my Testimony on Oath.

Fitz-Harris. Where is Dr. Cary?

Mr. Sh. Cornish. Dr. Cary is not well, my Lord, and can't come.

Fitz-Harris. Then Mr. Sheriff Bethell.

Dr. Oates. My Lord, I pray I may be discharged.

L. C. J. Doctor, we have nothing to say to you, but the Prisoner hath more Questions to ask you. 'Tis not we that detain you, but you stay upon the Prisoner's account.

Fitz-Harris. Mr. Sheriff Bethell, I desire to know what you can say concerning Mr. Everard.

Mr. Sh. Bethell. My Lord, I know nothing of Mr. Everard as to his Business, save that he told me, he writ the Libel himself. And I confess, my Lord, further, that before ever he knew my Face, or before ever he heard me speak a Word in his Days, he put in an Information of Treason against me, at the Instigation of one that is known to be my mortal Enemy: And it was so groundless, that though it was three Years ago given in, yet I never heard a Word of it till Friday last, I can bring Witnesses of this, Persons that sent the Notice of it to me.

Fitz-Harris. Pray call Mrs. Wall, (who came down from her Seat.)

Fitz-Harris. Mrs. Wall, pray will you tell the Court, have not I conveyed some Libels and treasonable Papers to the King by your Means, and received Money upon that Account?

Mrs. Wall. Not as I know of.

Fitz-Harris. Did not you receive some of them from me to give to the King?

Mrs. Wall. No indeed not I.

Fitz-Harris. Is the Footman here that was by, when you paid me the Money?

Mrs. Wall. Yes, and the Porter too, though you have not subpoena'd them.

Fitz-Harris. How long ago is that?

Mrs. Wall. Two Years ago.

Fitz-Harris. Was it not about Christmas last was Twelve-month I gave you the Libel about the King and your Lady; and the King thanked me extremely, and I had 250*l.* given me? Come Mrs. Wall, don't think to trick me out of my Life in the Case, for I will not be tricked so. Pray tell the Court: Can you deny that I had the 250*l.*? speak, Mrs. Wall, had I 250*l.*?

Mrs. Wall. That was not the Question you asked me at first.

Fitz-Harris. But speak, had I it?

Mrs. Wall. There was 250*l.* I think it was 200 or 150, or 250*l.*

Fitz-Harris. What Use was it for? and upon what account?

Mrs. Wall. You do know it was not for any Libel.

Fitz-Harris. If you have any mind, tell it.

Mrs. Wall. There it is: (Delivering in a Paper to be read.)

Cl. of Cr. The humble Petition of Edward Fitz-Harris.

Mrs. Wall. I really took him for as honest a Man as ever I knew in my Life; and had it been in my Power to have done him a Kindness, I should not have failed to have done it.

Mr. Att. Gen. Was he your Countryman, Madam?

Mrs. Wall. Yes, he is, and my Relation too. I knew him to be the Son of a very suffering, loyal Family; and while his Mother was in Town, he came often to our House; and when she went away, he left visiting the House a great while. And you, Mr. Fitz-Harris, did once tell me, you could bring in People to the King's Interest, that were very considerable. So I spoke to the Secretary of State about you, that there was one that had been with me, and told me, that he could bring in those to the King and Duke's Interest that were very considerable. The Secretary of State desired of me to know who they were; and then he named to me one Thomas Merrey, and another Person, who I desire to be excused from naming. The other Party he did name was thought considerable, both for Quality and Understanding; and the Secretary desired me to get him in, if I could.

Mr. Att. Gen. Pray, Madam, who was it?

Mrs. Wall. I desire Mr. Fitz-Harris may tell you.

Fitz-Harris. No, Mrs. Wall, pray do you tell it, since you have spoke of it.

Mrs. Wall. I say nothing but what I will take my Oath of.

Fitz-Harris. Then you will never swear that which is true. Pray, Mrs. Wall, speak, who was it?

Mrs. Wall. I desire I may not name him; but he may.

Mr.



*Mr. Att. Gen.* He will not.

*Mrs. Wall.* Truly I do not think it convenient for me to name such Persons as those are, upon such accounts.

*Fitz-Harris.* Pray, *Mrs. Wall*, name the Person that I would have brought into the King's Service.

*Mrs. Wall.* If the Court commands me, I will; otherwise I will not.

*Fitz-Harris.* Did you ever, upon any such account as this, receive any Money for me? Speak the Truth.

*Mrs. Wall.* God forbid your Blood should lie at my Door; I assure you, I should be sorry for it. He told me, these Persons were considerable for the King's Interest, and could do him extraordinary good Service. So, as I said, I spoke to the Secretary of State; and he would know who they were. And when he was told who they were, as for one of them, *Thomas Merrey*, he was not thought worth the looking after, for he was thought an inconsiderable Rascal; but as for the other Gentleman, he was thought a Man of Worth, and a Person, that, if he would, could really serve the King. Upon this, when you first came, I was never at rest for you; and therefore, after a while, before you came again, I gave the Porter Order to tell you, I was not at home; and I desire the Porter may be asked the Question. But when I next saw the Secretary, I desired that he would give them a positive Answer, one way or the other; and the next time I saw you, this was your Business, and I told the Secretary of State of it. You gave me this Paper, and desired me to solicit for your Quit-Rent in *Ireland*, for you were in great Misery, and had been a great Sufferer. So I spoke to the Dutcheſs of *Portsmouth*, and she spoke to the Secretary of State; that if this Man be so considerable a Sufferer, 'tis convenient to give him something for his Encouragement: And if you will give him something, said I, give it him quickly. I was four, if not six Months, a-getting this Money.

*Fitz-Harris.* But will you say it was upon that account? When was that Money paid?

*Mrs. Wall.* I never thought I should be brought in for a Witness; or that you would have abused me thus for my Kindness.

*Fitz-Harris.* When were those Papers given you that you produced?

*Mrs. Wall.* I wish I may never see the Face of God, if I know any more than what I gave Evidence; there are the Papers, they will tell you the Time.

*Fitz-Harris.* Did I give them you?

*Mrs. Wall.* You or your Wife did; and I suppose your Wife's Condition was yours.

*Fitz-Harris.* Was not the Money received before those Papers ever were given you?

*Mrs. Wall.* Nay, *Mr. Fitz-Harris*, I will tell you more; send to *Mr. Henry Guy*, and let him tell you when he paid it you.

*Fitz-Harris.* Call the Porter, and the Footman if he be here.

*L. C. J.* If you would ask any more Questions of *Mrs. Wall*, do.

*Fitz-Harris.* Did not I come to you the *Wednesday* before I was taken, and told you, I desired to speak with the King, and that I had a Libel to present to him?

*Mrs. Wall.* No, so far from that, that it was the *Thursday* before you were taken, you came about nine o'Clock at Night to our Lodgings, and sent up to my Chamber; and I sent word that *Mr. Cowling* was there, for I did not care to see you: But you sent word up, you had something of Consequence to tell me. So I came down, and you desired me to bring you to the Speech of the King, which was a thing you did never desire before: And you said thus, if you did but see the King, you believed you could say something to him that might do him Service.

*Fitz-Harris.* Did not I say, here is the Libel that I come to deliver to the King now?

*Mrs. Wall.* No, as I have a Soul to be saved.

*Fitz-Harris.* *Mrs. Wall*, I did, and this was what you said at the same time: That since my Lord *Sunderland* was gone, you could have no secret Service. I did desire to speak with the King privately, those were the Words; and you told me, you could not so easily do Business with the King, since my Lord *Sunderland's* time.

*L. C. J.* We must not let you hold a Dialogue between yourselves, you must speak that the Court may hear.

*Mr. Att. Gen.* Was not he a Roman Catholic?

*Mrs. Wall.* Yes, we looked upon him so, and upon that account we said it was dangerous for him to go near the King.

*Mr. Att. Gen.* Did not you know that ever he was admitted to the King?

*Mrs. Wall.* Never; but he hath been talking with me in a Room as the King passed by.

*Mr. Att. Gen.* Did the King ever take any Notice of him, speak to him?

*Mrs. Wall.* The King never took Notice of him, nor spoke with him by my means, nor gave him Money, other than what I speak of, nor the Dutcheſs of *Portsmouth*.

*L. C. J.* Look you, *Mrs. Wall*, I think you do say, that there was some Money paid to *Mr. Fitz-Harris*; pray speak plain, upon what account was it paid?

*Mrs. Wall.* My Lord, it was for the bringing in of my Lord *Howard* of *Eſſerick*, who is there; since you press me to it, I must tell; I think my Lord will not deny it.

*Ld. Howard.* I will never deny the Truth.

*Fitz-Harris.* Where was my Lord *Howard* of *Eſſerick*?

*Mrs. Wall.* He was not so much for the King's Interest, or that which they call the King's Interest.

*Fitz-Harris.* How long is this since?

*Mrs. Wall.* Two years ago since he came first to me; but whether it be a Year and a half since my Lord met with the King, I cannot tell.

*Fitz-Harris.* When my Lord was admitted in to the King, I did wait on him to that purpose, to bring in my Lord *Howard*.

*Mrs. Wall.* I desire that my Lord *Howard* may be asked, whether he don't remember, when the King was coming, *Mr. Fitz-Harris* was put out of the Room first.

*Fitz-Harris.* You say, I never shewed any Libel to the King.

*Mrs. Wall.* I tell you what I said since to this Gentleman that is here; I with you had shewn the Libel unto me, that I might have been in a Capacity of saving your Life.

*Fitz-Harris.* You said, that I had the 250*l.* for bringing in my Lord *Howard*.

*Mrs. Wall.* I say, it was upon Promise to bring in Persons that would be useful and serviceable to the King.

*L. C. J.* She is your own Witness, and she tells you, two Persons you did undertake to bring in, and for that you had this Money.

*Mrs. Wall.* It was his Poverty and this together.

*Mr. Serj. Jeff.* *Mrs. Wall*, I conceive he never discovered this Libel unto you; but pray, did he ever discourse with you about *Everard*? and what Character did he give him?

*Mrs. Wall.* Once he did, and he said he was an honest Man; and asked me if I would be acquainted with him? I told him No, for he had a knavish Reputation; He was an Informer, and I cared for no Informers.

*Fitz-Harris.* *Mrs. Wall*, to let the World see how you shuffle about me, When did the King see my Lord *Howard* first, when I brought him?

*Mrs. Wall.* I don't know, ask my Lord *Howard*.

*Fitz-Harris.* Did not I speak to the King in the outer Room? And did not you get me to make a stand there?

*Mrs. Wall.* *Mr. Fitz-Harris*, don't make me tell that Thing.

*Fitz-Harris.* Pray speak the Truth, *Mrs. Wall*.

*Mrs. Wall.* I defy you and all Mankind, to say I do otherwise. You did desire me to tell the Duke, that you would first bring my Lord to him, and then to the King; and I spoke to the Duke, and he said, you were a Rascal, and he would not meddle with you: This you know.

*Fitz-Harris.* Did not my Lady *Portsmouth* tell me, the Duke was angry, &c.

*Mrs. Wall.* *Mr. Fitz-Harris*, when you came to me upon such an Errand, was it reasonable that I should bring you, upon every Trifle, to the Speech of the King, and I should not bring you then? 'Tis without Sense and Reason.

*L. C. J.* You must not ask Questions, but answer. And *Mr. Fitz-Harris*, do you design to detect *Mrs. Wall* of Falshood? She is your own Witness, you consider not you can get nothing by that.

*Fitz-Harris.* My Lord, when you see the Papers produced, you will find it is upon another Account.

*Mrs. Wall.* Is this your Hand, *Mr. Fitz-Harris*? (*Shewing him a Paper.*)

*Fitz-Harris.* But is not this upon the Account of a Pension granted in *Ireland*? Pray let the Gentlemen of the Jury see, this is of another different Nature; I appeal to my Lord *Howard* of *Eſſerick*, whether he did not speak to my Lady about it.

*Ld. Howard.* I did so.

*Mrs. Wall.* My Lord did second my Lady, to get you some Charity.

*Fitz-Harris.* So that the Money received here was plainly upon another Account.

*L. C. J.* Look you, if you will have any Papers read, they shall be read. But the Gentlemen of the Jury must not see any Papers but what are read.

*Then the Petition of Mrs. Fitz-Harris, and the King's Letter to the Duke of Ormonde, was read, about a Pension in Ireland.*

*Fitz-Harris.* My Lord, if you please, I have something further to say to *Mrs. Wall*. But I desire to ask *Mr. Cowling* a Question, and that is, Sir, What *Mrs. Wall* said to you about my Business?

*Mr. Cowling.* My Lord, I think, the Day after this Man was examined in the Council, I came to *Mrs. Wall*, and she told me, that the second or third Night before he was taken, he came to her to bring him to the King; but she sent down Stairs, that she would not let him come up. But asked him, why he did not go to one of the Secretaries of State? No, said he, I can't go thither, without being taken notice of; but I'll tell you my Business. No, said she, if you will write down your Business, and give it me in a Paper, I will carry it to the King; and if the King have a mind to speak with you, you shall be sent for. No, said he, I will not do that. Then, said she, I must beg your Pardon, if I don't bring you to the King. And *Mrs. Wall* said further to me, truly her Blood did chill when she said so, for she was afraid he was come to do the King a Mischief.

*Mr. Att. Gen.* This was three or four Nights before he was taken.

*Fitz-Harris.* Is *Sir Robert Thomas* here? (*He did not appear.*) Then I desire my Lord *Howard* to stand up.

*Ld. Howard.* Have you any thing to say to me, *Mr. Fitz-Harris*?

*Fitz-Harris.* Yes, my Lord, if you please. My Lord, I desire your Lordship will please to tell, what my Lady *Portsmouth* did express to you concerning me, at your coming thither; and whether I did not introduce your Lordship; and how civil she was to me upon that account; and how she undertook to get the Quit-Rent for me.

*Ld. Howard.* Sir, I shall answer as particularly as I can all your Questions; but it will be necessary to introduce my Evidence with the Relation of the whole Transaction. You know, about *October* last, about the beginning of the Month; for it was, as I take it, ten Days, or a Fortnight, before the sitting down of the Parliament; you did make Applications to me, in the Name of the King, whether with or without his Privy, I cannot say; but you did make several Invitations to me, of putting myself into the Possession of an Honour I was altogether unworthy of, of waiting upon the King. I gave you my Reasons why I thought myself unfit for that Honour, because I was not in any Capacity of doing the King any Service: And I looked upon the King as a Person too sacred, and whose Time was too precious to be trifled away upon one that had nothing to offer to him, and therefore I refused it. But notwithstanding, this was reinforced by you: and when I still persisted in the Denial of that which was an Honour I ought rather to have sought, but only because I thought myself incapable of deserving it; after several Applications, I did at last tell you, besides the Impertinency of it, I did also apprehend it might be the Occasion of some Indecency; for perhaps I might thereby put myself upon declaring myself in some of my Sentiments, very much differing from those of his Majesty. And for me to seek an Opportunity to express my Contrariety to his Majesty's Thoughts, would be both Rudeness and Imprudence; and therefore I did then ultimately answer you, I would by no means be prevailed with. Then you did lower it, and said, it should suffice, if I would wait upon the Dutcheſs of *Portsmouth*. Truly, I told you, as to that too, you did me a great Honour, and greater than I could expect for I had nothing (I was afraid) worthy her trouble; and therefore I desired to know what it might mean. In short, you did resolve it into this, That you did find the King under great Apprehension, that there was something deep in the Hearts of some, that stood at a Distance from his Majesty, and opposite to his Interest; and that the Parliament stood at an irreconcilable Difference with the King. Truly, said I, I am a Person not fit to speak in the Name of a Parliament, for in a little time they will speak for themselves; but if were to I speak, or should presume



presume to speak in the Name of the Parliament, or the whole Nation, I should say, I believed the King would find his Parliament meeting him with as great Affection, Duty, and Loyalty, as any Parliament ever met any King of England. You said, then you were confident, and you cited her Grace the Duchess of Portsmouth for it, that the King came to meet them with Inclinations to gratify them in any Thing they could desire. Then said I, to what End need I come there, for the Parliament will speak its own Sense speedily? Pray do me that Kindness, as to go and satisfy the Duchess of Portsmouth, and to let her know she may now have an Opportunity of declaring how willing she is to be a good Instrument between the King and his People. Said you, I can assure you, that she is altogether for the same Interest that you look towards; for you are very much mistaken, if you think she is a Friend to the Duke of York. My Lord, in short, after much Intreaty, I did give myself that Honour, which I have no Cause to repent or be ashamed of, to go to Whitehall, humbly to kiss my Lady Duchess's Hand, and receive her Commands. But when I came there, I was surpris'd with a greater Honour of finding the King there, and I think it was an Opportunity, wherein my Time was not ill spent as to myself, but I am afraid this 25<sup>th</sup>. if it were given for the bringing me thither, his Majesty doth not think he hath deserved it at this Time.

*Fitz-Harris.* Your Lordship came there in October last.

*Lord Howard.* Because I will do you all the right I can, it was, as I take it, the Beginning of October, and about the 10<sup>th</sup>, because the Parliament sat down the 23<sup>d</sup>, and as I remember, it was a Fortnight before. This was the first Time that I owe you Thanks for the Honour of seeing the King. After that, a Matter of ten Days, I had a second Opportunity, and by your Means also. This was the last Time I had the Honour to see the King, but in Public. After this, I must confess, when the Parliament was ended, I did then, willingly enough, invite myself to the Honour of waiting upon the Duchess, and give her Thanks, and tell her, I was sensible she had endeavour'd, as much as in her lay, to persuade the King into a good Opinion of the Parliament, and to give them Time of Setting, and thereby to give them Opportunity of explaining their Intentions for his Service and Advantage. This was also the last Time I had the Honour of seeing her. At last, parting from her, I did make it my humble Request to her, that she would be pleas'd to represent your Condition to the King, since by your Means I had the Honour to be shew'd the Way to her Grace's Lodgings.

*Fitz-Harris.* My Lord, did not I come to you with a Message the Night before my Lord Stafford was condemn'd?

*Lord Howard.* You say right, and it was in my Thoughts, and yet I thought it too tender a Thing to speak of; and therefore I thought it so, because, I must confess, at that Time, (you must excuse me) I did believe you did not come with that Authority you pretended to make use of. After the Time that unfortunate Lord had had his Trial, and the House were preparing their Thoughts for the Sentence, I was indispos'd, and came not to the House that Day, which provoked the House so much, that they were near committing me to the Tower; but truly, I was so ill in Body, and had so little a Mind to have my Vote mixed with his Blood, that perhaps I should have run the Hazard of going to the Tower about it, if that had been all. But the Night before you came to me, and told me as a great Secret, That you did bring it as the Desire of the King, and as that which he would take as a great Instance of my Resignation to his Will and Pleasure, and that for which I might promise myself all the greatest Kindnesses possible for a Prince to shew to his Subjects, if I would go next Day and give my Vote for my Lord Stafford. Sir, said I, I have all the Obligations of Nature and Blood to dispose me, as much as can be, to favour my Lord Stafford, as far as can consist with the Integrity and Sincerity of a Judge: But though I was wavering in my own Thoughts the Day before, now by the Grace of God I will go, though I be carried on Men's Backs to the House; now I see there is so great an Account put upon it, for I see 'tis the Concerns, not only of my Lord Stafford, but the Protestant Cause; and then, said I, if all the Relations I have were melted down into my Lord Stafford, if I had but Breath enough to pronounce his Doom, he shall die.

*Mr. Att. Gen.* My Lord says, he did not think you came from the King, when you came with that Message.

*Lord Howard.* Sir, can I do any more Service? I shall be willing to do it if I can. I cannot deny, but I had by your Means, the Honour of waiting upon the King and the Duchess; but I had so little Reason to value my own Worth, that I cannot imagine how it should turn to the King's Service.

*Dr. Oates.* My Lord, I desire to have Liberty of going away, the Crowd is so great I cannot stand, and the Prisoner hath nothing to say to me.

*Mr. Att. Gen.* My Lord, that may be Part of the Popish Plot, to keep Dr. Oates here, to kill him in the Crowd.

*Fitz-Harris.* Have you not something more to say, Doctor? Truly I forget, my Memory is so distracted.

*Dr. Oates.* I know not, if you have any Questions to ask me, I will speak Truth. (But he had none, so the Doctor went away.)

*Mrs. Fitz-Harris.* Call Mr. Fanshaw; (who did not appear.)

*Fitz-Harris.* My Lady Duchess of Portsmouth.

*Mrs. Wall.* She is not come, because the Court is very full; but if the Court will send for her, she will come presently.

*Fitz-Harris.* My Lord, I beg that my Lady Duchess of Portsmouth may be sent for.

*Mrs. Wall.* She gave me a Commission to say, if the Court would have her to come, she would so do.

*L. C. J.* We cannot send for her, if she please to come, so; we have no Occasion to send for her.

*Mrs. Wall.* I presume he can ask her no Questions but what I can answer.

*L. C. J.* We will not prejudice the Prisoner in his Questions, nor send for her, unless she will come.

*Fitz-Harris.* Will you send one of your Footmen, Mrs. Wall? I am a Prisoner, and have no Body to send. In the mean Time, where is the Porter?

*Mrs. Wall.* Here he is.

*Fitz-Harris.* How long is it since you paid the Money to me, from my Lady Portsmouth?

*Porter.* I cannot tell indeed, 'tis so long since.

*Fitz-Harris.* Let him have his Oath.

*L. C. J.* No, that he can't have.

*Fitz-Harris.* Was it not Christmas last was Twelve-month?

VOL. III.

*Porter.* I can't indeed tell what Time it was.

*Fitz-Harris.* You dare not speak the Truth.

*Mr. Just. Dolben.* You disparage your own Witnesses.

*Mr. Serj. Jefferies.* He hath no Witnesses can say any thing for him, and therefore he must find fault with what they say.

*L. C. J.* Have you any other Witnesses, Mr. Fitz-Harris?

*Fitz-Harris.* Yes, my Lord, my Lord of Arran.

*L. C. J.* What say you to my Lord?

*Fitz-Harris.* Did not my Wife shew you this Libel the Sunday that I was taken?

*E. of Arran.* I do not remember I ever heard it, till I heard it read in the House.

*Fitz-Harris.* Did you not read it, my Lord?

*E. of Arran.* No, not that I remember.

*Fitz-Harris.* Did not I tell you, I was carrying it to the King?

*E. of Arran.* Not that I know of.

*Fitz-Harris.* Was it not a Dispute, whether this was Treason or not?

*E. of Arran.* You did shew me a Libel, but whether this, or no, I cannot say, perhaps it was this. I took him for an honest Man, my Lord; I have known him five Years, and knew his Family to be a good Family; I happened to be at Dinner with him the Day he was taken. After Dinner there were some Papers he pulled out, and I threw them away, I told you, you would do yourself a Mischief, some Time or other, in meddling with such Papers. There we drank a Bottle or two of Wine together, and then we parted. As soon as I came Home, I heard this Gentleman was seized on, and taken, which surpris'd me much. And this is all the Account I can give of the Matter.

*Fitz-Harris.* Then your Lordship did not read the Paper?

*E. of Arran.* No indeed, not I.

*Fitz-Harris.* Did not I tell you, I had a Promise of a Quit-Rent for Secret-Service?

*E. of Arran.* I do not know particularly what he told me of the Quit-Rent; but I was willing to do him all the Good I could, about a Reversion of a Pension that he had in the Right of his Wife; that was Part of my Business that Day, thinking he very well deserved it. I am very sorry to see that his Father's Son, as the Phrase is in Ireland, should be accused of such a Crime.

*Mr. Att. Gen.* My Lord, before you go, I desire to ask you one Question: Did you observe ever that he was employed by the French King, or the French Ambassador's Confessor?

*E. of Arran.* No, my Lord, never, as I heard of. He used to speak as honestly as any Man; I thought him of the best and loyalest Principles of any of his Religion.

*Mr. Serj. Jefferies.* What Religion did you take him to be of?

*E. of Arran.* He always owned himself a Papist, and he and I have had some Disputes about it.

*Fitz-Harris.* Mr. Sec. Jenkins, I desire to know of your Honour, what the King said of me?

*Mr. Sec. Jenkins.* I remember the King did conjure him, to declare who the Author of the Libel was.

*Fitz-Harris.* You are a Man of Honour, Sir; Did not the King own he had employ'd me?

*Mr. Sec. Jenkins.* I never remember the King did own he made Use of him, by Mrs. Wall's Means, or otherwise.

*Fitz-Harris.* My Lord Conway, don't you remember it?

*E. of Conway.* No, not upon my Honour. But I have heard him say, he did formerly employ you in some trifling Things.

*Fitz-Harris.* Did not the King declare in Council, that I had gotten Money of him?

*E. of Conway.* That was for my Lord Howard of Eserick's Business.

*Mr. Serj. Jefferies.* Now your Lordship is here, I would ask you; Did you ever hear the King declare when he first spoke with the King?

*E. of Conway.* The King never spoke with him till after he was taken; he was taken the 27<sup>th</sup> of February, and the King never spoke with him till the 28<sup>th</sup>, the Day after.

*Fitz-Harris.* Did not you tell me, if the King did put himself upon the Parliament, they would use him as his Father was used?

*Mrs. Wall.* I never told you any such Thing. You promis'd me to bring in my Lord Howard of Eserick; but they found themselves mightily mistaken in what was promis'd he would do when he came in.

*L. C. J.* Why, Mr. Fitz-Harris, you cast any Thing upon any Body, to make a Noise.

*Fitz-Harris.* Where is Mr. Peacock?

*Mrs. Fitz-Harris.* I would know of her, what Mr. Bulstrode said.

*L. C. J.* That every Body may see you are fairly dealt with, you shall have all the Liberty that can be given. You must not ask what another said, but call them themselves to say what they know. Here is Mr. Bulstrode himself.

*Fitz-Harris.* Mr. Bulstrode, then, what Message did you bring from the King to my Wife?

*Mr. Bulstrode.* No Message at all; but I'll tell you what I know. Mrs. Fitz-Harris, soon after her Husband came to be close confin'd, delivered a Petition to the King in the Park; and the King was pleas'd to give it to me, as he frequently does. Mrs. Fitz-Harris came to me, to tell her what the King said to it. Said I, the King hath given me no Commands at all in it, but this, Carry it to the Secretary of State, for I cannot say any Thing to it. For the King generally tells me what he will have done with such a Petition. But she was so very importunate, I asked the King again; Sir, said I, Mrs. Fitz-Harris is very importunate, what is your Majesty's Pleasure in it? Said the King, If she have a Mind to petition the Council, she may, I will neither meddle nor make with it. Afterwards I met her several Times, and she said, her Husband was very severely and hardly used, and she was denied the Liberty of coming to him. Said I, I hear he is guilty of a very foul Thing, and there is no Way to help him, but by discovering the Author of that villainous Libel. For she asked me, what I thought of her Husband; and she told me, she intended to try what she could do for him. I said, there was no Way to do any Good, but to make a full Discovery of the Author. Then said she, if the King would but let me speak with him, I am sure I could do him Service, and prevail with him to discover the Author. So I told the King of it; and the King said, If she will come and be examin'd, with all my Heart. And as soon as ever I heard she was come to Town, I told her what the King said: And she told me, she would willingly come; and if the King would give her Leave to speak with her Husband, she did not doubt to prevail with him. That Night, about Midnight,

O o

after



after I was in Bed; and had been in Bed two Hours, she came to my Door and knocked me up. So I rose, and put on my Night-gown, and went down, and I heard a Voice which I thought was hers. So she came out of the Coach to me, and told me, said she, I am come to you to beg of you, that you would be secret, and not to let the Court know that I was to come to have any Conference with you; for if you do, I am undone and ruined; for there are some Persons, my Friends, that will not look upon me if they hear any such Thing. The next Morning I went to her, and told her, the King had directed she should be examined in the Afternoon, and she should come down to be examined: Which she did; and as soon as the Council was up, I told his Majesty she was below. So he ordered some to examine her; but when I told her of it, said she, if the King will not speak alone with me, I will not speak a Word, nor be examined. This is the Truth of it, I assure you, my Lord, upon my Salvation.

*Fitz-Harris.* Where is Mr. Peacock?

*Mrs. Fitz-Harris.* What did Mr. Bulstrode say to me?

*L. C. J.* Look you, Mrs. Fitz-Harris, and you Gentlewoman, you must not be heard to talk of Discourses among yourselves, and to examine what Discourse passed between Person and Person, up and down; that is not to be permitted in a Court; the Witnesses is here, ask him himself. What hath been said to her, will be no Evidence.

*Mrs. Fitz-Harris.* What Offer did you make me?

*Mr. Bulstrode.* None; I told you this would be the Way to ruin your Husband.

*Fitz-Harris.* My Lord, I beg of you, may not I ask what he did say?

*L. C. J.* No, 'tis no Evidence.

*Fitz-Harris.* Then call Mr. Henry Killigrew. (But he not appearing, the Prisoner would have asked what he had been heard to say, but it was not permitted.)

*Mrs. Wall.* Here is the Footman Richard Perrot.

*Fitz-Harris.* How long ago is it since you brought the Money to me from my Lady Portsmouth?

*Perrot.* I never brought any.

*Fitz-Harris.* Was it not he brought the Money?

*Mrs. Wall.* Ask him.

*Fitz-Harris.* Was my Lord Howard ever at your House before October last?

*Perrot.* I do not know.

*L. C. J.* What Use do you make of that?

*Fitz-Harris.* Pray, my Lord, when did you go to my Lady Duche's? Was it before October last?

*Lord Howard.* I think not, I take it as near as I can, it was just before the Session of Parliament.

*Fitz-Harris.* It was ten Days before the Session.

*Then my Lady Duche's of Portsmouth appeared, and a Chair was set for her.*

*Fitz-Harris.* I am sorry to see your Grace come here upon any such Account; but I hope your Grace will excuse me, 'tis for my Life. I desire to know of your Grace, Whether I was not employed to bring several Papers to the King, and among the Rest, the Impeachment against your Grace: And thereupon your Grace was pleased to tell me, That it was a great Piece of Service to bring those Sort of Papers; and if I could find out Men serviceable for that Purpose, I should do the King good Service. I told your Grace, I knew one Mr. Everard, who knew all the Intrigues, and all the Clubs in the City, and could tell all the Designs of my Lord of Shaftesbury, and all that Party. And your Grace did encourage me to go on, and I did, by your Grace's Direction, and by your Means I came to speak with the King about it.

*Lady Duche's.* When must I speak?

*Sir George Jefferies.* Now, Madam; and will your Grace now be pleased to stand up?

*Lady Duche's.* I have nothing at all to say to Mr. Fitz-Harris, nor was concerned in any Sort of Business with him. All I have to say, is, he desired me to give a Petition to the King to get his Estate in Ireland; and I did three or four Times speak to the King about it. But I have not any Thing else to say to him; I never spoke to him about any Thing else.

*Fitz-Harris.* Does not your Grace remember what Directions I received about my Lord Howard?

*Lady Duche's.* I know nothing of that, I sent you not to my Lord Howard.

*L. C. J.* If you will ask any Questions of my Lady, do; but do not make any long Discourses.

*Fitz-Harris.* My Lord, my Lady may forget. Madam, does not your Grace remember you undertook, upon the Account of those Papers I conveyed, that you would procure me my Quit-Rent?

*Lady Duche's.* I never had any Papers.

*Fitz-Harris.* Not that Paper of the Impeachment against your Grace?

*Lady Duche's.* No.

*Fitz-Harris.* Upon what Account then had I the Money I received?

*Lady Duche's.* For Charity.

*Fitz-Harris.* I am sorry your Grace is so much under Mrs. Wall's Influence.

*Lady Duche's.* I come not here to wrangle with you, Mr. Fitz-Harris, I am come here to say what I know, and will not say one Bit more.

*Fitz-Harris.* Have I had any Money of your Grace since you knew my Lord Howard?

*Lady Duche's.* You never had, but that for Charity.

*Fitz-Harris.* When did your Grace ask it for me?

*Lady Duche's.* I do not remember the Time. Mr. Fitz-Harris, if I had any Thing in the World to do you Good, I would do it; but I have it not, and so cannot see that I am any Ways more useful here. (Then her Grace went away.)

*L. C. J.* Mr. Fitz-Harris, have you any more Witnesses that you would have called?

*Fitz-Harris.* No, my Lord.

*Mr. Serj. Maynard.* Will you apply them you have called?

*L. C. J.* Well, have you any Thing further to say?

*Fitz-Harris.* Yes, my Lord, I have something further to offer for myself: I will tell you what I know, since my Witnesses will not do me Justice. Gentlemen of the Jury, you are my Judges in Point of Law as well as Fact, and my Blood will be required at your Hands, if you do not do me Right. My Lord, I cannot forbear complaining to the Court of the hard Usage I received in Prison, contrary to the Statute of the 31st of

his Majesty's Reign; greater Oppression hath been done to me than to any before. My Lord Stafford, Sir Thomas Gascoigne, and others, had all the Liberty they could desire, to enable them to make their Defence against their Trial; which I have had denied me. But my Defence consists of two Heads, and I shall rely upon the Consciences of the Jury for the Issue. Though my Lady Portsmouth, and Mrs. Wall, and the Rest, are pleased to say, that I was not employed, nor received Money for secret Services; yet 'tis very well known I did so. As to Mr. Everard, when I met with him, though now he hath made a French Story, yet if he would tell the Truth, he knows that it was otherwise. He told me he was well acquainted with my Lord of Shaftesbury and my Lord Howard, and in several Clubs of the City he knew all their Intrigues; and that Speech that went by the Name of my Lord Shaftesbury's, my Lord gave it him before it was printed, and he had several other Things of that Kind. So then I told him, it was a Business of the greatest Consequence that could be, if he would continue those Discoveries. And whereas he says, I would betray the People to the French Interest, it is very well known I was always an Enemy to the French Interest; but I humoured him in his Discourse, and discoursed him to reduce the Paper that he accuses me of under some Heads; and that Paper I no sooner had, but I came to Whitehall with it: And though he said, he was to have forty Guineas, and so said Sir William Waller too, yet it was only forty Shillings that he desired, for his Poverty, I would lend him. And as to what he talks of three thousand Crowns Pension, it is a very unlikely Business. When I came to Whitehall, I was advised to go to my Lord Clarendon, or Mr. Hyde. Accordingly I did shew it to a Gentleman who was to give it to my Lord Clarendon, but before he could get to him, I was taken. Now, my Lord, I hope what I did was with a Design to serve the King, in discovering what was designed against him, according as I was employed, though both the Secretaries are so unkind as not to declare it: When I know I am in the Right, I am not ashamed to speak it, though my Life be lost upon it; and I refer it to the Gentlemen of the Jury. I was taken before I could come to the Speech of my Lord Clarendon. Next, I hope, Gentlemen of the Jury, you will consider these are great Persons that I have to do with; and where great State-matters are at the Bottom, it is hard to make them tell any Thing but what is for their Advantage: And so I am left in a sad Condition. But, my Lord, in the next Place, I think 'tis impossible for any Jury to find me guilty, without prejudging of those Laws which are not to be judged by any Jury or inferior Court: For if they judge me and bring me in guilty, 'tis Murder in them; and let the Bench tell them what they will, 'tis of that dangerous Consequence, that it overthrows the Government. My Lord, here is the Impeachment of the House of Commons, and here is a Copy of the Votes of the Commons thereupon; and though they be not Laws, yet they are such Declarations of the Parliament, as that afterwards no other Court ought to meddle with that Matter; and the inferior Courts do not use to meddle with Parliament-matters: And so, Gentlemen, you will lay at your own Doors what would lie at theirs, if you meddle not. For though the Court have over-ruled my Plea, yet the Matter is plain before you now who are my Judges, and my Blood will lie at your Doors, and you must answer it if you do me not Justice. And there is no insufficiency of a Plea as to Matter of Law will excuse you in Point of Fact; and you are obliged, as you will answer the contrary to God and your Consciences, to do me Right. And I hope your Lordship and the Jury will take particular Notice of this. I have been a close Prisoner, and had no Manner of Help, nothing at all allowed me to refresh my Memory; which if I had had Means to do as I ought, I could say a great deal more. But this I insist upon, if the Gentlemen of the Jury do bring me in guilty and convict me, they do shed my Blood, and overthrow the Law and Course of Parliaments. Whereas, if they bring me in not guilty, my Impeachment stands good still, and I am liable to answer that Impeachment before the Parliament: And I hope you will consider the Persons I have had to deal with; and that it cannot be made so plain, as in Matters wherein we deal with common Persons. I submit to what you shall think fit.

*L. C. J.* You have done, Mr. Fitz-Harris?

*Fitz-Harris.* My Lord, I have done; only I would examine one Gentleman, if he were here, but he does not appear. But here's a Copy of the Impeachment and Votes of the House of Commons, I desire I may deliver them to the Jury.

*L. C. J.* No, no; that can't be.

*Fitz-Harris.* Sir William Waller does declare upon Oath, that for this very Thing I was impeached by the House of Commons, and that I desire them to take Notice of.

*Mr. Serj. Jefferies.* Therefore you are not guilty: Is that the Consequence?

*Mr. Sol. Gen.* May it please your Lordships, and you Gentlemen of the Jury, you have heard our Evidence, and what the Prisoner hath said. The Crime, for which he is accused, that is High-Treason, and 'tis Treason in conspiring the Death of the King, in endeavouring to raise a Rebellion here; and that in order to destroy the King and the Liberty of all the People, to bring them under the Slavery of the King of France. This is the Treason that he was indicted for; and the Proof of this Treason is very full: It is proved to you by three positive Witnesses, and all Men of Credit, of whom you cannot have the least Suspicion. They prove to you, that Mr. Fitz-Harris is the Man guilty of this Treason; he was the Contriver of it, he was the Mover of it first to Mr. Everard, and he gave him those Instructions to pursue those Purposes of raising a Rebellion here, in order to destroy the King, by contriving a seditious Pamphlet to set the People together by the Ears; and he came to him in order to perfect this Libel. This is proved by Everard, who upon the first Motion of it to him, did acquaint Mr. Smith immediately, and Sir William Waller, that such a Design was on Foot, and desired them to come and be Witnesses of it. They both came, and heard the Communication between the Prisoner and Mr. Everard, to contrive such a Libel as hath been opened to you, and they swear it positively. Now what Defence does the Prisoner make to it? Truly I cannot say, whether it hath more of Folly or Impudence in it; for 'tis a Defence of a strange Nature; for it is inconsistent with itself, and shews what a Make he is of: And the latter Part is pursuing the same Treason he stands indicted for, which is the rendering the King odious to his People, by those Insinuations; that he did this by the King's Order. The first Part of his Defence is, I am not guilty, for Mr. Everard is the Man that did contrive it,



it, and he is the Author, and it moves from him. Now pray consider the Parts of your Evidence, and see if there be any possibility for you to be induced to believe any thing like it. 'Tis proved by Mr. *Everard* positively, that he came to him first; and when you consider this Objection that is made by Mr. *Fitz-Harris*, and consider on the other Side who were the Witnesses, and who is the Man that makes the Objection, you will then see no Cause in the World for you to give any Credit to it. The Prisoner says he was trepanned into it: For that, pray consider he is an *Irish* Papist, one that hath all along made it his Business to defame the Proceedings about the Popish Plot, to ridicule it, to deny that there was ever any such a Thing, and to laugh at the Justice that was executed upon the Popish Offenders who died for the Plot. The Witnesses that prove it against him have been zealous Prosecutors of the Plot, Men that have discovered many of those who were guilty of it, and brought them to Justice; Men that have been material Evidences upon the Discovery. Mr. *Smith* is a Man that spoke materially in the Trial of my Lord *Stafford*, and for which Service, I believe, the Papists, and Mr. *Fitz-Harris* himself, owe him little Thanks. As for Sir *William Waller*, all Men know how busy and active he hath been to bring in Men that were guilty of the Plot, and he hath suffered for it. Now if you can believe that Mr. *Smith* and Sir *William Waller* should be guilty of a Trepan that was to be put upon *Fitz-Harris*, a Man of that Persuasion you hear of, (and you must believe that, or you cannot believe the Defence the Prisoner makes) I leave it to you. Mr. *Everard* could do nothing alone; why then Sir *William Waller* must be guilty of this Contrivance, and of setting *Fitz-Harris* on Work and *Everard* too. But this is so unlikely a Story, that if there were any to assert any such a Thing, you could not possibly give any Credit to it. But when you consider what hath been proved, and what hath been shewed you under the Hand of *Fitz-Harris* himself, then there is no Room I am sure to doubt. They do positively swear, both *Smith* and Sir *William Waller*, they heard him own that he had given Instructions to *Everard*. They prove to you that he mended this Libel in several Places, they not coming up to the Instructions he had before given. They prove Part of the Libel written with his own Hand, and that is Treason enough: For that is certainly Treason, that 'tis the undoubted Right of People to dethrone the King. I never heard of that Doctrine any where but among the Papists, and 'tis a Papist that preaches that Doctrine to you now. As this is an Evidence in a Matter beyond any Contradiction in the World, his own Hand-writing of Part, and his owning the giving the Instructions; so there is no Room in the World for you to believe that ever he was drawn into this by *Everard*; or that he was the Man that was the original Contriver of it, and trepanned him into it. But it appears plainly upon the Proof, that it moved originally from *Fitz-Harris*; that it was the Malice of his Heart that promoted it; and that the Contrivance was how to raise a Rebellion here. For when he had read Part of the Libel, and *Everard* told him that it was Treason, why said he, I meant it so; and the more Treason, the better; the more odious you make the King to be, the more likely 'tis to raise the People into a Rebellion; and the sooner you raise the People into a Rebellion, the more like you are to accomplish the Design of bringing the People into Slavery to the *French* King, and so at once to destroy all Liberty and Property, and all that is sacred. Nobody can believe but Mr. *Fitz-Harris* is guilty of this Libel and Contrivance to dethrone the King, and raise a Rebellion here, as the Witnesses have sworn. Now as you cannot possibly doubt but this moves from Mr. *Fitz-Harris*, so then consider the Inconsistency of the second Part of his Defence, and the Impudency of it too. For as before he pretended he was drawn into it by Mr. *Everard*, so now he would make you believe he did not do it out of a traitorous Design, for that he was employed about these Affairs; and this comes under the Title of secret Service: And he would fain have it that you should believe the King should hire him to raise a Rebellion against himself, to defame himself, and to incense the Minds of the People against him. And this must be the Service that he is put upon; he had no traitorous Intent in himself, but he was to trepan all the Lords that stood zealously up for the Protestant Religion and Property, and that by Direction from whom? From the King, whom *Fitz-Harris* would have all People to believe to be a Papist; and he would have People believe that he is an innocent Man, that he was only employed upon such a special Piece of Service; that the King should be at great Pains to employ Mr. *Fitz-Harris* to destroy himself and the whole Nation, and to stain his whole Family: And upon what Reasons would he have you to believe it? As first, you observed how inconsistent it is with the former Part of his Defence, that he was trepanned into it; now he did not do it from Mr. *Everard*, nor with a traitorous Intention. But certainly this is a Treason that nothing can be said to palliate or excuse, and I am sure he hath said nothing will do it. Yet all the Defence he hath made has tended that Way. For though he hath not arrived to the Confidence to say such a Thing is, yet he hath insinuated, by the Method of his Proceedings, that he would fain have such a Thing believed; and that the Man had no traitorous Design in it. Now what Evidence hath he produced for it? He hath produced to you Evidence that he hath had Money from the King, and hath been sometimes at the Dukes of *Portsmouth's*. That he had Money from the King is true, but it little became him to mention it; for it was Charity to relieve a Man in Necessity, that was ready to starve, and was forced to go all the Ways to Work he could to raise Compassion; he urged the Sufferings of his Wife's Father; you heard the Petition read as a Ground for Supply; and he hath so far prevailed upon the King's Charity (which he hath abused) as to have a Sum of Money given him, and he hath had the Benefit of it: But he hath made a very ill Return for it; for the Thanks he hath given to the King for this his Charity, is to fly in the Face of him, his Family, and the Government. He hath endeavoured to raise a Rebellion; and when he is brought to his Trial, he continues to defame the King, which is an Aggravation of his Treason, if possible. And now having no Proof in the World for these malicious Insinuations; and all the Witnesses that he hath called to make out what he would fain have believed, and dares not mention, (not proving any such Thing) you will have little Reason, Gentlemen, to believe any Thing that comes from him, especially if you consider the Nature of the Libel itself, it is impos-

sible this Man should ever be set on Work to contrive such a Thing as this, to defame the King and all his Family, to raise a Rebellion, to overthrow all Religion, Liberty, and the King himself; it is impossible to be believed. But I fear I press too much upon you, as if I did suspect there could be Men in this Kingdom so bad as to believe such a malicious Insinuation. Gentlemen, I leave it to you; you hear what our Evidence is, three Witnesses that positively swear this Treason against the Prisoner. Now as you have this positive Evidence on the one Side, so you have no Colour of Evidence on the contrary; and 'tis impossible for you to find him not guilty. It is to deny the Light of the Day; and 'tis a Thing of that Consequence, that all Ages, when they hear of it, will say, that there is no Justice to be had, if an *English* Jury do not find a Verdict according to their Evidence: For what Security hath a Man for his Life and Estate, if twelve substantial Men of a Jury shall dare to go against plain and full Evidence? 'Tis all the Security an *Englishman* has for all he enjoys, that he is to pass through the Hands of twelve honest Men of his own Country. And if it be possible for a Jury to go against Evidence so plain as this is, I say, no Man is safe in his Life or Estate.

Mr. Serj. *Jefferies*. Gentlemen, I desire to take Notice of what Mr. *Fitz-Harris* was pleased to conclude withal. He says, his Blood is to be required at your Hands, and therefore he would fain by that Means insinuate you out of your Consciences. But I think, if you consider the Circumstances that have been given, and all the Evidence, it will be impossible for Men that have any Respect to their Credit and their Consciences, to acquit this Gentleman. In the first Place, it is known, and it hath been given in Proof to induce the Probability of the Matter evidenced against the Prisoner at the Bar, that he is a known Roman Catholic; they are all Protestants, and good Protestants, and you are all Protestants too. And then the Case goes thus far further: You that are Protestants must take it upon your Oaths, that these Gentlemen have sworn false, and convict them of wilful Perjury; and if you do convict them, it must be upon the bare Allegation of a Papist: And I hope never to live to see the Day that Men that are of good Credit, and Protestants, shall by an Allegation (though never so confidently affirmed at the Bar) be presumed to be guilty of Perjury. So that I say, my Lord, besides the Baseness and Venom of this impudent Libel, which certainly no honest Man in the World will give the least Countenance to, here is Evidence enough from himself. And you cannot believe it proceeds from any Direction from the Crown, (as this Man would insinuate) and therefore he hath given us the greatest Evidence by his libelling at the Bar. And he hath not only libelled the Crown, but he hath called up some Witnesses on purpose to libel the Rest of his own. And then I hope you will take Notice how he did insinuate with Mr. *Everard* at the Beginning: When you were in the *French* King's Service, said he, and have been neglected ever since you left it; if you will come and join with me, without peradventure you may get Encouragement fitter than that poor and mean Way that you are reduced to by embracing the Protestant Interest. He gives him a Method likewise to walk by: He thought him the Person that had writ some Pamphlet before, and therefore was fit for his Purpose, and ought to be encouraged. And he does tell you the Words not only against the present Government, but that which every good Protestant must needs abhor and tremble at; he bids him take Care to libel the whole Family. He tells him withal, you must be sure to say, that the late King, of blessed Memory, was concerned even in the *Irish* Rebellion; and that this King hath promoted those Persons that his Father had countenanced for that Action; and he tells him the Names of those Persons that were so promoted. After this is done, what does Mr. *Everard* do? he goes and makes a Discovery; he tells the Circumstances and the Persons, to whom and when: And the Persons he made that Discovery to, do in every Circumstance agree with Time, Place, and all. The first Night this Appointment was, I hope you will remember, that when Mr. *Everard* had so placed that Gentleman, against whom there is not the least Word said or imagined to find fault with him, he takes Notice of the Instructions; owns that he had given him Instructions; and takes particular Notice of one Passage, that when Mr. *Everard* said, But there may be Danger in them, is not this Treason? the Prisoner made Answer, the more Treason the better. Ay, but then this is dangerous, how shall I venture upon such Matters? Why have you not my Hand in it? I am as guilty as you, and in as much Danger. What then was the Reward? there was to be at present forty Guineas, and an annual Pension. But to whom was Mr. *Fitz-Harris* to discover this? not to the King, but to the *French* Ambassador, and the Confessor was to be the Man that was to give the Reward. *Flanders* was first to be subdued, and the Parts beyond the Seas, and then *England* would be but a Morfel for them, they could take that in the Way. All this was done, which is plainly sworn by a Witness that had a Place made on Purpose for him to over-hear all that passed. And, my Lord, for the next Witness there is Sir *William Waller*; there is this, besides what is sworn, agreeing in Circumstance: He tells you both, to their very Money, that it was forty somewhat, but he cannot say Guineas; and he tells you something of the Pension, a great many thousand Crowns: And he tells you particularly of that Circumstance of the *French* Confessor, and the *French* Ambassador. Besides all this, does not Sir *William Waller* tell you this very Thing, That he espy'd him with a Pen and Ink, that he gave a Note of the Libel itself, and he heard him give the Directions? and when he came into the Room, he saw the Ink fresh upon the Paper; and when he heard him give Directions for the Alteration of particular Words, he said, You have not worded it according to my Mind in such and such particular Places. But, my Lord, there is this Venom in it further to be taken Notice of, that he gave his Instructions to draw it so, as that it might best take Effect, according to his Intention: For when Mr. *Everard* thought it might do well to make it with *thou* and *thee*, as though it should be the Design of the Quakers, he said, No, by no Means; but put it in changing the Phrase, as if it was the Design of all the Protestant Dissenters, and so by that Means would draw the Odium upon them, and bring them in Danger as well as others. And this is confirmed too by Sir *William Waller*; so that in every Circumstance he hath shewed the Venom of his Design. But in the last Place, which surely the Gentlemen of the Jury will not forget what Sir *William Waller*



*Waller* said, that *Fitz-Harris* did say, I have taken Care already to disperse abundance of Libels amongst our Party. And when *Everard* told him of a Libel that was some While before, he said he had seen that a great While ago, and there might be somewhat in it to the Purpose. And for the Answer that hath been given to it, my Lord, I think it does not bear any Sort of Relation to the Charge that is upon him; for whatsoever Discourse, or whatsoever he hath urged, is not much to his Purpose. He hath brought here a Nobleman; but after all, I would put him in Mind of one Thing that Nobleman said, He did believe he came to him in the Name of one that sent him not: And so will every Body say that hath heard the Evidence; for all his Witnesses do positively deny that they ever knew of any such Matters as he speaks of. And now, my Lord, I could be very glad if this Gentleman (instead of saying as he hath said) would have come as soon as he had this Libel from *Everard*, and discovered it immediately to some Body himself before he had carried it on, as *Everard* did before the Thing was perfected. And so, Gentlemen, we do think upon this Evidence, we have left you without all Manner of Excuse: It being impossible, upon such a Proof as this is, and considering the Nature and Venom of the Libel itself, the base, venomous, malicious Insurgings he made Use of to effect it, and the Ends for which it was done, to bring in the *French* to set us together by the Ears, to render the King odious to his People; and the Person 'tis acted by, a known *Irish* Papist; I cannot doubt of the Issue. And I do hope when I see so many honest Gentlemen and Protestants at the Bar, they will be loth to forfeit their own Souls to eternal Damnation, to save a Man that is guilty of such a Treason as this.

*L. C. J.* Have you done, Gentlemen?

*Sir George Jeffries.* Yes.

*L. C. J.* Then look you, Gentlemen of the Jury, here is *Mr. Fitz-Harris* indicted for Treason against the King, and 'tis for endeavouring to take away his Life, to make him odious to his Subjects, to incite them to a Rebellion, and to raise Arms here in this Kingdom against our King, our Sovereign. And by the Indictment it is said, that he hath declared these Endeavours and these Intentions, by causing a scandalous and evil Pamphlet or Libel to be written, with an Intent to be dispersed through the Kingdom. The Words of the Libel you have heard particularly read; some of them are taken out and mentioned in this Indictment. *Mr. Fitz-Harris* hath been arraigned, and hath pleaded Not Guilty; and you are to try the single Matter before you, whether *Mr. Fitz-Harris* be guilty of this Treason. That this is Treason, and contains a treasonable Matter, Gentlemen, is so plain, as no Body living can doubt it: But it is a Treason of as high a Nature as peradventure ever was in the Kingdom of *England*, and tends as much to that which would be the Destruction both of the King and Kingdom. The King's Life, all our Lives, all we have that is dear to us, or of any Advantage or Avail in the World, are concerned in this: For what does it tend to? It tends to a popular Insurrection, to raise the People up in Arms, that like a Deluge would overrun and sweep away all. It is to undo the Government and all Order in the Kingdom, and to destroy the Life and Being of all that is good amongst us. A more virulent and villainous Book certainly was never written; nor any Thing that tended more to Sedition, or to incite the People to a Rebellion: Such a Book as peradventure no well governed Kingdom ever heard of the like. It tends to defame the King and all his Ancestors, and to blast all that shall come after him, to raise us into a Tumult. And what is all this to do? To settle the Roman Catholic Religion amongst us. And this is such a Piece of the Art of the Jesuits, which peradventure hath out-gone all they have done before. It seems to be their Hand directly, and we are all concerned as *Englishmen* to take Care of such Villainies. This is the Nature of the Treason that is comprised in this Book. Whether *Mr. Fitz-Harris* was the Author, or Director, or Contriver of this Book, is the Question before you: (For plainly, without any Suppose, the Book contains in it as high Treason as ever was.) And as to that, Gentlemen, you must consider that this appears evidently to be a Design of the Roman Catholic Party; 'tis a jesuitical Design: For this is that they aim at, to confound all Things, that they may fish in troubled Waters. And you see they have found out an apt Instrument, an *Irish* Papist, one that hath been all along continually concerned with them, and intermeddled in several of these Plots and Papers. Gentlemen, the Evidence that is given here against him is by three Persons, and there is great Evidence from the Matter that is produced, besides those Persons. There is *Mr. Everard* does declare to you the Whole of this, and *Mr. Fitz-Harris's* Application to him to write this Book. He tells you the Intention of it, and he gives you the very Grounds upon which this was to be written; that is, to raise Sedition, that was the first Instruction; to raise a Sedition in the Kingdom, and this was to buy us at Home, that the *French* King might get *Flanders* and the *Low Countries*, while we are confounded at Home: And then the Catholics have their Game to play, and carry all before them. Look you, Gentlemen, *Mr. Everard* is so cautious, that he walks, not alone in the Case, but with a great Deal of Prudence declares it to others, that they may be Witnesses in the Case for him. *Mr. Smith* does agree in all Things for the first Night that *Mr. Everard* hath declared, how that he heard the Directions owned as given by *Mr. Fitz-Harris*, for the writing this Book, and he heard the Design of it, he heard there was a Reward promised to him for the doing of it, and he tells you some of the Instructions. The next Night *Sir William Waller* was present; and he tells you all the Instructions of that Night, and that *Fitz-Harris* owned them, that he gave those Instructions in the private Consult. But that that is not to be answered, Gentlemen, is his own Instructions in Writing; what can be said to that? If you were doubtful of the Credit of these Gentlemen, yet *Mr. Fitz-Harris's* own Instructions in Writing under his Hand, are an Evidence beyond all Controul in the World that he gave those Directions; and these are Treason, that is plain. And therefore it does seem to be as strong an Evidence against *Mr. Fitz-Harris* of this Treason, as peradventure ever was given against a Traitor. There is not any one Witness that stands single, but there are two to each Night; and his own Instructions written by himself do not stand upon the Evidence of a single Witness, for he owned it in the Presence of three Witnesses: So then a stronger Evidence cannot be given that he was the Author and Director of this Book.

Then, Gentlemen, you must consider what he says for himself in Excuse of this horrid Treason that these Witnesses seem so fully to fix upon him. The first Witness he brings is *Dr. Oates*; and he does tell you, that having some Discourse with *Everard*, *Everard* should say, this was a Design of the Court, and was to be put into some Lords, and I think, into some Parliament-Men's Pockets; and then they were to be apprehended. I think this is *Dr. Oates's* Testimony. *Mr. Burnard* is here upon his Oath, and he testifies no such Thing in the World: 'Tis easy for one to come and say, I heard a Man say so; perhaps he said it by Way of Conjecture; but that is no Answer to direct Proof. *Mr. Sheriff Cornish* is the next Witness, and he says, he had some Discourse with the King, and the King should say, he thought *Mr. Fitz-Harris* had been an honest Man, and had given him some Money.

*Mr. Sh. Cornish.* No, my Lord, the King said, he took him to be an ill Man.

*L. C. J.* Then it seems I was mistaken; his Majesty did not tell him he took *Fitz-Harris* to be an honest Man, but an ill Man. But that he had formerly some Money of the King, upon Pretence of doing him some Service; now that brings it out what the King's Meaning was: For it seems there had been begged some Money for him, and the King, at my Lady *Portsmouth's* Desire, by way of Charity, gave him some little Matter of Money; he boasting and telling the King he could do him some Service. You see what Manner of Service it is he would have done for him and the Kingdom. Then as to the Rest of his Evidence, there is *Mrs. Wall*, and my Lady *Duchess of Portsmouth*; and he hath examined them concerning the Money he hath received, and they both declare upon what Ground that Money was given: It was given, they tell you, for a Gratuity from the King to him; and upon his boasting, says *Mrs. Wall*, that he could do the King Service, and bring over Persons to his Interest. I think there is no other Witness very material: For as for *Mr. Bulstrode's* Evidence, it signifies nothing at all; it is not material for him or against him in the Case: A Discourse about delivering a Petition to the King from his Wife. Now, Gentlemen, you must consider what ill Use this Gentleman designs to make of the King's Charity and Favour to him; he gave him some Money to relieve his Wants, and now would he interpret this, and insinuate this to be given for ill Purposes, for to make him trepan his Subjects: Which is another Piece of Virulency that these Papists always exercise against the King; they always make an ill Use of his best Actions, and an ill Interpretation of them. For, Gentlemen, can it be believed, that the King would ever design such a Thing as this is, to blacken his Family for ever, to stir up all his Subjects against him, to endanger his Crown and Kingdom, and all that he has in the World? And all this to what Purpose? No colourable Design can be made of it. This is such a Thing, to excuse such a Villainy, as never was heard of, by wresting the King's Charity and Generosity to such ill Purposes; but that some Men have the Confidence to do any Thing. I must leave it to you. Here are three witnesses his own Hand to these Instructions, and his making a Declaration that it was not treasonable enough, nor virulent enough. All these Things are strong Evidences in the Case. And if you believe these Witnesses and his own Hand-writing, 'tis a plain Case, you must find him Guilty.

*Fitz-Harris.* May I have Liberty to speak one Word?

*L. C. J.* Gentlemen, I had forgot one Thing. For fear it make an Impression in you, because I see he hath inculcated it often and often, and that is, the Impeachment that was by the Commons House of Treason against *Mr. Fitz-Harris* in the Lord's House: I must tell you, Gentlemen, that is not before you at all; the Matter of that was by way of Abatement pleaded to the Jurisdiction of this Court, and that is now over. You must have no Consideration, nor can have any Consideration of that now. Your Question is not whether we have Authority to try this Cause; but you are impannell'd and sworn to one Point, and that is, whether *Fitz-Harris* be guilty of this Treason or not. Whether the Court have Authority to do it, is another Question proper for our Determination, and we have determined it; but there is nothing of that lies before you in this Case. Therefore you must not be misled with any Thing that he talks so fondly of concerning the Impeachment, or concerning his Blood lying at your Doors, that surely will signify nothing to Men of Understanding at all.

*Mr. Johnson.* My Lord, 'tis our Unhappiness to come before you under these Circumstances. We have understood there is a Vote of the Commons of *England* in Parliament, that says this Man shall not be tried in an inferior Court; now we take ourselves to be the Judges of this Man in Part under your Lordship's Directions.

*Mr. Serj. Maynard.* You are not Judges of it, you are only to try the Fact.

*Mr. Johnson.* I only offer my Sense, and if the other Gentlemen think otherwise, they will speak it. I think the Office of a Juror is such, that it is within his Power to acquit or condemn, according to the Evidence, as it lies within his own Conscience. Now if we should acquit this Man (we have no Assurance we shall acquit him, only suppose it) then there is nothing against him but what lies in a Parliamentary Way, and we shall forejudge their Cause. Therefore, I say, I do not know how far by Law we are compellable to give a Verdict in this Case upon him.

*L. C. J.* Look you, Gentlemen, we would consult your Satisfaction as much as we can in all Things; and 'tis reasonable that if you have any Doubts you should propose them to us, and to that Purpose we are to give you Satisfaction, and will in all Things. I must tell you, as to the Jurisdiction of the Court, that is not at all before you: and as to the Vote of the House of Commons, alledged by him, if any such there be, that cannot alter the Laws of the Land, nor justify any of us in departing from our Duties, no more than if a Letter or Mandate should be gained from the Prince or Chief Magistrate of this Kingdom, to any of us in Derogation of Justice (as it's possible by Surprise to be) we are to take Notice of the one, no more than the other. We are upon our Oaths to do Justice according to the Law of the Land: You likewise are upon your Oaths, and sworn to do Justice in your Sphere; and your Oath is, that you shall enquire truly whether he be guilty or not; and if he be guilty in your Judgments, you can no more spare him, than you can condemn an innocent Person. It never was pretended by any Man, nor will it be asserted by any Man that understands himself or the Constitution of the Government of this Kingdom, that a Vote of the House of Com-



mons can change the Law of the Land. It cannot excuse us, if we deny to try a Man that is brought before us; nor will it excuse you, being under an Oath justly to try him. If you should (because the Commons House have voted that he shall not be tried) declare that Man innocent, who in your own Judgment you believe to be not innocent; you nor we are not to consider what will be the Consequence of this, if this Man be acquitted or condemned; that is not before us. You and we too are tied precisely to the Laws of the Land, and by that Law must this Man be judged. As to our Parts, we must do it as to the Law, and you as to the Fact. But I'll tell you further, Gentlemen, this Doubt was moved to us by the Grand Jury, before the Bill was found; we had an Intimation that they would move such a Doubt to us as seems to be your Doubt now. Therefore for their Satisfaction, and the taking away any Scruple that might be in the Case, all the Judges of England did meet together, and seriously debate the Matter and Substance of all this; and it was not our Opinion of this Court only, but the Opinion of all the Judges of England, That we had a Jurisdiction to try this Man. This we have told you, because we would satisfy all Men to go on fairly in the Things that are before them. Therefore, that being put out of the Case, you must consider of your Verdict, and give it in upon this Trial.

Mr. Johnson. We do not doubt, my Lord, but your Opinion in this Case will indemnify us from any future Charge by the Commons of England. But it lies before us to consider what we are bound to do in the Case.

Mr. Just. Jones. Gentlemen, I suppose you do not doubt but we are all of the same Opinion. It is no marvel indeed to hear a Man that stands in Fitz-Harris's place, to object any Thing that many cast a Mift before your Eyes. And yet it cannot but be wondered at too, that when three Protestant Witnesses have sworn precisely, he should have the Confidence to urge any Thing of this Nature. He who appears by the Indictment itself, and the Proofs made upon the Indictment, to have endeavoured to destroy all the Laws of England, all Magna Charta, all our Liberty and our Religion, and to enslave us to the King of France: For that appears plainly the Design, if you have any Credit to the Witnesses that are produced: He that would have pulled down all that is sacred amongst us, is so zealous for the Authority of the House of Commons. We have all of us a great Reverence for the House of Commons, and for their Opinions; but as my Lord hath told you, so I tell you my Opinion, That a Vote of the House of Commons does not in the least fort alter the Law: For indeed if it did, it were to give a Legislative Power to the Commons, which does only belong to the King, the House of Lords, and the Commons together. And, Gentlemen, though Mr. Fitz-Harris says, if he be acquitted here by you, yet he should remain to be questioned again in Parliament; there is no Man in the World can doubt, if he were acquitted here, and were questioned in Parliament, but he would say, he hath been upon his legal Trial by his Peers, and that he hath been acquitted by his Peers upon solemn Evidence. But, Gentlemen, you are to consider what is your Business: Your Office is to be Jurors, not to be Judges; you are not to take upon you any such Authority. Your Commission is your Oath, and by that Oath you are sworn to inquire whether the Prisoner be guilty, as he is indicted, or not: If you, as Englishmen, can say, he is not guilty, let it lie upon your Consciences, and the Danger of the King's Blood and Life be upon you.

Mr. Just. Delben. Gentlemen, I desire to speak one Word to you, to let you know, I am of the same Opinion with my Lord, and with my Brother; and I cannot but wonder at you for making this Scruple: For if there were any Thing in what you have said, it concerns us that are Judges, and not you at all; for 'tis a Matter of Jurisdiction: And whether we have a Jurisdiction or not, we must satisfy ourselves that we have a Commission to do it; it concerns not you. Do you but consider the Oath you have taken, That you will well and truly try, and true Deliverance make betwixt our Sovereign Lord the King, and the Prisoner at the Bar, according to your Evidence: And you have sworn a true Verdict to give upon it, and do you now scruple whether you should give any Verdict or no, when but even now you have sworn you will give a Verdict? If any such Thing as this had been in your Heads (for it might be then in your Heads, as well as now) why did not you speak of it before you took your Oath? You now lie under the Obligation of an Oath to give a Verdict according to your Evidence, and would you acquit him against such an Evidence as hath been given? For, besides what Sir William Waller, Smith, and Everard have deposed, the very Note sworn by Sir Philip Lloyd and Mr. Bridgman, to be owned by Fitz-Harris as his Hand, contains Treason enough in it, if there were no more: Therefore there must be something more in it, than for the Sake of such an unreasonable Scruple.

Mr. Just. Raymond. I am of the same Opinion, truly.

Mr. Johnson. My Lord, I took the Liberty to speak it now; I could not speak it before: For I was not then to enquire what I was to be sworn to, nor could I know what would be the Matter that would come before us, till we were sworn. Therefore I humbly beg your Pardon, that I made the Motion.

L. C. J. We are not at all troubled at any Thing you have said; do not mistake us, we do not take it ill from you, that you acquaint us with your Scruples: We are ready to give all Satisfaction we can, to any that are concerned before us; therefore we are no way troubled that you made any such Scruple, but have given you a fair Answer to it.

Mr. Johnson. My Lord, I desire a Note of the Names of the Jury.

L. C. J. Give it him, Mr. Astrey, or else the Crowd is so great he may not know them.

[Then the Jury withdrew for half an Hour, and at their Return being called over and appearing, the Clerk took the Verdict.]

Cl. of Cr. Edward Fitz-Harris, hold up thy Hand: (Which he did.) Look upon the Prisoner; how say you, is he Guilty of the High-Treason whereof he stands indicted, or Not Guilty?

Foreman. Guilty, &c.

L. C. J. I think you have found a very good Verdict, and upon very full and strong Evidence.

Mr. Sol. Gen. Will your Lordship please to give Judgment?

L. C. J. We will take Time for that.

Mr. Sol. Gen. Will you give a Rule to have him brought up to-morrow?

L. C. J. Move us another Day for it.

Fitz-Harris. My Lord, I hope I may have the Liberty of my Wife, and some Friends now to come to me.

L. C. J. Any Friend I think may come to you: But, Mr. Fitz-Harris, you must be modest in the using that Liberty we give you. You have heretofore abused your Liberty: I do not love to exasperate Things to one in your Circumstances, but you must be prudent and careful, knowing your own Condition, that you do nothing prejudicial to the King or Kingdom.

Upon Wednesday June 15, 1681, Edward Fitz-Harris was brought to the Bar of the Court of King's Bench, to receive his Sentence.

Mr. Att. Gen. My Lord, I humbly pray your Judgment against Mr. Fitz-Harris, who is convicted of High-Treason.

Silence proclaimed during Judgment.

Cl. of Cr. Edward Fitz-Harris, hold up thy Hand. Thou hast been indicted and arraigned of High-Treason, and hast thereunto pleaded, Not Guilty, and for thy Trial put thyself upon God and thy Country, and thy Country have found thee Guilty: What canst thou say for thyself, why Judgment of Death should not be given against thee, and Execution awarded according to Law?

Fitz-Harris. My Lord, I think it will be prejudicial to the King's Service, that Sentence should pass before I have made an End of the Evidence I have given in against my Lord Howard.

L. C. J. Mr. Fitz-Harris, we can take no Notice of any Thing of that Nature. When you are asked, what you can say why Judgment should not pass against you, it is, what legal Matter you have, what Matter in Law, to excuse yourself from that Judgment? For this is nothing, the saying you are to give Evidence; we know nothing of that, it will not delay Judgment a Minute. And for what you say, it will be prejudicial to the King's Service, it is the King that prays Judgment against you by his Attorney.

Fitz-Harris. I beg the King's Mercy for Transportation, my Lord.

L. C. J. We can do nothing in that.

Fitz-Harris. Nor to give me Time before my Execution? I can say no more, my Lord.

L. C. J. Look you, Mr. Fitz-Harris, you have been here indicted for a very great and heinous Treason, a Treason that is in Truth of the first Magnitude; for it is a Treason that tends to the rooting up the whole Government of this Kingdom, and the destroying of us all; plainly, both of the King and of all his Subjects. It does not only destroy the Peace and Quiet, but it tends in Truth to the utter Destruction of the whole Kingdom, and to bring us into a Confusion and Disorder, never to be avoided or retrieved, if your Designs should have taken effect. You have been here arraigned, and put yourself upon the Country, and they have found you guilty of this Treason: It is a Thing you should well consider; for certainly, you have contracted to yourself a mighty Guilt in such a Thing as this is. You have endeavoured the Destruction of the King, and in such a Way, as must have in Truth destroyed all his good Subjects together with him. Your Design hath been to excite the People to a Rebellion, and a popular Insurrection, that would have swept away all like a Deluge, if it had taken Effect. In Truth, it is a Treason against all Mankind, the stirring up of the People is; it is of evil Example to all Mankind, the stirring up of the People against their natural Lord, to whom we owe all Allegiance and Obedience. But your Design in this Way was by setting the People of England together by the Ears, to bring in the Roman Catholick Religion upon such as should be left. It seems you are an Irish Papist, and sucked in very ill Principles where you have lived; and you have here endeavoured to do as much Mischief in this Kingdom, by that treasonable Book, as lies in any one Man's Power perhaps to do. It is a Mercy and a Happiness, that it hath pleased God in his Providence to deliver us out of your Hands; for this was your Design, if you could have brought it about: But it hath pleased God now to bring you to Justice for it, and the Judgment of the Law must pass upon you. Now that Judgment is this: You must return to the Tower, from whence you came, and from thence you must be drawn through the Streets of the City of London to Tyburn; there you shall be hang'd by the Neck, but cut down before you are dead; your Bowels shall be taken out and burnt before your Face, your Head cut off, and your Body divided into four Quarters, to be disposed as shall please the King; and I pray God to have Mercy upon your Soul, to give you a Sight of your Sin, and Repentance for it.

Fitz-Harris. My Lord, I hope I may have the Liberty of my Wife to come to me, and any Friend.

L. C. J. You have that Liberty already.

Fitz-Harris. No, not without the Presence of a Warder.

L. C. J. We will not restrain them as to that, let them come to you.

Officer. There is no Rule of Court for it, my Lord.

L. C. J. We will not restrain any thing of your Wife's coming, there is no Rule to restrain her; but let him have that Liberty that other Prisoners in his Condition usually have had in the Tower, his Wife to come to him, or any other Friend or Protestant Minister whatsoever.

Officer. Pray let it be put into the Rule of Court, my Lord.

L. C. J. We make no Rule, there does not need any. Look you, Mr. Fitz-Harris, we lay no Restraint upon your Wife, or any other Friend; but if your Wife be in another Condition, that she can't come to you, we can't meddle with that.

Mr. Just. Jones. We are not to deliver her out of Prison.

L. C. J. No, we make no Rule, but take off the Hands of the Court from restraining any one to come to you.

Then the Prisoner was taken away, and in Pursuance of this Sentence, the last Day of the said Trinity-Term, being the 22d of June, 1681, a Writ issued out of the Court of King's Bench directed to the Lieutenant of the Tower of London, reciting the Judgment, and commanding him to deliver the Prisoner to the Sheriff of Middlesex, upon Friday the first Day of July next following to be executed according to the Sentence. Which Writ followeth in these Words.

CAROLUS Secundus Dei gratia Angli. Scot. Franc. & Hibern. Rex, fidei defensor, &c. Loc. tenen. Turris nostrae London. salutem. Cum nos in Cur. nostra coram nobis consideraverimus quod Edwardus Fitz-Harris nuper de Parochia S. Martini in Campis in Com. Midd. Gen. pro quibusdam altis proditiombus unde ipse coram nobis inditatus est, & superinde per quandam Juratam Patriae inde inter nos & praefat. Edwardum capt. convict. & attin. existit,



existit, ac Turr. nostra London. per medium Civitatis nostrae London. praed. usq; ad Furcas de Tyborne trabatur, & super Furcas illas ibidem suspendatur, & vivens ad terram praesternatur, ac Interiora sua extra ventrem suum capiantur, ipsaq; vivente comburentur; Et quod Caput ejus amputetur, quodq; Corpus ejus in quatuor partes dividatur, & quod Caput & Quatuor. ill. ponantur ubi nos ea assignare voluerimus: Ideo tibi praecipimus firmit. injungend. quod die Veneris primo dei Julii prox. futur. apud Tower-Hill cum Vic. Midd. convenias, & praed. Edwardum Fitz-Harris eidem Vic. Midd. deliberari facias, ut idem Vic. executionem de eo in forma praed. fieri faciat, prout inde nobis respondere volueris. Teste Francisco Pemberton apud Westm. xxij<sup>o</sup> die Junij, Anno Regni nostri xxxij<sup>o</sup>.

Per. Cur. ASTRY.

And another Writ at the same time was issued out of the same Court, directed to the Sheriff of Middlesex, to receive the Prisoner from the Lieutenant of the Tower at the Time appointed, and to execute him according to the Sentence. Which Writ was in these words.

**C**AROLUS Secundus Dei gratia Angl. Scot. Franc. & Hibern. Rex, fidei Defensor, &c. Vic. Midd. salutem. Cum nos in Cur. nostra coram nobis consideraverimus quod Edwardus Fitz Harris nuper de Parochia S. Martini in Campis in Com. Midd. Gen. pro quibusdam altis proditiis unde ipse coram nobis inditatus est, & superinde per quandam Jur. Patriae inde inter nos & praefat. Edwardum capt. convict. & attinct. existit, de Turr. nostra London. per medium Civitatis nostrae London. praed. usq; ad Furcas de Tyborne trabatur, et super Furcas illas ibidem suspendatur, & vivens ad terram praesternatur ac Interiora sua extra ventrem suum capiantur, ipsaq; vivente comburentur; Et quod Caput ejus amputetur, quodq; Corpus ejus in quatuor partes dividatur & Quatuor. ill. ponantur ubi nos ea assignare voluerimus: Ideo tibi praecipimus firmit. injungend. quod cum Loc. tenen. Turr. nostrae London. praed. diei Veneris primo dei Julii prox. futur. apud Tower-Hill convenias, & ipsum Edwardum Fitz-Harris de praefat. Loc. tenen. recipias, & Executionem de eo in forma praed. facias prout decet. Teste Francisco Pemberton apud Westm. xxij<sup>o</sup> die Junij Anno Regni nostri xxxij<sup>o</sup>.

Per. Cur. ASTRY.

Upon the Day appointed, viz. July 1. Edward Fitz-Harris was, near the Tower-Gate, on Tower-Hill, delivered into the Custody of the Sheriffs of London and Middlesex, viz. Slingsby Bethel and Henry Cornish, Esquires; who upon the Place signed a Discharge for him to the Lieutenant of the Tower. Then he was put on a Sledge, and thence conveyed through the City of London to Newgate, where he overtook Oliver Plunket, who was just before on another Sledge, passing to the same place of Execution.

Where being come (soon after Plunket's private Prayers, &c.) Fitz-Harris asked Capt. Richardson, Whether the Sheriffs had a Warrant for the Disposal of his Body? Capt. Richardson answered, Yes. Then he desired Dr. Hawkins's Assistance, which the Sheriffs readily granted, and called for him to go to him on the Sledge; which the Doctor did, and on his Knees embraced him, and continued a private Discourse with him for some Time.

Sheriff Bethel asked Mr. Fitz-Harris, What have you to say?

Mr. Fitz-Harris answered, the Doctor of the Tower would answer for him, he having left his Mind with him.

Mr. Sheriff Bethel. You will do well to discharge your Conscience.

Fitz-Harris. I have left it all with the Doctor in Writing under my hand, who will communicate it with Witnesses, to the World.

Doctor Martin, of Woodstreet, being at the same Time in the Presence of the Sheriffs, desired Mr. Fitz-Harris to declare, whether he died a Protestant or a Papist. He answered, Having left his Mind fully with Dr. Hawkins, he hoped it might be satisfactory. The Doctor replied, it would be more satisfactory to declare himself there, and that it was no Shame to die a Protestant. To which Mr. Fitz-Harris replied as before.

Then Mr. Fitz-Harris said, Good People, this infamous kind of Death is much more irksome to me than Death itself: Such Judgments as these my Sins against God may justly bring upon me, and I do most humbly submit unto it. But as to the Crimes which I now die for, I take God to witness, I was no further concerned in the Libel, than to discover to the King what Practices of that kind were against him, being employed to that end; tho' those that employed me, refused to do me Justice at my Trial. And I call God to witness, I never had a Farthing of Money of the King in my Life, but on the Account of the like Service. And as to the Witnesses that have sworn against me, I do here solemnly declare now at my Death, that I have not seen the French Ambassador since the beginning of the breaking out of the Plot, neither have I had any Acquaintance with him. And as to his confessor, I never spoke with him in my Life; neither had I any Dealing, either directly, or indirectly, in my life with them, though Sir William Waller and the rest swore most falsely to the contrary. And how like is it that the French Ambassador would give three thousand Crowns for writing that Libel, I leave the World to judge. What I may further declare, I have left with Dr. Hawkins. I forgive all the World, and do hope that God will forgive me. I beg the Prayers of all good People for a happy Passage into the other World.

Mr. Fitz-Harris desired to know of the Sheriffs, whether his Body might not be at the Disposal of his wife, without quartering. Upon which the Sheriff read him the Warrant.

Soon after which he was executed.

The Paper \* referred to was as follows.

**I** Edward Fitz-Harris, having been indicted of High-Treason, for endeavouring to dethrone the KING, was thereupon found Guilty, and Sentence of Death passed on me. I the aforesaid Edward Fitz-Harris do voluntarily and freely, without any Hopes to save my Life, but a dying Man, and to discharge my Conscience towards God, and for the better Satisfaction of the World, make this Declaration following, in the Presence of God, and unto Doctor Francis Hawkins, Chaplain of the Tower of London.

\* This Paper contains many notorious Falsities, which were impossible to be true; and carries along with it gross Marks of Artifice and Contrivance practised on him, while he was entirely under the Management of Dr. Hawkins, Minister of the Tower, who soon after was made Dean of Chichester. Fitz-Harris's Wife was not then admitted to him; but he wrote several Letters to her, one the very Morning on which he suffered, informing her, how he was practised on with Hopes of Life, if he would accuse the Earl of Shaftesbury and Lord Howard of the Libel: He declared that they were innocent, and that what he had deposed against the Papists was true; he charged her by no means to be prevailed on to swear falsely against any. These Letters had such a Tendency to destroy the Credit of Hawkins's Paper, that the Court got her to deliver them, upon the Promise of a Pension.

I do profess and declare my Religion in the general to be that which hath been truly and antiently delivered in the first four general Councils; and in particular, my Belief is that true Faith of a Christian, briefly contained in those three Creeds, commonly called *The Apostles Creed*, *St. Athanasius's*, and *The Nicene Creed*: And I die a Member; and in the Communion of Christ's Holy Catholick Church, hoping for Mercy, through the alone Merits of the Passion of our Lord and Saviour Jesus Christ.

I do also confess and declare, as to the Crimes which I die for, I was no further concerned in the Libel, than as employed to give the King Notice of what Libels or other Accusations, there were against him; and to this Intent, and no other, I endeavoured to get this Libel: Which at length I did from Mr. Everard, all written under his own Hand, and carried it to Mrs. Wall, by whose Means I conveyed all Matters of this, or the like Nature, to the King. I told her I had a Business of great Consequence to acquaint the King with: But she answered me, That my Lord Sunderland being out, there would be no Money had for secret Service, and advised me to go to the Lord Clarendon or Hyde: But before I could do this, I was taken. As for that Part of the Libel which I left with Everard, as a Pledge, to assure him I would not betray him, I received it of the Lord Howard; and the Money I received from the King, was for bringing a Libel called, *The King unveiled*, and the *Lady Portsmouth's Articles*. I call God to witness, I never had a Farthing Charity from the King.

I do further confess and declare, that the Lord Howard told me of a Design to seize upon the King's Person, and to carry him into the City, and there detain him till he had condescended to their Desires. He and myself were privy to this Design, and had several Meetings with the Lord Howard; and as an Encouragement, the Lord Howard assured us of breaking the Settlement of Ireland, taking off the additional Revenue of the Bishops, Forty-nine Men, and Grantees, whose Estates were to be shared amongst the Party.

I do confess and declare, That while I was in Newgate, the Sheriffs, Bethel and Cornish, came to me, with a Token from the Lord Howard, which I knew to be true, and brought Heads with them from Everard, wherein he accused me of being a Court-Emisary, or Yorkist, put on by the King to put the Libel into Protestant Houses to trepan them. But I declare upon my Death I had no such intent, nor do know any such thing. The Sheriffs likewise told me, I was to be tried within three or four Days, that the People would prosecute me, and the Parliament would impeach me, and that nothing would save my Life but discovering the Popish Plot; and then the Sheriffs aforesaid gave me great Encouragement from my Lord Howard, that if I would declare that I believed so much of the Plot as mounted to the introducing the R. C. or if I could find out any that could criminate the Queen, R. H. or make so much as a plausible Story to confirm the Plot, that the Parliament would restore me to my Father's Estate, with the Profits thereof, since his Majesty's Restoration. I finding myself in the Condition I was, in Newgate, fettered, moneyless and friendless, my Wife ready to lie-in, without any Subsistence, my Children in a miserable Condition, and must needs be in a worse by my Death, and I could see no other Refuge for Life, but complying with them; so not with ambitious Intent, but to save my Life, I did comply. The Sheriffs brought Instructions, which they said came from the Lords and Commons who met that Day in order to address the King in my Behalf (if I should confirm the Instructions) and they made use of my Lord Shaftesbury's Name, and others, what Advantage I might have thereby. At the first I made a formal Story concerning the Plot, which was not prejudicial to any body, but most relating to general Heads known publickly; upon which Mr. Cornish told me these were things cried about the Streets two Years ago: I replied, I could say no more. Mr. Sheriff said, He was sorry for me with all his Heart, but thought I could say more if I would, and pressed me hard to speak to several Heads; unto which, unless I spoke, he said, there was no Hope of Life; the Heads I was to speak to, is what the examination taken by Sir Robert Clayton, and Sir George Treby contains, and a great deal more that I did not say then, relating to the Queen, R. H. Earl of Danby, declaring French Pensioners, Lord Halifax, Hyde, Clarendon, Feverham, Seymour, and others; the burning the Fleet, Ports and Governments in Popish Hands, Meal-Tub Plot, Prentices Plot, the Contrivance of the Libel on the Lady Portsmouth, being a French Design to destroy Protestants. These and many other Heads were brought to me by the Sheriffs.

I do further confess and declare, that Sir Robert Clayton, and Sir George Treby, coming to me to examine me, Sir Robert Clayton asked me what I could say concerning Godfrey's Murder? I answered something. He replied, It may be I was in a Confusion; recollect your self. And what I said concerning Father Patrick, was forced out of me, and what I said concerning him is not true. Sir George Treby was with me three Hours, or thereabouts, and pressed me to say something concerning Godfrey's Death: And said, Unless I could speak to that Murder, I could say nothing; whereupon I said something I had from others. He asked me if I could say no more? I replied, is not this enough to save my Life? Am not I Rogue enough? The Recorder hereupon swore, 'Zounds, what were you ever but a Rogue? Then the Recorder entered upon the Heads of the Examination; which being done, he told me, All this would not save my Life, unless I would speak to the Libel, which was a Court-Trick; and it was not for nothing that I have been so often seen at the Lady Portsmouth's. The Lord Shaftesbury said, You know more of these Matters than any Man. Sir George would have me speak to the Consult; that the Duke was at it, the Lords Bellasis, Arundel, and Powis, were at it; you have seen them go to it at St. James's, without doubt they were there; do you but say it, we have those that will swear it.

I do further declare and confess, that what I said against the Queen and the Duke, I was put upon, in the Matter of Sir Edmundbury Godfrey's Murder; and do further declare; That what I swore against the Earl of Danby; the threatening Words that were uttered, I did (to the best of my Remembrance) hear, but whom they concerned I could not well know, by

By whom  
is this note?



by what my Lord himself said. And what *de Puis* told me concerning my Lord of *Danby*, I do believe was spoken out of ill Will; and what I said against him was to save off my Trial till a Parliament; and they were the more desirous to accuse the Lord *Danby* of *Godfrey's* Murder, because the Crime of Murder is not inserted in his Pardon. I am sorry for what I have said against the Queen, his Royal Highness, and the Earl of *Danby*; I desire God to forgive me the Wrong I did them, and do heartily beg their Pardon.

I do further declare and protest, That this Confession and Declaration of mine I own sincerely, as a dying Man, and not to save my Life; and I call God and his Angels to witness the Truth of it; and I renounce Mercy at the Hands of God Almighty, if this be not true.

And I do further declare and protest, as a dying Man, unto *James Walmsley*, *Edward Pattel*, and *Mary Walmsley*, That I have made this Confession and Declaration unto Dr. *Hawkins* freely, and of my own voluntary Accord, without any Manner of Promise made, or Hopes given me by him from the King of saving my Life by this Confession, I having given him to understand beforehand they were Matters of Consequence, and such as chiefly concerned the Good of the King and Kingdom.

I give the Doctor my hearty Thanks for all his Prayers, Counsel, and charitable Offices he hath done me, and I pray God to bless him for ever for it. I forgive all the World, and desire all the World to forgive me; and the Lord have Mercy on my Soul.

Edward Fitz-Harris.

### CIII. The Trial of Dr. OLIVER PLUNKET\*, Titular Primate of Ireland, at the King's-Bench for High-Treason, June 8, 1681, Trin. 33. Car. II.

THE third of May, 1681, in Easter, 33 Car. Secund. Reg. Dr. *Oliver Plunket* was arraigned at the King's-Bench Bar for High-Treason, for endeavouring and compassing the King's Death, and to levy War in Ireland, and to alter the true Religion there, and to introduce a foreign Power: And at his Arraignment, before his Plea he urged for himself, that he was indicted of the same High-Treason in Ireland and arraigned, and at the Day for his Trial, the Witnesses against him did not appear; and therefore he desired to know if he could be tried here for the same Fact. The Court told him, that by a Statute made in this Kingdom, he might be tried in the Court of King's-Bench, or by Commission of Oyer and Terminer in any Part of England, for Facts arising in Ireland; and that this Arraignment there (he being never tried upon it) was not sufficient to exempt him from being tried here; because till a Trial be passed, and there be a Conviction or Acquittal thereupon, an Arraignment, barely, is no Plea: For in such Cases the Party is put twice in Danger of his Life, which only is the Thing the Law in such Cases looks after to prevent. He then desired Time for his Witnesses, which they told him he could not do till after Plea pleaded; whereupon he pleaded Not Guilty, and put himself upon the Country for his Trial. And after some Consideration, had about Time to be allowed him to bring his Witnesses from Ireland, the Court appointed the Day for his Trial, to be the first Wednesday in next Term, which was full five Weeks Time.

And accordingly on Wednesday the 8th of June, in Trinity-Term, he was brought to his Trial, and Proclamation, as in such Cases is usual, being made, it proceeded thus:

Cl. of Cr. *Oliver Plunket*, hold up thy Hand, those good Men which thou shalt hear called, and personally appear, are to pass between, &c.

*Plunket*. May it please your Lordship, I have been kept close Prisoner for a long Time, a Year and an Half in Prison: When I came from Ireland hither, I was told by Persons of good Repute, and a Counsellor at Law, that I could not be tried here; and the Reasons they gave me were, that first the Statute of *Henry VIII.* and all other Statutes made here, were not received in Ireland, unless they were an express mention made of Ireland in them: So that none were received there but such as were before *Poyning's* Act. So I came with that Persuasion that I could not be tried here, till at my Arraignment your Lordships told me it was not so, and that I must be tried here, though there was no express mention made of Ireland. Now, my Lord, upon that, whereas my Witnesses were in Ireland, and I knew nothing of it, and the Records upon which I very much rely were in Ireland, your Lordship was pleased to give me Time from the 4th of the last Month to this Day; and in the mean Time, as your Lordship had the Affidavit here Yesterday, and as Captain *Richardson* can testify, I have not dispatched only one, but two to Ireland, into the Counties of *Armagh*, *Dublin*, &c. and where there were Records very material to my Defence; but the Clerk of the Crown would not give me any Copy of any Record at all, unless he had some express Order from your Lordship. So that whether it were that they were mistaken, or wilfully refused, I could not get the Records, which were very material for me. For in some of those Records, some of those that accuse me were convicted of high Crimes, and others were out-lawed and imprisoned, and broke Prison; and there were other Records also of Excommunication against some of them, and I could not get the Records, unless your Lordship would instruct me in some Way or other, how I can get over them that are most material for my Defence. The Servants that I sent hence, and took Shipping for Ireland, were two Days at Sea, and cast back again, and from thence were forced to go to *Holy-Head*, and from *Holy-Head* in going to *Dublin* they were thirteen or fourteen Days, the Winds were so contrary; and then my Servant went about to go into the County of *Armagh* and *Derry*, that were a hundred Miles from *Dublin* and *Meath*, and other Places: So that in so short a Time, my Lord, it was morally impossible for them to have brought the Witnesses over; and those that were ready to have come, would not stir at all, unless they had a Pass from hence, because some of them were Roman Catholics, and they had heard that here some were taken Prisoners that were Roman Catholics, and that none ought to come without a Pass; and they being Witnesses against the King, they might be clapped up here, and brought into very ill Condition; so they sent one over, that made Affidavit.

† L. C. J. It was the Affidavit was read here Yesterday.

*Plunket*. So that, my Lord, I conceive your Lordship will think I did it not out of any Intent to put off my Trial; for Captain *Richardson* is here, who knows that I writ by the Post, and desired them to come with the Pacquet-Boat, and they writ over to the Captain after they were landed; so that I depended upon the Wind and the Weather for my Witnesses, and wanted your Lordship's Order for the Records to be brought over, and that their Examination might be brought into Court, and their own original Examination here might be compared with it. So I humbly beg your Lordship's Favour, the Case is rare, and scarcely happens in five hundred Years, that one should be in my Circumstances. I am

come here where no Jury knows me, nor the Quality of my Adversaries: If I had been in Ireland, I would have put myself upon my Trial To-morrow, without any Witnesses, before any Protestant Jury that knew them and me. And when the Orders went over, that I should be tried in Ireland, and that no Roman Catholick should be upon the Jury, and so it was in both the Grand and other Jury; yet then when I came to my Trial, after I was arraigned, not one appeared. This is manifest upon the Record, and can be proved.

L. C. J. There was no Prosecution of you there.

*Plunket*. But, my Lord, here is no Jury that knows me, or the Quality of my Adversaries; for they are not a Jury of the Neighbourhood that know them, and therefore my Case is not the same with other Cases. Though I cannot harbour, nor do not, nor will not, nor ought not, the least Conceit of hard Measure and Injustice; yet if I have not full Time to bring my Records and Witnesses all together, I cannot make my Defence. Some were there then, some afar off, so that it was a Miracle that in six or seven Counties they could do so much as they did: But they got in seven or eight of them, yet there were five or six wanting. Therefore I beseech your Lordship, that I may have Time to bring my Records and Witnesses, and then I will defy all that is upon the Earth, and under the Earth, to say any Thing against me.

L. C. J. Look you, Mr. *Plunket*, 'tis in vain for you to talk and make this Discourse here now; you must know that by the Laws of this Kingdom, when a Man is indicted and arraigned of Treason and Felony, 'tis not usual to give such Time; 'tis rare that any Man hath had such Time as you have had, five Weeks Time to provide your Witnesses: If your Witnesses are so cautious, and are such Persons that they dare not, or will not venture for fear of being apprehended, or will not come into England without such and such Cautions, we cannot tell how to help it; we can't furnish you with Witnesses, you must look to get your Witnesses yourself: If we should stay till your Witnesses will come, perhaps they will never come here, and so you will escape out of the Hands of Justice. Do not be discouraged in this, the Jury are Strangers to you peradventure, but they are honest Gentlemen, and you shall have no other upon your Jury; and you may be confident, that if there be not some Fact proved against you, that may amount to Treason, you shall be discharged; there are Persons that understand so much, and we will direct them so much. You shall have as fair a Trial as if you were in Ireland; but for us to stay for your Witnesses, or send you back to Ireland, we cannot do it: Therefore you must submit to your Trial. We heard your Affidavit Yesterday, and we did then tell the Gentleman that moved it, as much as we tell you. You are here to be tried, look to the Jury as they are called, and except against them if you will.

*Plunket*. My Lord, I desire only to have the Favour of some Time, some Time this Term.

L. C. J. We can't do it. Cl. of Cr. Swear Sir *John Roberts*.

*Plunket*. I humbly present this to your Lordship, I am then in imminent Danger of my Life, if I cannot get ten Days to have my Witnesses over: I desire I may have but to the one and twentieth of this Month, and then if they do not come, you may go on.

L. C. J. We cannot do it, you have had five Weeks Time already.

*Plunket*. I desire but a few Days.

Clerk. Sir *John Roberts*, take the Book, look upon the Prisoner: You shall well and truly try, &c.

*Plunket*. My Lord, I desire to know, whether they have been of the Juries of *Langborn*, or the five Jesuits, or any that were condemned?

L. C. J. What if they have? That is no Exception.

Then the Jury was sworn, whose Names follow.

Sir <i>John Roberts</i> ,	<i>Thomas Earsby</i> ,
<i>Thomas Harriot</i> ,	<i>John Hayne</i> ,
<i>Henry Ashbush</i> ,	<i>Thomas Hodgkins</i> ,
<i>Ralph Bucknall</i> ,	<i>James Partherich</i> ,
<i>Richard Gowre</i> ,	<i>Samuel Baker</i> ,
<i>Richard Pagett</i> ,	<i>William Hardy</i> .

Cl. of Cr. *Oliver Plunket*, hold up your Hand. You of the Jury look upon the Prisoner, and hearken to his Charge.

HE stands indicted by the Name of *Oliver Plunket*, late of *Westminster*, in the County of *Middlesex*, Doctor in Divinity, for that he is a false Traitor against the most illustrious and most excellent Prince our Sovereign Lord *Charles II.* by the Grace of God, of *England*, *Scotland*, *France*, and *Ireland* King, and his natural Lord, the Fear of God in his Heart not having, nor weighing the Duty of his Allegiance, but being moved and seduced by the Instigation of the Devil, the cordial Love, and true and due natural Obedience, which true and faithful Subjects of our said Sovereign Lord the King, towards him our said Sovereign Lord the King do and of right ought to bear, utterly withdrawing, and contriving, and with all his Might intending the

Peace



"Peace and common Tranquillity within the Kingdom of Ireland, as also of this Kingdom of England, to disturb, and War and Rebellion against our said Sovereign Lord the King in the Kingdom of Ireland, then being the Dominion of our said Sovereign Lord the King, in Parts beyond the Seas, to stir up and move, and the Government of our said Sovereign Lord the King there to subvert; and our said Sovereign Lord the King from his Regal Power and Government there to depose and deprive; and our said Sovereign Lord the King, that now is, to Death and final Destruction to bring and put; and the true Worship of God within the said Kingdom of Ireland, by Law established and used, to alter to the Superstition of the *Romish* Church: The first Day of December, in the Year of the Reign of our Sovereign Lord Charles the Second now King of England, &c. the two and thirtieth, and divers other Days and Times, as well before as after, at Dublin in the Kingdom of Ireland, in Parts beyond the Seas, with divers other false Traitors unknown, traiterously did compass, imagine and intend the Killing, Death, and final Destruction of our said Sovereign Lord the King, and the ancient Government of his said Kingdom of Ireland aforesaid to change, alter, and wholly to subvert; and him our said Sovereign Lord the King, that now is, from the Crown and Government of his Kingdom of Ireland aforesaid to depose and deprive, and the true Protestant Religion to extirpate, and War and Rebellion against the said Sovereign Lord the King there to move and levy. And to fulfil and accomplish his said most wicked Treasons, and traiterous Compassings, Imaginations, and Purposes aforesaid, he the said Oliver Plunket, the said first Day of December, in the above said two and thirtieth Year of the Reign of our said Sovereign Lord the King, that now is, with Force and Arms, &c. at Dublin, in the Kingdom of Ireland, then being the Dominion of our said Sovereign Lord the King in Parts beyond the Seas, maliciously, devilishly, and traiterously did assemble and gather together himself, with divers other Traitors unknown, and then and there devilishly, advisedly, maliciously, subtilly, and traiterously did consult and agree our said Sovereign Lord the King, that now is, to Death and final Destruction to bring, and from his Crown and Government aforesaid to depose and deprive, and the Religion of the *Romish* Church into the Kingdom of Ireland aforesaid, to introduce and establish. And the sooner to fulfil and perfect his said most wicked Treasons, and traiterous Imaginations and Purposes, he the said Oliver Plunket, with divers other false Traitors unknown, then and there advisedly, maliciously, and traiterously, did further consult and agree to contribute, pay, and expend divers great Sums of Money to divers Subjects of our said Sovereign Lord the King, and other Persons unknown, to procure them the said Persons unknown, our said Sovereign Lord the King, that now is, traiterously to kill, and the *Romish* Religion into the said Kingdom of Ireland, to introduce and establish. And that he the said Oliver Plunket, and other Traitors unknown, afterwards, to wit, the said first Day of December, in the two and thirtieth Year of the Reign of our said Sovereign Lord the King above said, at Dublin aforesaid, in the Kingdom of Ireland aforesaid, within the Dominion of our said Sovereign Lord the King, with Force and Arms, &c. unlawfully, maliciously, devilishly, and traiterously did receive, collect, pay, and expend divers great Sums of Money to divers Persons unknown, to persuade and induce divers other Persons also unknown, the said false Traitors in their said Treasons to help and maintain, against the Duty of his Allegiance, and against the Peace of our said Sovereign Lord the King, that now is, his Crown and Dignity, and against the Form of the Statutes in that Case made and provided." To this Indictment he hath pleaded, Not Guilty.

Mr. Heath. May it please your Lordship, and you Gentlemen of the Jury, this is an Indictment of High-Treason against Dr. Oliver Plunket, the Prisoner at the Bar; and it sets forth, That the two and thirtieth Year of the King, at Dublin in the Kingdom of Ireland, he did compass and imagine the Death of the King, and to deprive the King of his Kingdom of Ireland, and to raise War to extirpate the Protestant Religion in the Kingdom of Ireland, and to establish the *Romish* Religion there. And it sets forth further; that for the Accomplishment of these Treasons, the Defendant, with several others, did meet together at several Places at Dublin in the Kingdom of Ireland, and elsewhere, and at these several Meetings did consult and agree to put the King to Death, to raise War, to extirpate the Protestant Religion, and set up the *Romish* Religion. And the Indictment further sets forth, that to accomplish these Treasons, the Defendant did raise great Sums of Money in the Kingdom of Ireland, and did get several Persons to contribute several Sums for these Treasons, and that the Defendant with others did disburse several Sums of Money to several Persons, to persuade them and entice them to be aiding and assisting in these Treasons, and to recompence them for them. To this Indictment the Defendant hath pleaded, Not Guilty. If we prove these Things, you are to find him Guilty.

Mr. Serj. Maynard. My Lord, we will quickly come to the Evidence: But in short, you have heard his Charge is as high as can be against the King, and against the Nation, and against all that is good. The Design and Endeavour of this Gentleman was the Death of the King, and the Destruction of the Protestant Religion in Ireland, and the raising of War: And to accomplish this, we charge him, that there was a Confederacy made, Assemblies and Consultations had to these Ends, and raising Money to accomplish it. Gentlemen, Dr. Plunket was made, as we shall prove to you, as they there call him, Primate of Ireland; and he got that Dignity from the Pope upon this very Design. He did by Virtue of that Power, which he thought he had gotten, make out Warrants, Significations, I know not what they call them, to know how many Men in Ireland could bear Arms from sixteen to forty; he raises Taxes upon the People and the Clergy there. But, my Lord, the Particulars will best fall from the Witnesses that we shall call and prove it by, and we need not make any Aggravation; for such a Thing as this cannot be more aggravated than 'tis.

Mr. Att. Gen. (Sir Robert Sawyer.) May it please your Lordship, and you Gentlemen of the Jury, the Character this Gentleman bears, as Primate under a foreign and usurped Jurisdiction, will be a great Inducement to you to give Credit to that Evidence we shall produce before you. We shall prove that this very Preferment was conferred upon him upon a Contract, that he should raise sixty thousand Men in Ireland, for the Pope's Service, to settle Popery there, and to subvert the Government.

The Evidence that we shall give you, will prove how it leads to destroy the King; and I take it according to the Relations that have been, to raise War in the Kingdom, and to introduce a foreign Power, will be certainly Evidence of an Attempt and Machination to destroy the King. As soon as he was in Possession of his Primacy, he goes about his Work. There are two great Necessaries to be provided, Men and Money: For Men, having this great spiritual Jurisdiction, whereby, indeed, all that are under it are become Slaves, he issues out his Warrants to all the Clergy of Ireland, to give an Account, and make Return from the several Parishes, and all the Men in them above fourteen, and under sixty. And Returns were accordingly made by them, that he might accordingly take a Measure what Men to provide for the Service. The next Thing was Money, my Lord; and your Lordship takes Notice, that when the Mind is enslaved, the Purse, nay all the Body bows to it. He issues out his Warrants to his Clergy to make a Collection of Money; in all Parts great Sums were levied, and when they were levied, we shall give you an Account by our Proofs, that several Sums were issued out, and sent into France to further the Business. There was also Provision made of great Ammunition and Arms; and we shall prove in particular, several delivered out by this Gentleman's Order, to carry on this Thing; and to go through with this Business, he takes a View of all the several Ports and Places in Ireland, where it would be convenient to land; for they were to have from France an auxiliary Force, and upon his View he pitched upon *Carlingford* as the Place. We shall prove the several Correspondencies between Rome and him, and France and him, and several Messengers employed, and Monies issued out from Time to Time for their Maintenance. This will be the Course of our Evidence; and we shall begin first with some that do not speak so particularly to this Doctor, but prove there was a general Design in all Parts of the Kingdom of Ireland, to bring in the King of France, and extirpate the Protestant Religion. And then we shall call the particular Persons to the particular Facts against him. First, we call *Florence Wyer*, (*Who was sworn*.)

Mr. Sol. Gen. Are you sworn, Sir?

Wyer. Yes, Sir.

Mr. Sol. Gen. Pray give the Court and the Jury an Account of what you know of any Plot in Ireland, to introduce the *Romish* Religion, or to bring in the French King.

Wyer. Yes, I know there was a Plot, both before Plunket's Time, and in his Time; for it was working in the Years 65 and 66, but it was brought to full Maturity in the Year 1667. For then Col. Miles Rely and Col. Bourne were sent to Ireland from the King of France, with a Commission to muster as many Men as he could, promising to send an Army of 40,000 Men with a Commission, upon St. Lewis's Day in August next following to land at *Carlingford*, to destroy all the true Subjects, to destroy the Religion as it was established there, and to set up the French King's Authority and the Roman Catholick Religion. And one Edmund Angle, that was a Justice of Peace, and Clerk of the Crown, sent for all the Rebels abroad in the North to come up into the County of Longford, and they marched into the Head-Town of the County, and fired the Town; the Inhabitants fled into the Castle: Then they came up to the Gaol, thinking to break it open, and by setting the Prisoners free, to join them with them; but then Angle was shot, received a deadly Wound, and dropt off of his Horse, and they fled. So then when they were without the Town, one Charles Mac-Canal alighted, and took away all the Papers out of his Pocket; which if they had been found, would have discovered all. This occasioned Col. Bourne to be suspected; and being so suspected, he was taken Prisoner, and turned to *Newgate* in Dublin. Then Col. Rely fled away again to France, and the Plot lay under a Cloud during the Life of Primate Raley the Prisoner's Predecessor. This Primate Raley died beyond Sea. Then many of the Popish Religion would have had the Primacy conferred upon one Duffy; but the Prisoner at the Bar put in for it; which might have been opposed, if the Prisoner had not engaged and promised that he would so manage Affairs, that before the present Government were aware, he would surprise the Kingdom; provided the Pope and King of France would send a competent Army to join with theirs for the effecting of it. So the first Year of his coming over I was in the Friery at Armagh; I was an Acquaintance of the Friars, and they invited me; and one Quine told the Prisoner, that they thought Duffy would have been Primate. Said he, 'tis better as it is; for Duffy hath not the Wit to do those Things that I have undertaken to do; meaning that he did undertake to supplant the Protestant Religion, to bring in Popery, and put the Kingdom under Subjection to the King of France.

Mr. Sol. Gen. How do you know that?

Wyer. Those were the Words, and the Meaning I knew before, because I had heard it talked of.

L. C. J. Who was the first of these Primates you speak of?

Wyer. Edmund Raley; he set this Business on Foot first.

L. C. J. About what?

Wyer. About calling the Rebels together out of the North when they came to Longford.

L. C. J. What Year was that?

Wyer. It was in the Year 67.

L. C. J. When died he?

Wyer. He died a little While afterwards.

L. C. J. Then Duffy would have it conferred upon him?

Wyer. Yes, after Raley's Decease he would have had it conferred upon him; and there was a Contention between him and the Prisoner, who did engage he would bring Things to that full Maturity, that before the present Government were aware he would do the Work.

L. C. J. How do you know this?

Wyer. I know this, because I had an Account of it from certain School-Fellows that were with me in Ireland, then studying in Rome; they wrote this to me, desiring me I would take a good Heart with the Rest of my Countrymen, and assuredly in a short Time the Kingdom would be relieved, and the Irish restored to their former Patrimonies.

L. C. J. This you speak of their Information. What do you know of your own Knowledge?

Wyer. All that I know is, he coming into the Friery of Armagh—

L. C. J. About what Time?

Wyer. It is either 10 or 11 Years ago, and there was a Fast there, and I was invited by the Friars, being their Acquaintance; one Quine, one of the Friars, told him—

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VOL. II



L. C. J. Told whom?

Wyer. The Prisoner that he did expect *Duffy* should have been Primate; but the Prisoner made answer, 'tis better as it is; for *Duffy* had not the Wit to manage the things that I have undertaken for the general Good of our Religion.

L. C. J. Now tell me this: What Things were those he had undertaken? Did he explain himself?

Wyer. No farther than those Words: But I did conceive this was his Meaning; because I knew partly of it myself, knowing of the former Plot.

L. C. J. I ask you only what Words came from him; and you say they were, that *Duffy* had not the Wit to manage what he had undertaken for the general Good of their Religion.

Wyer. Yes, and then again in his Assembly, kept by him, he charged his Inferiors to collect such several Sums of Money as he thought fit, according to the several Parishes and Dignities, to assist and supply the *French* Forces when they came over.

L. C. J. How know you that?

Wyer. I have seen the Money collected; and I have seen his Warrant, *sub pœna suspensionis*, to bring it in, to redeem their Religion from the Power of the *English* Government. Again, there were those Rebels that went to *Longford*.

L. C. J. What Time were those Collections?

Wyer. From Time to Time since he came into *Ireland*.

L. C. J. About what Time?

Wyer. Nine Years, eight Years, seven Years ago, and the last Year of all.

L. C. J. Then it was several Times, you say?

Wyer. Yes, and he procured the *Mackdonells* a Piece of Money out of the *Exchequer*, pretending to do good Service to his Majesty; but he sent them for *France*, meaning they should improve themselves, and bring themselves into favour with the King of *France*, and come over with the *French* King to surprise *Ireland*. This one of the Rebels told me. So I have seen the Prisoner's Letter directed to the grand Tory *Flemming*, desiring that they should go to *France*, and he would see them, in spite of all their Enemies in *Ireland*, safe ashore: And *Flemming* should return again a Colonel to his own Glory, and the Good of his Country.

Mr. Att. Gen. Do you know his Hand?

Wyer. Yes, I do, as well as my own. I have seen Capt. *O-Neal*, Son of General *O-Neal*, coming every Year into *Ireland*, and carrying three Regiments to the *French* King into *France*; and he used to come over to *Ireland* every Year to get a Recruit; and he did get my Brother to go with him, and so much importuned me, that I could hardly withstand him; but I did not yield to his Desire. He told me, it was to improve me for my Good, to improve myself in military Discipline; and then I should return for *Ireland* a Captain under the *French* King, to surprise the Kingdom and settle the Popish Religion; and then I should be restored to my Estate.

L. C. J. Who told you this?

Wyer. Captain *O-Neal*. And in the mean while, says he, I hear Dr. *Plunket* is the only Man intrusted in *Ireland* to make these Preparations, and get Things ready against the *French* King's coming, who is to land at *Carlingford*.

Mr. Att. Gen. How often were you in the Doctor's Company?

Wyer. Not very often.

Plunket. I never saw him with my Eyes before in all my Life.

Wyer. I have seen him in the Priory the first Year that he came over to *Ireland*; and you know the Meetings held at *George Blyke's* House in the *Fives*, and I have seen him in his own House.

Mr. Just. Dolben. How come you to know the Prisoner's Hand?

Wyer. Because I was well acquainted with his Hand, seeing his Hand among the Priests.

Mr. Just. Dolben. Did you ever see him write?

Wyer. Yes, in the Priory, and in his own House.

Mr. Just. Dolben. How often?—Wyer. Not often.

Mr. Just. Dolben. How often?

Wyer. Ten or a Dozen Times. I should know his Hand from all the Writing in *London*, if it were among never so many. Let me but see it, I will know it.

L. C. J. Have you ever heard him own himself Primate?

Wyer. Yes, my Lord, he writes himself *Oliverus Armacanus, Primas & Metropolitanus totius Hiberniæ*, that is his Stile.

L. C. J. Who did he say made him Primate?—Wyer. The Pope, my Lord.

L. C. J. Have you heard him say so?

Wyer. Yes, I heard him discourse of it in the Priory.

Mr. Att. Gen. He was a public Officer, and they might well know his Hand.

L. C. J. I believe any Body that hath seen us write but a little, would soon know our Hands.

Wyer. His Hand is as well known over *Ireland*, as mine is among my Acquaintance.

L. C. J. Well go on.

Wyer. During the Time of his Imprisonment, I have seen his Commands to some of his inferior Dignitaries, commanding them, *sub pœna suspensionis*, to bring in the Monies assessed for bringing in the *French* Army; and that there was no better Time than the Time of his Imprisonment to bring it in.

L. C. J. Who were they, you say, that were commanded *sub pœna suspensionis*?

Wyer. Since his taking, I have seen in the Time of his Imprisonment his Commands to his inferior Dignitaries, not to be forgetful of the Monies that were assessed towards the supplying the *French* Army; and that there was no better Time to bring in the *French*, than when he was in Prison.

L. C. J. How long ago was that?

Wyer. The first of *February* (79). The second and last of it was in *July* and *November* last.

L. C. J. And this was to bring in the Money?

Wyer. Yes, to supply the *French* Army. And that there was no better Time than during his Imprisonment, and they should not be so much suspected.

L. C. J. And these Mandates you have seen under his Hand?

Wyer. Yes, I have, my Lord.

Vol. III.

Mr. Att. Gen. What do you know of his summoning or issuing out these Warrants for Lifts of Men?

Wyer. I have not seen any of the Warrants; but the Priests have told me they were commanded by his Warrants to let him know how many there were in all their Parishes from sixteen to sixty.

Mr. Att. Gen. You say you never saw the Mandates?

Wyer. No, I did not.

Mr. Serj. Jeff. What do you know about the Prisoner's viewing the Ports?

Wyer. I have seen him going about from Port to Port, to *Derry*, to *Carrisfergus*, *Casly-Down*, and *Carlingford*, and all about.

Mr. Serj. Jeff. When he went to take a View of those Ports, can you tell to what Purpose he did it?

Wyer. Yes, I heard it among the Church, that he went on Purpose to view the Sea-Ports, to know the Strength of all the Garrisons, and to see which was the most convenient Way to bring in the *French* Army.

Mr. Serj. Jeff. Did you ever speak with the Prisoner at the Bar about his going?—Wyer. No.

Mr. Serj. Jeff. What Place did he pitch on as most convenient?

Wyer. *Carlingford*.

Mr. Att. Gen. Were you in the Prisoner's Company when he viewed the Ports?—Wyer. I have seen him go to and fro; I did not go all the Circuit round with him.

Plunket. Did you ever see me at *Carlingford*?—Wyer. No.

Plunket. Did you ever see me at any other of the Ports?

Wyer. I have seen you at *Hamilton's* coming back from *Derry*. Do you not remember that you lodged at Sir Geo.

Plunket. I never lodged there in my Life.

Sir Fra. Withens. Have you any Thing more to say concerning the Plot in general?—Wyer. No, in general I have not.

Mr. Serj. Jeff. He hath not only given an Account of the general, but fixed it upon the Prisoner.

Mr. Att. Gen. Dr. Plunket, will you ask him any Questions?

Plunket. You say you remember you saw me at my first coming as Primate ten Years ago, and that you were at the Priory when I was there?

Wyer. Yes.

Plunket. You were invisible to me.

L. C. J. If you will ask any Question, do; but do not make these Kind of Observations.

Plunket. Tell me this, Why did you not acquaint some Justice of the Peace then with what you knew, that which you had heard seven Years ago?

Wyer. When I first knew it, I was as willing to have it concealed as they.

L. C. J. What is your Question, Dr. Plunket? Pray tell it us.

Plunket. He says, my Lord, that ten Years ago I had such a Design in Hand, and he knew the Money was collected for these very Ends, and he knew of the Design from that same Captain *O-Neal*, whom I employed and sent abroad; and that I had a Design to bring in the *French* at *Carlingford*, and went about to all the Ports in *Ireland*, and pitched upon that as the most convenient; and yet it is so inconvenient for the bringing in a foreign Force, that any one that knows any thing of the Maps of the World, will easily conclude it otherwise. But, I say, my Lord, why did not he tell some Justice of Peace that I was upon such a Design, but let me live in *Ireland* ten Years after, and never speak of it till now?

L. C. J. What say you to the Question?

Plunket. When he saw me all the Time, and to the Time of my taking Prisoner, and never said one Word; for I was a Prisoner six Months, only for my Religion, not one Word of Treason spoken of against me for so many Years; why did not he acquaint some Justice of the Peace with it before?

L. C. J. What Religion were you of then?

Wyer. I was a *Roman* Catholick.

Plunket. And are you not so now?—Wyer. Yes, I am so.

Mr. Just. Dolben. Therefore it will be no Wonder that you did not discover it.

Mr. Serj. Jeff. But I ask you, Why did not you discover it all this Time?

Wyer. Because I was a Papist myself: The first that did discover it, he and I did consult about it, I had charged him so to do, and I set him on work; but he was ill paid for having discovered: You got him to be trepanned, that he hath gone in Danger of his Life for it.

Plunket. Who is the Man?—Wyer. *Moyer*.

Sir Fra. Withens. Call *Henry O-Neal*, (who was sworn.) What know you of any Design in *Ireland* to introduce the Popish Religion?

*O-Neal*. In *August* (78.) Bishop *Tyrrel* came with 40 odd Horsemen to Vicar-General *Brady's* House, and alighted at the Door; and he gave them there an Oath, which they took willingly and freely from Hand to Hand, to forward the Popish Plot against the Protestant Religion, to make an End of them all in one Hour from End to End in *Ireland*; and, said he, I will come within two Days with an Order from the Lord *Oliver Plunket*; and you need not be afraid, for the Lord *Oliver Plunket* and I have sent some Gold and Money into *France* to get Men and bring them from *France* over Sea: And do not fear, this will go on in one Hour through all *Ireland* from End to End. In *September* (78.) a little While after, the same Meeting was in a Place which they call *Virginia*, in the County of *Connaught*, where they took a Priest, he is here, and he was with me, and desired me to come up to *Dublin* and discover this; and there I did discover it to Sir *John Davis*; which is all that I can say. For this *Plunket*, I never saw him in my Life.

Mr. Jones. You were a Papist then?—*O-Neal*. Yes, I was.

Mr. Jones. Are you a *Roman* Catholick still?—*O-Neal*. Yes, I am.

Mr. Jones. And were you acquainted with all these Orders?

*O-Neal*. Yes.

L. C. J. How came you to know of this Oath?

*O-Neal*. I was in the House with them; I was one concerned to take my Oath with them, and I durst not but take the Oath.

L. C. J. Had you the Oath of Secrecy given you?

*O-Neal*. Yes, and so this Priest commanded me to go along to *Dublin* and discover it.

Mr. Serj. Jeff. What is his Name?—*O-Neal*. *John Mac Legh*.

Sir Fra. Withens. Do you know any other Transactions about the Plot?

*O-Neal*. No, I will not swear for all the World more than I know.

Q q

Sir



Sir Fra. Wilem.—Then call Neale O-Neal, (who was sworn.) What do you know of any Design carrying on in Ireland against the Government and the Protestant Religion?

N. O-Neal. I will tell you all I know: I was at Vicar Brady's House the 21st of August.

L. C. J. What Year?

N. O-Neal. (78.) And Bishop Tyrrel came with 40 Horse-Men to the House, and went into the House, and discoursed a little while; and they took their Oaths, every one round, to keep secret the Plot to destroy the Protestant Religion and the Protestants, that they might have their Estates again. And he said they did not need to fear: For, said he, you have a very good Man to assist you, and that is the Lord Oliver Plunket, and you need not fear but it will go through all Ireland.

Mr. Att. Gen. Will you ask him any Questions?

Plunket. Why did you not discover it before?

Mr. Serj. Jefferies. Were you a Roman Catholick at that Time?

N. O-Neal. Yes, and am so still.

Mr. Papet, Jury-Man. I desire he may be asked how he came to be there.

L. C. J. You say, I think, this was at Vicar General Brady's; how came you to be there?

N. O-Neal. I was there several Times before that; for my Nurse or my Forster-Mother (I don't know which you may understand best) was House-keeper to him.

L. C. J. Were you required to take the Oath?

N. O-Neal. No, my Lord, I was acquainted in the House, I had been there two or three Weeks before.

Plunket. Why did not you tell it to some Justice of the Peace?

L. C. J. He was a Papist, and so he is now.

N. O-Neal. There were many there that were wiser than I, that did not discover it.

L. C. J. How old are you?

N. O-Neal. I believe about two and twenty Years old.

L. C. J. And this was but in (78.)

Mr. Att. Gen. Swear Owen Murfey, (which was done.) Come, what say you?

O. Murfey. Mr. Edmund Murfey discovered the Plot; he went to one Lieutenant Baker and did discover the Plot to him, that there was a Design to bring in the French.

L. C. J. Speak out aloud, I can't hear you.

O. Murfey. All I know is from Mr. Edmund Murfey—

L. C. J. What do you know of any, of your own Knowledge?

O. Murfey. Mr. Lieutenant Baker told me, that he did hear of the French—

L. C. J. Speak what you know yourself.

O. Murfey. If it please your Lordship, this is more: I saw that Evidence that Edmund Murfey did produce in Ireland, when he was sent to the Gaol there; but without Trial or any Thing.

Mr. Att. Gen. Then swear Hugh Duffy; (which was done.) Speak aloud, and tell my Lord what you know of this Plot and the Prisoner: You know the Prisoner, don't you?

Duffy. I know him! yes, I know him well enough.

L. C. J. What say you more of him?

Duffy. My Lord, I say I have seen this Dr. Oliver Plunket raising several Sums of Money to carry on this Plot; sometimes 10s. per Ann. sometimes 20.

Mr. Sol. Gen. Of whom?

Duffy. Of all the Priests in Ireland; of every Priest according to his Pension and Parish.

L. C. J. In all Ireland?—Duffy. Yes.

L. C. J. And towards the Proceedings of the Plot?

Duffy. It was to give to his Agent which was at Rome, and for the carrying on the Business.

Mr. Att. Gen. How came you to know this?

Duffy. I was Servant to Dr. Duffy, who was infinitely below'd by this Man. He was Father Confessor to the Queen of Spain. There was nothing that happened between them, but I was by all the Time.

L. C. J. Were you Chaplain to him?—Duffy. Yes.

L. C. J. You are a Papist then?—Duffy. Yes.

Mr. Att. Gen. This Man is a Friar, my Lord.

L. C. J. Were you in the Company with them?—Duffy. Yes, I was.

L. C. J. What did pass there?

Duffy. About the Plot; how they could confirm the Plot: And this Man Plunket said, he could prevail with the King of France, and the other with the King of Spain.

Mr. Att. Gen. Pray acquaint my Lord particularly when this was, and in what Place, and what they said?

Duffy. It was in 73, 74, and 75, at his own House; and at he kept three or four Jesuits there, and a matter of a hundred Priests.

Mr. Att. Gen. What passed in the Company?

L. C. J. Who else was there?

Duffy. The Discourse, my Lord, was always about the Plot, how they could contrive the Matter between them; and so they did conclude afterwards to raise so much Money upon several Priests, all the Priests in Ireland, sometimes 20s. sometimes 40.

L. C. J. A-piece, do you mean?—Duffy. Yes.

Mr. Att. Gen. What Discourse had they about the French at any Time?

Duffy. Yes, a hundred times; he talked several Times, that he did not question but he should prevail with the King of France not to invade Spain: And I have seen his Letter to Cardinal Bouillon, to exhortate with him about the King of France, why he should wage War with the King of Spain, who was a Catholick, but rather should come and redeem Ireland out of its heretical Jurisdiction.

Mr. Att. Gen. Did you see the Letter?—Duffy. Yes.

Mr. Att. Gen. Why, do you know his Hand?

Duffy. Yes, I know it as well as I know my own; I know it if there were a thousand Papers together.

Mr. Att. Gen. And what was the Import of it, pray?

Duffy. That Cardinal Bouillon should prevail with the King of France not to invade Spain; and the Contents of the rest of the Letter were, That

he did admire he should not rather wage War with the King of England, who hath been an Apostate, and help their poor Country that was daily tormented with heretical Jurisdiction.

Mr. Att. Gen. How came you to be in France? Were you employed?

Duffy. I went to France to live there in a Convent.

Plunket. Did Cardinal Bouillon shew you my Letter?—Duffy. Yes.

Plunket. What Year?—Duffy. 77.

Mr. Att. Gen. Pray, Sir, you were speaking of raising of Money—Duffy. Yes.

Mr. Att. Gen. Did you see any Precept about it?

Duffy. Yes, I have seen several Precepts: I was Curate to one Father Murfey; and while that Man was with Dr. Oliver Plunket, and other Jesuits, I did officiate in his Place, and he sent his Letters to me to raise 40s. and 20s. a time, several times.

L. C. J. You yourself?—Duffy. Yes.

Mr. Att. Gen. What for?

Duffy. It was to send to Dr. who was at Rome.

Mr. Att. Gen. Did you send any Money that you know of?

Duffy. Yes.

Mr. Att. Gen. Tell what Time you gave the Money yourself?

Duffy. In 73, 74, 75.

Mr. Att. Gen. Where?—Duffy. At his own Dwelling Place at

Mr. Just. Jones. Of what Quality was the Prisoner amongst you?

Duffy. He was Primate of all Ireland.

Mr. Just. Jones. Under whom?—Duffy. Under whom? under the Pope.

Mr. Just. Jones. How do you know he was so?

Duffy. We had it in his Writings.

L. C. J. Did he stile himself so in his Letters?

Duffy. Yes, if he writ but to the least Man in the Country, he would write, *Oliverus Armicanus, Primas totius Hiberniæ*.

L. C. J. And so you always understood him?—Duffy. Yes.

Mr. Att. Gen. Were you present at any of the general Consultations or Meetings?—Duffy. Yes, I was.

Mr. Att. Gen. What Number might meet at that Time?

Duffy. Five hundred Men and Women.

Mr. Att. Gen. Where was this?—Duffy. At Clonds.

Mr. Att. Gen. What was the Occasion and Design of that Meeting?

Duffy. Confirmation from the Bishop.

Mr. Att. Gen. And what was done there besides?

Duffy. The second Thing was, that the Gentlemen of the three Counties should conclude together about this Matter.

L. C. J. About what?

Duffy. About joining the French and Spanish together.

Mr. Justice Dolben. Where was that Meeting?

Duffy. In the County of Monaghan.

Mr. Just. Dolben. Was the Prisoner there?

Duffy. Yes, he was the chief Man.

L. C. J. When was this?—Duffy. In 71, to the best of my Knowledge.

Mr. Just. Dolben. Were you there yourself?—Duffy. Yes.

Mr. Att. Gen. What was the Transaction of that Day, besides the Sacrament of Confirmation?

Duffy. It was agreed that the Gentry of Armagh, Monaghan, and Connaught, should join together; and then they went into a private Council to get a List of all the Officers that were in the last Rebellion, and those that lost their Estates.

Mr. Att. Gen. How do you know that? Did you go into the Consult?

Duffy. Yes, I was in the same Consult myself, and was as willing to proceed in the Matter as any one in the World.

L. C. J. Where was this?

Duffy. Within two Miles of Clonds, at one Father House.

L. C. J. Was that at the Time when there were so many Persons met? Pray speak again what was done there besides Confirmation?

Duffy. Why they were withdrawn aside into a Garden, some stood up, and some sat down: And Oliver Plunket stood in the middle of them all as a Prelate, and every one kneeled down before him and kissed his Hand.

Mr. Att. Gen. What was then said?

Duffy. Then they did consult and gave special Order to some of them to get a List of all the Officers in the late Rebellion, and that lost their Estates, and that they should be more forward than others to proceed in that wicked Design.

L. C. J. What was that Design?

Duffy. To destroy all the Protestants together.

Mr. Att. Gen. Was it to mingle the Irish, and Spanish, and French Army together?—Duffy. Yes, it was.

Mr. Att. Gen. Did you hear the Prisoner speak about it?—Duffy. Yes, and he made a Speech before them concerning our own Faith and Religion.

Mr. Att. Gen. Was there any mention of Money at that Time?

Duffy. It was, that every Man of them that could dispose of Money should provide some for those Gentlemen that would soon come into Ireland.

Mr. Serj. Mayn. Who were those Gentlemen?

Duffy. The French Army and the Spanish Army together.

Mr. Att. Gen. Were you at any other Meeting?—Duffy. No.

Mr. Att. Gen. After he was taken, do you know of any Order he sent out to gather Money?—Duffy. Yes, at the Affizes of Dalkiath, I think it is June two Years ago he was apprehended—

Mr. Att. Gen. Indeed he was first apprehended as a very busy Papist.

Duffy. I have seen two or three several Orders to raise Money, for the same purpose; and that it was the only Time to bring the Matter to an end when he lay in Gaol himself.

Mr. Att. Gen. Was that the effect of the Letter?

Duffy. Yes; and that the French and Spanish Kings should take Advantage that now was offered whilst he was in Prison.

Mr. Just. Jones. You say some Money was sent to Dr. Cray?

Duffy. Yes.

Mr. Just. Jones. To what End?—Duffy. To comply with this Design.

Mr. Just. Jones. Where was that Dr. Cray?

Duffy. He was at Rome, he was made a Bishop there.

Mr. Att. Gen. Who employed him there?

Duffy. This Man employed him always.

L. C. J. What was his Name?

Dr.



Duffy. *Cray.*  
 Mr. Just. Jones. You say some of the Priests paid 20, some 40?  
 Duffy. Yes.  
 Mr. Just. Jones. Did the Lay-Gentry agree to pay nothing?  
 Duffy. I don't know for the Gentry.  
 L. C. J. But I think you paid something yourself?  
 Duffy. Yes, I paid for two or three Years myself.  
 L. C. J. And that was for the Design?  
 Duffy. Yes, for the French and Spanish Army, and all the Purposes together.  
 Mr. Att. Gen. What do you know of any Precept to be given in of all Sorts of Persons of such an Age?  
 Duffy. I gave a List of the Age of every Person from 16 to 60.  
 Mr. Att. Gen. By whose Order?—Duffy. By his Order.  
 Mr. Serj. Jeff. To whom did you give it?—Duffy. To Dr. Plunket.  
 Mr. Serj. Jeff. That is, to the Prisoner?  
 Duffy. Yes, out of my own Precinct.  
 Mr. Att. Gen. Had you any Order from him?  
 Duffy. Yes, it was directed to the Parish-Priest; and I, being Curate in his Place, received the Order.  
 Sir Fra. Withens. To what Purpose was it?  
 Duffy. To know what Men in Ireland were able to bear Arms.  
 Mr. Just. Jones. What was the Number contained in your List?  
 Duffy. 250.  
 Mr. Just. Jones. What, in one Parish?—Duffy. Yes.  
 Mr. Serj. Jeff. What was the Parish's Name?—Duffy. *Coghan.*  
 Mr. Att. Gen. Do you know any thing of his going to view the Ports?  
 Duffy. I accompanied him to *Carlingford.*  
 Mr. Att. Gen. Did you?—Duffy. Yes, in Person I did.  
 Mr. Serj. Jeff. What did he say?  
 Duffy. He went round about the Place where some of the Custom-ships come in; there was a great Castle there near the Sea, and he went to view the Place, and could not get a Boat: And there was a great Talk of *Carlingford* to be one of the best Havens in Ireland; there was no great Garrison at the Place, and any Ship might come to the Gates of the Town, and surprize it, being a little Town.  
 Mr. Att. Gen. What did he conclude upon that?  
 Duffy. That he might get the French Army to land safely there.  
 Mr. Att. Gen. What do you know of delivering any Ammunition and Arms?  
 Duffy. He did send some of this Money to get Ammunition into Ireland.  
 Plunket. You say you were Murfey's Curate: Can you shew me such Institution as you say came to you to raise Money?  
 Duffy. I could have brought them, but thought it needless.  
 Plunket. Can you name any other Person I received Money from?  
 Duffy. I have seen your Paper of the County of *Monaghan.*  
 Plunket. Have you seen any of them pay any Money?  
 Duffy. Yes, I have seen twenty of them pay Money.  
 Mr. Just. Dolben. Why, you are acquainted with this Man, are you not Mr. Plunket?  
 Plunket. My Lord, I believe I have seen him.  
 Mr. Just. Dolben. Don't you know he was Chaplain to Bishop Duffy?  
 Plunket. No, I never was in his Company.  
 Mr. Serj. Jeff. Pray tell him what Time of the Year it was that you were at *Carlingford*?  
 Duffy. It was at the End of the Year 77, and the Beginning of the Year 78.  
 Mr. Att. Gen. Pray, if you can recollect, was you once, or twice, or twenty Times in his Company?  
 Duffy. As I am a Christian, I have been an hundred Times in his Company. And when you were creating Priests, you would always send for me to be present; and I wonder how the Man should forget himself.  
 Plunket. I do not say I have not seen him, or that I am a Stranger to the Man; but in the Company of Bishop Duffy I never saw him, nor I ever sent him Orders to pay any Money; and if he did pay any Money, he might shew the Order.  
 Mr. Serj. Jeff. If he did pay any Money, you did ill to take it.  
 Mr. Att. Gen. Pray let him have fair Play to ask any Questions.  
 Mr. Sol. Gen. Tell how you came to remember that you saw him at Sir Nich. Plunket's.  
 Duffy. Dr. Duffy did send me to Sir Nicholas Plunket's, and I met Dr. Plunket as I was coming out of the City. I had been half a Year at the Spanish Ambassador's, and he sent me for Ireland again, and then I lived at the Convent in *Dublin*; and then, when I knew that he would come to Town, I went to *Ring's-End*, where the Ships came in, to meet him.  
 Plunket. You say you were with him at my House.—Duffy. Yes.  
 Plunket. If you were, you were invisible: But I ask you, Why did not you tell this to some Justice of the Peace?  
 Mr. Just. Dolben. Good Mr. Plunket, he tells you, he was as willing to forward it then as you.  
 L. C. J. How came you now to change your Mind?  
 Duffy. I went into France in 77, and I was not there a Year altogether; but when I have seen how the poor People there are brought into such Slavery by the French King, I thought of it, and had rather the Devil should reign over us, than the Frenchman.  
 Mr. Just. Dolben. He gives you a very good rational Account why.  
 Duffy. I have been at Sir Nicholas Plunket's, and Dr. Patrick Plunket's, where there fell some Variance about something this Man had done to Father Duffy. Says Bishop Duffy, I might have had you drawn and quartered, if I were as ill a Man as you; and I might have been Primate of Ireland, if I could have undertaken those Things that you undertook. Upon that, says Sir Nicholas Plunket, What is that? Why, it was said, it was to raise 60000 Men in Ireland at any Time whenever the French or the Spanish King should wage War with England, Scotland, or Ireland. And this Man did confess before my Face to Father Duffy, that it was not only to exalt himself, but all the Romish Clergy, and all the Gentry that had lost their Estates.  
 Plunket. Mr. Duffy, one Word with you: Is not this out of Malice to me, for correcting some of the Clergy?

Duffy. You had nothing to do with me, for I was a Friar.  
 Mr. Att. Gen. Swear Edmund Murfey (which was done.) Tell your whole Knowledge of Dr. Plunket and the Irish Plot.  
 Murfey. May it please you, my Lord, I was one of the first Discoverers of this Plot; but of nine Witnesses, I have but one in Town.  
 L. C. J. Well, tell your own Knowledge.  
 Murfey. Now I beg your Lordship, as to Dr. Plunket, that you will respite it till next Term; I could bring ten Witnesses.  
 Mr. Att. Gen. Do you speak your own Evidence?  
 Murfey. I refer it to the King and Council, what Evidence I have given.  
 L. C. J. Do not trouble yourself, be directed a little: You are here now to speak what you know concerning any Treasons, or any other Matters against the King, done by Dr. Plunket; speak your own Knowledge, for as to other Witnesses we do not call you.  
 Murfey. If I be called in question for this Evidence—  
 Mr. Att. Gen. Come, Sir, you have been at the Spanish Ambassador's lately, answer my Question; have you ever been with Plunket in Ireland?  
 Murfey. Yes, Sir.  
 Mr. Att. Gen. Have you ever heard him own himself Primate of Ireland?  
 Murfey. Yes, Titular Primate.  
 Mr. Att. Gen. Under whom did he claim that Authority? Under the King, or under the Pope?  
 Murfey. I think he could not be under the King at all.  
 Mr. Att. Gen. Under whom then?  
 Murfey. It must be either the King or the Pope.  
 L. C. J. Answer me directly, did he claim to be Titular Primate under the Pope?—Murfey. I suppose he did.  
 L. C. J. Was he reputed generally so to be?—Murfey. Yes, my Lord.  
 Mr. Att. Gen. Mr. Murfey, remember what you swore before the Grand Jury: pray recollect yourself whether that be true, and tell all.  
 L. C. J. You are upon your Oath, you must speak the Truth, and the whole Truth; you must not mince or conceal any Thing.  
 Mr. Serj. Jeff. Were you sworn before the Grand Jury?  
 Murfey. I was sworn before the King and Parliament.  
 Mr. Serj. Jeff. Did you give in any Evidence to the Grand Jury?  
 Murfey. Yes, I did.  
 Mr. Serj. Jeff. Was that you swore before the Grand Jury true, upon your Oath?—Murfey. I can't say but it was.  
 Mr. Serj. Jeff. Repeat it; tell my Lord and the Jury what it was, and tell the Truth.—Murfey. I have forgot it.  
 Mr. Att. Gen. Why then, I would ask you a little; you remember, I was by, and 'tis no laughing Matter, Mr. Murfey, you will find it so. What do you know of any Orders issued out by Mr. Plunket to raise Money from the Priests?  
 Murfey. I know there were Orders, and I took the Orders myself in my Hand.  
 Mr. Att. Gen. From whom had you those Orders?  
 Murfey. From another, and not from him.  
 Mr. Att. Gen. Under whose Hand were those Orders?  
 Murfey. They were from the Primate.  
 Mr. Att. Gen. Did you see any Order under Plunket's Hand for raising of Money?  
 Murfey. No, but under the Vicar-General's, by his Authority, as I suppose.  
 Mr. Att. Gen. Upon your Oath, did you not swear before the Grand Jury, that you saw the Orders under his Hand?  
 Murfey. No, I did not, or I was mistaken, for it was only by his Direction.  
 Mr. Att. Gen. Pray had you any Converse with Oliver Plunket about the raising of Money?  
 Murfey. Oliver Plunket about the raising of Money?  
 Mr. Att. Gen. Yes, that is a plain Question.  
 Murfey. It was about other Matters I conversed with him.  
 Mr. Att. Gen. But did you converse with him about Money?  
 Murfey. No, not about the Money.  
 Mr. Att. Gen. Upon your Oath, did you converse with him about bringing in the French?  
 Mr. Serj. Jeff. Declare the Truth, come.  
 L. C. J. Come, don't trifle; what Discourse have you had with the Prisoner about raising of Money, or bringing in the French? Either of them, Sir?  
 Murfey. I know this, if the Duke of York and Duke of Ormond had proceeded according to their Intentions, it was a general Expectation at the same Time, that all the French and Irish would come and fall upon the English Nation, as I understood.  
 L. C. J. Pray answer the Question directly: You must not come and think to trifle with the Court, you must speak the Truth, you are sworn to it; you must not come to quibble and run about to this, and that, and t'other, but answer directly, have you had any Discourse with the Prisoner about Orders for raising of Money in Ireland?  
 Murfey. Yes, I have seen Orders from his Vicar-General for the raising of Money.  
 L. C. J. Hath he owned them to be by his Direction?  
 Murfey. Not before me, but others he has.  
 Mr. Att. Gen. Have you seen any Money paid to him?  
 Murfey. To whom?  
 Mr. Att. Gen. To Plunket.  
 Murfey. To the Vicar-General I have.  
 L. C. J. But to Plunket?—Murfey. None to Plunket.  
 L. C. J. Have you had any Discourse with him at any Time about the raising of Money, which the Vicar-General gave Order for?  
 Murfey. I have had Discourse with the Vicar-General.  
 L. C. J. Sir, don't trifle; have you had any with him?  
 Murfey. With him?  
 L. C. J. Yes, with him.  
 Murfey. Yes, I have had some Discourse with him.  
 L. C. J. Tell me what Discourse this was?  
 Murfey. I think it was about this: If the D. of York and the D. of Mon-



Monmouth fell out together, that he had some Men to raise about the Matter, and if the D. of Monmouth would raise the Protestant Religion—

Mr. Att. Gen. You see he hath been in Spanish Hands.

L. C. J. Were you a Protestant, Sir?—Mursey. No, I am a Priest.

Mr. Serj. Jeff. He is to seek yet.

Mursey. I am indifferent whether I be a Protestant or Priest.

Mr. Att. Gen. My Lord, he is a Priest in Orders, and so hath acknowledged himself.

Mursey. Yes, I am a Priest, but it makes me forget myself to see so many Evidences to come in, that never knew Plunket.

L. C. J. Sir, you refuse to answer those Questions that we put to you here.

Mursey. What I said before the Parliament, I answer punctually.

L. C. J. You are asked Questions here, and produced as a Witness, will you answer directly, or not?—Mursey. Yes, I will.

L. C. J. Then let me hear what Discourse you had with the Primate Plunket concerning any Money raised by him or his Vicar-General.

Mursey. May it please your Lordship, first of all, I did not impeach Primate Plunket, but the Officers and Justices of the Peace.

Mr. Just. Jones. Had you any Discourse with him, yea or no?

Mursey. That he should find so many Catholics in Ireland, if the D. of York and the D. of Monmouth fell out.

Mr. Just. Jones. Why, it plainly appears what you drove at at first, to put off this Trial if you could.

L. C. J. The Papists in England have been at Work with you.

Mr. Serj. Jeff. I perceived this Gentleman was very busy, looking upon his Hat, I desire he may be searched, if he have no Paper about him.

Mr. Att. Gen. Mr. Solicitor and myself heard the Evidence he gave to the Grand Jury.

Then he went out of the Court, and would scarce be persuaded to come back again.

Mr. Att. Gen. We both heard him, and he gave the fullest Evidence, much fuller to all Instances and Particulars of this High-Treason, much fuller than Duffy, to the Grand Jury. Afterwards, about three Weeks ago, the Trial coming on, he ran away and lay hid; I took a great Deal of Pains to find him out, and sent Messengers about; at last I heard he was got to the Spanish Ambassador's, I sent, and they spied him in the Chapel; but the Spanish Ambassador's Servants fell upon the Messengers and beat them, the Ambassador was first sent to about it, and his Excellency promised that he should be brought, and when he was found, he told me but the last Night, that all he had sworn before the Grand Jury was true, and he was ready to make it out again.

L. C. J. And now he says, he knows not what he said then; pray take Notice of that.

Mursey. I told the Grand Jury this, that my Lord Plunket had a Design to get 60 or 70,000 Men in Ireland, if the D. of York and the D. of Monmouth should fall out.

Mr. Att. Gen. Did you tell a Word of that to the Grand Jury?

Mursey. Yes, Sir, or I was mistaken.

Mr. Att. Gen. Not one Word of that did he then say.

L. C. J. Do you own this Man, Dr. Plunket, to be of your Religion?

Mr. Serj. Jeff. Do you know this Seeker?

Plunket. He says himself he is indifferent to be a Protestant or a Papist.

Mr. Serj. Jeff. I will only try you by one Question more, for you are fought out, and it may be you may be found: Do you know how many Men he was to raise in Ireland? remember what you said to the Grand Jury.—Mursey. 70000 Men.

L. C. J. What were they to do?

Mursey. For establishing if Occasion should be—

Mr. Serj. Jeff. Establishing, establishing what?

Mursey. Of the Romish Religion.

Mr. Serj. Jeff. Well, so far we have got 70000 Men to establish the Romish Religion: What, was Plunket to do this?

Mursey. As far as I understood.

Mr. Just. Jones. And you understood it by himself?

Mursey. I received Letters from the Vicar-General to get so much Money collected, and as soon as I got the Letters to my Hands, I sent them to a Privy Councillor.

L. C. J. Do you not know that he was engaged to assist the French Army?—Mursey. I do not know that by him, but by others.

Mr. Just. Dolben. Did you ever discourse with him about it?

Mursey. I did discourse with him about several Matters.

Mr. Just. Dolben. About the French Army?—Mursey. Yes.

L. C. J. Do you know that he did endeavour to bring them into Ireland?—Mursey. I had a Correspondence in France at the same Time—

L. C. J. With whom?—Mursey. With one Mac Carty.

L. C. J. And do you know that he had Correspondence in France?

Mursey. Yes, I know that.

Mr. Just. Dolb. With whom had Plunket Correspondence in France?

Mursey. He had Correspondence with Dr. Cray and others in France, as I understood by others.

Mr. Just. Dolb. Was the End of that Correspondence to bring Men from France into Ireland?—Mursey. Yes, so far as I understand.

Mr. Just. Dolb. You understood the Letters when you read them, did you not?

Mursey. I know not how these People come to swear this Business, whether they had not Malice against him—

Mr. Att. Gen. Well, Sir, pray give you your Evidence, we will take Care of the Rest.

Mr. Just. Dolb. I reckon this Man hath given the best Evidence that can be.

L. C. J. Yes, it is Evidence that the Catholics have been tampering with him.

Mr. Serj. Jeff. I desire he may be committed, my Lord, because he hath fenced from the Beginning (Which was done accordingly.)

Mr. Att. Gen. Swear John Mac Legh. (Which was done.)

Sir Fra. Wubens. Tell my Lord and the Jury what you know of any Plot in Ireland to bring in the French.

Mac Legh. I was a Parish Priest in Ireland, in the County of Monaghan,

and Dr. Oliver Plunket received several Sums of Money in Ireland, and especially in the Diocese where I am. I raised some of it, and paid him 40s. at one Time, and 30s. another Time, in the Year (74) I paid him 40s. in the Year (75) I paid him 50s. and it was about July, and it was for the better Advancement of the French coming in.

Mr. Jones. Did he tell you that the Money was to be employed that way? Mac Legh. Yes, that the Money was to be kept for Arms and Ammunition for the Roman Catholics in Ireland.

L. C. J. Before you paid it, did you receive any Order from him? Mac Legh. Yes, I received an Order *sub pena suspensionis*, and there was a publick Order throughout Ireland, or we would not pay it; nay, several would not pay it, and they were to be suspended.

Plunket. Can you shew any of the Orders under my Hand?

Mac Legh. Yes, I can shew them, but only they are afar off, I did not expect to have them asked for.

Plunket. Have you no Superiors of your own? Mac Legh. Yes, but you being Lord Primate, you could suspend Bishops and inferior Clergy together.

Plunket. When was this?—Mac Legh. In the Years (74) and (75.)

Plunket. What is the Reason you kept it so secret all this while? Mac Legh. In the Year (77) I did discover it to one Mr. O-Neal,

whom I sent to Dublin to discover this Plot. I was in France myself, my Lord.

Plunket. How many Years is it since you returned from France? Mac Legh. In May in the Year (78.)

Plunket. Why did you not speak all this while till now? Mac Legh. I did send one Mr. Henry O-Neal to Dublin, for I durst not go, lest I should have been suspended and excommunicated.

Mr. Att. Gen. This is the Priest that Henry O-Neal speaks of.

L. C. J. Is not this a very good Reason? If he had come to Dublin to discover, you would have suspended him.

Plunket. But, my Lord, then he might have shewn my Suspension, and brought me into a Præmunire.

Mr. Serj. Jeff. If you please, Dr. let us who are for the King have done with him first. I would ask you another Question, Sir, were you at one Vicar Brady's House?—Mac Legh. Yes, I was.

Mr. Att. Gen. Tell what was done there.

Mac Legh. There was Bishop Tyrrel came there with 40 Horsemen well mounted and armed, he came into the House about 10 in the Morning, and staid till about 11 at Night, I was very much among them, and was as willing to be of the Plot as themselves.

Mr. Att. Gen. Tell what was done there.

Mac Legh. There Bishop Tyrrel said, that he had Orders from Dr. Oliver Plunket, and others, to partake of the Plot to bring in the French and subvert the Government in Ireland, and destroy the Protestant Religion and the Protestants.

Mr. Att. Gen. Was there an Oath given?

Mac Legh. Yes, they were all put to their Oaths, which they did take willingly to keep it private during their Lives Time, and the Reason was they were to have their Estates during their Lives Time.

Mr. Serj. Jeff. Now tell us when this was?

Mr. Att. Gen. My Lord, Henry O-Neal, and Phelim O-Neal speak to the same Purpose.

Mr. Serj. Jeff. Do you remember whether Henry O-Neal was there? Did he take the Oath of Secrecy?—Mac Legh. Yes.

Mr. Att. Gen. What do you know of any Letters from Plunket?

Mac Legh. In France I landed at Brest, and going through Brittany, I met with Bishop Tyrrel and Dr. Cray, who was my Lord Oliver Plunket's Agent, and Duke John of Great Brittany came into them; for he heard of these two Bishops being newly come out of Rome, sent for them, and I being a Priest of Tyrrel's Diocese, I went along with them, and they were well accepted, and he shewed Dr. Oliver Plunket's Conditions with the King of France, which was this; to get Dublin and London-Derry, and all the Sea-Ports into their own Hands, to levy War and destroy the Protestant Religion, and that they should have him to protect them during his Life-time.

L. C. J. Did you see those Conditions?

Mac Legh. A Copy of them I did, the Governor of Brittany did shew them to the Bishop.

Mr. Serj. Jeff. What Language were those Conditions in?

Mac Legh. They were were in Latin, Sir.

Mr. Serj. Jeff. Was Edmund Mursey put out of the Diocese?

Mac Legh. Not as I know of.

L. C. J. What do you know of his being Primate? Upon what Conditions was he made Primate?

Mac Legh. He was made Primate by the Election of the King of France. And upon his Election, he made those Conditions with the King of France, to raise Men to join with the French, to destroy the Protestant Religion.

Mr. Just. Jones. You know that Man, Dr. Plunket?

Plunket. Yes, my Lord.

Mr. Att. Gen. Will you ask him any Questions?

Plunket. None, but what I asked the others.

Mr. Just. Dolben. Then if that is all, he hath given you a good Answer to that already, he was as forward then as the Rest.

Mr. Att. Gen. Then swear John Moyer. (Which was done.)

Mr. Just. Jones. What do you know concerning any Plot in Ireland, and Dr. Plunket's being in it?

Moyer. I knew him first, my Lord, to be made Primate of Ireland, imagining that he should propagate the Romish Faith in Ireland, and to restore it to the Catholic Government; and I know the Time by Relation, that I came to Rome within two Months after his being made Primate of Ireland, upon the same Conditions that have been related to you; and I was brought into the Convent of St. Francis in Rome, by one Father

and this Father was very intimate with Cardinal Spinola, and when he used to go abroad, he used to carry me along with him as a Companion, and there I found several of the Romish Cardinals say, That the Kingdom of Ireland should come under the Catholic Government by the Way and Means of the Lord Primate Plunket.



Mr. Att. Gen. What do you know of your self?

Moyer. As I was coming then from Rome, I happened to come into a Convent of the Order of St. Francis, and there came out of Ireland a young Gentleman of the Family of the O-Neals, who hath been my Lord Primate's Page.

Plunket. I never had a Page.

Moyer. You termed him so, my Lord, in Ireland, and as I came, this young Man had a Packet of Letters with him, as though they were Commendations to enter him into the College de propaganda fide, directed to the Secretary of that College. And thinking them to be Letters of Recommendation, an old Father, called one Thomas Crawley, and I, thought it not prejudicial to open the Seal; and the Contents were these, I translated them five Years ago, and here are the Contents following, if you please, they may be read, I will do my best to read them in English, the Original were in Latin, and some Phrases in Italian. And when I was surprised by Mr. Murfey the last Year, and taken suddenly, all my Papers were taken away before I could return back again, by the Soldiers and the Tories. I only kept a Copy of this Letter I had in English as near as I could, and if I did not diminish any thing by the Translation, upon the Oath I have taken, I have not put any thing in it, but what the Contents of the Letter were.

L. C. J. Was that Letter under his own Hand?

Moyer. My Lord cannot deny that.

Plunket. Do you know my own Hand-writing?

Moyer. Does your Lordship deny that I know your Hand?

Plunket. Pray Sir, will you answer it?

Moyer. Yes, I do very well.

Plunket. When did you leave Ireland?

Moyer. I will tell you that, my Lord, 'tis some 14 or 15 Years ago.

Mr. Serj. Jeff. You were giving an Account of the Letter, read it.

Moyer. Here is the Contents, *Illustrissime Domine*; It was directed to Signior who is now Secretary of the College de propaganda fide. (So then he read his Paper.)

Mr. Sol. Gen. You say, you translated that out of a Letter under the Prisoner's own Hand?

Moyer. Yes, I translated it immediately, and to prove it, I have Statutes which his Lordship made in the general National Council, which are under your own Hand, my Lord.

Mr. Sol. Gen. When did you make this Translation?

Moyer. Five Years ago.

Mr. Sol. Gen. Where did you make it?

Moyer. I made it out of the Original in Ireland.

Mr. Sol. Gen. Where is the Original?

Moyer. When I was taken by Mr. Murfey and Mr. Hetherington the last Year, the Soldiers and Tories came and took them away, with other Papers I had of the same Business.

L. C. J. Was the Paper you translated from, of his Hand-writing?

Moyer. No, my Lord, the Paper I took this out of, was a Copy of the Original.

L. C. J. Was the Original of his Hand-writing?

Moyer. Yes, it was.

L. C. J. When did you take it?

Moyer. In Caprennica, where I met with my Lord's Page.

L. C. J. What made you take a Copy of it?

Moyer. It was in Latin and Italian, and I translated it afterwards.

L. C. J. And the English Father, you say, made bold to open it?

Moyer. Yes, because he thought 'twas a Letter of Recommendations; but the Original of the Statutes made at Clouds, I did take the Original, and gave a Copy to the Page.

L. C. J. Have you the Original here?

Moyer. Yes, my Lord, under his own Hand.

Plunket. That's another thing.

L. C. J. But we would know that other thing.

Mr. Serj. Jefferies. My Lord, I desire that he would produce it, 'tis his own Hand-writing; see whether his Grace can deny it.

Moyer. The signing of it is his own Hand-writing, I got the Writing along with the Letter, and thinking to have a Copy of the one, as well as of the other; it was the Statutes I got, and I never knew I had them till I was in Madrid in Spain.

Then the Paper was shewn to the Prisoner.

Plunket. My Lord, 'tis my Hand.

Moyer. Indeed, my Lord, it is your own Hand.

Mr. Serj. Jefferies. He owns it.

Moyer. And there is an Order in those Statutes, wherein Ireland was bound to send so much Money to Rome, upon such a Design.

Then the Witnesses read the Title in Latin.

Mr. Just. Dolben. Look out that Clause for the raising of the Money.

Moyer. My Lord, 'tis that I look for. *Cum tot. Clero in Hibernia necessarium sit.*

Mr. Just. Dolben. That is but *negotia* generally.

Mr. Serj. Maynard. That was to solicit their Affairs.

Mr. Att. Gen. 'Tis 500*l.* in the whole.

Plunket. Is it 500*l.*?

Moyer. 'Tis in Figures a 5 and two (00.)

Plunket. My Lord, this is counterfeit, 'tis put in by other Ink.

Mr. Just. Dolben. Like enough so.

L. C. J. Nothing more ordinary, you leave a Blank for the Sum, and then, may be, you put it in with other Ink.

Mr. Just. Dolben. How much do you say was the Money, Dr. Plunket?

Plunket. My Lord, every Agent that is kept at Rome hath a Maintenance, as all Countries have their Agents at Rome.

Mr. Just. Dolben. How much was it?

Plunket. It was 50*l.* a Year.

L. C. J. Look you, Mr. Plunket, consider with yourself, 50 or 500 in his Case is not 5 Farthings Difference, but the Money was to be raised by your Order.

Plunket. Ay, but whether it was not raised to this Effect. There is never a Nation where the Roman Catholick Religion is professed, but hath an Agent for their Spiritual Affairs at Rome, and this was for the Spiritual Affairs of the Clergy of Ireland.

Mr. Serj. Jefferies. And the Letter was for Spiritual Affairs too, was it not?

Plunket. I desire nothing, that is a Truth, every Nation hath an Agent, and that Agent must be maintained; and the Reason is this, because we

VOL. III.

have many Colleges beyond Sea, and so there is no Country of Rome Catholicks but hath an Agent in Rome.

L. C. J. You had better reserve yourself till by-and-by, to answer that and the Letter together; for this is but a small Part of the Evidence.

Mr. Att. Gen. About this Letter you were speaking of, pray, will you tell what fell out about it?

Moyer. I will tell you how it fell out afterwards. Then I came along into Marseilles in France, and there were two Captains that had as much Notice as I had in that Letter, for they were discoursing, that they would advance themselves in the French King's Service, and hoped, that by the King of France's Help to have the Roman Catholick Faith set up in their own Country; why, that Discourse passed off, for I was mightily afraid of any such thing, because I was of another Opinion; for perhaps I might think the Roman Catholick Faith would flourish as well as ever it did, and hoped so as well as any body else, but not by the Sword. As I came to Madrid, there came one Hugh O'Donnell, Son to O'Donnell, with

Letters of Recommendation, and those Letters were to intitle the young Man Earl of Tyrone; and likewise that his Majesty, the King of Spain, should help him for Ireland, according to the Form of the Letters he had. And then as I came for Ireland, speedily after there came Letters of Recommendation to me, that I should present myself to my Lord Primate, to hear Confessions, and be heard Preach. I came to his Lordship at his own House the 9th of December (74,) and there he kept me several Hours, and approved me; and the Copy of the Approbation I have to shew. And after a long Dispute we went aside, and went to look Father Patrick, and there he shewed me such and such things. And after a long Discourse I told my Lord Primate, I saw your Lordship's Letter, which you sent by young O-Neal, in such a Place, and he shewed me the Contents of it, and said, Ay, my Lord, 'tis a good Intention and Design, if it can be done without Bloodshed: Then my Lord mused a little, and he said, Well Father Francis (which is my Name in Religion; my Christian Name was John) pray will you keep it Secret? Well, my Lord, said I, you need not fear; for said he, whatever I have done herein was not for my own good, but for the publick good of the Catholicks. Well, said I, 'tis well. Then he does commend me into the Parish of where this Mr.

Murfey here was to put in a Bull, that I had from my Lord Primate, which Bull was brought here last Year; and there he proffered me high Promotions, if I would further such Things, and solicit such Gentlemen as I knew would be private in such a Business, such as were old Commanders among my Friends and Relations. Shortly after this I saw Plunket and Bishop Tyrrel, and Captain Con O-Neal, practising to bring Soldiers ready for Ireland, as soon as they could get Opportunity. This Captain Con O-Neal coming to the Place where we kept our Priory, and he and his Brothers were Sons to General O-Neal. And there Captain Con comes in the Night-time and lodges with us, and discoursed with his Brother and I, because I was his Companion beyond Sea, about these matters, That he expected my Lord Primate and Bishop Tyrrel's coming thither that Night, to make some Proposals about the Church and other Affairs. After 10 o'Clock, or thereabouts, my Lord Primate and Bishop Tyrrel came, with others in their Company, and there they and Father O-Neal did consult amongst themselves, that they should send Captain Con to France and to Barcelona with such and such Instruments; and sending those Instruments away, Captain Con departs the Country, and goes for France soon after; and speedily my Lord Primate undertook, that he and Bishop Tyrrel should view Munster and Ulster, and other Parts of Ireland, to see how Affairs stood. Soon after my Lord Primate calls a General Provincial Council, and sends out his Orders to levy such and such Taxes and Subsidies, and Warrants, to all the Parish Priests, that they should give them new Lists, to know whether the Numbers they had sent to Rome before, would comply with that List. And then O-Neal went to view the Forts of Charlemont and Dun-Gannon, whilst those Lords did collect the Money: The Orders I have seen with my own proper Eyes, and his own Man confessed before the Council in Ireland, that my Lord gave them under his Hand.

Mr. Serj. Jeff. What Year was this?

Moyer. It was in (76) to the best of my Remembrance.

L. C. J. Look you, Sir, was this at a Provincial Meeting?

Moyer. Yes, my Lord, a general national Council, to send over Instruments, to tell them, that they were ready to assist any foreign Army that should help on the Design.

L. C. J. And to raise Money?

Moyer. Yes, my Lord.

Mr. Just. Dolben. Have you paid him any Money?

Moyer. I was exempted myself, but I have seen others.

Mr. Just. Dolben. How many?

Moyer. I believe 30.

Mr. Just. Dolben. It was not a secret Thing then, but openly done by them.

Moyer. Yes, I saw them when they came with Orders, there were four Priests, and they had a great Cloak-bag going with Orders up and down.

Mr. Serj. Jeff. Why were you exempted?

Moyer. Because I am a regular Priest.

Sir Fra. Withens. You say you saw the Orders for raising Money, how do you know for what it was to be employed?

Moyer. It was there specified down.

Plunket. Can you shew any of the Orders?

Moyer. I could not take them, they did not concern me.

Sir Fra. Withens. How was it specified?

Moyer. To levy so much Money per Priest. I cannot remember the particular Sum; but that every Priest should give so much towards an Agent in Rome to solicit their Business, and forward it.

L. C. J. What Year was it?

Moyer. (76).

L. C. J. Was any of the Money specified for raising an Army, or bringing in the French?

Moyer. It was both for the Agent and to summon a national Council, to get Things ready prepared to entertain and accept the French Army when it should come. I am not so good in expressing myself in English.

L. C. J. Your Sense is good, 'tis no matter for your Expression.

Mr. Jones. What more do you know?

Moyer. I know that he had the same Council, and that they did agree upon the Business, and this I know by one Patrick Bourne, and I being

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willing that this wicked Action should be hindered, sent to the next Justice to discharge myself of it, which Justice was as favourable to the Business as my Lord himself was.

L. C. J. Will you ask him any Questions, Mr. Plunket?

Plunket. I desire to know when he left Ireland.

Moyer. I cannot tell how to number the Years, but I think it was in 62 or 63, to the best of my Remembrance it was 16 or 17 Years ago.

Plunket. When did you return?

Moyer. I came back in 74, you know it, my Lord.

Plunket. Very well, when did you see the Letter with the young Man in Caprennica?

Moyer. In (72.)

Plunket. How then did you know my Hand, which you had never seen?

Moyer. I have seen it several times to several Instruments to Seignior and I have seen several other Letters of your Hand.

Plunket. How did you know my Hand?

Moyer. I cannot positively say I then knew your Hand, but according to Relation, I heard it from those Cardinals I conversed with at Rome.

L. C. J. But now you are acquainted with his Hand, is it the same Hand which you have seen up and down in Writings with his Name to?

Moyer. Yes, my Lord, it is the very same Hand.

Mr. Serj. Jeff. I ask you, Sir, when you came back again and told him you had seen such a Letter under his Hand with *O-Neal*, did he own it to you?

Moyer. Yes, he did own it, and that he did not do it for his own benefit, but for the publick.

Mr. Serj. Jeff. Did he desire you to be secret?

Moyer. Yes, he did, and to be discreet, and he would see me highly promoted. And, my Lord, you sent Proposals to me, to give me 100 l. that I should not prosecute you, according as they told me, and they gave me one Guinea in Hand for it.

L. C. J. Some of it came to the Hands of *Murfey*, I believe.

Plunket. My Lord, I cannot say any thing to this, my Hands are tied, because my Witnesses are not here. My Lord, if I had my Witnesses and Records, I did not care for all these Witnesses.

L. C. J. But you know, you had Time to bring them.

Plunket. My Lord, I desire to know whether this be his Hand (shewing the Paper to Mr. Moyer.)

Moyer. Yes, I believe it is.

Plunket. I desire it may be read.

Moyer. Yes, I am very well satisfied it should.

Cl. of Cr. reads. For my Reverend Father *Anthony* Guardian of *Armagh*, Your Letter and Citation—'Tis dated in *July* (78.)

Plunket. He can best read it himself.

Cl. of Cr. Read it right (the Paper being delivered him.)

Moyer. My Lord, I pity him with all my Heart, that a Man of my own Function should be brought into Question for such things as these are, (he reads) Very Reverend Father Guardian, 'tis dated 1 *July* (78) Your Paternity's paternal Letter and Citation homeward, I did instantly peruse. As for my Lord *Oliver Plunket*, I wrote a Letter to him the Day before I saw your Reverence last, that he might cause my Fame, which is as dear to me as my Life, to be recalled, or I should cause his Name to be fixed at every publick Place, which by the Almighty I will do, Nature and all Reason compelling me to do it.

Plunket. My Lord, I say this, he says he came to my House when he came over, and I imparted this Secret to him, yet you see I had denounced him throughout my whole Diocese, and he here calls me by all those Names of *Elymas*, *Simon Magus*, and *Barjesus*, and 'tis impossible, if I had communicated such a Secret to him, that I would deal so with him.

Mr. Just. Dolben. He does not say, you imparted this Secret to him; but he says, when he told you of the Letter, you answered him, but you seemed surprised and amused first.

L. C. J. You seemed to flatter him then, and told him you hoped to see him the best of his Order, highly promoted.

Mr. Just. Dolben. How came you to fall out, Moyer?

Moyer. When first they had this Meeting at *Brantry*, seeing a Cloud a-coming, and dreading a War, and the Consequences of it, I went and applied myself to Sir *Hamilton*, one of his Majesty's Privy Councillors in Ireland, and I gave in all my Informations the 7th December (76.)

Mr. Just. Dolben. And thereupon he denounced you excommunicate?

Moyer. Yes, and afterwards, when he saw I was in Communication and familiar with these Privy Councillors, then he was certain I had discovered the Matter, and then he got a great many Devices to get the Letters out of my Hand.

Plunket. You shall see under his own Hand all the Stratagem of this, if I had my Witnesses here, you should then see under his own Hand, upon what Account he fell out with me. Pray, my Lord, ask him if this other Letter be his Hand.

Moyer. I believe it is my own Hand.

L. C. J. Read it.

Moyer. (Reads) Very Reverend Father Guardian (then speaking) My Lord, you know that I was loth to discover myself, being among People knowing of the Plot.

L. C. J. Well, read it over.

Moyer. (Reads) The 23d of *April*, (78) I was somewhat comforted by your Letter. But now I hope your Reverence hath considered what Wrong I have sustained, by my envious Adversaries Calumnies, only for standing, as I have a Soul to save, for your Rights and Privileges, as also for endeavouring to hinder my native Country's Ruin and Destruction.

Mr. Just. Dolben. Read that again (which he did.)

Plunket. Observe, that I was his Adversary, for standing for the Rights and Privileges of the Friers.

Mr. Just. Dolben. As also for endeavouring to hinder his Country's Ruin and Destruction.

L. C. J. The one and the other were the Reason of your falling out.

Moyer. (Reads on)

Moyer. My Lord, I was, I confess, a begging Frier, and stood up for the Privileges of the Friers.

Plunket. Did you write any Process to Rome against me?

Moyer. No, I never did.

Plunket. My Lord, does not he say I was in Disgrace at Rome?

Moyer. No, nothing of that.

L. C. J. I don't hear it, but what if he did? what is that to the Purpose?

Plunket. To shew his Contradictions; now he says, I was great in Rome, and but then in his Letter he says, I was in Disgrace at Rome. Now he says, all that he had against me, was for his Friers, and to hinder the Destruction of his Country, because I hindered the Friers to beg there, is the Destruction of the Country, as he was doing there. Upon that he fell out with me, and upon that his own Superiors sent this Order.

L. C. J. We can't meddle with your Superiors Orders; they are nothing before us.

Mr. Serj. Jeff. My Lord, I think, for the present we have done our Evidence.

Plunket. My Lord, to shew what was part of the falling out, I would ask him if he was indicted for any Crime, and found Guilty by a Jury?

Moyer. That was for discovering, for I discovered it before.

Plunket. My Lord, he confesses he was Convict for giving Powder and Shot to the Rebels.

Mr. Just. Dolben. No, he does not say so; produce the Record, if you have any such thing.

Moyer. To satisfy the Court.

Mr. Serj. Jeff. Look you, Dr. Plunket, if you will ask him any Questions, that by Law he is bound to answer, do it in God's Name, we will not interpose; but if you ask him any Questions that may tend to accuse himself, we must tell you, he is not bound to answer them.

Plunket. He hath been convicted and found guilty, he will confess it himself.

L. C. J. He is not bound to answer such a Question.

Moyer. It was a Tory Swore against me, that you did absolve.

Mr. Just. Dolben. Don't tell us a Story of your Tories.

L. C. J. Look you, Mr. Plunket, don't misspend your own Time; for the more you trifle in these things, the less Time you will have for your Defence. I desire you now to consider, and well husband your Time for your Defence; what have you to say for your self?

Plunket. My Lord, I tell you, I have no Way to defend myself, in that I was denied Time to bring over my Records and my Witnesses which are 10 or 12. And if I had them here, I would stand in Defiance of all the World to accuse me; but I have not sufficient Time to bring over my Records and my Witnesses, and I am brought here out of my Native Country; were I in Ireland, there both I and they should be known: But when I was to be tried, they would not appear; and it is all false, and only Malice. These Men used to call me *Oliverus Cromwellus* out of Spite.

Mr. Serj. Maynard. You are very like him, a destroyer of the Government.

Mr. Serj. Jeff. Were not you acquainted with him?

Plunket. This is all I can say, if I had my Witnesses here, I should make my Defence.

L. C. J. Here are some Things, that if you can give an Answer to, you will do well to do it; for they stick close to you. They do testify against you here, that you did undertake to raise a body of Men in Ireland, 70000 Men they speak of, out of your own Nation, and all these were to join with the French, for the introducing the Religion of the *Romish* Church into Ireland, and settling that again there. And that you, in order to this, did take a Survey of all those Roman-Catholics that were able to bear Arms, from 16 to 60; and there is plentiful Evidence, that you did go a Circuit there to peruse all Towns, and see which might be most convenient for the taking in and entertaining the French, and landing their Forces; and *Charlemont*, you did design that for one strong Place to be taken, and *Dun Gannon* for another, and that you did design the French Army to land at *Carlingford*, and all that was with you, tells the Reason you gave, why that should be the Place, that they might come up with a burdened Ship to the very Gates of the Town; that you did, in order to the entertaining these foreign Forces, raise Money; that you did send out your Orders *sub pena suspensionis* to all that were of the Roman Clergy, and that this Money was received, several of them testified that they paid it to you, and this Man hath seen great Numbers of Persons pay Money to you upon these Accounts. All these are Treason: What say you to them? It does import you to consider what Answer you can give.

Plunket. My Lord, first as to the first Point, I answer, that I never received a Farthing of Money out of my own District, and but for my own Livelihood, and that I can prove by those that have received it for me, that I never received over threescore Pound a Year in my Life, unless some Gentleman would now and then give me 10 s. for my Relief. For, my Lord, this is the way in Ireland, every Priest hath so many Families allotted to him, and every Roman Catholic Family gives 2 s. a Year (as they that profess that way, know) and the Priests give me who am Superior over them, in my own District, some 20 s. some 30 s. and I never got so much in my Life as to maintain a Servant, and this was attested before the council in Ireland.

Mr. Just. Dolben. Ay, but the Witnesses say, out of your own District you sent into another Bishop's Diocese to collect Money.

Plunket. My Lord, I say, I could never get so much as to keep a Servant, and till now I never got a Farthing out of my own Diocese unless I have been called to an Arbitration or some such thing, it may be for my Journey and Expences 40 or 50 Miles they would give me something for my Maintenance. If you should find any thing else, I will be content to suffer; and if my Evidence were brought from Ireland there is nothing but what would be made clear, both under their own Hands and by Records, and that is all well known, and was attested in Presence before the Council in Ireland; which threescore Pounds was a very small thing to maintain me, and I never had above one Servant, and the House I lived in was a little thatch'd House, wherein was only a little Room for a Library, which was not seven Foot high, where once the Fellow came to affront me, because I hindered him from begging, that's for the Money. For the Men, I defy any one that ever saw me make a List of Men in my Life, or can produce any List made by my Order. I was never in my Life at *Kingsale*, at *Corke*, at *Dun Gannon*, at *Limerick*, &c. or those Parts of *Munster* which were the chief Ports where the French should come in, and not in *Carlingford*, which is the narrow Sea *Ulster*, which any one that knows the World will judge to be a very proper Place for the French to land in. 'Tis all one as to say that the



should come in at a poor Place, where they could get nothing, it being at the narrow Seas, and they never saw me there in their Lives.

L. C. J. Yes, one does say, he was with you.

Plunket. Well, one does say he saw me there, but if I had my Witnesses here, I could prove he was a Friar, and declared an Apostate by his own Provincial, as this Gentleman is; and because I hindered them to beg in my Districts, therefore they have this Malice against me, that is all. Well, my Lord, that is for that, I was never in my Life in *Connaught*; and they cannot say, I took any Lift in *Ulster*, nor was 12 Miles in *Munster* in my Life. But thus, my Lord, sometimes there would be, as our way is, so many Families assigned to every Priest, (and this is the plain Truth,) this Priest perhaps complains to me of the Inequality, my Companion near me hath 150, and I have but threescore, which I must rectify; though I never knew but one of these Complaints. And if I had my Witnesses from *Ireland* and the Records, I would defy all these Witnesses together. For my sending to *Rome*, I never had an Agent in *Rome* for these seven Years past, because I was not able to maintain him, and indeed it was a great Shame to us; because there is never a Community of Friars, that hath a College beyond Sea, but hath some Agent at *Rome*.

L. C. J. 'Tis a Shame to have one there, not to want one.

Mr. Just. Delben. Well, if you have Witnesses, I cannot tell what to say.

Plunket. If I had gotten but to the latter end of the Term, I had defied them all together. And your Lordship should have seen under their own Hands what they were.

L. C. J. You forget this all this while, your own Letter; wherein this Matter is, that you had searched the Towns and considered it.

Mr. Att. Gen. He does deny there was such a Letter, he does not own there was such a Letter.

Plunket. I, my Lord, I never did write such a Letter. And that young Man that he speaks of, I could prove, if I had my Witnesses, that he never was in my Service or Company in *Ireland*, nor writ any Letters by him.

L. C. J. Did you never send any Letter by one O-Neal?

Plunket. No, my Lord, but he went over a begging.

Moyer. This young Man's Brother-in-Law will testify, that he was your Lordship's Page.

Plunket. I have 3 Witnesses that he came there begging, naked, and was sick three Months, and went over a begging, and was at *Rome* as a Stragler.

Moyer. Call Hanlet, (who came in.)

Sir Fra. Withens. Did you know Neil O-Neal?

Hanlet. Yes.

Sir Fra. Withens. Whose Servant was he?

Hanlet. My Lord Plunket sent him to *Rome*; he was sent there with his Letters, and I saw the young Man and his Letters.

Mr. Jones. Did he come a begging there?

Hanlet. No.

Plunket. Where did you see him?

Hanlet. At *Mantis*.

Plunket. Where is that?

Hanlet. In *France*.

Plunket. And you saw him with my Letters?

Hanlet. Yes.

Plunket. And this Man says, the Letters were opened at *Caprennica*, because he thought they were Letters of Recommendation.

Hanlet. Why, he went that way afterwards, and they were not opened when I saw them.

Mr. Serj. Jefferies. Did you know he was the Doctor's Servant?

Hanlet. Yes, he was.

Plunket. Did you see him in my Service?

Hanlet. I saw him in *Mantis*.

Mr. J. Delben. How do you know he was the Bishop's Servant?

Hanlet. Because he shewed me his Letter.

L. C. J. Was he owned for his Servant, and was he taken for his Servant?

Hanlet. Yes.

Plunket. Did he go on Foot, or on Horse-back?

Hanlet. He went on Foot.

Plunket. He was in a poor Condition in a Place not above four Miles from *Rome*, that I can prove.

L. C. J. Did he beg as he went?

Hanlet. No.

L. C. J. Mr. Plunket, if there is any Question you will ask of the Witnesses; or if there be any Evidence you would give yourself, this is your Time for the doing of it; if not, we must leave your Case to the Jury, who have heard the Evidence all along.

Plunket. Only this, my Lord, your Lordship sees how I am dealt with. First and foremost, I have not Time to bring my Witnesses, or my Records, which if I had, I would not weigh one Farthing to leave my Cause with any Jury in the World. Besides all this, I am brought out of my own native Country, where these Men lived, and I lived, and where my Witnesses and Records are, which would shew what these People are. I sent by the Post, and did all that I could, and what can I say when I have not my Witnesses against these People, that may swear any Thing in the World? You cannot but observe the Improbability of the Thing in itself, and unto what a Condition I am brought. My Lord, my Life is in imminent Danger, because I am brought out of my own Country, where these People would not be believed against me.

Mr. Sol. Gen. My Lord, I think this Matter lies in a narrow Compass, the Evidence hath been long; I would only repeat the short Heads of that which hath been given at large. He is indicted for a Conspiracy to kill the King, the Overt-Act is an Endeavour to introduce a foreign Power into *Ireland*, to raise an Army, and levy War there; and the Proof of it hath been very full. The Proof in general, that there was a Plot to introduce the *French*, is plain by all the Witnesses; and the Proof in particular upon this Person at the Bar, hath been as plain as any Thing can be. They prove to your Lordship in general, that there was an Expectation that the *French* should come in, that there was an Invitation of *Florence Wier* the first Witness, to go over into *France*, and speedily he should have a Command, upon his return, in *Ireland*; that there were Preparations; for this appears by the Oath of Secrecy given to several Men. Forty Men that came along with Bishop *Tyrrel* to keep it private during

their Lives. And there was a farther Proof of that general Conspiracy by *Duffy*, that when there was a general meeting of so many thousand People for Confirmation, there was by the Gentlemen of that Meeting a secret Consultation how to carry on the Design, and how to look out the old Officers in the late Rebellion, and to see what Posture they were in as to the Management of this Design; and this comes now particularly to the Prisoner, who was by at this Consultation, so the Witnesses do tell you. But that that comes nearer to him, is, that he did issue out Orders for the raising of Money, and that he did raise Money pursuant to those Orders, and did receive Money for that very Purpose: This is proved by three Witnesses, *Duffy* and *Mac Legh*, who paid the Money, and by *Moyer* the last Witness, who saw him receive it from several Persons. This is positive upon him; nay, they say farther, that there was a Lift made of the several Men, in the several Parishes, that were able to bear Arms upon occasion, from sixteen to sixty, and there was a Lift of a matter of threescore thousand Men that were ready upon any Occasion to rise for the Purpose, and this Lift was delivered over into the Hands of the Prisoner at the Bar. There is one Witness, *Duffy*, that says farther, that he saw a Letter under his Hand in *France* to the Cardinal *Bouillon*, to invite the *French* King into *Ireland*; and he did wonder that he should spend his Time and Blood in Wars against *Spain*, which was a *Roman* Catholick, and not come into *Ireland* to extirpate the Hereticks. And this Letter is confirmed by another Letter, which was seen by *Moyer*, a Copy of which is produced, which he translated from the Original in *Latin*, and the Letter was sent to *Rome* by *Neil O-Neal*, whom the Prisoner says he had no Concern for, but to give him some Recommendations.

Plunket. I gave him no Recommendations.

L. C. J. No, he says he did not give him any, nor sent any Letter by him.

Mr. Sol. Gen. Then he urged, that he went along begging by the Way; but 'tis proved he was sent by him, and sent with Letters, and that by his Brother-in-Law, who met him at *Mantis*. And 'tis proved by *Moyer*, who saw the Letter opened, taking it to be but a common Letter of Recommendation, he read the Letter and took a Copy of it, and translated that Copy, which Translation is enough to verify all the Matter which the Witnesses have sworn; for 'tis agreeing to what he said of Cardinal *Bouillon* in his other Letter, that it was more proper for the Catholick Princes to agree together and extirpate Heresy, than to vary amongst themselves; that now was the Time; for there were threescore thousand Men ready to rise upon such an Invasion. This is the Substance of the Letter, and this proves fully the Conspiracy this Man was engaged in, his receiving of Money, his lifting Men, and his Invitation of foreign Princes. And this is fully proved.

Mr. Serj. Maynard. And so his viewing the Ports too.

Mr. Sol. Gen. It was likewise agreed that *Carlingford* should be the Port, and 'tis like enough to be the Port, for 'tis a very large Port, that Ships of the greatest Burden may come up to the Town, and the Town itself but a weak Town. This is the Substance of the Evidence, and this is Proof enough, we think, to convict any Man of this Fact.

Mr. Serj. Jeff. My Lord, I shall trouble you but with one Word that hath been omitted. I think 'tis a Cause of great Example, and that Thing which the Prisoner seems to make his Excuse, hath been answered by a Favour and Indulgence from the Court in a very extraordinary Manner. For, in as much as this Gentleman would make it a very hard Case, that he is brought out of his own Country, and hath not his Witnesses; it is very well known that by a particular Favour of the Court, which is not usual in these Cases, he had between five and six Weeks time for Preparation for his Trial: So that truly as to what does appear, I think all the Witnesses that have been examined, are Witnesses to be credited, except you Gentlemen, of yourselves, can convict upon your own Knowledge these Persons of any Misdemeanor, which I think you cannot, much less of Perjury. But besides, the Witnesses we have produced, all which speak to the Plot in general, and four of them fix it upon the Person at the Bar; they speak particularly, and every one agrees in Circumstances, and that other that spoke mincingly, I put it upon; it is the greatest Evidence that can be. For that Person that could come before a Grand-Jury, and there be the main Witness, but when he comes here, must be scrued and pumped to discover the seventy thousand Men. And I suppose you did observe how difficult it was to know of him, whether this Person was Primate of *Ireland*, or whether it were from the Authority of the King or the Pope; a very probable thing, that he should be such a one as the King designed to be Primate and Superintendent of *Ireland*. Further, my Lord, I desire to take notice of too, that *Wyer*, the first Witness, fixes four particular Things upon the Prisoner at the Bar, which have not yet been taken notice of. First, he fixes a Discourse with another Person that was Competitor with him for this very Office, Bishop *Duffy*, and he gives the Reason why he was admitted into the Office rather than the other, because he was a Man of greater Ability to carry on the Design; and though he does not give you an account of the Design, yet the rest of the Evidence do, and make it to be the Design then carrying on. Another Thing is, he tells you of the sending one into *France*, that was to come back again in order to this Design, I think his Name was *Mac Donnel*, and then the great Tory *Flemming* and he were to come back again Colonels in the Army that was to be raised. The next Person that fixes it upon him, is Mr. *Han O-Neal*, and he gives the plainest Circumstances, That at a Time in *August* when Bishop *Tyrrel* came to the House of one *Brady* with so many Men well equipped with such and such Arms, and took the Oath of Secrecy; he himself, but not only he, but the other Priest *Mac Legh*, was present at the same Time, and took the said Oath, and he does tell you that that very Priest was sent to *Dublin* to discover it that very Time, and so he hath fixed the Person, and Time, and the Business they came about. Then *Mac Legh* comes and tells you the same Thing in every Circumstance; ay, but says the Prisoner at the Bar, and would make it to be a great Objection, How chance that they have concealed this all the while, and not discovered it to some Justice of the Peace? Why, says one, I was under your Jurisdiction in that Place, that is the very Reason he gives wherefore he durst not; and, says another, I was concerned and as earnest as the Prisoner or any Body else, but going into *France*, I observed the Slavery that all the Subjects were under, under the Tyranny of that King, and apprehending that the same King was to come into *Ireland* by the Means of



of these Gentlemen, I was concerned at it, and had rather the Devil should reign over us than such an one, and therefore I will discover it. And he said very well, I think, that he had rather have the Devil to reign; for it seems to be him, or one in his Shape that reigns after that Manner. And there are two Persons that swear to the very Year that they were obliged to raise the Money, and swear positively, they saw his Orders, *Sub pœna suspensionis*, I do not know whether they meant hanged or suspended from their Office. But it seems it was so terrible, that it made them pay twenty Shillings a-piece for three Years successively. And there is another Gentleman that tells you, that out of a small Living, wherein he was concerned only as Curate to a third Person, it had been paid two or three Times, and another, though he was exempt himself from the Payment, yet so great a Confident was he of the Prisoner's at the Bar, that he was present when he saw thirty or forty pay this Tax, and whereas the Prisoner at the Bar would make it thought a strange Thing, that he should raise so much Money, who had but an House seven Foot high, it seems there is above that thatched House a Chappel.

*Plunket.* There is no Chappel.

*Sir Geo. Jeff.* But now, my Lord, that which substantially proves what these Witnesses say, is the Letter that is sent to Rome to the Secretary of the College de propaganda Fide, which is the last Letter that the last Gentleman speaks of, wherein he does particularly take notice, that he had taken care to raise such Monies, and view all the Ports and Places of Strength. And my Lord, that which is a very great Circumstance to back the Evidence of the first Letter to the French Cardinal Bouillon, which was taken notice of by the first Witness, and there is such a Passage in this too, that the Catholic Princes should not spill one another's Blood, when they might better employ it here in Ireland for the Propagation of the Faith; this last Letter takes particular Notice of this very Instance too, that instead of drawing their Swords against one another, they had better come to promote the Catholic Faith in Ireland. These four Witnesses are punctual and precise in every particular Circumstance of the Case, and against them there is nothing but the common Objection; If I had such Records, and Witnesses here, I could make my Defence, that is, if he had those Things that he has not, he might appear to be another Man than he is; but I am sure, as it appears upon the Evidence that hath been given by all the Witnesses, there is a plain Proof, and a full Proof of every Treason laid to his Charge.

*Plunket.* My Lord, I desire these Witnesses may be called [giving in a Paper.]

*Crier.* David Fitz-Gerard, Eustace Commynes, and Paul Gormar.

*L. C. J.* Who gave him this Paper? He had it not before.

*Stranger.* I was told that these were good Evidences for Dr. Plunket, and I gave him the Names.

*L. C. J.* Where are they?

*Stranger.* They are hard by.

*Mr. Att. Gen.* Where is Eustace Commynes? For he was one that gave in Evidence against the Prisoner.

Then Paul Gormar appeared.

*L. C. J.* What would you ask him?

*Plunket.* I desire to know of him, whether Mr. Moyer did allure and intice him to swear against me?

*Gormar.* Indeed my Lord he never did.

*L. C. J.* Will you ask him any more?

*Gormar.* But this, my Lord, Mr. Moyer and I were in Discourse, and he said if there was Law to be had in Ireland, he would shew Mr. Plunket his Share in it.

*L. C. J.* Well, what of that?

*Gormar.* My Lord, I did come out of Ireland to reveal what Plots the Irish had against the King, and as for this Mr. Plunket, as I have a Soul to save, I never heard of any Misdemeanor of him.

*Mr. J. Dolben.* How came you here to Day?

*Gormar.* I was summoned.

*Mr. Just. Dolben.* By whom? Was it the Attorney General or Plunket that summoned you?

*Gormar.* Here is the Summons.

*Mr. Serj. Jefferies.* It is a common Subpœna.

*Plunket.* I never sent for him.

*Gormar.* It was not against you, they knew I had nothing against you, I thought you did more good in Ireland than hurt; so I declare it.

*L. C. J.* Have you any more Witnesses? If Fitz-Gerard or Commynes will come, we will hear them.

*Plunket.* My Lord, I have not any more Witnesses.

*L. C. J.* Look you, Gentlemen of the Jury, This Gentleman here, Mr. Plunket, is indicted of High-Treason, and 'tis for conspiring the King's Death, and endeavouring to bring the French Army into Ireland for to invade that Kingdom, and to plant the Romish Religion in that Kingdom. You have had evidence against him that hath been fully examined. And these Things do seem to be very plain by the Witnesses, That he himself hath taken a Commission, or a Grant, or what you will please to call it, from the Pope to be Primate of Ireland, that he hath taken upon him to make Laws as the Provincial, and that he hath undertaken and endeavoured to settle the Popish Religion in that Kingdom, and in order to that, he hath invited the Aid of the French Army, and that he hath for the better landing of them, looked out what Places were most convenient for them; That he hath set a Tax upon the Clergy within his Province for the facilitating of all this, and for the making Preparations for the Entertainment of this Army. This the Witnesses testify against him, and that there were some Towns, as Dungannon and another Town, that were to be betrayed to the French. Now you must consider concerning these Witnesses: If you believe the Evidence that hath been given, and which hath been repeated by the King's Council, and if you believe that he did design to bring in a French Army, to establish the Romish Religion there again, and that he took upon him to raise Money for that Purpose, surveyed the Ports, and made such Provisions, as the Witnesses speak of and was in that Conspiracy; you must find him Guilty. I leave it to you, it is a pretty strong Evidence, he does not say any thing to it, but that his Witnesses are not come over.

*Plunket.* I can say nothing to it, but give my own Protestation, that there is not one Word of this said against me is true, but all plain Romance, I

never had any Communication with any French Minister, Cardinal, nor other.

Then the Jury withdrew for a Quarter of an Hour, and being returned, gave this Verdict.

*Cl. of Cr. Oliver Plunket,* hold up thy Hand. How say you, is he guilty of the High-Treason whereof he stands indicted, or Not Guilty? *Foreman.* Guilty.

*Plunket.* Deo gratia, God be thanked.

Then the Verdict was recorded, and the Court rose. And the Keeper went away with his Prisoner.

On Wednesday, 15 Junii, 1681, Oliver Plunket was brought to the Bar to receive his Judgment.

*Mr. Att. Gen.* My Lord, I pray your Judgment against the Prisoner Oliver Plunket.

*Cl. of Cr. Oliver Plunket,* hold up thy Hand; Thou hast been indicted of High-Treason, thou hast been thereupon arraigned, thou hast thereunto pleaded Not Guilty, and for thy Trial hast put thyself upon God and the Country, which Country hath found thee Guilty; what hast thou to say for thyself, why Judgment of Death should not pass upon thee, and Execution be thereupon awarded according to the Law.

*Plunket.* My Lord, may it please your Lordship, I have something to say, which if your Lordship will consider seriously, may occasion the Court's Commiseration and Mercy. I have, my Lord, for this Fact been arraigned in Ireland, and brought to my Trial there. At the Day of my Trial all the Witnesses voluntarily absented themselves, seeing I had Records and Witnesses to convince them evidently, and shew what Men they were, and the prepened Malice that they did bear to me, and so finding that I could clear myself evidently, they absented themselves, on the Day of my Trial no Christian appeared, but hither over they came, and procured that I should be brought hither, where I could not have a Jury that knew the Qualities of my Adversaries, or who knew me, or the Circumstances of the Places, Times, and Persons; the Juries here, as I say, were altogether Strangers to these Affairs, and so, my Lord, they could not know many Things that conduce to a fair Trial, and it was morally impossible they should know it. I have been accused principally and chiefly for surveying the Ports, for fixing upon Carlingford for the landing of the French, for the having of seventy thousand Men ready to join with the French, for collecting Money for the Agents in this Matter, for assisting of the French and this great Utopian Army. A Jury in Ireland consisting of Men that lived in that Country, or any Man in the World that hath but seen Ireland in a Map, would easily see there was no Probability that that should be a Place fit for the French to land in, though he never was in Ireland, yet by the Map, he would see they must come between the narrow Seas, all along to Ulster, and the Rocks, and such Places would make it very dangerous; and by their own Confession it was a poor Town, and of no Strength, a very small Garrison, which had not been so, if it had been a Place of any Consideration. And where I had Influence only upon one Province, as is well known, though I had the Title of Primate of all Ireland, as the Archbishop of Canterbury hath of all England; yet the Archbishop of York did not permit him to meddle with his Province; and 'tis well known by the Gentry there, and those that are accustomed to the Place, That in all the Province of Ulster, take Men, Women, and Children of the Roman Catholics, they could not make up seventy Thousand. This, a Jury there, my Lord, had known very well, and therefore the Laws of England, which are very favourable to the Prisoner, have provided that there should be a Jury of the Place where the Fact was committed, as Sir Thomas Gascoigne, as I have heard, had a Yorkshire Jury, though he was tried at London. And then after my coming here, I was kept close Prisoner for six Months, not any Christian was permitted to come to me, nor did I know any Thing, how Things stood in the World. I was brought here the third of May, to be arraigned, and I did petition your Lordship to have some Time for my Trial, and I would have it put off till Michaelmas, but your Lordships did not think fit to grant so long, but only till the eighth of this Month, when my Witnesses who were ready at the Sea-side, would not come over without Passes, and I could not get over the Records without an Order from hence; which Records would have shewn that some of the Witnesses were Indicted and found Guilty of high Crimes, some were imprisoned for Robberies, and some of the Witnesses were infamous People; so I petitioned the eighth of this Month, that I might have Time but for twelve Days more: but your Lordship thought, when the Motion was made, that it was only to put off my Trial, and now my Witnesses are come to Coventry Yesterday Morning, and they will be here in a few Days, and so for want of Time to defend myself in, I was exposed to my Adversaries, who were some of my own Clergy, whom for their debauched Lives I have corrected, as is well known there. I will not deny myself, but that as long as there was any Toleration and Connivance, I did execute the Function of a Bishop, and that by the second of Elizabeth is only a Premunire, and no Treason. So that, my Lord, I was exposed defenceless to my Enemies, whereas now my Witnesses are come on, that could make all appear. I did beg for twelve Days Time, whereby you might have seen as plain as the Sun, what those Witnesses are, that began the Story, and say these Things against me. And, my Lord, for those Depositions of the seventy thousand Men, and the Monies that are collected of the Clergy in Ireland, they cannot be true; for they are a poor Clergy that have no Revenue nor Land; They live as the Presbyterians do here, there is not a Priest in all Ireland, that hath certainly or uncertainly above three score Pounds a Year, and that I should collect of them forty Shillings a-piece, for the raising of an Army, or for the landing of the French at Carlingford; if it had been brought before a Jury in Ireland, it would have been thought a meer Romance. If they had accused me of a Premunire for the exercise of my Episcopal Functions, perhaps they had said something that might have been believed; but my Lord, as I am a dying Man, and hope for Salvation by my Lord and Saviour, I am not guilty of one Point of Treason they have sworn against me, no more than the Child that was born but Yesterday. I have an Attestation under my Lord of Essex's Hand concerning my good Behaviour in Ireland, and not only from him, but from my Lord Berkley, who was also Governor there, which the King's Attorney saw; but here I was brought, here I was tried, and not having Time to bring my Witnesses, I could not prove my Innocency, as otherwise I might



I might. So that if there be any Case in the World that deserves Compassion, surely my Case does: And 'tis such a rare Case, as I believe you will not find two of them in Print, that one arraigned in *Ireland*, should be tried here afterwards for the same Fact. My Lord, if there be any Thing in the World that deserves Pity, this does; for I can say, as I hope for Mercy, I was never Guilty of any one Point they have sworn against me, and if my Petition for Time had been granted, I could have shewn how all was premeditated Malice against me, and have produced all Circumstances that could make out the Innocency of a Person. But not having had Time enough, and being tried, I am at your Mercy.

L. C. J. Well, you have nothing further to say in Bar of Judgment, you have said all you can?

Plunket. I have nothing further to say, but what I have said.

*Then Proclamation was made for Silence, while Judgment was passing upon the Prisoner.*

L. C. J. Look, you, Mr. Plunket, you have been here indicted of a very great and heinous Crime, the greatest and most heinous of all Crimes, and that is, High-Treason; and truly your's is Treason of the highest Nature, 'tis a Treason in truth against God and your King, and the Country where you lived. You have done as much as you could to dishonour God in this Case; for the Bottom of your Treason was, your setting up your false Religion, than which there is not any Thing more displeasing to God, or more pernicious to Mankind in the World. A Religion that is ten times worse than all the Heathenish Superstitions; the most dishonourable and derogatory to God and his Glory, of all Religions or pretended Religions whatsoever, for it undertakes to dispense with God's Laws, and to pardon the Breach of them. So that certainly a greater Crime there cannot be committed against God, than for a Man to endeavour the Propagation of that Religion; but you to effect this, have designed the Death of our lawful Prince and King: And then your design of Blood in the Kingdom where you lived, to set all together by the Ears, to destroy poor innocent People, to prostitute their Lives and Liberties, and all that is dear to them, to the Tyranny of *Rome* and *France*; and that by introducing a *French* Army. What greater Evil can be designed by any Man? I mention these Things because they have all been fully proved against you; and that you may take Notice, and repent of them, and make your Peace with God, by a particular Application for Mercy for all these Faults; for it seems to me, that against God, your Prince, and Fellow Subjects, you have behaved yourself very ill, designing very great Evil to all these; and now it hath pleased God to bring you to Judgment.

I must tell you, peradventure, what you urge for yourself might introduce Pity, if it were to be believed; that is, that you are innocent, and had Witnesses to prove it; but we cannot suppose any Man innocent, that hath had a legal and fair Trial, and a Trial with as much Candor to you, as your Case could bear, or as perhaps any Man in such a Case ever had. You had Time upon your Request to send for your Witnesses, to help you in your Defence, and to have proved your Innocence, if you could have done it; Time long enough to your own Content, you yourself thought it so, at the Time it was given. To give a Prisoner under your Circumstances, five or six Weeks Time to send for Witnesses, is not usual; we could have put you upon a present Defence, and hurried you out of the World by a sudden Trial, if we had had any Design against you; but we go on in a fair Way, and with legal Proceedings, and with as much Respect to you, as in such a Case could be used, for we gave you all the fair Hearing and Liberty that you desired to have.

Look you, as to what you urge, that your Trial was in this Kingdom, whereas your Offence was in another, that is a Thing that does not become you by any Means to object; for you have had a Trial here by honest Persons, and that according to the Laws which obtain in this Kingdom, and that too of *Ireland*, which is by a Statute not made on Purpose to bring you into a Snare, but an ancient Statute, and not without Precedents of its having been put in Execution before your Time: For your own Country will afford you several Precedents in this Case, as *O'Rourke*, and several others that have been arraigned and condemned for Treason done there. So that you have no Reason to except against the Legality of your Trial. You say, now you have Witnesses that could prove all this Matter; why that lies in the Mouth of any Man that is condemned to say; but pray consider with yourself, what regard ought to be given to this. We cannot help it, if your Witnesses don't come; you may remember they wanted not Time nor Opportunity to come over; but you told us they would not come unless they had a Passport.

Plunket. My Lord, they got a Pass to come over afterwards, and so in eight Days they came hither.

L. C. J. You might have provided yourself, if they wanted such a Thing. In the first Place, no Body is bound to give it them, much less could you expect it for them without asking.

Plunket. I could not get the Copies of the Records neither by any Means, unless I had an Order from the Council, and they would not give that Order, unless your Lordship appointed it.

L. C. J. We cannot tell that, you should have petitioned in Time.

Plunket. How could any one foresee, unless he was God Almighty, that they would deny it, or that he could not get out a Copy of a Record, paying for it, without a Petition. All the Friends I had, told me, upon Motion there it might be had; but here I have it under the Lieutenant's and Council's Hands, that they would give no Copy of Records without Order from hence, which before I could know it, it was impossible for me to have them ready against my Trial.

L. C. J. Look you, Sir, I do speak this to you, to shew you that those Objections, which you seem to make against your Trial, have no weight at all; but in this Case it is not the Jury that are so material as the Witnesses themselves. I appeal to all that heard your Trial, if they could so much as doubt but that you were guilty of what you were charged with. For consider, here were Persons that were of your own Religion, the most of them Priests, I think almost all of them in Orders.

Plunket. There were two Friars, and a Priest whom I have endeavoured

to correct this seven Years; and they were Renegadoes from our Religion, and declared Apostates.

L. C. J. Look you, Sir, they gave an Evidence very home to your Matter; you had Liberty to examine them, and they gave you a rational Account of any Thing you asked. Let me but put you in Mind of one Thing. You made Exceptions to one's Evidence, (and indeed that was very much of your Exception to all) why he did not reveal this in all that Time: Truly he told you he was of your Mind, till he went into *France*; and saw what Slavery and Mischief you endeavoured to introduce upon his and your own Countrymen, and this his Spirit rose against, to see what a Condition *Ireland* was like to be brought into. And pray, did he not give you a full Answer to that Question?

Plunket. I had sufficient Witnesses to prove he was an Apostate, and was chastised by me, and therefore had premeditated Malice against me.

L. C. J. Therefore I have spoken this to the Satisfaction, I hope, of yourself; and all that hear it. I do now wish you to consider, you are near your end. It seems you have lived in a false Religion hitherto; it is not too late at any Time to repent, I wish you may have the Grace to do so: In the mean Time there is no room for us here to grant you any Kind of Mercy, though I'll tell you, we are inclined to pity all Malefactors: Whoever have done evil, we are inclined to pity them, and wish heartily that they may repent, as we do that you may, of what you have done. But all we can do now, is to say what the Law says, and that is to pass Judgment upon you.

Plunket. May it please your Lordship to give me leave to speak one Word. If I were a Man that had no Care of my Conscience in this Matter, and did not think of God Almighty, or Conscience, or Heaven, or Hell, I might have saved my Life; for I was offered it by divers People here, so I would but confess my own Guilt, and accuse others. But, my Lord, I had rather die ten thousand Deaths, than wrongfully accuse any Body. And the Time will come when your Lordship will see what these Witnesses are, that have come in against me. I do assure your Lordship, if I were a Man that had not good Principles, I might easily have saved my Life; but I had rather die ten thousand Deaths, than wrongfully to take away one Farthing of any Man's Goods, one Day of his Liberty, or one Minute of his Life.

L. C. J. I am sorry to see you persist in the Principles of that Religion.

Plunket. They are those Principles, that even God Almighty cannot dispense withal.

L. C. J. Well, however, the Judgment which we give you is that which the Law says, and speaks. And therefore you must go from hence to the Place from whence you came, that is, to Newgate, and from thence you shall be drawn through the City of London to Tyburn; there you shall be hanged by the Neck, but cut down before you are Dead, your Bowels shall be taken out and burnt before your Face, your Head shall be cut off, and your Body be divided into four Quarters, to be disposed of as his Majesty pleases. And I pray God to have Mercy upon your Soul.

Plunket. My Lord, I hope I may have this Favour, of leave for a Servant, and some few Friends that I have, to come at me.

L. C. J. I think you may have Liberty for any Servant to come to you, I know nothing to the contrary.

Plunket. And some few Friends that I have in Town.

L. C. J. But I would advise you to have some Minister to come to you, some Protestant Minister.

Plunket. My Lord, if you please, there are some in Prison, that never were indicted or accused of any Crime, and they will do my Business very well; for they will do it according to the Rites of our own Church, which is the ancient Usage, they cannot do better, and I would not alter it now.

L. C. J. Mr. Richardson, you may let his Servant come to him, and any Friend in your Presence, to see there be no Evil done, nor any Contrivances that may hereafter have an Influence upon Affairs.

Mr. Just. Jones. Be you present, or somebody.

Plunket. My Servant, I hope may come, without his being present.

L. C. J. Yes, yes, his Servant may be with him alone. Well, Sir, we wish better to you than you do to yourself.

Plunket. God Almighty bless your Lordship. And now, my Lord, as I am a dead Man to this World, and as I hope for Mercy in the other World, I was never guilty of any of the Treasons laid to my Charge, as you will hear in Time; and my Character you may receive from my Lord Chancellor of *Ireland*, my Lord Berkley, my Lord Essex, and the Duke of Ormonde.

*Then the Keeper took away his Prisoner, and upon Friday the first of July, he was executed according to the Sentence.*

*At the Place of Execution he spake as follows.*

I HAVE some few Days past abided my Trial at the King's-Bench, and now very soon I must hold up my Hand at the King of King's-Bench, and appear before a Judge that cannot be deceived by false Witnesses, or corrupted Allegations; for he knoweth the Secrets of Hearts; neither can he deceive any, or give an unjust Sentence, or mislead by respect of Persons; He being all Goodness, and a most just Judge, will infallibly decree an eternal Reward for all good Works, and condign Punishment for the smallest Transgression against his Commandments. Which being a most certain and undoubted Truth, it would be a wicked Act, and contrary to my perpetual Welfare, that I should now, by declaring any Thing contrary to Truth, commit a detestable Sin, for which, within a very short Time, I must receive Sentence of everlasting Damnation; after which there is no Reprieve or Hope of Pardon. I will therefore confess the Truth, without any Equivocation, and make use of the Words according to their accustomed Signification; assuring you moreover, that I am of that certain Persuasion, that no Power, not only upon Earth, but also in Heaven, can dispense with me, or give me Leave to make a false Protestation: And I protest upon the Word of a dying Man, and as I hope for Salvation at the Hands of the supreme Judge, that I will declare the naked Truth with all Candour and Sincerity: And that my Affairs may be the better known to all the World.

'Tis to be observed, that I have been accused in *Ireland* of Treason and *Præmunire*, and that there I was arraigned and brought to my Trial;

S f

but



but the Prosecutors (Men of flagitious and infamous Lives), perceiving that I had Records and Witnesses who would evidently convince them, and clearly shew my Innocency and their Wickedness, they voluntarily absented themselves, and came to this City, to procure that I should be brought hither to my Trial (where the Crimes objected were not committed) where the Jury did not know me, or the Qualities of my Accusers, and were not informed of several other Circumstances conducing to a fair Trial. Here, after six Months close Imprisonment (or thereabouts) I was brought to the Bar the third of May, and arraigned for a Crime, for which I was before arraigned in *Ireland*: A strange Resolution, a rare Fact, of which you will hardly find a Precedent these five Hundred Years past: But whereas my Witnesses and Records were in *Ireland*, the Lord Chief Justice gave me five Weeks Time to get them brought hither: But by Reason of the Uncertainty of the Seas, of Wind and Weather, and of the Difficulty of getting Copies of Records, and bringing many Witnesses from several Counties in *Ireland*, and for many other Impediments (of which *Affidavit* was made) I could not at the End of the five Weeks get the Records and Witnesses brought hither; I therefore begged for twelve Days more, that I might be in a Readiness for my Trial, which my Lord Chief Justice denied; and so I was brought to my Trial, and exposed, as it were, with my Hands tied, to those merciless Perjurors, who did aim at my Life, by accusing me of these following Points:

*First*, That I have sent Letters by one *Niel O-Neal* (who was my Page) to Monsieur *Baldeschi*, the Pope's Secretary; to the Bishop of *Aix*, and to *Principe Colonna*, that they might solicit foreign Powers to invade *Ireland*; and also to have sent Letters to Cardinal *Bouillon* to the same Effect.

*Secondly*, To have employed Captain *Con O-Neal* to the French King for Succour.

*Thirdly*, To have levied and exacted Monies from the Clergy of *Ireland*, to bring in the French, and to maintain seventy thousand Men.

*Fourthly*, To have had in Readiness seventy thousand Men, and Lifts made of them, and to have given Directions to one Frier *Duffy* to make a List of 250 Men in the Parish of *Foghart*, in the County of *Louth*.

*Fifthly*, To have surveyed all the Forts and Harbours in *Ireland*, and to have fixed upon *Carlingford* as a fit Harbour for the French's landing.

*Sixthly*, To have had several Councils and Meetings, where there was Money allotted for introducing the French.

*Finally*, That a Meeting in the County of *Monaghan*, some 10 or 12 Years past, where there were 300 Gentlemen of three several Counties, to wit, *Monaghan*, *Cavan*, and *Armagh*; whom I did exhort to take Arms to recover their Estates.

To the *first* I answer, That *Niel O-Neal* was never my Servant or Page, and that I never sent Letter or Letters by him to Monsieur *Baldeschi*, or the Bishop of *Aix*, or to *Principe Colonna*. And I say, that the *English* Translation of that pretended Letter produced by the Frier *Macmoyer*, is a mere Invention of his; and never penned by me, or its original, either in *English*, *Latin*, *Italian*, or any other Language. I affirm, moreover, that I never wrote Letter or Letters to Cardinal *Bouillon*, or any of the French King's Ministers; neither did any who was in that Court either speak to me, or write to me, directly or indirectly, of any Plot or Conspiracy against my King or Country. Farther, I vow, that I never sent Agent or Agents to *Rome*, or to any other Court, about any Civil or Temporal Affairs: And 'tis well known (for it is a Precept publicly printed) that Clergymen (living in Countries where the Government is not of *Roman* Catholics), are commanded by *Rome*, not to write to *Rome*, concerning any civil or temporal Affairs. And I do aver, that I never received Letter or Letters from the Pope, or from any other of his Ministers, making the least Mention of any such Matters: So that the Friers *Macmoyer* and *Duffy* swore most falsely, as to such Letter or Letters, Agent or Agents.

To the *Second* I say, That I never employed Capt. *Con O-Neal* to the French King, or to any of his Ministers; and that I never wrote to him, or received Letters from him; and that I never saw him but once, nor ever spoke to him, to the best of my Remembrance, ten Words: And as for his being in *Charlemont* or *Dungannon*, I never saw him in those Towns, or knew of his being in those Places; so that as to *Con O-Neal*, Frier *Macmoyer*'s Depositions are most false.

To the *Third* I say, that I never levied any Money for a Plot or Conspiracy, for bringing in *Spaniards* or *French*, neither did I ever receive any upon that Account, from Priests or Friers, as Priest *Mac-Clave*, and Frier *Duffy*, most untruly asserted. I assure you, that I never received from any Clergyman in *Ireland*, but what was due to me by ancient Custom for my Maintenance; and what my Predecessors these hundred Years past were wont to receive; nay, I received less than many of them. And if all what the Catholick Clergy of *Ireland* get in the Year were put in one Purse, it would signify little or nothing to introduce the French, or to raise an Army of seventy thousand Men, which I had insisted, and ready, as Frier *Macmoyer* most falsely deposed; neither is it less untrue what Frier *Duffy* attested, viz. That I directed him to make a List of 250 Men in the Parish of *Foghart*, in the County of *Louth*.

To the *Fifth* I answer, That I never surveyed all the Forts or Harbours of *Ireland*, and that I was never at *Cork*, *Kingsale*, *Bantry*, *Youghal*, *Dungarvan*, or *Knockfergus*; and these 36 Years past I was not at *Limerick*, *Dungannon*, or *Wexford*. As for *Carlingford*, I never was in it but once, and staid not in it above half an Hour; neither did I consider the Fort or Haven; neither had I it in my Thoughts or Imagination to fix upon it, or upon any other Fort or Haven, for landing of French or *Spaniards*; and whilst I was at *Carlingford* (by mere Chance passing that Way), Frier *Duffy* was not in my Company, as he most falsely swore.

To the *Sixth* I say, That I was never at any Meeting or Council, where there was Mention made of allotting or collecting of Monies for a Plot or Conspiracy; and 'tis well known, that the Catholick Clergy of *Ireland*, who have neither Lands nor Revenues, and hardly are able to keep decent Clothes upon their Backs, and Life and Soul together, can raise no considerable Sum; nay, cannot spare as much as would maintain half a Regiment.

To the *Seventh* I answer, That I was never at any Meeting of three hundred Gentlemen in the County of *Monaghan*, or any Gentlemen of

the three Counties of *Monaghan*, *Armagh*, and *Cavan*, nor of one County, nor of one Barony; and that I never exhorted a Gentleman, or Gentlemen, either there, or in any other Part of *Ireland*, to take Arms for the recovering their Estates; and 'tis well known, that there are not even in all the Province of *Ulster* three hundred *Irish Roman* Catholics, who had Estates, or lost Estates by the late Rebellion; and, as it is well known, all my Thoughts and Endeavours were for the Quiet of my Country, and especially of that Province.

Now to be brief, As I hope for Salvation, I never sent Letter or Letters, Agent or Agents, to Pope, King, Prince, or Prelate, concerning any Plot or Conspiracy against my King or Country: I never raised Sum or Sums of Money, great or small, to maintain Soldier or Soldiers, all the Days of my Life; I never knew or heard (neither did it come to my Thoughts or Imagination) that the French were to land at *Carlingford*; and I believe there is none who saw *Ireland* even in a Map, but will think it a mere Romance; I never knew of any Plotters or Conspirators in *Ireland*, but such as were notorious and proclaimed (commonly called *Tories*) whom I did endeavour to suppress. And as I hope for Salvation, I always have been, and am entirely innocent of the Treasons laid to my Charge, and of any other whatsoever.

And though I be not guilty of the Crimes of which I am accused, yet I believe none came ever to this Place who is in such a Condition as I am; for if I should even acknowledge (which in Conscience I cannot do, because I should bely myself) the chief Crimes laid to my Charge, no wise Man that knows *Ireland* would believe me. If I should confess, that I was able to raise seventy Thousand Men in the Districts of which I had Care, to wit, in *Ulster*; nay, even in all *Ireland*, and to have levied and exacted Monies from the *Roman* Clergy for their Maintenance, and to have prepared *Carlingford* for the French's landing, all would but laugh at me, it being well known, that all the Revenues of *Ireland*, both Spiritual and Temporal, possessed by his Majesty's Subjects, are scarce able to raise and maintain an Army of seventy Thousand Men. If I will deny all those Crimes (as I did, and do), yet it may be that some, who are not acquainted with the Affairs of *Ireland*, will not believe that my Denial is grounded upon Truth, though I assert it with my last Breath. I dare venture further, and affirm, That if these Points of seventy Thousand Men, &c. had been sworn before any Protestant Jury in *Ireland*, and had been even acknowledged by me at the Bar, they would not believe me, no more than if it had been deposed and confessed by me, that I had flown in the Air from *Dublin* to *Holy-Head*.

You see, therefore, what a Condition I am in, and you have heard what Protestation I have made of Innocency, and I hope you will believe the Words of a dying Man; and that you may be the more induced to give me Credit, I assure you, That a great Peer sent me Notice that he would save my Life, if I would accuse others: But I answered, That I never knew of any Conspirators in *Ireland*, but such (as I said before) as were publicly known Outlaws; and that, to save my Life, I would not falsely accuse any, nor prejudice my own Soul. *Quid prodest homini*, &c. To take away any Man's Life or Goods wrongfully, ill becometh any Christian, especially a Man of my Calling, being a Clergyman of the Catholick Church, and also an unworthy Prelate, which I do openly confess. Neither will I deny to have exercised in *Ireland* the Functions of a Catholick Prelate, as long as there was any Connivance or Toleration; and by preaching, and teaching, and Statutes, to have endeavoured to bring the Clergy (of which I had a Care) to a due Comportment, according to their Calling; and though thereby I did but my Duty, yet some, who would not amend, had a Prejudice for me, and especially my Accusers, to whom I did endeavour to do good; I mean the Clergymen; (as for the four Lay-men, who appeared against me, viz. *Florence*, *Macmoyer*, the two *Neals*, and *Hanlon*, I was never acquainted with them), but you see how I am requited, and how by false Oaths they brought me to this untimely Death; which wicked Act being a Defect of Persons, ought not to reflect upon the Order of *St. Francis*, or upon the *Roman* Catholick Clergy; it being well known, that there was a *Judas* among the Twelve Apostles, and a wicked Man, called *Nicholas*, among the seven Deacons; and even, as one of the said Deacons, to wit, holy *Stephen*, did pray for those who stoned him to Death; so do I, for those who with Perjuries spill my innocent Blood, saying, as *St. Stephen* did, *O Lord, lay not this Sin to them*. I do heartily forgive them, and also the Judges, who (by denying me sufficient Time to bring my Records and Witnesses from *Ireland*) did expose my Life to evident Danger. I do also forgive all those who had a Hand in bringing me from *Ireland* to be tried here, where it was morally impossible for me to have a fair Trial. I do finally forgive all who did concur, directly or indirectly, to take away my Life, and I ask Forgiveness of all those whom I ever offended by Thought, Word, or Deed.

I beseech the All-powerful, that his Divine Majesty grant our King, Queen, and the Duke of *York*, and all the Royal Family, Health, long Life, and all Prosperity in this World, and in the next everlasting Felicity.

Now that I have shewed sufficiently (as I think) how innocent I am of any Plot or Conspiracy, I would I were able, with the like Truth, to clear myself of high Crimes committed against the Divine Majesty's Commandments (often transgressed by me), for which I am sorry with all my Heart; and if I should, or could live a Thousand Years, I have a firm Resolution, and a strong Purpose, by your Grace (O my God) never to offend you; and I beseech your Divine Majesty, by the Merits of Christ, and by the Intercession of his blessed Mother, and all the holy Angels and Saints, to forgive me my Sins, and to grant my Soul eternal Rest. *Miserere mei Deus*, &c. *Parce anime*, &c. *In manus tuas*, &c.

P O S T S C R I P T.

To the final Satisfaction of all Persons, that have the Charity to believe the Words of a dying Man, I again declare before God, as I hope for Salvation, what is contained in this Paper is the plain and naked Truth, without any Equivocation, mental Reservation, or secret Exemption whatsoever; taking the Words in their usual Sense and Meaning, as Protestants do, when they Discourse with all Candour and Sincerity. To all which I have here subscribed my Hand.

Oliver Plunket  
CIV.



CV. *The Trial of Sir Miles Stapleton, Bart. at York Assizes for High-Treason, June 18, 1681,*  
33 Car. II.

**S**IR Miles Stapleton, Baronet, was indicted at the Sessions of Oyer and Terminer at the West Riding of the County of York, and the Indictment was removed by a Writ of Certiorari to the King's Bench, where Sir Miles Stapleton having been arraigned, and pleaded to the same Not Guilty, was sent down to be tried in the County of York. The Indictment was as followeth.

Sir Miles Stapleton, late of Carleton in the County of York, Baronet; stands indicted, for that he, as a false Traitor against our illustrious and excellent Prince, King Charles the second, his natural Lord, not having God before his Eyes, nor weighing the Duty of his Allegiance, but by the Instigation of the Devil being moved and seduced, the cordial Love, and true, due, and natural Obedience, which true and faithful Subjects of our Lord the King should bear to him, and of right are bound to bear, wholly withdrawing, devising, and with all his Power intending to disturb the Peace and common Tranquillity of this Realm, and to bring and put our said Lord the King to Death and final Destruction, and the true Worship of God in this Kingdom by Law established, and used, to alter to the Superstition of the Church of Rome, and to move and stir up War against our said Lord the King in this Realm, and to subvert the Government of this Kingdom, the 30th Day of May, in the thirty first Year of our said Lord the King's Reign, at the Parish of Barwick in Elmet in the said County of York, in the West-Riding of the same County, with divers other false Traitors unknown, did traiterously compass, imagine and intend, the Death and final Destruction of our said Lord the King, and to change and alter, and wholly to subvert the ancient Government of this Realm, and to depose and wholly to deprive the King of the Crown and Government of the said Kingdom, and to root out the true Protestant Religion: And to fulfil and accomplish the same most wicked Treasons, and traiterous Imaginations and Purposes, the said Sir Miles Stapleton, and other false Traitors unknown, on the said 30th of May, in the thirty first Year aforesaid, with Force and Arms at the Parish of Barwick aforesaid, advisedly, devilishly, maliciously and traiterously, did assemble, unite and gather themselves together, and then did devilishly, advisedly, maliciously, craftily and traiterously, consult and agree, to bring our said Lord the King to Death and final Destruction, and to depose and deprive him of the Crown and Government, and introduce and establish the Religion of the Romish Church in this Realm; and the sooner to fulfil and accomplish the said most wicked Treasons and traiterous Imaginations and Purposes, the said Sir Miles Stapleton, and other unknown Traitors, then and there advisedly, maliciously and traiterously, did further consult and agree to contribute, pay and expend divers large Sums of Money, to divers of the King's Subjects, and other Persons unknown, to procure those Persons traiterously to kill our said Lord the King, and to introduce the Romish Religion into this Realm, against the Duty of his Allegiance, against the Peace of our said Lord the King, his Crown and Dignity, and against the Form of the Statute in such Case made and provided.

Clerk of Assize. Hold up thy Hand, Sir Miles, thou hast heard the Treasons and other Misdemeanors whereof thou standest indicted: Art thou Guilty thereof, or not Guilty?

Sir Miles. Not Guilty.

Clerk of Assize. How wilt thou be tried?

Sir Miles. By God and my Country.

Cl. of Assize. Culpit, God send thee a good Deliverance.

Clerk of Assize. Sir Miles, this understand you, that these Gentlemen that are now to be sworn, are returned by the Sheriff of this County, to pass between our Sovereign Lord the King and you for your Life; therefore if you will challenge any of them, you are to challenge them as they come to be sworn, and before they be sworn.

The Jury being called, Mr. Justice Dolben took Notice to Sir Miles, that there were but few appeared, and therefore told him, he would do well not to challenge too many of them. Sir Miles thereupon said, he should not challenge many; and enquired whether those that served on the Lady Tempest's, Mr. Thwing's and Mr. Ingleby's Juries did now appear; and the Judge answered him, that if they did, Care should be taken that they should not be sworn.

Then the Jury being called to the Book, Sir Miles challenged these, viz.

Sir David Fowles, Bar.	John Wright, Esq;	Robert Turner, Gent.
John Estoft, Esq;	John Green, Esq;	John Beckwith, Gent.
William Bethel, Esq;	Robert Bell, Gent.	Simon Warrenner, Gent;
William Caley, Esq;	John Dixon, Gent.	Gervase Hatfield, Gent.
Towers Driffeild, Esq;	Thomas Wood, Gent.	John Coats, Gent.
Marm. Trueman, Esq;		

And only two of the Jury returned, viz. Tho. Fletcher, Rob. Gudgeon, were sworn.

Mr. Just. Dolben. Sir Miles, I see you must stay till the next Assizes, or you challenge too many, here will not be a Jury gotten.

Sir Miles. If your Lordship please, I shall be content, and do desire the Jury may be called that served the first Day; nay, all the three Juries, if you please.

Mr. Just. Dolben. That is, you would chuse all of one Way, and leave the others; where is the Indifferency of the Trial then; but come call them, I cannot deny it.

The three Juries called, and five challenged, viz.

Tho. Worfeley, Esq;	Robert Bushel, Gent.	Roger Lee, Esq;
Manuel Tennant, Gent.	Roger Stretwel, Gent.	

And these Sworn, viz.

Tho. Pennymann, Bar.	Thomas Conyers,	against by Sir Thomas
Thomas Rokely, Esq;	Christopher Tankard,	Stringer: as one that
William Stone,	Esq; who was excepted	

paraged the Evidence of the Plot, and called his Dogs by the Names of Bess and Badloe; which the Judges allowed to be a good Exception; but there being no Witnesses in the Court to prove it, he was sworn.

Mr. Just. Dolben. Sir Miles, you must stay till the next Assizes we have not a full Jury.

Sir Miles. Here are Gentlemen in the Court; your Lordship may take whom you please.

Mr. Just. Dolben. I cannot do it without the King's Council move for a Tale, which as this Case stands they will not do.

And so he was remanded to Prison, and Remanet pro defectu Juratorum until the 18th Day of July 1681.

And at the Assizes then holden for the County of York, before Mr. Just. Dolben, and Mr. Baron Gregory, was proceeded against as followeth.

Clerk of Assize, Sir Miles Stapleton, hold up thy Hand; thou standest indicted by the Name of Miles Stapleton; late of Carleton in the County of York, Bar. &c. prout in the Indictment.

After not Guilty pleaded to the Indictment, and other Formalities of the Court, as before, these Gentlemen following were called.

Sir Thomas Maleverer, Kt. Challenged by the King's Council.

Sir Roger Beckwith, Kt. Challenged by the King's Council.

Sir Miles. Are any challenged?

Mr. Just. Dolben. Yes, there are two challenged for the King.

Sir Miles. I hope they must shew cause why they challenge them.

Mr. Just. Dolben. Yes, they shall, but they are not bound to shew Cause before the Pannel be gone through, and then, if you desire it, they will shew Cause; but I suppose Sir Thomas Maleverer married a Kinswoman of your's, and if so, 'tis a good Exception.

Sir Miles. I desire it may be proved.

Richard Audbrough, Esq; Challenged by the King.

John Dodsworth, Esq; Challenged by the King.

Isaac Fairfax, Esq; Christopher Bradshaw, Esq; Challenged by Sir Miles.

These following were called and sworn, viz.

Sir Barrington Boucher, Tobias Hodson, Esq; Francis Fuldgam, Esq; Kt. John Beverley, Esq; Humphrey Brook, Esq;

Sir John Jennings, Kt. Anthony Frankland, Esq; Thomas Lee, Esq;

Richard Hutton, Esq; John Addams Esq;

Wellbrough Norton, Esq; Francis Battery, Esq;

Crier. Twelve good Men and true, stand together and hear your Evidence.

Clerk of Assize. Sir Miles Stapleton, hold up your Hand (which he did). Gentlemen, you of the Jury that are Sworn, look upon the Prisoner, and hearken to his Charge; you shall understand that he stands indicted by the Name of Sir Miles, &c. prout in the Indictment; upon this Indictment he hath been arraigned, and thereupon pleaded Not Guilty, and for his Trial hath put himself upon his Country, which Country you are, &c.

Then Proclamation was made for Evidence, and Sir Thomas Stringer, one of the King's Council aggravated the Indictment as followeth.

Sir Miles Stapleton. I desire, my Lord, the King's Evidence may be put apart, not to hear what each other swears.

Mr. Just. Dolb. No, no, Sir Miles, that must not be, would you have the same for your Witnesses?

Sir Thomas Stringer. May it please your Lordship, and you Gentlemen of the Jury; Sir Miles, the Prisoner at the Bar, stands here indicted of the greatest and blackest Treasons that can be invented by the worst of Men; he stands here indicted for endeavouring to depose the King from his Crown and Dignity; and imagining and compassing the Death of the King, to alter the established Government, and root out the true Protestant Religion, and to establish the Romish Religion among us. Gentlemen, to compass these wicked Designs we shall prove there hath been several Consults where the Prisoner at the Bar hath been, and where he hath contributed Money to carry on these wicked Designs: And Gentlemen, I must acquaint you, there hath been a horrid Plot against the King and Government, and I need not do it, for it hath been made notoriously known; not only Parliaments have declared it so, but there have been Noblemen, Gentlemen, and Priests, nay, some Men have been found guilty for carrying on the horrid Design, and have received their Deserts. This Plot, Gentlemen, is no new Plot, not a Plot of a Day, nor of an Age; but a Plot that hath been carried on for an hundred Years. My Lord, since we were delivered by God's Mercy from the Popish Religion by the Reformation; ever since that Time, the Pope, the Jesuits, the Priests and those of the Popish Persuasion, have, my Lord, been from Time to Time, and ever since, endeavouring to carry on this wicked Design, and had destroyed us long since, if we had not been by God Almighty, from Time to Time, delivered from their Power. And you, Gentlemen, of the Jury, I must tell you, this Plot was carried on in Queen Elizabeth's Time; and as they did in this Plot carry on their Designs, with the King of Spain at Valadolid in Spain. The King of Spain, he join'd with the Popish Party here; but it pleased the Lord to take the Queen to his Mercy, before the Plot was effected. And I must tell you, the same Men of the same Quality that carried it on then, have now endeavoured to carry it on in these Days. My Lords, the King of Spain, though he was a Papist, yet it was so horrid a Thing, that he left them to carry on their wicked Design, and God Almighty did preserve the Queen. My Lords, they rested not here; but in King James his Time they designed to have destroyed both King and Parliament at one Blow, and thereby the whole Nation in it's Representatives, and this they managed by Guy Vaux and others. And all King Charles his Time the same Plot was on Foot, and pray how far did they bring it? they brought it to the Death of that Gracious King, and the sad Effects of a Civil War; and they have brought it in these Days to raise Officers, Generals, Major-Generals, and other Officers, and proceeded so far that actual Commission was delivered for destroying our King, and if this had not been by God's Mercy prevented, what would have been the evil Effects thereof, ere this Day? And, Gentlemen, I must tell you, that which is now before you is the greatest, and most wicked Design that ever was before Men; and though you be of the Relations and Kindred, yet I know if you have but Conscience and Right in you, you will give a Verdict according to the Justness of the thing, and the Evidence you shall have.

Sir John Ottwith. We call Mr. Smith first, who will give you an Account of the Plot in general.

Mr. John Smith called and sworn.

Mr. Just. Dolben. Mr. Smith, pray tell the Court what you know of the Plot.

Mr. Smith. I must speak of it then what I have done beyond Sea, my Lord.



My Lords, I remember when I had been first beyond Sea, I became acquainted with one *Abbot Montagu* and *Mr. Thomas Car*, at *Paris*, and they told me then, if I came to the *Romish Religion* what Preference I should have here in *England*; they told me what Friends they made in *England*, they named several Persons about the Court, and several Gentry in *England* which I did not then know to be Papists. I staid some time among them in *Paris*, and all this while I did not pervert to the *Romish Religion*; though they told me how many Jesuits they had sent over into *England*. After I left *France*, I was for going for *Rome*, where I met with *Father Arderton*, Rector of the *English College*, and *Father Southwel*, and *Father Campion*, who introduced me into the Acquaintance of *Cardinal Grimaldi*, which is an *Italian Name*, but he is Archbishop of that Place; I happening there, they carried me to speak to the Cardinal, and he told me what Likelihood there was for introducing the *Romish Religion* into *England*, and he told me, he would prefer me very well there, if I would turn to their Religion; and gave me Letters to several Friends in *Italy*: At last I was perverted to the *Romish Religion*, by virtue of this Cardinal; and this Gentleman at last asked me if I had a mind to study; I told him Yes, so I came into an *Italian College*, and became acquainted with the all secular Priests, both *English*, *Scotch*, and *French*; who told me what Interest they had made in *England*, during the coming in of *Cardinal Norfolk*, and said, there was but one Man in the Way, meaning the King, and said they should soon remove him.

Mr. Just. Dolben. Did they mean the King?

Mr. Smith. Yes, my Lord, they said there was but one Man in the Way, and that they would soon make an end of him, and that they had Men ready in *England* for it. After this, my Lord, I left this *Italian College*, and came to the *English College* (for I had a Mind to come there) and I made Friends with the Jesuits: After I came to the *English College*, my Lord, I was informed of one *Father Arderton* Rector of that College, and *Father Mondford*, who told me, that by Means of this Cardinal *Norfolk* they did not doubt but to take the King out of the way; and that they would give me all Privileges that could be for a young Man in that Time. When I was coming away, my Lord, from *Rome*, and had my Letters Emisaries, by *Cardinal Perorin* (He sent for me when I was coming away, and as is usually done to all Scholars, and they kiss the Pope's Toe, and he gives them his Blessing and particular Indulgence; which I had when I came into *England*) said he to me, there is one Man in the Way who hath made us fair Promises, but will perform nothing, therefore we must take him out of the way, and that I might be instrumental in the Design; with this, my Lord, I took leave of the College, and we came five into *England* as Priests, and I made my Application to the Arch-Priest, which was in *London*, one *Purrat*, and I was employ'd a long Time by him in *England*; but Proclamations coming forth for the apprehending Popish Priests, I was constantly after at the *Portugal Ambassador's Chappel*, where this *Purrat* had a Chamber, wherein I discoursed with several of the Clergy in *England*, who said they doubted not but Popery would soon be settled in *England*. I came after that to live at one *Mr. Jennison's House*, where the Clergy had several Meetings, and we were all of Opinion that Course would be taken with the King, unless he brought in Popery. And this, my Lords, is all I can say in general.

Mr. Just. Dolben. Do you know of any Conspiracy in *Yorkshire*?

Mr. Smith. My Lord, I am coming to that. When I came to *Mr. Jennison's House*, there was one *Mr. Thwing*, a Priest, who has suffer'd as a Conspirator, he was well acquainted in the House before I came there, and did very much to persuade me that I would intreat *Mr. Jennison* to send his Daughters to a Place called *Dolebank*, where a Nunnery was to be erected, and I knew several that were there. This *Mr. Thwing* came to me oftentimes, and several Priests in this City, and they all pressed me to it, but I was against it, knowing what their Design was.

Mr. Just. Dolben. But do you know any thing against the Prisoner?

Mr. Smith. All that I can say to the Gentleman at the Bar, is this: I never saw him before to my Knowledge; but *Mr. Thwing*, when we were at *Mr. Jennison's*, and discoursing of the Plot, asked me how they gave Money in the *Bishoprick*, I told him some gave more, some less.

Mr. Just. Dolben. What were those Collections for?

Mr. Smith. My Lord, it went among ourselves under the Notion of killing the King, and rooting out the Protestant Religion; but we gave it out that it was repairing a College at *Doway*, which, if granted, had been penal by Law. Then I asked him, How doth the Collections go among you in *Yorkshire*? Some, faith he, give freely; but, faith he, my Uncle and his Friends are engaged another way; for, faith he, they are going to make a Founder for *Dolebank*; several persons he named, among which he named this Gentleman.

Mr. Just. Dolben. What said he of Sir Miles?

Mr. Smith. He said Sir Miles was very zealous for promoting the *Roman Catholick Religion*, and had contributed largely for the introducing of it into *England*.

Mr. Bar. Gregory. You say that amongst yourselves you gave it out, that the Money that was raised was for the Killing of the King, and rooting out the Protestant Religion; pray, by what Way and Means was it to be done, was that ever discoursed among any of you; was it for raising of an Army? or what was it for?

Mr. Smith. Wherever I was, my Lord, it was resolved, that that was the most effectual Means for the introducing of Popery.

Mr. Robert Bolron called and sworn.

Sir Thomas Stringer. Mr. Bolron, acquaint my Lords and the Jury, what you know of Sir Miles Stapleton.

Mr. Bolr. May it please your Lordship, I came to live with Sir Thomas Gascoigne in 1674, as Steward of his Coal-works; and was then a Protestant, but was persuaded by *Mr. Rushton*, Sir Thomas, and others, to turn *Roman Catholick*; when I had turned *Roman Catholick*, about 1676, they came and asked me, what I would do for the *Romish Religion*, if it should come to it; I told them, I would venture my Life in that Cause, and then I went to *Barmbow-Hall*, where I took the Oath of Secrecy; after that I went to *Barmbow-Hall*, where Sir Miles Stapleton was at a Consult in 1677.

Mr. Just. Dolben. At what Time in 77?

Mr. Bolr. It was about *Whitsuntide*, my Lord.

Mr. Just. Dolben. That was the *Whitsuntide* after you had taken the Oath of Secrecy?

Mr. Bolr. Yes, my Lord.

Mr. Just. Dolben. Who was there?

Mr. Bolr. Sir Miles Stapleton, Sir Tho. Gascoigne, Mr. Gascoigne his Son, my Lady Tempest, Lawyer Ingleby, Mr. Thwing, Father Rushton, and several others.

Mr. Bar. Gregory. What was there done at that Consult?

Mr. Bolr. My Lord, the Consult was about killing the King, and establishing a Nunnery at *Dolebank*, near *Ripley*; Sir Tho. Gascoigne gave 900*l.* per Annum, and 300*l.* for killing the King; and I remember very well, *Pickering* was mentioned about killing the King; and they asked Sir Miles Stapleton what he would give? and he said, 200*l.* for killing the King.

Mr. Just. Dolben. Are you sure that in the Presence of Sir Miles Stapleton it was resolved the King should be killed?

Mr. Bolr. Yes, my Lord, it was resolved both by him and all others, that the King should be killed; and, my Lord, I heard them further say, if the Duke of York did not please, that they would serve him as they would serve his Brother.

Mr. Bar. Greg. Who said these latter Words?

Mr. Bolr. Sherby of *Stone-house* said these latter Words, and Mr. Sherburn said—

Mr. Just. Dolben. No matter what Mr. Sherburn said. What said Sir Miles?

Mr. Bolr. The Gentlemen said, that Sir Miles should be a Privy Councillor, and that they would procure the Duke's Consent to it.

Mr. Just. Dolben. Is that all?

Mr. Bolr. My Lord, I was further at a Consult in 78, about the thirteenth or fourteenth of June.

Mr. Bar. Greg. What Time was that?

Mr. Bolr. The thirteenth Day of June 78, and there it was agreed upon the taking of *Hull*, the letting in of the *French* there, as the fittest Place for the *French* to land at.

Mr. Just. Dolben. Where was this?

Mr. Bolr. At *Barmbow*; and likewise they did discourse, that my Lord *Bellasis* had caused the Block-houses to be almost ruined, that the *French* might more easily come in; and we had all Pardons for our Sins.

Mr. Lawrence Mowbray called and sworn.

Sir Tho. Stringer. Mr. Mowbray, tell my Lords and the Jury what you know against Sir Miles Stapleton, the Prisoner at the Bar.

Mr. Mowbray. My Lords, you have heard what Mr. Smith and Mr. Bolron say to the Plot in general; what I say shall be very brief, in relation to Sir Miles Stapleton, and no further. Sir Miles Stapleton being present with Sir Tho. Gascoigne, my Lady Tempest, Esquire Gascoigne, and several others, they held several Discourses concerning a Design of killing the King, subverting the Government, and bringing in Popery, and accordingly they would fire *London*.

Mr. Bar. Greg. When was this?

Mr. Mowbray. This was in 76, where Father Rushton gave him an Oath of Secrecy, and he promised to be true to the Design, and would venture his Life and Estate for the promoting so good a Cause.

Mr. Just. Dolben. Did you hear Sir Miles Stapleton say he would adventure his Life and Estate for killing of the King?

Mr. Mowbray. Yes, my Lord.

Mr. Just. Dolben. And was it resolved at that Consult?

Mr. Mowbray. Yes, my Lord.

Mr. Just. Dolben. And he consented to it?

Mr. Mowbray. Yes, my Lord, and took the Oath of Secrecy from Father Rushton.

Mr. Just. Dolben. This is not the Time that Mr. Bolron speaks of.

Mr. Mowbray. No, my Lord, he speaks of 76 and 78, this was in 78.

Mr. Bolr. I have seen in 75 a collusive Conveyance of Sir Miles Stapleton's Estate to Sir John Daney.

Mr. Just. Dolben. Where did you see it?

Mr. Bolr. I did see it at Sir Thomas Yarbrough's, and he asking me when Sir Miles Stapleton was at Sir Tho. Gascoigne's; may it please you, said I, I can tell you something where you are concerned with Sir Miles Stapleton; as soon as he heard that he blushed, and away he went, and would hear no further.

Sir Tho. Stringer. What say you, Mr. Mowbray, of an Indulgence you had?

Mr. Mowbray. Yes, my Lord, I had an Indulgence.

Mr. Just. Dolben. Was it for the Time to come, or the Time past?

Mr. Mowbray. It was for the Time past; for I was to enter into the Rosary.

Sir Tho. Stringer. Did you ever attend Rushton at the Altar?

Mr. Mowbray. Yes, I did.

Mr. Just. Dolben. Mr. Bolron, you say, you saw a collusive Conveyance made by Sir Miles Stapleton to Sir John Daney; pray, what was the Forfeiture of it?

Mr. Bolr. It was—

Mr. Just. Dolben. Was it Sir Tho. Yarbrough, or Sir John Daney, you told of it?

Mr. Bolr. I told it to Sir John Daney.

Mr. Mowbray. I drew a Copy of that very Conveyance.

Sir Tho. Stringer. Truly, my Lord, we want Mrs. Bolron, one of the most material Evidences against Sir Miles, being sick at *London*.

Mr. Baynes called and sworn.

Sir Tho. Stringer. Come, Mr. Baynes, declare to the Court what you know against Sir Miles.

Mr. Baynes. I know nothing against Mr. Miles, only I have seen him at *Barmbow-Hall* in 77.

Sir Tho. Stringer. Pray tell us this, whether you observed, in the Year 77, Sir Miles Stapleton come to several Meetings with Sir Tho. Gascoigne, my Lady Tempest, and others?

Mr. Baynes. Yes, my Lord, I have.

Mr. Just. Dolben. But do you know what Discourse they had?

Mr. Baynes. No, my Lord; but I remember we were once discoursed about some Nuns beyond Sea, and they were called Galloping Nuns.

Mr. Just. Dolben. They were Gallopers, indeed.

Mr. Just. Dolben. Sir Miles, you have heard what hath been proved against you—

Sir Miles. My Lord, there is nothing of Truth in it at all; I hope to make it appear to your Lordship. I call God to witness I am as innocent of what they say, as any Child unborn.

Mr. Just. Dolben. That is an easy Thing to say.



Sir Miles. I hope to make it appear to your Lordship: Will your Lordship please to give me leave to ask the Witnesses some Questions?

Mr. Just. Dolb. That you may have Allowance in.

Sir Miles. Then I desire to ask Bolron this Question; Did you accuse me in your Information to Justice Lowder?

Mr. Bol. No, my Lord, I did not.

Sir Miles. Did I, or any other, desire you to keep any Secret for me?

Mr. Bol. Yes, my Lord, I have been desired.

Mr. Justice Dolben. But did Sir Miles ever desire you?

Mr. Bol. No, my Lord, he did not, but Rushton did, when I was introduced by the Priests to the Consult.

Sir Miles. Did you and Mowbray know that each other was concerned in the Plot?

Mr. Bol. Yes, we did.

Sir Miles. Name the Persons that were present at the Consult.

Mr. Bol. There was Sir Tho. Gascoigne, my Lady Tempest, Esquire Gascoigne, Mr. Ingleby, Mr. Thwing, Mr. Rushton, Mr. Addison, Mr. Metcalf, and several others.

Sir Miles. How long did the Consult last?

Mr. Bol. Some six or seven Hours.

Sir Miles. What Servants were there?

Mr. Bol. I took no notice of the Servants.

Sir Miles. What Room was it in?

Mr. Bol. In the old Dining-Room.

Sir Miles. How long did it last?

Mr. Just. Dolb. Six or seven Hours he tells you.

Sir Miles. Was there any other at Sir Thomas Gascoigne's?

Mr. Bol. None else that I can remember.

Sir Miles. Upon what Occasion did he mention Mowbray in his Information to the Council?

Mr. Just. Dolb. There hath no Information to the Council been mentioned here.

Sir Miles. Pray what was the Occasion you were turned out of Sir Thomas Gascoigne's Service?

Mr. Bol. My Lord, I know not; they say it was about a Trunk: Sir Thomas Gascoigne sent him to York, and he was to come again. I know there was a Design to take away Mowbray's Life; but I never told him so much; and my Lady accused him for a Ring; I never durst tell him this, but this was the Thing contrived against him to take away his Life; I can make it appear where he bought the Ring.

Mr. Just. Dolb. What tell'st thou us of a Ring? Can'st thou not as well tell us it was for that he left Sir Thomas Gascoigne's Service?

Sir Miles. When did you first become a Protestant?

Mr. Mowb. When I made my first Information.

Bar. Greg. When was that?

Mr. Mowb. That was in 79, and a little before that I kept Correspondence with Father Addison.

Sir Miles. I desire to know whether he saw a List of Names?

Mr. Mowb. Yes, I did.

Sir Miles. Whose Names were there;

Mr. Mowb. There was your Name for one, and Sir Thomas Gascoigne's.

Sir Miles. What was it for?

Mr. Mowb. It was a List of those that were Actors and Contributors for killing the King.

Mr. Just. Dolb. You are sure Sir Miles Stapleton's Name was in the List?

Mr. Mowb. Yes, my Lord, I am.

Mr. Just. Dolb. Was it Parchment or Paper?

Mr. Mowb. No, my Lord, it was Paper.

Mr. Just. Dolb. Were you to assist in killing the King?

Mr. Mowb. My Lord, I was to be an Actor in killing the King.

Sir Miles. Whether did I, or any other desire you to keep any Secret for me?

Mr. Mowb. Yes, Father Rushton did.

Sir Miles. Did I ever do it?

Mr. Mowb. No, Sir Miles, you never did.

Sir Miles. Did any Body else desire you?

Mr. Just. Dolb. Father Rushton, he tells you, did.

Sir Miles. Was the discourse so loud that Sir Thomas Gascoigne could hear it?

Mr. Mowb. Sir Thomas could hear well enough when he would.

Sir Miles. Was it in 79 that you discovered the Plot?

Mr. Bol. Yes; I went to London, and there discovered the Plot in 79, I think it was.

Sir Miles. You said, I was not concerned, you only accused Sir Thomas Gascoigne and some others in your Information; but did not name me.

Mr. Just. Dolb. Did he so? You may prove that upon him.

Sir Miles. It was so in his Information, my Lord.

Mr. Just. Dolb. Well, then let it be so. Call your Witnesses.

Mr. Lowder called and examined.

Sir Miles. I desire Mr. Lowder to acquaint your Lordships and the Jury, what was in the Information Mr. Bolron gave in, whether he accused me or no.

Mr. Lowder. All I know of it is, that in January 79, on Sunday Evening, as I think, about the 24th Day of the Month, Robert Bolron came to me, and told me he had something of Secrecy to impart to me, and I asked him if he would go into the House with me; he told me it was Matter of High-Treason; I asked who was concerned, he answered, Sir Thomas Gascoigne, and several others: Then I ordered my Clerk to bring a Bible, and pen and Ink to take his Information. I desired him to be very cautious, telling him, that several Lives were at Stake: At that he began to be fearful and changed Colour: I asked him for what Cause that Fear was; he said, if that were upon my Conscience, that was upon his, for concealing so long, I should be as fearful as he. I bid him seriously consider what he had to say; he then said, he had delivered his Information to Mr. Tindal. Well then, said I, why is it you come to me? Said I, Mr. Tindal is to be in my House the 25th Day, and I shall discourse it with him, and we shall make it together. Mr. Tindal did come, and Bolron came and delivered in his Information.

Mr. Just. Dolb. You did not give him his Oath at that Time?

Mr. Lowder. No, my Lord; for it seems he had not then delivered in his Information, but only a Writing of his to Mr. Tindal.

Bar. Greg. You took no Examination then?

Mr. Lowder. No, my Lord, not at that Time; but afterwards he came and gave in his Information to us, and I think we were about two

Vol. III.

Hours about it; and then he did not charge any Person but Rushton and Sir Thomas Gascoigne; but said, he had more to recollect: Well, said I, if you recollect any more, you may come again.

Bar. Gregory. Pray who did he name?

Mr. Lowder. He named Father Rushton and Sir Thomas Gascoigne; he named my Lady Tempest, but spoke that as from another. And when he came again, he said he would trouble us with no more, but would go to the King and Council to deliver in the rest.

Mr. Just. Dolb. He said then he should recollect more.

Mr. Lowder. Yes, my Lord, he did, and when he came again, he said he would not trouble us with it, but would inform the Council of it: When we saw him so positive, he had a Letter of Recommendation from Mr. Tindal to the Council; and he lost that Letter at Ware; but he went on, and delivered his Information to the Council.

Mr. Just. Dolb. Do you know it?

Mr. Lowder. Yes, my Lord.

Mr. Just. Dolb. You cannot know it, were you there then?

Mr. Lowder. No, my Lord, but I do know it.

Mr. Just. Dolb. How do you know it?

Mr. Lowder. I have a Copy of the Order under several of the Council's Hands.

Mr. Just. Dolb. That is not Evidence, you are not to speak what another Man knows. But that is not the Matter; it seems he went to give in his Information to the Council, for indeed he could not otherwise have been safe.

Mr. Lowder. After this, he goes up to London again, and comes down and brings me another Order of Council to examine Mr. Mowbray and one Hickeringil; and I asked him if he knew any thing about Sir Miles Stapleton's being concerned in the Plot, and he said no, he believed he was very clear.

Mr. Just. Dolb. You say that Bolron brought you another Order of Council to examine Mowbray.

Mr. Lowder. Yes, my Lord.

Mr. Just. Dolb. Did Bolron bring you in Writing what Mowbray could say?

Mr. Lowder. My Lord, I know not whether it was by Writing, or by Word of Mouth.

Mr. Just. Dolb. What was it he told you Mowbray could say?

Mr. Lowder. He told me, he could say he saw Sir Miles Stapleton at Barmbow when the Consult was; but, said he, there will others come against Sir Miles.

Mr. Just. Dolb. Pray let us ask Bolron that: Did you say to Mr. Lowder, you knew nothing against Sir Miles Stapleton, but there were others would do it?

Mr. Bol. No, my Lord, not that I remember.

Mr. Lowder. Bolron himself had never said any thing against Sir Miles.

Bar. Greg. Did you ask Bolron if he knew whether Sir Miles was concerned in the Plot, or no?

Mr. Lowder. Yes, my Lord, I did, and he answered, he knew nothing against him.

Mr. Just. Dolb. He was not then upon his Oath?

Mr. Lowder. No, not then; but after this he delivered his Information, and did swear, to the Effect that Mowbray did swear, that Sir Miles was at Barmbow, and that they all did conspire the killing of the King, and introducing the Romish Religion; and he said, my Lady Tempest came to him, when he was in the Passage, and said to him, Mr. Mowbray, it is fitter for you to be treating of Sir Miles Stapleton's Servants in the Larder: And he asked me whether he had best go and apprehend Sir Miles or Mr. Ingleby first?

Mr. Just. Dolb. This was your Discourse with Bolron.

Mr. Lowder. Yes, my Lord.

Mr. Bol. May it please your Lordship, I did not know then that Mr. Mowbray was at all concerned in the Plot.

Mr. Just. Dolb. He tells you, how you told him what Mowbray would say before he came to him, and what he would say against Sir Miles Stapleton.

Mr. Bol. No, my Lord, I never said any such thing.

Mr. Just. Dolb. You say, you did not know what Mowbray would say, Mr. Lowder saith otherwise.

Mr. Bol. My Lord, I did not know what it was before he brought it himself, and he brought it in Writing.

Bar. Greg. Mr. Lowder, did he tell you the Particulars, or only said he was to depose things against Sir Miles Stapleton?

Mr. Lowder. My Lord, he told me he could swear Sir Miles was at the Consult at Barmbow, and did there conspire the Death of the King, and introducing the Romish Religion.

Mr. Just. Dolb. How long was this, Mr. Lowder, you had that Discourse with Bolron before Mowbray came to give in his Information?

Mr. Lowder. It was, my Lord, two or three Days before, and I ordered him to come again, when Mr. Tindal was to be at my House.

Mr. Just. Dolb. Were you ever with Mr. Lowder, and knew when he and Mr. Tindal ordered him to come to him?

Mr. Bol. I went to Mr. Mowbray, and we came to Esquire Lowder's, and there Mr. Tindal was; but I knew nothing of what he had to say; my Lord, Mr. Mowbray was there at that Time he doth affirm.

Mr. Just. Dolb. Mowbray, before you came to Mr. Lowder's, had you acquainted Bolron with what you had to say?

Mr. Mowb. I might acquaint him I had something to say, but did not tell him the Particulars.

Mr. Just. Dolb. Did you tell him you had any thing against Sir Miles Stapleton?

Mr. Mowb. 'Tis possible, my Lord, I might; but I am not positive in that.

Bar. Greg. Did he tell you, Mr. Lowder, what Mr. Mowbray could swear against Sir Miles, and was it not the Day which he tells here of?

Mr. Lowder. No, my Lord, it was not.

Bar. Greg. It was not the same Day?

Mr. Lowder. No, my Lord, I shall be positive in it, if I be brought to my Oath.

Mr. Just. Dolb. Come, another Witness, Sir Miles.

Sir Thomas Yarbrough called and examined.

Sir Miles. I desire Sir Thomas to speak what he heard Bolron declare what he knew of the Plot after Sir Tho. Gascoigne was taken.

Sir Tho. Yarbrough. The 10th of August 79, Mr. Bolron came to my House about 10 or 11 o'Clock at Night, and knocked at my Door; I thought

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him very unseasonable; but my Servants looking out at the Window, asked who was there; he said a Friend that would speak with Sir Thomas: My Servant came and told me, and I ordered my Servant to go down and bring him into my Chamber; in the Interim I put on a Morning-Gown: As soon as he came in, he told me he had an Order of Council to search all suspicious Places for Popish Priests, and I have great Cause to believe that there is one *Rushton* a Priest now at Sir Miles Stapleton's. What would you have me to do, said I, would you have me go with you myself? He said no, but a Servant. Said I, Mr. *Bolton* will you shew me the Order; and finding his Name in the Warrant, I ask him, Was that the Person that inform'd against Sir Thomas Gascoigne? His Answer was this, that if I pleased he would shew me the Article against Sir Thomas Gascoigne; when I observed the Article, I asked him, if he knew any Thing of Sir Miles Stapleton's being concerned in the Plot: No, I protest, faith he, I know nothing of Sir Miles Stapleton's being concerned in it, for he is a very honest Gentleman: Only this I must say, that I know he hath made a collusive Conveyance of his Estate, and I believe most of the Roman Catholics in England have done it for the securing of their Estates.

Mr. Just. *Dolben*. What do you say to this, *Bolton*?

Mr. *Bol*. My Lord, when I delivered in my Information to the Council I did accuse Sir Miles Stapleton.

Mr. Just. *Dolben*. Did you say this to Sir Thomas?

Mr. *Bol*. No, I did not, if it was not in the Information I gave to the Council, believe not one Word that I have said.

Mr. Just. *Dolben*. 'Tis possible it might be in the second Information to the Council that you accused Sir Miles: Was Sir Miles Stapleton's Name in the Paper you gave to him?

Mr. *Bol*. Yes, my Lord.

Mr. Just. *Dolben*. This was the 10th Day of August 79. Had you then informed the Council of any Thing before that Time against Sir Miles Stapleton's being at *Barmbow-Hall* at the Consult?

Mr. *Bol*. May it please your Lordship, I was called out when I was before the King and Council, and there was something I did not deliver in.

Mr. Just. *Dolben*. Then you did not do it at that Time?

Mr. *Bol*. No, my Lord, I did not.

Mr. Just. *Dolben*. I ask you again, before the 10th of August 79, had you informed the Council of any Thing against Sir Miles?

Mr. *Bol*. No, my Lord, I had not.

Mr. Just. *Dolben*. Then it could not be in the Information that you shewed him.

Mr. *Bol*. No, my Lord, it was at the second Time.

Bar. *Greg*. Was it before you had this discourse with Sir Thomas *Yarbrough*?

Mr. *Bol*. No, my Lord, it was not before that: I shall not speak one Word of a Lie.

Sir Miles. Every Word you speak is a Lie.

Mr. *Bol*. It is no Lie, before this honourable Court.

Mr. Just. *Dolb*. Were these Informations inclosed in the Letter from the Council?

Mr. *Lowd*. Yes, my Lord, your Lordship may see the Letter mentions it, (holding the Letter forth in his Hand with the Informations) which Mr. Justice *Dolben* took and silently read them over, after which he made his Report thereof to the Court.

Mr. Just. *Dolb*. Mr. *Lowder*, I have read all these Things over, and there is nothing of any Consult in them: How should then the Accusation of Sir Miles be mentioned in them?

Bar. *Greg*. I do believe, Sir Thomas, you mistake Times.

Sir *Tho*. *Yarb*. No, my Lord, I do not.

Mr. Just. *Dolb*. In the bringing of this Order of Council to you, did you ask Mr. *Bolton* if he knew any Thing against Sir Miles Stapleton?

Sir *Tho*. *Yarb*. Yes, my Lord, I did, and he said he believed he was innocent.

Sir *Tho*. *String*. Pray, Sir Thomas, why did you ask him that about Sir Miles?

Sir *Tho*. *Yarb*. Because I knew Sir Miles was related to Sir Thomas Gascoigne, and was often there.

Sir *Tho*. *String*. It seemed, Sir Thomas, you feared it.

The Lady *Yarbrough* called and examined.

Sir Miles. Madam, pray acquaint the Court what you heard *Bolton* say when he discoursed your Husband.

Lady *Yarb*. All I can say is, that I was in Bed then, and heard him say all these Things, and I heard the Order read, and there was mention of several at the Consult, among whom there was no mention of Sir Miles Stapleton.

Mr. Just. *Dolb*. Does your Ladyship very well remember that Sir Thomas *Yarbrough* asked him if Sir Miles was concerned, and he said, not that he knew of?

Lady *Yarb*. Yes, my Lord, and he said more than that; for when he returned from taking Priests in the Afternoon, there was a great deal of Company in the House, and when he came, he brought one of the Sons along with him, and they came into the Hall, there Mr. *Bolton* was with him, and among the rest there was one Mr. *Anby*, who being a little merry, he takes him by the Arm, and comes and brings him to us as we were sitting in the Porch, and said, Heark you, Mr. *Bolton*, I hear you are a Discoverer of the Plot? Yes, I am, said he: Then I pray you, who are they that are concerned? But he would not tell him. So said he, is Sir Miles Stapleton in it? He answered, he had nothing to say against Sir Miles, but he was an honest Gentleman for ought he knew, excepting that he had made a collusive Conveyance of his Estate.

Mr. *Normanton* called and examined.

Mr. *Norm*. In June 79, came *Rob. Bolton* to me, and said, that Sir *Tho. Gascoigne* would give 1000*l.* for killing the King, and the Lady *Tempest* would have hanged him for breaking a Trunk, but now he would be even with her; and that Sir Miles Stapleton kept Priests in his House, but he would apprehend them presently, for he might have twenty Pound a-piece for taking of them.

Bar. *Greg*. You say *Bolton* told you this?

Mr. *Norm*. Yes, my Lord, he told me this in my own House; and I told him he might go to Esquire *Tindal*, and I lent him eighteen Pence, and borrowed him a Horse in the Town.

*Rich. Pears*, Sir Miles's Man, call'd and examin'd.

*Rich. Pears*. My Lord, *Bolton* came to *Carleton*.

Mr. Just. *Dolben*. *Carleton*, what is that?

*Rich. Pears*. To my Master's House.

Mr. Just. *Dolben*. Who is thy Master?

*Pears*. Sir Miles Stapleton.

Mr. Justice *Dolb*. What then?

*Pears*. I go in to an Ale-house where *Bolton* was, he asked me how I did, I thanked him.

Mr. Justice *Dolben*. Did you know him?

*Pears*. Yes, my Lord, and he called for a Pot of Ale, and wished me to drink with him, and he asked me if they did not blame him for accusing my Master Sir Miles? And I said I did not hear him named; he said it was not him, but he might not tell who it was.

Mr. Just. *Dolben*. When was this?

*Pears*. Three or four Days after my Master was taken into Custody; and he said he would have gone to have seen Sir Miles; but I think (says he) he does not know me: And he asked me, if Mr. *Legget* would be at our House, and he desired me to give him a Letter; and I said I should not see him; then he said I might burn it, and I did burn it, my Lord.

Sir *Tho*. *String*. How came you acquainted with *Bolton*?

*Pears*. At the Coal-Pits, my Lord.

Sir *Tho*. *String*. Did you never see him at Sir Thomas Gascoigne's?

*Pears*. No, my Lord.

*Stephen Thompson* called and examined.

Mr. Just. *Dolb*. Have a care you speak nothing but Truth, though you are not sworn, yet we can punish you, and God Almighty will punish you if you speak false.

*Steph. Thompson*. An't like your Honour, *Robert Bolton* was Servant to Sir Thomas Gascoigne, as Steward of his Coal-Pits; Sir Thomas put him out of his Coal-Pits, and there was a great deal of Money due, and he knew not how to get it, and therefore he would take threescore Pounds for it, because he knew not how to get it, and he would take thirty-two Pounds at one Time, and twenty-eight at another, and came to me to be bound with him, which I was unwilling to; faith he, here is thirty-eight Pounds good Debt, and I shall take care to get the other, and if Sir Thomas be not kind, I shall do him an ill Turn.

Mr. Just. *Dolb*. What is this to Sir Miles Stapleton?

*Thomp*. He did swear, this Plot being discovered, they thought he knew something of Sir *Tho. Gascoigne*, and he said before the Plot broke out, there was never a Catholick in *Yorkshire* was concerned in it; if there were any, it was above.

Bar. *Greg*. This was before his Information, I'll lay a Wager.

Mr. Just. *Dolben*. How could he do him an ill Turn?

*Thomp*. My Lord, this is the ill Turn, Mr. *Legget* said he did it not for Need: O *Rob. Bolton*, said I, do you thus requite Sir *Tho. Gascoigne's* Kindnesses?

Bar. *Greg*. Did he speak any Thing to you concerning Sir Miles?

Sir Miles. I conceive when they reflect upon Sir Thomas, they reflect upon me.

Mr. J. *Dolb*. No, not so, you might be guilty, and Sir Thomas innocent, or you might be innocent and Sir Thomas guilty.

Sir Miles. My Lord, I think that as there was a Consult at Sir *Tho. Gascoigne's*, certainly if any one was guilty, we were all guilty.

Bar. *Greg*. There are some that conceive, and I think not without Grounds, that there are no considerable Catholics in England, but they are concerned in the Plot.

Mr. J. *Dolb*. There was one *Dixon* came at Sir *Tho. Gascoigne's* Trial, and said he heard *Bolton* and *Mowbray* down a pair of Stairs, speaking of Revenge against Sir *Tho. Gascoigne* and my Lady *Tempest*, and thinking these Witnesses might now be produced, we called at *Leeds* to view the Stairs, and I am sure neither my Brother nor I could see any Probability in it.

Bar. *Greg*. For Satisfaction we made two go up into the Chamber and stand where the Witnesses were, and they spoke as loud as People do usually when they discourse, and I am sure I could neither perceive what they said, nor see them, unless I went three or four Steps up.

Mr. J. *Dolb*. This is but occasioned by your jesting upon the Matter.

*Nathaniel Wilson* called.

Mr. Just. *Dolben*. Sir Miles, I would put you in mind of one Thing; produce those two Witnesses that were produced at Sir *Tho. Gascoigne's* Trial.

Sir Miles. I have none of these Witnesses.

Mr. J. *Dolben*. Certainly these Witnesses would be as material as any you can have to do it.

Sir Miles. I have them not here, my Lord.

Mr. J. *Dolb*. Nay, that is because you dare not; the King's Council will prove that what they spoke they were hired to, and had Money from Sir *Tho. Gascoigne*, which they confessed.

Sir Miles. My Lord, they made Affidavit of it.

Mr. Just. *Dolb*. Though they did, yet they confessed they were hired to it.

The Lady *Vavasour* called and examined.

Sir Miles. My Lord, I call my Lady *Vavasour* to tell, whether Sir *Walter* was there at the Consult they tell us of at *Barmbow*.

Mr. J. *Dolb*. That will be hard for her to do; but call her in. (When she was called:) But speaking so low she could not be heard by the Court, and standing beside Mr. Justice *Dolben*, he repeated her Words to the Court. My Lady, faith this Gentleman, she believes her Husband was not there in any Part of the Year, because he was infirm at *York*. Now, Gentlemen, I would only know, whether that be conclusive Evidence when it is only possible.

Mr. *Legget* called and examined.

Sir Miles. Mr. *Legget*, pray, what Money would Mr. *Bolton* have given you when I was taken?

*Legget*. Mr. *Bolton* desired me to lend his Wife some Money to go to *Marble* with, and I did: The same Day between *Tadcaster* and *York*, Mr. *Bolton* asked me what Allowance Dr. *Oates* had; I told him, I heard he had five hundred Pounds a Year: and he answered, I deserve as much; for I have done more than he.



done as much good as he: As I was going for York, I met with Mr. Mowbray, and it raining, I put in at Tadcaster; when the Rain was over, we set forward for York; said Mr. Mowbray, Mr. Bolron hath sent for me; so I went to Mr. Bolron to the George, and he sent for Mr. Mowbray, and he pulls out his Information, and after he had read it, he asked him if he knew any thing of that, and he said, he did not know of it.

Mr. Just. Dolb. Well, what is this to the Purpose? Did you hear him say any thing against Sir Miles?

Legget. I have heard Mr. Bolron say, that he had nothing to say against Sir Miles Stapleton, but only he had made over his Estate to Sir John Daney.

Mr. Just. Dolb. How came he to name Sir Miles to you?

Mr. Leg. He voluntarily told me of it, when we went to Allerton to apprehend some Priests; and when I returned I told him, I took but one of these Persons, old Mr. Metcalf; and he said, he cared not if I had but taken one Addy.

Mr. Just. Dolb. You must not talk of this Fashion.

Sir Miles. It shews but what a kind of a Man he is.

Mr. Just. Dolb. So may we examine to the end of the Chapter. Do you say Bolron read over his Information to Mowbray, and he said he knew nothing of it as to Sir Miles Stapleton?

Leg. No, my Lord, but of Sir Tho. Gascoigne; he asked him nothing, my Lord, but against Sir Tho. Gascoigne; after they went out and had been together, Mr. Bolron told me, Sir Miles Stapleton was it to be taken into Custody; and he said, you may as well have it as another, but I'll go half Snips with you: At last he told me, if I have an hundred Pounds of Sir Miles, you shall have twenty of it.

Mr. Just. Dolb. Had you any Warrant at that Time to take Sir Miles?

Leg. No, my Lord.

Bol. I know nothing of any such thing.

Mrs. Eliz. Holmes called and examined.

Mrs. Holmes. An't please you, my Lord, at Sir Tho. Gascoigne's Trial, Mr. Bolron and his Wife they were at our House at Dinner; after Dinner, they asked me, if I would go to Sir Thomas's Trial. I answered, yes; so Mrs. Mowbray came and called her Husband out of Door, and I asked her about Sir Thomas Gascoigne, and she said—

Mr. Just. Dolb. Tell us what she said.

Holmes. She said, they were hard People; but she thought they were innocent to the Plot, and she had nothing to say against them, as God shall judge her Soul. Then another Time, my Lord, after Bolron came from York, he met me. How now, Sister, I understand you are to be a Witness against me at York, but if you'll be kind to me, I'll be kind to you, and speak as favourably as I can; and he said, if he had known he should have been no better rewarded, he would never have been a Witness; the Devil should have been a Witness as soon as he.

Mr. Just. Dolb. Against whom?

Holmes. Against Sir Thomas Gascoigne and Sir Miles, my Lord, and he bid me be careful what I swore; for if we did swear false, he would have us at the Pillory, and unless I would unsay what I had said in my Lady's Trial, he would punish me sufficiently.

Mr. Just. Dolb. Who said this, know you?

Holmes. Mr. Bolron, my Lord.

Bar. Greg. Where do you live?

Holmes. I live, my Lord, in Baldwin's Garden.

Sir Tho. Stringer. Did you ever tell any that if they would come and swear against the Evidence against Sir Miles Stapleton, they should be sufficiently rewarded?

Holmes. No, never in my Life.

Sir Miles. When did you see me last, Bolron?

Bol. I have seen you in 78 several times.

Mr. Just. Dolb. He hath seen you in Prison.

Bol. My Lord, I have seen him at Barmbow-Hall in 78.

Sir Thomas Stringer. Yow know Sir Miles Stapleton?

Mr. Bol. Yes, very well; and I have several times talked with him.

Sir Miles. I desire to know whether he hath seen Sir Tho. Gascoigne and he discourse about any thing?

Mr. Bol. No, not since the Plot broke out.

Sir Miles. He swore in Sir Tho. Gascoigne's Trial, he heard me and Sir Thomas discourse about Oates and Bedloe.

Mr. Just. Dolb. Well, how material will that be?

Sir Miles. I shall prove that he swore false; for Sir Thomas and I were ever together since the Plot broke forth.

Mr. Just. Dolb. That is hard to do.

Mr. Bar. Greg. You have an excellent Witness that can swear that.

Sir Miles. In all Probability I can do it.

Mr. Just. Dolb. But that must not go before a positive. Well, have you any more?

Sir Miles. There is another Witness or two, if it be not too tedious.

Mr. Just. Dolb. No, we will stay here all Day, if you please.

Edward Cooper called and examined.

Cooper. My Lord, all that I can say is, we having been at Authertons, we met with Mr. Mowbray; knowing him, and being acquainted with him, pray said I, whether is there any thing of a Truth in this that Bolron swears against Sir Thomas Gascoigne, or no? No, faith he, he might well have sworn it against you, or any other Person; for I have been in his House as long as he, and I never knew any such thing.

Mr. Just. Dolb. This was before Mowbray had discovered any thing; for Mowbray was then a Papist, and had taken the Oath of Secrecy: Besides, he did not much what Mowbray said, he was going on a high-way: If it had been before a Justice of Peace, or if he had been upon his Oath, then it might have been more material.

Madam Shereburn called and examined.

Sir Miles. Madam Shereburn, pray declare what Bolron said at your House.

Madam Shereburn. Mr. Bolron and Mowbray came to our House under Pretence of searching for Priests, and Bolron took several Parcels of

away with him.

Judge Dolb. Away, away, if you have any thing against him on the behalf of this Gentleman, Madam, speak it; but you would prove him a Thief, and say, he went to seek for Priests, and he stole Money from them.

Mowbray. We went to seek for Priests, and we took some Chalices and other Popish Trinkets away.

Mr. Just. Dolb. Do not spend your's and our Time in saying that Bolron and Mowbray were knavish Boys; we, it may be, are guilty of Extravagances in that particular.

Mr. Bar. Greg. They themselves confess they have been very bad; they took the Oath of Secrecy, and it is as ill as ever was spoke or writ in so few Words.

Mr. Just. Dolb. I know they have been very bad Men. Well, have you any more Witnesses?

Sir Miles. I can produce my Neighbours and those of the Church of England, that can say no otherwise than that I have been of good Behaviour.

Sir Tho. Stringer. It is generally concluded by all, that Sir Miles hath been a very good Man until he fell into this great Action.

Mr. Just. Dolb. Brother, have you any thing more to say? if not, I'll proceed.

Sir Tho. Stringer. Only I desire that Dixon and Wilson may be called in to swear that they were hired at Sir Thomas Gascoigne's trial.

Mr. Just. Dolb. Call them, then.

Dixon called and sworn.

Sir Tho. Stringer. Pray tell my Lord and the Jury what Witnesses were hired, and whether you were hired to testify for Sir Thomas Gascoigne or no?

Dixon. My Lord, in November 79, John Bailly sent John Wilkinson for me, and when I came there, Batley was there; and they desired me to go and there called me into the Garden, and asked me, if I would be a Witness for Sir Thomas Gascoigne, and would give me forty Shillings.

Wilson called and sworn.

Sir Tho. Stringer. Were you offered any thing by Mr. Babbington, to be a Witness for Sir Miles?

Wilson. I was, my Lord.

Sir Tho. Stringer. Pray, tell my Lord what you were offered, and what he would have you to say.

Dixon. Batley would have him to be a Witness.

Mr. Just. Dolb. Well, but what was he to say?

Dixon. He was to say, he never see Bolron nor Mowbray at his House. Saith Batley, I saw them at the Door. Thou never didst see them in my House. Yes, saith he, I see them once, and my Lord, the third Time before they departed he might say, that in 79 he came in and found them there. This he pressed on me, telling me, it was but telling a lie, for no Oath was required in this Case.

Mr. Bar. Greg. Did Mr. Babbington offer you Money? What would he have you to testify for it?

Mr. Just. Dolb. What Money would he have given you?

Wilson. He would have given me 10 l. and Hickering proffered me 10 l.

Mr. Just. Dolb. Is Babbington a Solicitor for Sir Miles?

Bol. Yes, my Lord, here he is.

Dixon. Batley did press me to say again, that he never did see Mr. Bolron and Mowbray in his House, and he made a Contrivance of that.

Christopher Langley and Richard Cocker called and sworn.

Sir Tho. Stringer. Pray tell my Lords and the Jury what you have been proffered, and by whom, to give Evidence for Sir Miles.

Chr. Langley. My Lord, an't please you, I kept a publick House; so William Batley and John Ross came and called for a quart of Ale, and this Richard Cocker was with us, and he said, if you'll go and be a Witness for Sir Miles in those Things we shall direct you, you shall have a couple of Oxen and half a score of Sheep.

Sir Tho. Stringer. Who proffer'd you this?

Langley. Will. Batley and John Gross.

Cocker. Well, it is the same, my Lord, I went with him into his House, and he proffer'd him a couple of Oxen, and half a score of Sheep, if he would be a Witness for Sir Miles.

Mr. Bayns called and sworn.

Sir Tho. Stringer. Speak whether Mrs. Holmes would have had you to have recanted any thing against Sir Miles.

Mr. Bayns. She proffer'd me since I came into the Kingdom of England threescore Pound a Year to have holden my Tongue, if I had any thing to say against Sir Miles: I told her not whether I had any thing or no, and she proffer'd me 60 l. per Annum. Mrs. Hewit said, she would give me more if I would say nothing against Sir Miles.

Mr. Just. Dolb. Did they make an Assurance?

Bayns. I asked them, do you know another Gentleman's Purse? They said, they knew it very well, that he would give it.

Sir Miles. Pray let Mrs. Holmes be called again.

Mr. Just. Dolb. Well, she denies it. What is that Hewit?

Bayns. He married another of my Daughters, my Lord.

Mr. Just. Dolb. She only appeared zealous for Sir Tho. Gascoigne, and she would be the same for Sir Miles Stapleton. Have you any thing more, Sir Miles?

Sir Miles. No, my Lord; only Mrs. Holmes denies.

Mr. Just. Dolb. She does so.

Sir Miles. I have not so much to say against Mr. Bayns.

Mr. Just. Dolb. I do not hear he saith much against you.

Mr. Bar. Greg. He had got his Money pretty easily if he said nothing more against you; he had scarce earned his Money.

Sir Miles. I desire the Jury may consider what Credit was given to their Evidence formerly in the former Trials; for I speak seriously, I never spoke any such thing, nor was ever at any Consult about any such thing; I believe there is none that knows me will believe it.

Mr. Just. Dolb. Is that all?

Sir Miles. The Evidence is very improper; I never thought ill against the King in my life; what Reason was there for it?



Mr. Just. *Dolben*. No Reason at all that either you or any Papist should do it, but only through the mad fiery Zeal of the Jesuits; for ever since the Reformation you have enjoyed your Estates and Religion without any Molestation; but you could not endure we should quietly enjoy ours. But if you have any Matter on Record against them, we will hear it. It may be you will say he is an idle Fellow and the like; there will be no end of such Reflections.

Bar. *Greg*. You see what is produced on your Behalf, Sir *Miles*, though not by your Direction, yet on your Behalf, and they said it was but telling a Lie.

Sir *Miles*. No, my Lord, not I; I never gave any such Directions.

Mr. J. *Dolben*. Gentlemen of the Jury, Sir *Miles Stapleton* stands indicted for a very foul Treason, for endeavouring to subvert the Government, change the Religion, and to bring in Superstition and Idolatry; which he could never do, without compassing the Death of the King, he being the only Obstacle in the way. This is his Charge. The Proof of this depends upon *Bolton* and *Mowbray*; Mr. *Smith*, the first Witness, he only relates he hath been in *Rome* and *France*, and among all the Priests he conversed with there was such a Design on Foot; but against Sir *Miles* he knows nothing, but Things told him by Mr. *Thwing*, which I must tell you is no Evidence against Sir *Miles Stapleton*. *Bolton* and *Mowbray* do positively swear the Thing as plain as any Thing can be; they both swear they were present at several Consults, where it was resolved the King should be killed, and that Sir *Miles* did agree to it, and did agree to contribute 200*l* to carry on this Design. Captain *Bayne*, being examined, he saith, he did really see Sir *Miles* at *Barnbow-Hall* at that Time, but he doth not know whether it was about that or no.

Against this, Sir *Miles* saith it cannot be; but this is an Invention of *Bolton* and *Mowbray*; and to prove this, he produceth several Witnesses, that *Bolton* should deny, and that he should sometimes say that Sir *Thomas Gascoigne* knew nothing of it; sometimes that Sir *Miles* knew nothing of it: I must tell you at this Time, that they were then discoursed withal, they at that Time were Papists themselves, and lay under the Oath of Secrecy. But now here are three Witnesses, Sir *Thomas Yarbrough*, my Lady *Yarbrough*, and Mr. *Lowder*; and they do speak as much as any of the other doth concerning *Bolton* and *Mowbray*, and they speak it when it was a Time pertinent; for what they spoke to a Justice of Peace at that Time seems somewhat probable: You heard what Mr. *Lowder* saith, they came to him to accuse them the 25th Day of *January* 79, and he put them off for that Time, and he gives you Reasons why he did it; and then he brings an Order of Council to examine *Mowbray*, and he tells him what *Mowbray* would swear, and he tells him he would swear against Sir *Miles Stapleton*, that he was at the Consult at *Barnbow-Hall*; you have heard him often deliver this, and because it was somewhat material we desired him to speak it again and again: *Bolton* denies it, he never told what *Mowbray* could swear; so that depends upon the Credit of the Witnesses.

Sir *Thomas Yarbrough* tells us that *Bolton* came to him, and knocked him up out of Bed, for his Warrant to search for *Rushton* a Priest, who he said was at Sir *Miles's*, and thereupon he asked him if he could tell any Thing of Sir *Miles Stapleton*, and he said no, with many Asseverations; now if that Information were the same that was sent to Mr. *Lowder*, then 'tis of no such Weight, and it hath been presupposed by the King's Counsel, that Sir *Thomas* might forget himself, neither was there any Thing in these Papers relating to Sir *Miles*.

And my Lady *Yarbrough* being in Bed in the same Chamber, she saith she heard the Papers read, and her husband asked him of Sir *Miles Stapleton*,

but he denied that he was concerned in the Plot: And she saith further, in the Afternoon, a Gentleman brought him into the Porch where they were sitting, and the Gentleman asked him who were Plotters, but he would not tell him; then he asked him if Sir *Miles Stapleton* was concerned, and he positively denied it. These Things hang not well together, I know not how to make any Observations upon it; he denies that he said so, they say he did. The rest of the Witnesses are not very much material; only, as I told you before, what Talk they would have talked before they changed their Religion: There is nothing proved against them, but they are good Witnesses in the Law; there is no Records, nor Perjuries, nor any Thing else that takes off their Evidence, they have sworn it several Times, and stand to it. Now you have heard and taken Notice what Objections have been made against it.

Mr. Baron *Greg*. My Brother has opened it so fully, I shall trouble you with very little, only to let you see that my Observations were the same, and that I concur in the Evidence with my Brother; for there is full Evidence against the Prisoner at the Bar. The Matter they swear is Treason of the highest Nature imaginable: There are but two that swear positively, but they swear of several Consults, and of the Particulars that were agreed on by Sir *Miles Stapleton* for the carrying it on; and there is no material Witnesses against them. For the latter Witnesses of their denying of it, it must be before they were of the Protestant Religion; when they were concerned as much to conceal it, as any Persons that were guilty of it: Besides, in a Discourse a Man is not bound to tell a Neighbour all Things that he doth know, he cannot be safe to tell it to a private Person at that Time. It is very true, as my Brother hath told you, they were resolved when they discovered it they would have Security for themselves: I suppose they needed not have feared Sir *Miles* flying from being apprehended; but if Sir *Miles* was at large they might have feared it. But when they came to be examined upon their Oaths before Mr. *Lowder* and Mr. *Tindal*, there could not be any Thing to excuse them; It is true, to my Apprehension, there was no probable Reasons why these two Gentlemen should ask them if Sir *Miles* were concerned in the Plot; for in the Information they saw his Name was not mentioned; thus they were as much afraid as Sir *Miles* was, it may be; it was their care of him, knowing what Religion he was of, and knowing him to be related to Sir *T. Gascoigne*. Now it doth depend upon the Credit of what they have sworn; they deny what is charged upon them by these Gentlemen; by Sir *Thomas Yarbrough* and by my Lady; and 'tis true, Mr. *Lowder* was as a Magistrate too, and Sir *Thomas* was as a Magistrate too; it is true, he was not upon the Examination of them upon Oath at that Time, therefore that was not as before a Magistrate; but Mr. *Lowder*, they came to him as a Magistrate; therefore it must be for you to consider whether or no there might be a Forgetfulness of them in their speaking, or a misunderstanding of them; there is nothing else that I know can tend to the reconciling of it: For if there were a Mistake by the one, or a Forgetfulness in the other, then it might alter the understanding; but if they heard well and remembered true, then it will be, as I have said before, more difficult to be reconciled. But, Gentlemen, upon the whole Matter, it will depend upon the Construction and Reputation of what they swear, and these Gentlemen speak, which you are to consider.

Having sworn a Bailiff, the Jury withdrew for about half an Hour's Consultation together, and then returned into Court, and gave in their Verdict NOT GUILTY.

## CVI. *The Trial of GEORGE BUSBY, at Derby Assizes, for High-Treason, being a Romish Priest,* July 25, 1681, 33 Car. II.

THE Court being sat, and the usual Formalities preceding Business over, the Pannel of the Grand Jury was called over, and nineteen of them sworn. The Names of which Gentlemen of the Grand Jury, which found the Bill of Indictment, &c. against *George Busby*, were as follow.

1. Sir *Henry Every* of *Egginton*, Baronet.
2. Sir *Robert Coke* of *Langford*, Baronet.
3. Sir *William Boothby* of *Ashborn*, Kt. and Bar.
4. Sir *Robert Clark* of *Chilcote*, Knight.
5. *William Fitz-Herbert* of *Tiffington*, Esq;
6. *Henry Cavendish* of *Dovebridge*, Esq;
7. *William Mundy* of *Darley*, Esq;
8. *John Lowe* of *Denby*, Esq;
9. *William Berrisford* of *Bentley*, Esq;
10. *John Allen* of *Gresely*, Esq;
11. *William Hopkinson* of *Bonjall*, Esq;
12. *William Lee*, Gent.
13. *Lionel Parslow* of *Dionfield*, Gent.
14. *Joseph Harpur* of *Yeavely*, Gent.
15. *John Stiffin* of *Hopton*, Gent.
16. *Matthew Smith* of *Denby*, Gent.
17. *John Whigly* of *Cromford*, Gent.
18. *Paul Jenkinson*, Gent.
19. *George Birds* of *Stanton*, Gent.

The Indictment being brought into Court, *Billa vera*.

Clerk of the Assizes. Goaler, set *George Busby* to the Bar. (Which was done.)

Clerk of the Arraignments. *George Busby*, hold up thy Hand. (Which he delayed to do.)

Clerk again. *George Busby*, hold up thy Hand.

Which he did not do, but instead thereof, presented a Petition to the

Court to this Effect, That he was committed to the Goal in *March* last, for being a Popish Priest, and that great Industry had been used to procure Witnesses to swear against him, and that having obtained his *Habeas Corpus* to be removed to *London*, the Under-Sheriff falling sick, and being since Dead, the *Habeas Corpus* was not executed; he prays he may be removed to the King's Bench, that he may have Time to make his Defence, he depending upon his *Habeas Corpus*, his most material Evidence to clear him, and to prove his being an Alien, being then in *London*, &c.

Baron *Street*. Mr. *Busby*, notwithstanding I must proceed to try you, the Grand Jury having found the Bill *Billa vera*; you say you are an Alien; if that be so, then you are without this Law of the 27th of *Elizabeth*.

*Busby*. I had not my *Habeas Corpus*, and so am deprived of my Witnesses to prove that I am an Alien born.

Baron *Street*. If they prove you not a Native, then the Indictment falls.

Then the Clerk of Arraignments proceeded to arraign the Prisoner.

Clerk. *George Busby*, hold up thy Hand, (which he did.) 'Thou standest indicted by the Name of *George Busby*, late of *West-Hallam* in the County of *Derby*, Clerk, for that thou, being a Subject of our Sovereign Lord the King that now is, and being likewise born within this Kingdom of *England*, was made and ordained a Priest by the Authority derived and pretended from the See of *Rome*, after the Death of the Nativity of St. *John Baptist*, in the first Year of the Reign of our Lady *Elizabeth*, late Queen of *England*, &c. and before the 16th Day of *March*, in the 33d Year of the Reign of our Sovereign Lord *Charles* the second, of *England*, *Scotland*, *France* and *Ireland* King, Defender of the Faith, &c. the Laws and Statutes of this Kingdom of *England* little weighing, nor the Punishments in the same contained nor all regarding; with Force and Arms, &c. at the Parish of *West-Hallam* aforesaid, in the County of *Derby* aforesaid, being within this Kingdom of *England*, voluntarily, freely and treasonably, the 16th Day of *March*, in the 33d Year of the Reign aforesaid, hath been and remained, contrary to the Form of the Statute in that Case made and provided



and against the Peace of our Sovereign Lord the King, his Crown and Dignity, &c.

Baron Street. How sayest thou, *George Busby*, art thou guilty of this Felony and Treason whereof thou standest indicted, or Not Guilty?

*Busby*. This Indictment, my Lord, is not full; it recites not the particular Case in the Statute of Queen *Elizabeth*, viz. that I took Orders beyond Sea, and another Point, that I am a Native of the King's Dominions.

Baron Street. You may be made a Priest in England by the Authority of the Bishop of Rome, as well as at Rome.

*Busby*. How can I be made a Priest in England by the Authority of the Bishop of Rome, where there is no such Authority?

Baron Street. You must plead to your Indictment as it stands.

*Busby*. Then, my Lord, I humbly beg I may be allowed Council.

Baron Street. If any Point in Law arise, you shall be allowed Council.

*Busby*. The Time and Place is not specified in the Indictment.

Baron Street. If that be so, 'tis material. But upon View of the Indictment, 'twas found right.

Clerk of Arraignments. *George Busby*, hold up thy Hand; art thou Guilty of this Indictment, or Not Guilty?

*Busby*. (then holding up his Hand) said, Not Guilty.

Clerk of Arraign. Culprit, How wilt thou be tried?

*Busby*. By God and my Country.

Clerk. God send thee a good Deliverance.

Baron Street. Now we will see if your Objections be of any Weight; you hear the Indictment read, which was *ut ante*, being a Subject of the King's, born within this Realm; you may be made a Priest by the Authority of Rome, in England, Ireland, or Germany, or any where else, and that will make you a Priest within this Law.

*Busby*. I am no Native, I was born beyond the Sea.

Baron Street. Your being a Native, is Matter of Fact, and must be proved.

*Busby*. My Lord, I move I may have right of challenging the Jury.

Baron Street. Sure we must have the Jury before us first, before you can challenge any of them.

So the Jury being called, *Busby* challenged peremptorily near the Number allowed by the Law, viz.

<i>John Burrows</i> , Gent.	<i>John Agan</i> , Gent.	<i>Robert Rowland</i> .
<i>Henry Goodyer</i> , Gent.	<i>Henry Wild</i> , Gent.	<i>Robert Cooper</i> .
<i>John Hawksworth</i> , Gt.	<i>Thomas Coxon</i> .	<i>Edward Ridge</i> .
<i>Thomas Cockayne</i> , Gent.	<i>James Dawson</i> .	<i>William Alsop</i> .
<i>Cornelius Dale</i> , Gent.	<i>John Rose</i> .	<i>James Cooper</i> .
<i>Thomas Wetton</i> , Gent.	<i>William Salt</i> .	<i>John Wallat</i> .
<i>Thomas Wingfield</i> , Gt.	<i>John Hurd</i> .	<i>Gregory Seale</i> .
<i>William Kirkland</i> , Gt.	<i>John Stone</i> .	

The King's Council did except against two Persons only, viz. *Robert Dorey*, *Christopher Holmes*.

Bar. Street. Have a Care, Mr. *Busby*, at your Peril, if you challenge peremptorily above the Number of 35.

The Names of the Petty-Jury sworn.

1. <i>Samuel Ward</i> , Gent.	5. <i>Ed. Wolmestly</i> , Gent.	9. <i>John Roper</i> .
2. <i>Tho. Wilson</i> , Gent.	6. <i>William Horn</i> , Gent.	10. <i>John Creswell</i> , Gent.
3. <i>John Steer</i> .	7. <i>George Tricket</i> , Gent.	11. <i>Edmund Woodhead</i> .
4. <i>John Ratcliff</i> .	8. <i>Jeremiah Ward</i> .	12. <i>Anthony Bowne</i> .

Then Mr. *Bridges*, Council for the King, opened the Indictment.

Mr. *Bridges*. May it please your Lordship, and the Gentlemen of the Jury, the Prisoner at the Bar, *George Busby*, stands indicted for High-Treason, as it is alleged in the Indictment, that he being born within the King's Dominions, and made a Priest, and having received Orders by pretended Authority from the See of Rome, did the 16th Day of March last come into the Realm of England, as 'tis laid in the Indictment, to *West-Hallam*, in the County of *Derby*, and there he did abide, contrary to the Form of the Statute; and this is laid to be traiterously done. To this he hath pleaded Not Guilty; and we are to prove it upon him, by the King's Evidence, whom we are now to call.

Mr. *Coombes*. Gentlemen of the Jury, you have heard the Indictment read and opened, you will presently have it fully proved, and highly aggravated by our Evidence; for, Gentlemen, we shall prove that the Prisoner at the Bar is not only a Popish Priest, but a Jesuit, and this by his own Confession; and that his Name was inserted in Sir *William Waller*'s Warrant, when he came down into this Country to search for Jesuits: That he has held a secret and dangerous Correspondence with *Harcourt*, *Ireland*, and other Popish Traitors: That he has been their Procurator, and disbursed and received great Sums of Money for them.

Gentlemen, the Prisoner hath been a Person highly suspected, as well as dangerous to the Government, for some Years; for treasonable Matters of another Nature than he stands indicted of, have been deposed against him upon Oath at the Council Board, and thereupon a strict Warrant to apprehend him was directed to Mr. *Gilbert* (a worthy Gentleman and Justice of Peace of this County.) Mr. *Gilbert*, Gentlemen, will presently tell you the Manner of his taking him in an obscure Place in the Roof of one Mr. *Powtrel*'s House at *West-Hallam*, in this County. But here I must beg Leave to digress; for I cannot but take Notice of the malicious Temper and base Practices of this Sort of Men; for though Mr. *Gilbert* acted by Virtue of a Warrant from the Lords of the Council, and has since received an Approbation from his Majesty of what he did, under the Hand of a Secretary of State, yet could not those People forbear to raise false and scandalous Reports of, and make false Accusations against him, upon this very Account: But what is it they will not do to discourage Protestant Magistrates from doing their Duty against them? I confess, nothing is to be wondered at since the barbarous Murder of Sir *Edmundbury Godfrey*. But to proceed, Gentlemen, we shall also prove to you, that the Prisoner is so little a Friend even to the Civil Govern-

ment of this Nation, that he would not suffer his Nephew, Mr. *Powtrel*, to take so much as the Oath of Allegiance, which is scrupled only by the Jesuits; for I think their secular Priests will generally take it. Gentlemen, the Things I have already opened, are Matters of high Aggravation, and come in by Way of Indictment. But that which in this Case we rely upon is this, that the Prisoner has baptized, married, confessed, and absolved, in the Popish Way, that he has given the Sacrament, and said Mass very frequently in his Popish Vestments; and for Proof of this we have a Cloud of Witnesses.

Gentlemen, you hear the Prisoner is indicted upon a Statute made in the 27th *Eliz.* which makes it Treason for any Subject born to take Orders from the See of Rome, and afterwards to remain in England; which Law I conceive was not only made for the Security of the Government, but also in Favour of the Lay Papists themselves; for though several Statutes were made to keep them within the Bounds of their Allegiance, and to secure the Government from their villainous Designs; yet it was experimentally found true, that no Dangers or Penalties whatsoever could deter or hinder them from plotting against the State, in order to bring us back again to the Slavery of Rome; whilst those juggling Managers of their Consciences were suffered to come amongst us; and therefore I may well call this Statute, upon which the Prisoner stands indicted, an Act of Charity to the common Papists; for it was made to prevent the Dangers they would otherwise run themselves into, as well as the Nation. 'Tis true, indeed, Gentlemen, that the lively Execution of this Law has (by the Clemency of our Princes, and good Nature of the Government) been many times suspended, and might yet have continued in the Shade, had not the Popish Priests and Jesuits roused up this sleeping Lion against themselves, by a damnable and hellish Plot against his Majesty's Life, the true Religion and well established Government of this Nation; the Reality of which has been confirmed to us, not only by the unanswerable Evidence of *Coleman*'s Papers, and other loyal Proofs, but also by frequent Proclamations, and the uniform Votes and Resolutions of several Parliaments. I may therefore very well borrow the Words of a great Man upon the like Occasion, and say, That at this time of the Day 'tis much better to be rid of one Priest than many Felons: and therefore, Gentlemen, if our Evidence shall make good the Indictment, I hope you will do your King, your Country, and yourselves the Right to find the Prisoner Guilty.

Mr. *Coombes*. We shall call our Evidence.

Call Mr. *Gilbert*. (who was sworn.)

Pray tell my Lord and the Jury, what you can say concerning the Prisoner at the Bar.

Mr. *Gilbert*. My Lord, I dwell within two Miles of Mr. *Powtrel*'s House at *West-Hallam*, the Place where the Prisoner was taken, and have heard that he hath been a Priest in that Family six or seven Years, though I did never know him personally, nor, to the best of my Knowledge, ever saw him till I apprehended him, which was the sixteenth of March last, the very Day on which the Judges went out of *Derby* the last *Assizes*; the first Enquiry I made after him, was occasioned by a Letter and a Messenger from Sir *Simon Degg*, about November 1678, at which time I sent a Warrant to the Constable at *West-Hallam*, to search for the said *George Busby*, but he could not then be found; at that Time it was reported, that he was a Jesuit, and concerned in the Plot; which I had Reason to believe, because when Mr. *Gray* came to search Mr. *Powtrel*'s House for some Jesuits the January following, by Order from the Lords of the Council (in which Service he commanded me to attend him), we perceived Mrs. *Powtrel* (who is *Busby*'s Niece) to be much troubled, and in a great Passion, the Cause whereof Mr. *Powtrel* declared to be for Fear the said Search was made for her Uncle *Busby*, who, as I heard afterwards, was then in the House, though at that Time he was reported to be fled.

However, the Government had a jealous Eye on this *Busby* about two Years ago, as may appear by a Warrant from the Lords of the Council, which Warrant I have ready, and humbly pray your Lordship it may be read openly in Court.

Baron Street. Let it be read.

Clerk. "Whereas information hath been given to his Majesty in Council upon Oath, That *George Busby*, late of *West-Hallam*, in the County of *Derby*, is a reputed Priest and Jesuit, and has had a considerable Part in the late Conspiracy against the Life of his sacred Majesty, and the Peace of the Government; these are therefore to will and require you to repair to the Place aforesaid, or where-ever else the said *George Busby* shall be found, and him to seize and apprehend, and convey to the next County-Goal, there to remain in close Custody, until he shall be delivered by the due Course of Law. And all Mayors, Sheriffs, Justices of the Peace, Constables, and other his Majesty's Officers and loving Subjects are to be assisting unto you in the Execution hereof, as they will answer the contrary; for which this shall be your Warrant. Dated at the Council-Chamber in *White-Hall*, the 19th Day of March, 1678.

Indorsed to <i>Henry Gilbert</i> , Esq; at <i>Locko</i> , in the County of <i>Derby</i> .	<i>Worcester</i> , <i>Clarendon</i> , <i>Alysbury</i> , <i>H. London</i> ,	<i>Sunderland</i> , <i>Essex</i> , <i>Falconbridge</i> .
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*John Nicholas*.

(Then Mr. *Gilbert* proceeded.)

Mr. *Gilbert*. My Lord, I received this Order on Saturday the 22d Day of March, 1678. And on Sunday Afternoon I sent to Mr. *John Bagnall* of *Derby*, who was then Under-Sheriff, requiring him to meet me early on Monday the 24th, at Mr. *Powtrel*'s House at *West-Hallam*, about some earnest Business lately sent down from the Lords of the Council, where-with I would acquaint him at our Meeting: As soon as he came, I shewed him the Warrant; after which we searched very diligently in every Place we could see, but could not find him; though afterwards I was informed he was in the House at that Time also.

About August, 1679, Mr. *Powtrel* obtained a Licence from his Majesty to travel beyond Sea, and it was confidently reported by the Papists, that



that this Mr. Busby was gone over too, infomuch, that when Sir William Waller came into these Parts in January 1679, with Warrants to search for Jesuits (in one whereof I saw Busby's Name) and would have searched at Hallam, I dissuaded him, and did assure him I believed he was gone beyond Sea, and told him how often I had searched for him in vain; whereupon Sir William Waller diverted to another Place, though I have been informed since, that Busby was never out of England, since the Discovery of the Plot.

But about Christmas last, and since, I having had Notice that Busby was in England, and particularly at West-Hallam, and had been seen last Corn-Harvest to walk in Mr. Powtrel's Garden with one Anne Smalley, a Widow, I thought it my Duty to make it my further Enquiry after him, which I did on the first Day of March last, and came to the House to buy some Wood for my Coal-pits, and then brought five or six Persons with me, and sent for the Constable to help me to search for him, which we did most part of the Afternoon, but could not find him, though he was seen to be walking in the Garden with the said Anne Smalley when I came first into the House, as I was afterwards informed; but when I asked the said Anne Smalley for him, she affirmed with many Protestations, that he was in Flanders, and not in England, and that if I had any Business with him, I must go beyond Sea to him, for she had not seen him for above two Years; though she had helped to convey him out of the Garden into his hiding-hole, but a few Minutes before: However, I proceeded in my Search, and found in the Chamber where Busby lodged, a Crimson Damask Vestment, wherein was packed up a Stole a Maniple of the same (as the Popists call them) an Altar, Stone, Surplice, and a Box of Wafers, Mass-Books, and divers other Popish Things: Then I told Mrs. Braylsford (a Kinswoman of Mr. Powtrel's) and the said Anne Smalley, those Things did signify that a Priest belonged to the House; for the Book had been lately used, as was apparent by the String which was put betwixt two Leaves, whereof *Festa Februarii* was on the one Side, and *Festa Martii* was on the other side; but they stiffly affirmed, that no Priest had been there of above two Years before, and jeered me when I could not find him, and said, if there was a Priest in the House, why did I not take him?

When I had done searching, and could not find him, I took away the Vestment, and other Things, which I brought to the Assizes, a Fortnight after, and did ask Mr. Justice Charlton (who came that Circuit) his Opinion, what I should do with them; he told me they must be burnt, according to Law; I entreated his Favour, that I might send them again to the same Place, for two or three Days, to make the Priest more confident, that I might better apprehend him; he told me, he could give no such Permission; but insisted, that they ought to be destroyed.

When all the Business was done at the Assizes on the Crown-side (where I was obliged to attend) on March the 15th Day at Night, I went to the Judge again, and craved his Lordship's Pardon for presuming to send back the Popish Things, contrary to his Opinion; but acquainted him that I intended to go after them to West-Hallam that Night, and if I could not catch the Priest, I resolved to bring the same Things again; and after I had asked his Lordship some Questions, and received his Directions, I came to my own House, and went about eleven of the Clock at Night (with some Company to assist me) to Hallam, and set two Men to watch in the Garden, and one in the Church yard (joining to another side of the House) to see if they could spy any Light, or hear any Walking, in the Lofts or false Floors, when I made a Noise on the other Side of the House. I sent a Man before to call up the Constable, and when he and two or three more came, I knocked at Mrs. Anne Smalley's Window, about twelve of the Clock in the Night, and said aloud, Mrs. Smalley, open the Doors, I am come to search for a Popish Priest. She started up, and said, Who was there? I told her, It was I, she knew me well enough, I dwelt at Locko. Then I staid a pretty Space of Time, and called aloud to her again, and spoke the like Words: but by that Time, I suppose she and her Bedfellow, Mrs. Braylsford, were gone to give the Priest Notice, and to help him to his hiding-hole, for no body answered me; then, after a pretty Space, I called to her a third time, and required her, in the King's Name, to open the Doors, for I was come to search for Busby, the Jesuit, who was a Traitor by Law, and if she would not open the Doors, I would cause the Constable to force them open; and when I could have no Answer from her, I went to Joseph Dudley's Chamber-Window, and called there, charging him in the King's Name to open the Doors, but no Answer at all was returned; for he also was gone into the Priest's Chamber, and found Anne Smalley busy in helping Busby to secure himself, as the said Joseph Dudley did afterwards inform me.

After I had staid about a quarter of an Hour, I commanded the Constable, in the King's Name, to break the Doors open, which was done; and when we came into the Priest's Chamber, I found the Fire had been lately extinguished, the Counterpane and the Blankets laid in confused Heaps on the Bed, and some part of them warm, and some part cold; the upper part of the Feather-bed was cold; which I wondred at, then I put my Hand underneath, and the Bed was warm; for they had turned it. I looked for the Pillow, Sheets, Cap, &c. but Anne Smalley (as I was afterwards informed) had taken them into the Chamber where she lay. I asked her divers Questions about the Person that had lain in that Bed that Night, and particularly, whether or no it was not Busby? She told me, no body had lain in that Bed that Night; I told her, I was sure some Person had lain there; for the Feather-Bed was warm on the under-side: She took many Protestations, that no body had lain there of divers Nights before: I replied, if she would discover the Person who had lain there, it would save her and me much Trouble: But when all I could say would not prevail, I told her, I must search, for I was confident, that Busby was in the House, because she would not declare who it was that lay there.

I began to search about one of the Clock, and continued till after ten next Morning before I could find him: And though the Watchers in the Garden told me, they heard his Paces and Steps very plainly amongst the Lofts and false Floors, and described on the out-side of the House the Place where they last heard him, within the Space of nine or ten Foot-

where he was hid; yet were we almost so many Hours before we could find him.

At last when the Searchers were almost all tired, Anne Smalley, and others of the Family, scoffed at us, and asked, What have you not found him yet? You said there was a Priest in the House, why do you not find him then? Why do you not take him? I said, All in good Time? I was resolved to find him, or starve him out: Nay, the Foot-Boy of the House, seeing my Servant look within the Kitchen-Chimney, where there hung a Port-Mantle, said, jeering to my Man, Look if he be not in the Port-Mantle.

After those Persons had pleased themselves a good while with mocking us for our Disappointment, I persuaded two or three of the Searchers once again to climb upon the Lofts (which I could not do myself, by reason of a Lameness in my Shoulder), and look well near the Place where Busby's last Steps were heard. Which when they had done some while, and found nothing, I took my Sword and Scabbard, (being in the Room underneath) and knocked on the Plaster-Floors over my Head, and caused them to answer me with the like Knocking as near the same Place as they could, and when we had examined the Floors in this Manner, I knocked near unto a Stack of three Chimneys, but they could not answer within a Yard; I knocked again in two or three Places near the Chimneys; yet still they could not answer near those Places, but told me there was nothing but Tiles and Roofing; I bid them break open those Tiles, which they did, and espied under them a wooden Door, and a little iron Hinge; I bid them break the Door; then one of the Searchers put in his Hand into a little Hole that was broken in the Door, and felt a Hat; then he told me some Body was in that Place, for a Man had thrown his Hand off the Hat; then I caused them to break open the Entrance, which when they had done, Busby spoke to them, and desired them to be civil; when they told me what he said to them, I charged them to be civil to him, and bring him to me, which they did. Then I arrested him in his Majesty's Name for High-Treason, and after he had refreshed himself a little, I told him he must get on his Boots, and prepare himself to go to Derby.

Soon after his Apprehension, (I perceiving him to be a little dismayed) I encouraged him, and said, he should have all the Favour a Person in his Circumstances could expect; for I told him, I understood he was a Gentleman of a good Family in Buckinghamshire or Oxfordshire, and that his Brother lived at Coddington in Oxfordshire, which he acknowledged and thanked me for my Civility.

I was so well satisfied that we had apprehended him, after much tedious watching and searching, that I never thought of sending any Man to look what was in the hiding Hole with him; but after an Hour's stay, or thereabouts, I took him away from Hallam between eleven and twelve o'Clock on the 16th of March last, and brought him to Derby between one and two of the Clock; where, after I had taken his Examination, I made a *Mittimus*, and committed him to Derby-Goal.

On Saturday following, I writ a Letter to Oxford to the Right Honourable the Earl of Conway, one of his Majesty's Principal Secretaries of State, informing his Lordship of the apprehending and Commitment of Busby, and inclosed a Copy of his Examination, to which his Lordship writ me a Letter in Answer, that he had acquainted his Majesty with my Proceedings, who did very well approve of what I had done.

Busby. My Lord, I am an Alien, born at Brussels.

Bar. Street. Was your Father of that Place? It is a very good Family.

Busby. My Father lived at Coddington, my Mother was an Heiress, and here is an Affidavit ready to be produced of what Children my Father had before he went beyond Sea, born at Coddington, out of the Register of that Place; I have had no Time to bring a particular Certificate where I was born, and what other Children my Father had beyond Sea; my Father went over about the beginning of the Troubles, and I am about forty Years of Age.

After the Judge had told Busby of the Act for Naturalization.

Mr. Busby. I suppose (my Lord) that Act may stand good as to Privileges of the Subject, but not as to Penalties.

Bar. Street. Yes, as to all Intents and Purposes: Read the Act 29 Car. II. cap. 6.

An Act for the Naturalizing of Children of his Majesty's English Subjects, born in foreign Countries during the late Troubles.

WHEREAS during the late unhappy Troubles in England, which began in the Year of our Lord, one Thousand six Hundred forty One, and continued until the Time of his Majesty's most happy Restoration, divers of his Majesty's English Subjects, as well of the Nobility as others, did either by reason of their Attendance upon his Majesty, or for fear of the then usurped Powers, reside in Parts beyond the Seas out of his Majesty's Dominions, and it may hereafter become difficult to make Proof of the Occasion of such their Residence: Now for preventing of all Disputes and Questions that may arise, whether the Children of such his Majesty's Subjects of this Realm are Natural-born Subjects of our Sovereign Lord the King, and to express a due Sense of the Merit of all such Loyal Persons as out of their Duty and Fidelity to his Majesty and his Father of blessed Memory, did forego, or were driven from their native Country;

Be it declared and enacted by the King's most excellent Majesty, by and with the Consent of the Lords Spiritual and Temporal, and the Commons in this present Parliament assembled, and by the Authority of the same, That Charles Gerard, and Elizabeth Gerard, Children of the Right Honourable Charles Lord Gerard of Brandon, Trever Wheler, and Dorothy-Elizabeth Wheler Children of Sir Charles Wheler, Baronet, Anne Ravenscroft the Wife of Edward Ravenscroft of Bretton in the County of Flint, Esq; one of the Daughters of Sir Richard Lloyd, Knight, deceased, born at Calais in France, and all other Persons who at any Time between the

fourteen



fourteenth Day of *June* in the said Year of our Lord one Thousand six Hundred forty-one, and the four-and twentieth Day of *March* in the Year of our Lord one Thousand six Hundred and sixty, were born out of his Majesty's Dominions, and whose Fathers and Mothers were Natural-born Subjects of this Realm, are hereby declared and shall for ever be esteemed and taken to all Intents and Purposes, to be and to have been the Natural-born Subjects of this Kingdom; and that the said Children, and all other Persons born as aforesaid, and every of them, are and shall be adjudged, reputed, and taken to be and to have been, in every respect and degree, Natural-born Subjects, and free to all Intents, Purposes, and Constructions, as if they and every of them had been born in *England*.

And be it further enacted and declared by the Authority aforesaid, That the Children, and other Persons as aforesaid, and every of them, shall be, and are hereby enabled and adjudged able, to all Intents, Constructions, and Purposes whatsoever, as well to demand, as to have and enjoy any Titles of Honour, Manors, Lands, Tenements, and Hereditaments, and all other Privileges and Immunities belonging to the Liege People and natural Subjects of this Kingdom, and to make his or their Resort or Pedigree, as Heir to his, their, or any of their Ancestors, lineal or collateral, by Reason of any Descent, Remainder, Reverter, Right, or other Title, Conveyance, Legacy, or Bequest whatsoever, which hath, may, or shall descend, remain, revert, accrue, come or grow unto the said Children, or Persons born as aforesaid, or any of them; as also to have and enjoy all Manors, Lands, and Tenements, or other Hereditaments, by way of Purchase or Gift of any Person or Persons whatsoever; as also to prosecute, pursue, maintain, avow and justify all and all manner of Actions, Suits and Causes, and all other Things to do as lawfully, liberally, freely and fully, as if the said Children, and the Persons born as aforesaid, and every of them had been born of *English* Parents within this Kingdom, or as any other Person or Persons born within this Kingdom may lawfully in any wise do; any Law, Act, Statute, Provision, Custom, or other Thing whatsoever, had, made, done, promulged, proclaimed, or provided, to the contrary thereof in any wise notwithstanding; provided always, that no Person, other than the Persons expressly named in this Act, shall have any Benefit thereby, except such Person shall within seven Years next ensuing, receive the Sacrament of the Lord's Supper, and within one Month next after such receiving the Sacrament, take the Oaths of Allegiance and Supremacy in some of his Majesty's Courts at *Westminster*, and deliver into the Court, at the same Time, a Certificate of such his receiving the said Sacrament, and then make Proof thereof by Witnesses to be examined *viva voce* upon Oath.

And be it further enacted, That no Person or Persons, other than the Persons expressly named in this Act, shall have any Benefit thereby, until he or they shall have received the Sacrament, and made Proof thereof by Certificate and Witnesses, and taken the said Oath in Manner aforesaid.

And for the better Manifestation and Proof of such Qualifications as may entitle any Person to the Benefit of this Act, which in process of Time may be very hard to be proved; Be it further enacted, That any Person having received the Sacrament, and made Proof thereof by Certificate and Witnesses, and taken the said Oaths within the Time aforesaid, in any of his Majesty's Courts, in manner aforesaid, shall and may be admitted to make Proof of such his Qualification in the said Court by Witnesses *viva voce* to be examined upon Oath; and if he shall make Proof thereof to the Satisfaction of the said Court, he shall thereupon have a Certificate thereof under the Seal of the said Court, to be likewise enrolled in the said Court, and for ever after upon shewing such Certificate or Enrollment thereof, every such Person shall have full Benefit of this Law, as if he had been therein expressly named.

Bar. Street. Then you are a Natural-born Subject by the late Act of Parliament; whereby it appears that all Persons born abroad in the late Troubles, who went out of this Kingdom by reason of their Sufferings for the King, are made Natural-born Subjects, as if born here.

[Then Joseph Dudley was called and sworn.]

Bar. Street. Joseph Dudley, do you know the Prisoner at the Bar? Look upon him.

Joseph Dudley. I have known him these six Years and more, to belong to Mr. *Powtrel's* at *West-Hallam* to whom I was at that Time a Servant, where he officiated as a Priest, and was kept to do that Office; where I have heard him say Mass, preach, pray, and have seen ten, twenty, or thirty or more at a Time before him in the Chappel there, when he hath officiated with his Priestly Robes upon him; and likewise seen Children brought to be christened by him, others to be catechized; which he frequently did, as if he had been a Parish-Priest, but with what Privacy he could: And I myself have taken care of the Doors at such Times, which care they left to me, though I was not of their Opinion; yet upon my promising to be so, they did repose that Trust and Confidence in me.

Bar. Street. Tell us what you know concerning Mr. *Busby's* being an Alien, as he pretends, which I cannot believe.

Joseph Dudley. He tells you, that when the Civil Wars were here in *England*, his Father and Mother, with their Family, went beyond Sea, where he was born; but, my Lord, in discoursing with my Master and others of the late Wars, I have heard Mr. *Busby* relate what happened to their Family in those Times, and that their House was often plundered, and his Father and Mother living at *Coddington* in *Oxfordshire* (as he tells you) the first Time the Soldiers came to plunder the House, he was about two Years old or more, and being frightened at the Soldiers, he hid himself behind the Bed in the Curtains, so that while they were there, none of the House knew where to find him, which made them believe that the Soldiers had taken him, or made him away; but when the Soldiers were gone, his Mother and some of the Family lamenting for him in her Chamber, he hearing them, appeared; so that with great Joy they received him. My Lord, I think the Place was *Coddington*, where he tells you his Mother lived, and that it was her's, she being an Heiress. At least, I

am very certain I have heard him speak of the Place where he was born, to be in or about *Oxfordshire*, I think it was *Coddington*; for it is the Place where Mr. *Charles Busby* his eldest Brother now liveth, and he saith, that from thence his Father and Mother went beyond Sea.

Busby. When did you hear me discourse any such thing as you have related, and with whom; you speak this by hear-say, do you not?

Jos. Dudley. Several times with my Master and others, as I said before, when they have been talking how some Families have been ruined by the great Oppressions of those Times, some being plundered, others sequestered, and forced to leave their Estates and Friends, which you have said was your Mother's Case; for their great Sufferings forced them to go from their own House: And, my Lord, when he was about five Years old, he did also say, that he could remember Soldiers coming again to plunder, and he being at that Time in the Garden or Orchard, he did hide himself in the Hedge, where he did continue till they were gone, and then he came forth when it was late in the Evening; but his Mother nor any of the Family knowing where he was, did very much fear they had lost him; but when he came to them, they were not a little joy'd; but after this they went immediately beyond Sea, and took him with them, where his Mother continued several Years, and had several Children there, the which I have heard him say of himself, and of her being at *Brussels*.

Bar. Street. Mr. *Busby*, the Evidence says, that you told a Story of your Mother's House being plundered, and how you hid yourself in the Curtains when you was two Years old, and in the Garden-Hedge, when five Years old, for fear of the Soldiers, and that soon after your Mother went beyond Sea, where she had several Children, which yourself told from your own Mouth, and he had it not from other People.

Bar. Street. But, Mr. *Dudley*, What can you say as to his being a Priest or Jesuit?

Jos. Dudley. My Lord, my Master and his Family, and all Papists that were acquainted with him, ever owned him to be a Jesuit; and several of them have many times told me so: Besides he himself has owned that he was of the Society of *JESUS*, particularly one time, when I should have been his Convert; telling me, *While I was out of the True Faith, I could not be saved; and there was no way to be saved, but by believing the Catholick Church, which was the Roman Catholick, as Tradition makes appear; for God help me, I was a poor Heretick, and led by weak and blind Pastors; for they had their Religion only from Calvin and Luther, and every silly Fellow was made now a Preacher of the Gospel, before he understood it; but that he and all Jesuits were fifteen Years labouring in their Studies and Degrees, before they came to be ordained.*

Busby. I pray you, where and when was it I said all this to you?

Jos. Dudley. In the Gardens at *West-Hallam*, where my Master Mr. *William Powtrel* and Mrs. *Anne Smalley*, after great Persuasions, sent me to you; and told me they had sent you before; and that I should find you there, where I did. And your first Discourse was of the Gardens, withal giving me a Description of the Jesuit's College in *Liege*, where you did (as I remember) own your receiving Orders. Besides, I have heard my Master, Mrs. *Smalley*, Mrs. *Winifrid Attwood*, and *George Harrison* (who lived in the Colleges beyond Sea) own it. And yourself said, *That Mr. Evers, my Lord Aston's Priest (who had been with you at West-Hallam) was your Master and Tutor*, when, as I think, you were a Scholar at *St. Omer's*.

Busby. How long do you say you have lived at *West-Hallam*?

Jos. Dudley. Betwixt six and seven Years.

Busby. When was that I talked of the Gardens at the College of *Liege*? And whether I told you I was a Jesuit when I spoke of *Liege* Gardens? What Time was it, what Year?

Jos. Dudley. I cannot say the Time, but 'twas since I lived at *Hallam*, and 'twas when you persuaded me to be a Catholick.

Busby. You take a Compass of six Years, this is a mere Story. Pray, what were my Arguments?

Bar. Street. You were about to convert him, and then you told him this; 'tis enough you have endeavoured to make him change his Religion; but it seems your Arguments were not of so much weight as to be remembered.

Busby. I pray you, was I ever with you alone to tell you I was a Jesuit? Let me know the Year and Time, and what induced me to say so?

Jos. Dudley. I cannot satisfy you when the Discourse was; but I have been alone with you in the Garden a hundred Times and more; when you did satisfy me that you was a Jesuit, was the Time when you did move me to be of your Persuasion; the which I did so far condescend to, that ever since there was none of the Family more trusted than I; for, my Lord, I did give them all the Assurance that might be of being of your Religion; but the Times being troublesome, and the fear of disobliging my Friends, particularly one or two, who had the Care and Management of a House of mine (which was then in Trouble) then I durst not consent, yet my seeming Inclination did ever much please them, and they did so far credit me that my Master did intend (as he told me) to take me beyond Sea with him; nor did I know the contrary, till I was upon the Road for *Dover*, and then he told me that his Uncle *Busby* was inserted in the Pass (by the Name of *Thomas Jackson*) which he shewed me; but he having no Mind to go, stayed in *England*, (and for the most part at *Hallam*) so that my Master commanded me back, to look after his Affairs there: And for some Time before he was to return, he said he would send for me over. Ever since he left *Hallam* Mr. *Busby* hath continued privately there, for none besides Mr. *George Brent* and myself, and the Women of the House, were suffered to know of him; nay, some of his Relations who have lain in the House, have not known but that he was beyond Sea, though they were Papists, yet he would not suffer them, but concealed himself.

Busby. I pray, will you tell me what Day, Month, or Year it was, you and I had this Discourse you speak of; and tell me how it came that I was so familiar with you?

Bar. Street. What need you impose it upon him, when he saith he hath lived with you six Years and more? He cannot remember it; but he tells you



you, that it was in the Garden, where he has been with you a Hundred Times and more, not thinking further of it; 'tis impossible to satisfy you the particular Time: Therefore why do you ask him such a foolish Question?

*Busby.* I desire you will let me know how you (as you pretend) come to know I was a Jesuit.

*Jos. Dudley.* Sir, it is what you know to be Truth, and I am sure you cannot but remember, it was in the Walk at the Head of the Orchard, where you was before me expecting my coming to you, and did then use all the persuading Means that might be to confirm me in your Opinion; in which I seemed so well satisfied, that you told me you would leave me to consider of it; but that I ought to forsake my Friends, and whatever else, to come to God Almighty, of which you did not doubt; but bid me be careful, for Delays are dangerous: And, my Lord, as to his being a Jesuit, he did own it when my Master was committed to Prison for refusing the Oaths of Supremacy and Allegiance; (for he was then private at *West-Hallam*), withal saying, in his Conscience he ought not to take them, for their Church would not allow it, but on the contrary did expressly forbid it: Nevertheless Mrs. *Powtrel*, Mr. *William Powtrel*, and divers of the Family, did argue for his so doing, especially after Mr. *Thomas Cannynge* came from *St. Thomas*, in *Staffordshire*, and said, that his Uncle *Fowler*, he, and all belonging to him, had taken the Oath of Allegiance: And that it was the Opinion, and with the Consent of Mr. *Fitter*, their Priest, that they might do it; and for that Reason Mr. *Cannynge* came to advise my Master the like: But Mr. *Busby* did reject the Motion, and said, no secular Priest could give Leave so to do, and for his Part he was absolutely against it, and so was all the Society: But if Seculars gave too much Liberty, he would not be guilty of their Fault; so when all would not prevail with him, then Mrs. *Powtrel* and I went to Mr. *William Brent*, at *Fox-Coat*, in *Warwickshire*, her Grandfather, and Mr. *Busby's* Father-in-Law, a Counsellor, to have his Advice; and upon his writing several Letters to my Master, and Mr. *Busby*, that it was proper for my Master so to do, nor could he avoid it; then in Compliance to Mr. *Brent*, he did not much oppose the taking of the Oath of Allegiance: And those Letters, the next Night after Mr. *Gilbert* had taken Mr. *Busby*, Mrs. *Smalley* (for Fear he should find them) did burn, but shewed them to me as she was looking over many Papers more, the most of which she did likewise burn.

Mr. *Gilbert*. For your Lordships and the Juries further Confirmation, that the Prisoner is a Jesuit as well as a Priest, and that he held a dangerous Correspondence with some of his Order, which have been executed for their Treasons in Relation to the Plot, I must acquaint your Lordship, that this *Busby* was Procurator for the Jesuits, and that he received the Rents of their Lands, from 1673 till 1677, and that he disbursed and returned several great Sums of Money to divers Jesuits, as may appear by Letters, and his Account-Book, which I took, where may be seen what Dealings and Transactions he had with *Gawen*, *Harcourt*, *Turner*, *Ireland*, *Pool*, *Bennet*, *Heaton*, *Tomson*, and others of his Tribe: He could not deny it to be his own Hand-writing.

My Lord, here is the Book.

(Which was presented to the Judge, and perused by him.) Then Mr. *Gilbert* proceeded.)

My Lord, I did also search at *West-Hallam* House for popish priestly Garments (being well informed that there were such in the House), and found divers Suits of Vestments, and other popish Trinkets, which I brought away, together with those I formerly sent back from the last Assizes; all which I have ready in Court to be produced, and have also a Minister here (who has formerly been a popish Priest himself), to inform your Lordship the Names and Use of all the Particulars; here are also (my Lord) a Box of Wafers, which I suppose they use for the Sacrament at the Mass; the larger Sort, I am told, are for the Priests Use, the lesser for the People; and here are the Wafer-Irons which made them.

Mr. *Sheppey*, pray tell my Lord and the Jury the Names of all those things, and how the Priest used them at Mass.

Mr. *Sheppey* taking up the Things, said, My Lord, this is a Vestment, used when the Mass is said; this is a Stole, and this is a Maniple, and this an Antependiana: And so gave an Account of the rest of the Trinkets.

[Then Thomas Houis was called and sworn.]

Bar. *Street*. What can you say, Friend, of the Prisoner? See if you know him, look upon him.

*Thomas Houis.* I know him well enough, he persuaded me to be a Roman Catholic, when I was about to marry a Man's Daughter that was a Papist; whom I could not have, until I turned to their Religion. Mr. *Busby* persuaded me, and when he had converted me, bound me to believe that Matrimony was a Sacrament; he gave me Absolution, and made me do Penance; the Words of the Absolution I cannot pronounce, but I have been several Times at Mass when he said it, when I had Absolution from him; after Confession I was to say these Words:

'For all which, and whatever else I cannot at this present call to Mind, I am heartily sorry for, for the Love of God; and purpose by God's Grace to amend, beseeching you, my Ghostly Father, to pray to God for me, and to give me Absolution and Penance.'

Afterward you know you married me, and I was cited to *Lichfield*-Court for being married privately by you. My Lord, I have been present when Mr. *Busby* said Mass at *West-Hallam*, and have heard and seen him say Mass several Days in his priestly Robes: I never knew any other Priest but him at *West-Hallam*; most Sundays and Holydays he said Mass, where were present most of the Roman Catholics in those Parts; I have heard him preach three Times, and no more.

*Busby.* Did I come to you, or you to me?

*Tho. Houis.* I came to you.

*Busby.* Then I did not persuade you to turn Catholic, you was satisfied upon the first Persuasion before you came to me, and declared you would turn Catholic.

*Tho. Houis.* I was persuaded by Mr. *Shirburn* of *Stanly-Grange*, yet not fully convinced but by you.

Mr. *Gilbert.* My Lord, this *Shirburn* he speaks of, was one Captain *Shirburn* a great Papist, who lived near me, a Letter-Carrier (as was reported) and one that sold them Books and Trinkets.

*Tho. Houis.* For I was fully satisfied then in all Things by your Instructions, and hearing your Sermons; as for Mass, I did not understand it; but you said it was Mass; besides, others called it so.

*Busby.* How can you swear to a Thing you do not understand?

*Tho. Houis.* If I did not, you told me so, and I believed you, because you did the Office of a Priest.

Bar. *Street.* It seems this is the Matter, you courted a Papist for your Wife, and *Busby* told you the Way to have her was to be a Papist, and you did hearken to *Busby* to persuade you; he told you, Matrimony was a Sacrament, and before you were married, you must be confessed, and have Absolution; and Mr. *Busby*, you put Words into his Mouth to desire Absolution; but gave it in such Language as he understood not: He says, he has heard you say Mass frequently; but preach only three times.

*Busby.* It is an easy Matter for him to say such Things, but how does he prove it to be Absolution or Mass, when he says he understands not the Language?

*Tho. Houis.* My Lord, I have not only been present at that which they call their Mass, but I have also received the Sacrament from Mr. *Busby* then, and have seen him give the Sacrament to divers other Persons too; and besides, my Lord, I did send my eldest Child to the Chapel at *Standly-Grange*, to have it christened by Mr. *Busby*: This Woman (pointing to *Sarah Clark*, who stood by) carried it: When we came there, Dr. *Richard Needham* (who lived there) said to me, Are you the Father of this Child? I answered, Yes: Then, says Dr. *Needham*, You ought not to be present when your Child is christened: Whereupon, my Lord, I went into a Corner of the Room, but could perceive well enough what was done, and Mr. *Busby* did christen my Child, and gave her the Name of *Anne*, Mr. *Peter Waldron* was Godfather, and Mrs. *Anne Smalley* Godmother.

King's Council. We shall now call *Elizabeth Evans*, for further Proof of Mr. *Busby's* exercising his priestly Office: (Who was also sworn.)

Bar. *Street.* Come, good Woman, what can you say of the Prisoner at the Bar, do you know him?

*Eliz. Evans.* Yes, I know the Prisoner at the Bar, it's Mr. *Busby*, my Lord, and have seen him in his priestly Habit say Mass in the Chapel at Mr. *Powtrel's* House at *West-Hallam*; I saw him christen *Henry Avery's* Child of *Stanton*, I was Godmother to the Child: He has confessed me several Times; and I have received Absolution from him: I have received the Sacrament from him.

Bar. *Street.* What was it he gave you, when you received the Sacrament from him?

*Eliz. Evans.* I know not what it was Mr. *Busby* gave me.

(Then the Wafers were called for; they were of several Sizes in the Box.)

And being shewed to her, she said, yes, my Lord, these are what he gave us at Mass for the Sacrament; I remember them, they were just such.

*Busby.* Wafers are things usually put under Biskets and Macaroons; therefore how can she say those are the Sacrament, for they are what I have seen given to Children to eat and play withal.

Bar. *Street.* They are Things indeed to give to Children.

King's Council. Pray call *Dorothy Saunders*.

(Who appeared, and was sworn.)

Bar. *Street.* Well, *Dorothy Saunders*, what say you?

*Dor. Saunders.* He has several Times absolved me, and given me the Sacrament, and has said Mass, where the Company were sometimes more, and sometimes less; (and having a Wafer given her into her Hand) and he held up the Wafer thus (and shewed the Court and the Jury the Manner of his Elevation of the Host.) And being asked by the Judge, whether she knew priestly Vestments? (answered)

*Dor. Saunders.* Yes; I know priestly Vestments when I see them; (which being shewed to her) she said, she had seen *Busby* in some of them; but for his christening of Children, I know nothing of that.

*Busby.* Is that the Sacrament? Those Wafers in the Box is that the Sacrament?

*Dor. Saunders.* We took it at your Hands for the Sacrament.

Bar. *Street.* Mr. *Busby*, you are so impertinent in your Questions, you think you have weak Persons to deal with; I hope the Jury will take Notice of it.

King's Council. Call *Sarah Clark*. (Who appeared, and was sworn.)

Bar. *Street.* *Sarah Clark*, have you heard Mr. *Busby* say Mass?

*Sa. Clark.* Yes, my Lord, that which he told us was Mass, but I did not understand it, for it was in another Tongue, which they said was Latin.

Bar. *Street.* But had he his Vestments on, or how was it, tell us, good Woman?

*Sa. Clark.* Yes, my Lord, he had Vestments on, and he did then give us the Sacrament, as he called it, which was a Wafer, and that he put into our Mouths after that he had elevated the Host: And he himself told me it was the Sacrament.

Bar. *Street.* Well, and have you made Confession to him, and has he absolved you after you have done so?

*Sa. Clark.* I have been at Confession before him upon my Knees, and when I had done, he spoke something to me in Latin (as I think) which he said was Absolution, and I did take to be so; and I have sometimes, my Lord, heard him preach; and that I understood, because it was in English. He told me what Absolution was, and the Mass, and the same was to be read in English, and those that could read, at those Times, said the same.

Bar. *Street.* Several Witnesses have spoken closely, that he has exercised his Office in all Things as a Priest: Have you known him marry any Body, and christen Children; if you have, speak?

*Sa. Clark.* My Lord, he did not marry me, one Mr. *Gavan* married me, but I have heard that he did marry *Thomas Houis*, and I am sure he did christen



christen *Thomas Hunt* his first Child, for I carried it to him, and Mr. *Waldron*, and Mrs. *Anne Smalley* were Godfather and Godmother, and he did name it *Anne*; it was christened at *Standly Grange*, at Dr. *Needham's* House, and several others were there at the same Time, and afterwards I brought it home.

*Busby*. How do you know it to be *Mafs* and Absolution, when you say you do not understand the Language I spoke in?

*Sa. Clark*. Though I did not understand what you said, you told me what every thing meant, and I did believe you, because others told me so too; besides, all Papists thought it their Duty (as you told us) to be there Holy-days and *Sundays*, to prevent a venal Sin, which if we omitted we were liable to Penance.

*Mr. Gilbert*. My Lord, we have three or four more Witnesses, but we are loth to trouble your Lordship and the Court with any further Testimony of this Nature; hoping the Matter of the Indictment has been fully proved against the Prisoner; and if your Lordship please we will rest here.

*Bar. Street*. I suppose the Jury will believe there has been sufficient Evidence given to convict him; but Mr. *Busby*, what can you say for yourself?

*Busby*. *Joseph Dudley* tells your Lordship how I should tell a childish Story of hiding myself in the Curtains, when I was two Years old; pray, my Lord, consider how I could remember what I did at two Years old; I know not how I could. I have told your Lordship I was born beyond Sea, I am sure I was bred there; I hope your Lordship will not take notice of an Hear-say; my Mother went beyond Sea at the beginning of the Troubles, not after, 'twas before *Edge-Hill Fight*. As to what *Houis* says, he himself does acknowledge, that he does not understand what Language I absolved him in, nor the Language of the *Mafs*, and therefore he cannot swear to it; and for ought I know, as to his being married, it was in a privileged Place, and could not be cited to *Litchfield-Court*; and for what the other witnesses say, their Evidence is only that they heard something read in an unknown Language, usually Women pray in an unknown Language, and those publick Prayers were only Family-Duties; they swear not what it was, because they understand it not.

*Bar. Street*. I believe not one in a hundred understands your Prayers that hear them; else they would not be so juggled by you.

*Busby*. There are Vespers and Mattins, and Even-song; he does not distinguish what it was that was said, by reason it was in an unknown Language to him; it was only Family-Duty. I can produce a Witness to prove it, that Women do Family-Duty in an unknown Language.

*Bar. Street*. I know Women do not officiate in your Church.

*Busby*. He swears, my Lord, to what he does not understand. As for *Elizabeth Evans*, she swears concerning saying *Mafs*, and understands not one Service from another, and this proves not particularly my priestly Office.

*Bar. Street*. Mr. *Busby*, you forget christening *Avery's* Child, and *Houis's* Child, confessing and absolving divers Persons, the material Evidence: You only offer some little Diversions.

*Busby*. *Dorothy Saunders* knows not what she swears, nor *Sarah Clark*; none of the Witnesses can distinguish one Service from another; they cannot therefore swear what was, and what was not; giving of Bread is not the priestly Office, they do not swear positively to my exercising the priestly Office, other Persons wear those Garments as well as Priests: Those Things are Monuments and *Heyre-Loomes* to the Family, they were taken out of Churches in former Times at the Reformation: There are now to be seen in the Cathedral at *York*, Church-Stuff and Vestments, which are kept for Antiquity, and so were these.

*Bar. Street*. Mr. *Sheppy* has been a Priest, and he knows the Use of those Things as well as you.

*Busby*. My Lord, those Things Laymen do wear as well as Priests, I desire to call a Witness to prove it.

*Bar. Street*. You may if you will, but to what Purpose?

*Busby*. Pray call *Robert Needham*. (Who was called and appeared.)

*Bar. Street*. Well, *Needham*, do you know these Things?

(The Vestments being shewed unto him.)

*Rob. Needham*. I have had these Things on my self, my Lord, and have said my Prayers in them, and have thought my Prayers more acceptable when I had them on; and I have seen them used by others several Times.

*Busby*. More wear them that are Laymen, than such as are Priests.

*Bar. Street*. *Needham*, it seems you wore them whilst you said your Prayers, that they might be more acceptable?

*Rob. Needham*. Such like Vestments are worn by Laymen in several Places.

*Busby*. I desire one Mr. *Charles Umphrevill* may be called, to speak to my being an Alien born.

(Who being called for the Prisoner, was not sworn.)

*Char. Umphrevill*. To Mr. *Busby's* being an Alien, I have known Mr. *Busby* several Years, and I have heard his Mother and Brother affirm he was born at *Brussels*: And I have an Affidavit from the Register at *Coddington* of all their Children born in *England*, and we do not find Mr. *George Busby's* Name in the Register.

*Bar. Street*. How can you be sure of that? You ought to have brought the Man along with you to testify it.

*Char. Umphrevill*. My Lord, the Sexton is an old Man, above sixty Years of Age, and could not come; but he made Affidavit of it, which is here.

*Bar. Street*. That does not signify any Thing at all; that Affidavit cannot be allowed, for he might be born there, and yet not registered; but what makes you say we? What makes you concern'd?

*Char. Umphrevill*. I say we, because I was one of those employed to get Mr. *Busby's* *Habeas Corpus*.

Upon Mr. *Umphrevill's* being at a stand, and *Busby* directing him to tell what he had seen beyond Sea, the Judge taking notice thereof said,

*Bar. Street*. What would you have him say, Mr. *Busby*? Tell him.

VOL. III.

*Char. Umphrevill*. I have seen Canons beyond Sea wear such Vestments that are not in Orders; I have seen Children wear them, and they, I am sure, are not in Orders.

*Busby*. I call Mr. *Mays* to prove that I am not a natural-born Subject of the King's.

*Bar. Street*. (Come, Sir, though you are not upon your Oath, yet you must tell us the Truth, as faithfully as if you were.)

*Edw. Mays*. I have searched the Register at *Coddington*, and I do not find *George Busby's* Name, the Prisoner, registered; I have searched all the Books, and I find no Register of him.

*Bar. Street*. An hundred Children may be born in that Parish within these 20 Years, and not registered; all that are baptized, are registered only.

*Busby*. Mr. *Mays*, satisfy my Lord of the Disappointment I had of my *Habeas Corpus*, which you got for me.

*Bar. Street*. To what Purpose? But Mr. *Busby* you shall not say but I will hear him: What say you, *Mays*?

*Edw. Mays*. My Lord, I was employed about an *Habeas Corpus* for Mr. *Busby* in *Easter Term* last, and did obtain one for him then, but by reason of some Slackness it was presently out of date, and so became ineffectual. Also in *Trinity-Term*, I procured another *Habeas Corpus* for him, which was delivered to the Under-Sheriff of this County of *Derby*, who was then very Sick at *London*, of which Sickness he died there at last, and that *Habeas Corpus*, for that reason, did likewise fall short; by which Disappointments Mr. *Busby* is not so prepared for his Trial at this Time as otherwise he might, if he had not really depended upon his being removed to *London* by *Habeas Corpus*.

*Bar. Street*. All this is too little to the Purpose; for if he expected to have had his Trial there, and was prepared for it a Term or two ago, how comes it to pass he is not prepared now? Come, come, Mr. *Busby*, what can you say more?

*Busby*. I could not be born at *Coddington*, I was born beyond Sea, out of the Kingdom. My Lord, here is not one Word proved of the Substance of the Indictment, not a Word proved that I took Orders beyond Sea, nor here, from any Person that saw me take Orders; not a Word of that proved; nor not a Word of the Substance of that Statute of Queen *Elizabeth*, which I am indicted upon; only some few Women say they heard me pray in an unknown Language, which was no more than Family-Duty; and I can produce a Witness that Women say their Prayers publicly in an unknown Tongue, and all answer; and by these Circumstances I am accused for being a Priest.

*Bar. Street*. I find, Mr. *Busby*, you understand the Law. But pray you, is the Sacrament given by Women? And is Absolution given by Women?

*Busby*. If they understand not the Language, they understand not the Thing: Treason may be spoke in *French*, and I not know it to be so.

*Bar. Street*. Then it seems no Man can prove a Priest that does not understand the *Latin* Tongue.

*Busby*. None of the Witnesses has sworn that I gave Absolution, nor that I said *Mafs*, but in an unknown Tongue. What they have said are only Circumstances, and do not prove the Indictment; and what they say I did, are Things that are performed by those who are not Priests. I offer it again to your Lordship's Consideration, that I have not been proved a born Subject of the King's. I was deprived of my *Habeas Corpus*, which was detained in the Sheriff's Hand, and so lost the Benefit of it; (these Things are material;) and have not had Time to produce Witnesses that I was not born in *England*, but beyond Sea: At *London* I could have got Evidence to prove that; and here has been no Proof made of that, but a Story told of me when I was a Child: I have proved that my Name cannot be found in the Register at *Coddington*. For the rest I have not had time; if I had had the Benefit of my *Habeas Corpus*, to have been tried at *London*, I had Friends there that could have proved me born beyond Sea: This *Dudley* that appears an Evidence against me, was a Servant of Mr. *Powtrel's*, who was gone away upon Disgust; he sent away several Loads of Goods, and now he comes to swear against me; I am verily confident that he carried away above three Horse-load of Goods, that he carried privately out of the Garden, of Plants and such Things, and sent them all away.

*Mr. Gilbert*. My Lord, they were his Clothes, and other Things of his own, which he took with him when he went away.

*Bar. Street*. All this signifies nothing, if it be proved; but bring what Witnesses you will to prove it.

*Busby*. I hope your Lordship will consider that I am an Alien born, and that by the Loss of my *Habeas Corpus* I had not Time to bring my Witnesses; and that the Prayers I said were only Family-Duties: I hope that will be considered; and that those People that have sworn I said *Mafs* and Absolved, do not know what *Mafs* is, nor Absolution. My Lord, here is nothing proved of the Indictment against me.

*Bar. Street*. You have said all this six Times over, if you have nothing farther to say in your Defence, I must sum up the Evidence to the Jury.

*Bar. Street*. You of the Jury, the Prisoner at the Bar, *George Busby*, stands indicted of Treason upon the Statute of 27 *Eliz. Cap. 2.* the principal Branch whereof is this:

'And be it further enacted by the Authority aforesaid, That it shall not be lawful to or for any Jesuit, Seminary Priest, or other such Priest, Deacon, or religious or ecclesiastical Person whatsoever, being born within this Realm, or any other of her Highness's Dominions, and heretofore, since the said Feast of the Nativity of St. *John Baptist*, in the first year of her Majesty's Reign, made, ordained, or professed, or hereafter to be made, ordained, or professed, by any Authority or Jurisdiction, derived, challenged, or pretended from the See of *Rome*; by or of what Name, Title or Degree soever the same shall be called or known, to come into, be or remain in any Part of this Realm, or any other her Highness's Dominions, after the end of the same forty Days, other than in such special Cases, and upon such special Occasions only, and for such Times only, as is expressed in this Act: And if he do, That then every such Offence shall be taken and adjudged to be High-Treason: And every Person so offending, shall for his Offence be adjudged a Traitor, and shall suffer, lose, and forfeit, as in Case of High-Treason.'

X x

This



This makes every Offender against this Statute a capital Offender, and guilty of High-Treason: Now whether he is within this Law, you are to consider. Mr. Gilbert has told you that he is a reputed Priest and Jesuit in the Neighbourhood, and that as such he had an Order from his Majesty to apprehend him. He used his Endeavours to take him for some Time, but could not apprehend him till the sixteenth of March last, and then he found him; but in such an obscure Hole, that no Body would hide himself in, but such an extraordinary Offender. Innocent People do not obscure themselves in that Manner. *Joseph Dudley*, to prove him a Native and not an Alien, tells you, that when Soldiers, in the Time of the late Wars, came to plunder his Father's House, he heard him say, that at two Years old he hid himself in the Curtains in his Mother's Chamber for fear of the Soldiers. But (says the Prisoner) my Memory could not serve me at two Years old to retain what I did then. But our Parents tell us what we did then. If a man be asked, What Age are you of? No Man can tell but as his Parents tell him. My Father told me I was six years old, and from thence I remember it. His Father and Mother were not out of England (as appears) till about 1646, and then the War was ended; and the Prisoner confessed himself to be about forty Years of Age, which shews him born in England. He that but observes his Language, will find that the Tone of the English Language remains with him. One born in Wales (though he came young from thence) he will have a Welsh Tone as long as he lives. The Prisoner tells you, that no Man has proved his being in Orders of the Church of Rome, nor where, when, or by whom made a Priest: But if all that were to be proved, it would make the Law idle and insignificant. If he be made a Priest in England, 'tis as much as if made at St. Omer's or Rome. He did own to *Joseph Dudley*, that he was made a Jesuit, and laboured to make a Convert of him in the Garden, when he was alone with him. The next was *Thomas Houis*, who courted a Woman, and must not have her, unless he turned Roman Catholick. *Busby* must discourse him, and make a Convert of him. He hears *Busby* preach three Times, and heard him say Mass several Times; and was not only married by him, but has been confessed and absolved by him divers Times. But *Busby's* fallacious Argument has no Weight in it, that because he understood not Latin, therefore he proves it not Mass nor other Services of the Church of Rome. *Dorothy Saunders* speaks to the same Purpose, that he confessed and absolved her. And she tells you, that she has seen him elevate the Host, and has shewed you the Manner how; and he gave her the Sacrament, which

she and the rest took from him as the Sacrament: And that she has seen him officiate in some of the Robes produced in Court. *Sarah Clark* speaks to the same Purpose, and so did *Elizabeth Ewins*. But *Busby* says, because this was done in an unknown Tongue, they cannot swear it; and that he is no Priest, because they do not swear where, and when, he received his Orders. Whoever does exercise that Profession, we do believe him of that Church. When a Minister of our Church preaches or officiates, we do not say, Pray let us see your Orders first; but if he officiate usually as a Priest, 'tis taken for granted that he is one. He can tell where he received his Orders, but it may be cannot produce them upon all Occasions. Must he therefore be no Priest? Upon the Whole, if you believe the Witnesses, or any two of them, you are to find the Prisoner guilty; I believe you have had full Evidence; go together, and consider of it.

(The Jury went forth, and after a short stay came back into the Court.) And then,

Clerk. Gentlemen of the Jury, have you agreed on your Verdict?

Jury. Yes.

Clerk. Who shall say for you?

Jury. The Foreman.

Clerk. *George Busby*, hold up thy Hand: Look upon the Prisoner.

Clerk. Do you find *George Busby* Guilty of the High-Treason and Felony he hath been arraigned of, or not Guilty?

Foreman. Guilty.

Clerk. And so you say all?

Jury. Yes.

Clerk. Look to him Jailor.

Bar. Street. Though I must pass Sentence upon you of course, the Jury having found you guilty; yet I must tell you, that his Majesty hath commanded me to reprieve you from Execution.

Then Mr. Baron Street passed Sentence.

That you the Prisoner, now at the Bar, be conveyed hence to the Place from whence you came, and that you be conveyed thence on a Hurdle to the Place of Execution; where you are to be hanged by the Neck; that you be cut down alive, that your Privy Members be cut off, your Bowels taken out and burnt in your View; that your Head be severed from your Body; that your Body be divided into four Quarters; which are to be disposed of at the King's Pleasure: And God of his infinite Mercy have Mercy upon your Soul.

The Petitions of STEPHEN COLLEDGE, precedent to his Trial, with the Orders made thereon. 33 Car. II. 1681.

To the King's most excellent Majesty.

The humble Petition of STEPHEN COLLEDGE, now Prisoner in your Majesty's Tower of London,

Most humbly sheweth,

THAT whereas your Petitioner being charged with High-Treason, is under strait Confinement, that he hath not Liberty to see or speak with any of his Friends or his Children, and being lately informed, that it is ordered your Petitioner shall come to his Trial at the City of Oxon about the Middle of the next Month;

Your Petitioner therefore most humbly prays your sacred Majesty, That Leave may be given for Mr. Aaron Smith and Mr. Robert West to come to him; and also to have the use of Pen, Ink, and Paper, in order only to make his legal and just Defence, and also to have the Comfort of seeing his two Children.

And your Petitioner as in Duty bound shall ever pray, &c.

A true Copy,

Francis Gwyn.

At Hampton-Court, July 28, 1681.

UPON reading this Day at the Board the Petition of Stephen Colledge, Prisoner in the Tower, praying that in order to the making his Defence at his Trial, which he hears is to be the Middle of the next Month, he may be permitted to see his two Children, to have the Liberty of Pen, Ink, and Paper, and that Mr. Aaron Smith, and Mr. Robert West may come to him; his Majesty was pleased to order, That the Lieutenant of the said Tower of London do permit the said Stephen Colledge to have Pen, Ink, and Paper, and to see his two Children, and the said Mr. Aaron Smith, and Mr. Robert West, and to converse with them as often as he shall desire in Prefence and Hearing of the Wardour who attends him.

A true Copy,

Francis Gwyn.

To the King's most excellent Majesty, and to the Right Honourable the Lords of his Majesty's most honourable Privy Council.

The humble Petition of STEPHEN COLLEDGE, now a Prisoner in the Tower of London,

Humbly sheweth,

THAT your Petitioner having been a close Prisoner ever since his first Commitment, is altogether ignorant of the particular Matters charged against him, and of the Names of the Witnesses who are

to prove the same; upon his Knowledge of both which, as well the Nature as the Manner of his Defence must depend; and because upon the Consideration of his Case, several Matters of Law may arise as well before as at the Time of his Trial, in which Council will be necessary to assist him, and several Matters of Fact preparatory to his Trial, with which, under his Confinement he cannot be furnished without the help of a Solicitor, and he is like to be wholly incapable of receiving any Benefit from the Privilege allowed by Law of peremptory Challenge to several Jurors, especially in a Country where he is absolutely a Stranger, unless he may have some Knowledge of them before his Trial.

In full Assurance therefore of the great Justice and Clemency of your Majesty and this honourable Board, which he hath lately had some Experience of, and doth with all Humility and Thankfulness acknowledge, your Petitioner doth humbly beseech your Majesty and this honourable Board, that he may have a Copy of the Indictment against him, or the particular Charges of it, that his Council and Solicitor may have free Access to, and private Conference with him; and because their own private Affairs or other Accidents may call away some of his Council from his Assistance, that Mr. Wallop, Mr. Smith, Mr. Thompson, Mr. Darnel, Mr. West of the Middle-Temple, Mr. Hawles of Lincoln's-Inn, Mr. Rotherham, Mr. Lovell, Mr. Rowny of Gray's-Inn, Mr. Pallesfen, Mr. Ward of the Inner-Temple, may be assigned him for Council, and Aaron Smith for his Solicitor, and that he may have a Copy of the Jurors to be returned upon his Trial some Days before the Trial.

And your Petitioner shall ever pray, &c.

A true Copy,

Francis Gwyn.

At Hampton-Court, August 11, 1681.

IT is ordered by his Majesty in Council, That the Friends and Relations of Stephen Colledge, a Prisoner in the Tower, shall have Liberty of visiting and freely conversing with him; and the Lieutenant of the Tower having first caused their Names to be taken in writing, is to suffer such Friends and Relations to have Access to the said Stephen Colledge, without any interruption from Time to Time accordingly.

A true Copy,

Francis Gwyn.

CVII. The



CIVIL. The Trial of STEPHEN COLLEDGE\*, at Oxford, for High-Treason, August  
17, 1681, 33 Car. II.

ON Wednesday the 17th of August, 1681, the Lord Norreys, Lord Chief Justice North, Mr. Justice Jones, Mr. Justice Raymond, Mr. Justice Levinz, Commissioners of Oyer and Terminer and Goal-Delivery, met at the Court-House in the City of Oxford; and after Proclamation for Silence, the Commission of Goal-Delivery was read, and then the Commission of Oyer and Terminer. Proclamation was made for the Sheriff to return the Precepts to him directly: The Justices of the Peace of the County of Oxford were called over; and the Appearance of the Grand Jury summoned to attend this Commission was taken.

L. C. J. North. Gentlemen, you that are returned of the Grand Inquest, there has been a Sessions so lately that in all Probability there will be no great Matter to trouble you with at this Time. And so I shall not trouble myself nor you to give you any Charge, because we know of no Business yet that we shall need you for. The Court hath recorded your Appearance. You will do well to be in the way either in the Town or here about the Court, that you may be ready if any Thing should happen. 'Tis necessary for us to have your Attendance, but we know not of any Thing that we have in particular to trouble you with. We have an Indictment before us, let us proceed upon that.

C. of Crown. Goaler, have you your Prisoner?  
Goaler. We will fetch him presently.

[Then the Prisoner was brought to the Bar.]

Cl. of Cr. Stephen Colledge, hold up thy Hand. (Which he did.)

'Thou art here indicted by the Name of Stephen Colledge late of Oxford, in the County of Oxford, Carpenter; for that thou as a false Traitor against the most illustrious, most serene, and most excellent Prince, our Sovereign Lord Charles the Second, by the Grace of God, of England, Scotland, France, and Ireland, King, Defender of the Faith, &c. thy supreme and natural Lord, the Fear of God in thy Heart not having, nor weighing the Duty of thy Allegiance; but being moved and seduced by the Instigation of the Devil, the cordial Love, and true, due and natural Obedience which true and faithful Subjects of our said Sovereign Lord the King towards him our said Sovereign Lord the King, should, and of right ought to bear, wholly withdrawing and machinating, and with all thy Strength intending the Peace and common Tranquillity of our said sovereign Lord the King of this Kingdom of England to disturb, and Sedition and Rebellion, and War against our Sovereign Lord the King, within the Kingdom of England to move, stir up and procure; and the cordial Love, and true and due Obedience which true and faithful Subjects of our said Sovereign Lord the King, towards him our said Sovereign Lord the King should, and of right ought to bear, wholly to withdraw; put out and extinguish, and him our said Sovereign Lord the King to Death and final Destruction to bring and put, the tenth Day of March, in the three-and-thirtieth Year of the Reign of our Sovereign Lord Charles the Second, by the Grace of God, of England, Scotland, France, and Ireland, King, Defender of the Faith, &c. at Oxford, in the County of Oxford, falsely, maliciously, subtilly, and traiterously, did purpose, compass, imagine, and intend Sedition and Rebellion within this Kingdom of England, to move, stir up, and procure, and a miserable Slaughter among the Subjects of our said Sovereign Lord the King to procure and cause, and our said Sovereign Lord the King from his Regal State, Title, Power, and Government of his Kingdom of England, to deprive, depose, cast down and disinheret; and him our said Sovereign Lord the King to Death and final Destruction to bring and put, and the Government of the said Kingdom at thy Will and Pleasure to change and alter, and the State of all this Kingdom of England, in all its Parts well instituted and ordained, wholly to subvert and destroy, and War against our said Sovereign Lord the King, within this Kingdom of England to levy; and thy said most wicked Treasons and traiterous Imaginations and Purposes aforesaid to fulfil and perfect, thou the said Stephen Colledge the said tenth Day of March, in the three-and-thirtieth Year of the Reign of our said Sovereign Lord the King, with Force and Arms, &c. at Oxford aforesaid, in the County of Oxford aforesaid, falsely, maliciously, subtilly, advisedly, devilishly and traiterously didst prepare Arms, and Warlike offensive Habiliments to wage War against our said Sovereign Lord the King. And thyself, in War-like Manner, for the Purposes aforesaid, then and there falsely, maliciously, subtilly, advisedly, devilishly and traiterously didst arm, and one Edward Turberville, and other Subjects of our said Sovereign Lord the King, to arm themselves, to perfect thy traiterous Purposes aforesaid, then and there advisedly, maliciously and traiterously didst incite and advise. And further, then and there falsely, maliciously, subtilly, advisedly, devilishly and traiterously didst say and declare, That it was purposely designed to seize the Person of our said Sovereign Lord the King at Oxford aforesaid, in the County of Oxford aforesaid. And that thou the said Stephen Colledge, in Prosecution of thy traiterous Purpose aforesaid, would be one of them who should seize our said Sovereign Lord the King at Oxford aforesaid, in the County aforesaid. And that thou the

said Stephen Colledge, thy said most wicked Treasons and traiterous Imaginations, Compassings and Purposes aforesaid the sooner to fulfil and perfect, and Discords between our said Sovereign Lord the King, and his People to move, cause and procure, then and diverse Times and Days, as well before as after, in Oxford aforesaid, in the County of Oxford aforesaid, in the Presence and Hearing of diverse liege Subjects of our said Sovereign Lord the King, then and there being present, falsely, maliciously, subtilly, advisedly, devilishly and traiterously didst say and declare, That nothing of good was to be expected from our said Sovereign Lord the King, and that our said Sovereign Lord the King did mind nothing but Beastliness and the Destruction of his People: And that our said Sovereign Lord the King did endeavour to establish arbitrary Government and Popery, against the Duty of thy Allegiance, against the Peace of our Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statutes in this Case made and provided.'

How say'st thou, Stephen Colledge, art thou Guilty of this High-Treason, whereof thou standest indicted, and hast now been arraign'd, or Not Guilty?

Colledge. My Lord, I do desire, if it please your Lordship, to be heard a few Words.

L. C. J. Look you, Mr. Colledge, the Matter that hath been here read unto you is a plain Matter, and it hath been read to you in English, that you may understand it. 'Tis an Indictment of High-Treason; now you must know, that no Plea can be received to it, but either Guilty, or Not Guilty, as to the Fact; if you can assign any Matter in Law, do it.

Colledge. Will you please to spare me, that I may be heard a few Words? I have been kept a close Prisoner in the Tower ever since I was taken: I was all along unacquainted with what was charged upon me. I knew not what was sworn against me, nor the Persons that did swear it against me, and therefore I am wholly ignorant of the Matter: I do humbly desire, I may have a Copy of the Indictment, and a Copy of the Jury that is to pass upon me, and that I may have Council assigned me, to advise me, whether I have not something in Law pleadable in Bar of this Indictment.

L. C. J. These are the things you ask, you would have a Copy of the Indictment, you would have Council assigned to you, to advise you in matter of Law, and a Copy of the Jury.

Colledge. One Word more, my Lord, I desire to know upon what Statute I am indicted?

L. C. J. I will tell you for that. Is it not *contra formam Statut.* with an Abbreviation?

Cl. of Cr. Yes.

L. C. J. That refers to all manner of Statutes that have any Relation to the Thing in the Indictment that is High-Treason. For it may be meant *contra formam Statut.* which are all the several Statutes that are in force concerning High-Treason. Now for those things that you demand, you cannot have them by Law. No Man can have a Copy of the Indictment by Law; for Council you cannot have it, unless matter of Law arises, and that must be propounded by you; and then if it be a Matter debatable, the Court will assign you Council, but it must be upon a matter fit to be argued: For I must tell you, a Defence in Case of High-Treason ought not to be made by Artificial Cavils, but by plain Fact. If you propose any matter of Law, the Court will consider of it, and assign you Council, if it be reasonable. For a Copy of the Jury, that you cannot have neither, for there is no such thing as yet; there is no Issue joined whereupon such a Jury should be impannelled. When you have pleaded to Issue, then we must award the Sheriff to impanel a Jury to try that Issue. So as to what you say as to want of Preparation for your Trial, we cannot enquire what Notice you have had; and yet if you had never so little Time, there is no Cause why you should not plead, though you were but just now taken and brought to the Bar to answer it, and never heard of any thing of it before. So that I think you ought to plead presently.

Colledge. My Lord, I am wholly ignorant of the Law, I may ruin myself by mistaking the Law; I desire Council, not to delay my Trial, but only to advise me, whether there is not something in Law proper for me to plead to this Indictment, and those things I alledged were not at all to delay the Trial, but only that I may not be wanting to myself in what I may by Law have.

L. C. J. I tell you, Council cannot be assigned you, till the Court be possessed of some Matter to grant it upon.

Colledge. I had some Papers, my Lord, that were taken from me, which I desire may be restored to me. I only plead, that I may have my Birth-right, and that which the Law gives me; if I may have Justice, I desire no more. Those Papers were taken from me in the House over the way since I was brought from the Prison; they were Papers that concerned my Defence; some Directions and Instructions how to manage myself in that Defence. If you please to let me have those Papers, I will not take up much of your Time; I desire to have but common Justice, and that which is my right by Law.

\* Burn Hist of his own Times, Vol. I. p. 504.

† See his Character, Ibid. 665.



*L. C. J.* That which you demand, Justice, you shall have by the Grace of God to the best of our Skill, without any Partiality in the World. But you must trust the publick Justice of the Kingdom. We are to be of Council for you, so far as to see that all Things proceed fairly on all Sides. And when Things come before us that are fit for you to have Council upon, you shall have Council assigned you; for we are tender of the Life of a Man, as well as of the Life of the King, and of the publick Justice of the Kingdom. But this is no Reason why you should not now plead. For the Papers you speak of, we will take an Examination of them afterwards. If they were Papers that are necessary for your Defence upon your Trial, in God's Name you must have them restored to you; but we know not which way you came by them, nor what they are.

*Colledge.* They were taken from me just now, under Pretence of bringing them to your Lordship.

*L. C. J.* How comes any body to give you Papers? No body can solicit for one that is under an Accusation of High-Treason, unless he be assigned so to do by the Court.

*Colledge.* God have Mercy upon any Man that is so accused then; for 'tis not possible for him to make his Defence, if he cannot be at Liberty to look after it himself, nor any of his Friends permitted to do it for him.

*L. C. J.* You can say, whether you are Not Guilty without any Papers.

*Colledge.* My Lord, I know not but there may be something in Law for me to plead to this Indictment, which I shall lose the Benefit of, if I plead. I humbly conceive, you are to be my Council; and as you are Judges, are to proceed according to the Law. You are upon your Oaths do me right according to the Law.

*Mr. Just. Jones.* But till you have proposed a Matter of Law fit for Council to argue, there is no Council to be assigned you.

*Colledge.* If I had those Papers I could tell what I should plead. My Lord, this is one Thing, I am a Freeman of London, and I am not impleadable by the Charter of London any where out of the Liberties of the City in Pleas of the Crown.

*L. C. J.* You are indicted in Oxfordshire for High-Treason committed here. If there be not any thing of High-Treason proved, done in Oxfordshire, you will be acquitted. But a Free-man of London cannot have a Privilege to commit Treason in Oxfordshire, but must be tried for it there.

*Colledge.* Will you please to order me my Papers back that were taken from me?

*Mr. Just. Jones.* You ought first to plead. You have a right to demand Council in Matters of Law, but then it must be upon such Matters of Law as you yourself propose to the Court, and the Court shall judge to be Matters of Law fit to be debated: Till then we cannot assign you Council.

*Colledge.* It was so in the Trial of *Lilburne*, and in the Trial of my Lord *Stafford*, there was Council assigned to them.

*Mr. Just. Jones.* Not before they pleaded to the Indictment.

*Colledge.* Did not your Lordships, some of you, that are Judges of the King's-Bench say, that it was the Right of the Prisoner, to have a Copy of the Pannel and of the Jury before the Trial?

*Mr. Just. Jones.* No sure: Here are two of us that are of the Court, and we never heard of any such thing.

*Colledge.* Pray, my Lord, do me Right, I am ignorant of the Law, and through my Ignorance may mistake.

*L. C. J.* God forbid we should not do you Right; you may expect it from us; we are upon our Oaths to do all the King's Subjects Right.

*Colledge.* I am ignorant in the Law, and 'tis impossible for me to make my Defence without the Assistance of my Papers.

*L. C. J.* Cannot you tell, whether you be Guilty or Not Guilty of this Treason?

*Colledge.* I can so; but I know not what Error I may run myself into, if I should plead presently, and lose the Benefit that the Law may give me.

*L. C. J.* All Matters of Law are saved to you after you have pleaded.

*Colledge.* Pray, my Lord, let me have my Papers again that were taken from me.

*Cl. of Cr.* You must plead to the Court, Guilty or Not Guilty.

*Colledge.* Shall I not have my Papers after I have pleaded?

*L. C. J.* We will not capitulate with you. Move what you will then; but till you have pleaded, we can enter into no other Business.

*Colledge.* I know not but I might plead some other thing to the Indictment.

*Mr. Just. Jones.* Propose what you will, if it be a Matter in Law fit to be argued, you shall have Council assigned you.

*Colledge.* Pray, my Lord, let me have my Papers again. If it were not my Right to have them, or to have Council, I would not ask it; but if it be, I would not lose what is my Right.

*L. C. J.* You must plead first. I know not but he may be a Criminal that brought you those Papers; for we allow no Solicitors in Cafes of Treason.

*Colledge.* Some of those Papers were received from me in the Tower, and were brought back to me, and taken away but to Day, I desire they may be returned.

*Cl. of Cr.* Are you Guilty or Not Guilty?

*Colledge.* Those Papers tell me I have a Plea in Law, but what it is, I cannot directly tell without my Papers.

*L. C. J.* You must mention it and propose it, and then we will do what is fitting for us to do in it.

*Colledge.* I have not that Method about me, nor can I directly tell it without my Papers; but 'tis something of Law about the Indictment.

*L. C. J.* You are not bound up to Forms of Law. For if you propose the Matter never so loosely, yet if it be a Matter of Avail, and that

which the Law is not clearly against you in, you shall have Council, and Time to draw it up in Form.

*Colledge.* I cannot propose the Matter so regularly as if I had my Papers.

*Mr. Just. Jones.* You are not bound to propose it in Formality of Law, my Lord tells you; only let us know what it is.

*Colledge.* If I have a Privilege in Law, I hope you will give me the Benefit of it.

*L. C. J.* We will deny you nothing that the Law gives you; but we cannot give you Council. It is not one particular Case, but the common Course of Justice is concerned. Without a Matter of Law arises, we cannot assign you Council; if we would, we cannot in Justice till you have proposed the Matter which the Court thinks fit to be argued.

*Colledge.* My Lord *Coke* says, it is the Birth-right of every Englishman to have Council in Matters of Law, and *Lilburne* had it. Trial 45.

*Mr. Just. Jones.* What Times were those? That was before the High Court of Justice.

*Mr. Att. Gen.* If there be Matter in Law, it must be proposed to the Court, and they are to judge, whether it be a Point fit to be argued, and then Council is to be assigned you, and not till then.

*Colledge.* My Lord, I know not but there may be somewhat in Law for me to plead to this indictment, till I have my Papers I can't tell what it is.

*L. C. J.* We know nothing of your Papers what they are: you must answer whether you be Guilty or Not Guilty.

*Colledge.* If I had my Papers, I would answer to it immediately; but I hope I shall not be murdered.

*Mr. Just. Jones.* Have a care of aspersing the Court. Pray who intends to murder you?

*Mr. Serj. Jeffries.* I remember in *Lilburne's* Trial, that he speaks of, such words were used indeed.

*Colledge.* My Lord, I hope I shall not be denied what is necessary for my Defence. This Design is not only against me, but against all the Protestants.

*Mr. Att. Gen.* How long have you been a Protestant, Mr. Colledge?

*Colledge.* Ever since I knew what Religion was, Sir; I never was any thing else. For God's sake, my Lord, let me have the Justice of the Nation, and what by Law an Englishman ought to have.

*L. C. J.* You must plead Guilty or Not Guilty, or you must shew some Matter that you will plead, that is proper for us to assign you Council. If we should record your Refusal, you would be judged to stand Mute, and Sentence would pass upon you.

*Colledge.* If I have a Privilege in Law as an Englishman, I will not forfeit it, if I can help it, for any thing in the World. Therefore I desire I may have my Papers again, that I may see if I can plead any thing in Law, for if I have a Privilege by the Law, before I will forfeit it, you shall do what you please with me.

*L. C. J.* You'll have the Advantage of all that Matter that is in your Papers after you have pleaded, if there be any Advantage.

*Colledge.* Pray, my Lord, order me my Papers that were taken away from me.

*L. C. J.* They were not taken away by me.

*Colledge.* They were taken away by the Keeper, under Pretence to bring them to your Lordship.

*L. C. J.* I know not how you came by them. There came one to me last Night that is a common Solicitor, one *Aaron Smith*, and desired he might have Liberty to go and speak with the Prisoner; I told him, I did not understand till he were assigned by the Court, that any could justify soliciting for a Man that is accused of High-Treason, nor could any be of Council till they were assigned: For a Defence against Treason ought to be by plain Matters of Proof and Fact, and not by artificial Cavils. But if you will propose any thing of Substance as a Matter in Law which the Court shall think fit to be argued, propose it, and then we will assign you Council.

*Colledge.* Is it not my Right, that I ought to have a Copy of the Jury?

*L. C. J.* Look you for that now, you cited the Opinion of the Judges of the King's-Bench. My Brothers two of them that are here who are Judges in that Court, say, they know nothing of any such Matter: But I tell you, you have Liberty by Law to challenge 35, by your Sight peremptorily without shewing Cause. They are bound to look upon you when they come to be sworn, and if you have just Cause, you may except against as many more as you will. But now we that proceed upon a Commission of Goal-delivery, are to proceed with Expedition; there are no particular Men designed for a Jury that I know of. But when you have pleaded, we shall award the Sheriff to impanel a Jury.

*Colledge.* If the Law allows me the Liberty of Challenging, it does intend it me, that I may challenge those Persons that I think will not do me Justice; but where they are strangers unto me, if I can have no Information about any of them by my own Inquiry or my Friends, I may challenge my Friends as well as my Foes: And should there be any Person that has a Prejudice against me, and I not know it, he may chance to be one.

*L. C. J.* I hope they will be neither Friends nor Foes, but true Men.

*Colledge.* I know not that, my Lord.

*Mr. Just. Jones.* This that you say as to a Copy of the Jury is unreasonable. There is no Jury, nor can be awarded till you have pleaded. There must be first Issue joined; and that cannot be but upon your Plea of Not Guilty. Therefore you must plead first, and then say all you will.

*Cl. of Cr.* Are you Guilty or Not Guilty?

*Colledge.* My Lord, may not I have a Pannel of the Jury?

*Mr. Just. Jones.* There is no such thing in being.

*Colledge.* I know not what to say to it; pray, my Lord, let me have my Papers.

*Cl. of Cr.* You have heard the Opinion of the Court, you must first plead.

\* This was very strange Treatment of the Prisoner, who had an Order of King and Council appointing him a Council and Solicitor, which is printed before the Trial.

he before  
p. 339. But the order was  
not for council or solici-  
tor.

Colledge

Vol. III.



*Colledge.* I cannot plead first: I must lose my Life, if I must; I neither know who accuses me, nor what it is they accuse me of; 'tis impossible I could defend myself if I have not my Papers.

*L. C. J.* We know not what Papers you mean.

*Colledge.* The Goaler took them from me, and one of the King's Messengers. Pray, my Lord, will you order them to be returned to me again? Let me but see whether I have any Right or no, and whether I have any Thing to plead or no: When I have perused my Papers, I will propose it as well as I can to you. Pray, my Lord let me have a fair Trial.

*L. C. J.* We promised you a fair Trial, but you must put yourself upon that Trial by your pleading.

*Colledge.* I cannot do that without my Papers, my Lord. Let me but have them again, and I will not delay your Time at all.

*L. C. J.* You can tell whether you are Guilty, or Not Guilty, can't you.

*Colledge.* If I have a Plea in Law against the Indictment, I hope you will not hinder me of that which is my Right. It is possible the Indictment does not lay it right, either as to the Matter of Treason, or as to the Place.

*Mr. Just. Jones.* That is upon the Issue of Not Guilty upon your Trial. If there be not Matter of Fact, or Words proved that are Treason in this Place, you will have the Advantage of it upon your Trial.

*Colledge.* I know not, my Lord, but that the Indictment does mention something of Treason, and something of Misdemeanour.

*Mr. Just. Jones.* That which is Misdemeanour, won't amount to a Proof of the Treason upon the Trial.

*L. C. J.* If they prove no Treason against you here, but only Misdemeanour, I do not understand that the Jury can find you Guilty of that Misdemeanour, for 'tis another Crime, and there is another sort of Proceedings for it. In Misdemeanour, there are no peremptory Challenges; in Misdemeanour Council is to be allowed for the Prisoner, but not in Treason.

*Colledge.* Pray, my Lord, be pleased to order me my Papers again: I know not what to say without I have the Assistance of my Papers; when I have them, I shall be ready to plead presently according as I shall find I may by Law. This I am sure, I have done nothing, nor said nothing of Treason, and I pray for nothing but Justice, and that which is my right. This is a most horrid Conspiracy to take away my Life; and it will not stop here, for it is against all the Protestants in England.

*L. C. J.* Mr. Colledge, you do not only trifle, but run out into very great Extravagancies. Who has any Conspiracy against your Life? You shall be allowed to give in Evidence any thing of any Conspiracy against you, or Contrivance against you when you are upon your Trial. Now the Question is, Are you Guilty, or not Guilty? I see no Use of Papers that you can have as to the Plea.

*Mr. Just. Jones.* You will run into Danger by spending of Time.

*Colledge.* Pray, my Lord, order me my Papers, they are in the Hands of Mr. Murrell the Goaler, and Sewell the King's Messenger.

*L. C. J.* When you have pleaded, we will take it into Consideration.

*Colledge.* It may be too late then.

*L. C. J.* 'Tis a plain Matter before you, whether you be Guilty or no. You know what to answer.

*Colledge.* I will give a direct Answer, after I have my Papers again.

*Mr. Just. Jones.* You can give an Answer to that without Papers.

*L. C. J.* Consult with your own Heart, and there you may receive an Answer to that Question.

*Mr. Att. Gen.* Mr. Colledge, can any body tell whether you be guilty, or no, better than your self?

*Mr. Just. Jones.* If you expect any Papers, they ought to be framed by yourself; for by Law, none can advise you what to plead.

*Colledge.* I don't expect it in Matter of Fact, but if Matter of Law arise.

*Mr. Just. Jones.* But this is a Matter of Fact, and therefore you may plead Not Guilty, as well without your Papers, as if you had them.

*Colledge.* But if there be any Matter of Law, that I ought to have the Advantage of.

*Mr. Just. Jones.* Then you ought to have no Advice, till they be assigned by the Court: For by the Law, neither Council nor Advice are allowable to you, till the Matter has been proposed, and the Court think fit to assign you Council.

*Mr. Just. Levinz.* You talk of the Privilege of an Englishman; you have all the Privileges of an Englishman: You are here brought to an open Trial, according to the Law, and by that Law you must plead. Now if a Man be indicted for High-Treason, he is bound to plead either Guilty, or Not Guilty, unless he has a Matter in Law to excuse him from that Plea, which must be proposed to the Court, and then Council will be assigned; and if so be Matter of Law arises upon any Evidence that is given against you at the Trial, you may demur upon that Evidence, and pray Council of the Court to argue that Demurrer, and they will not deny you; but I think you must plead presently.

*Colledge.* I suppose other Persons that have been tried, have had Council before they have pleaded.

*Mr. Just. Jones.* But never before the Matter was proposed to the Court.

*L. C. J.* It was so in the Case of my Lord Stafford. The Court made him propose his Matters in Law, and so it was in Lilburne's Case. He did insist upon a great many Matters in Law, and had the Books there himself.

*Colledge.* I am wholly ignorant of the Law, my Lord.

*Mr. Serj. Jefferies.* Your Lordships are the Judges of the Law in this Case. The Question here in short is, whether the Prisoner be Guilty or Not Guilty, and that being demanded of him by the Court, if he refuses, let him take the Consequence of it.

*Colledge.* What is that, pray, Sir George?

*Mr. Att. Gen.* Judgment of High-Treason. For if a Person stand mute, and will not plead to an Indictment of High-Treason, the common Judgment of pressing to Death must not pass upon him, but an Attainder of High-Treason.

*Colledge.* Well, if it be so, I cannot help it. I thank God, I am innocent of any Treason, or any such thing.

*L. C. J.* Why don't you plead Not Guilty, then?

VOL. III.

*Colledge.* I do not refuse to plead, I am willing to plead with all my Heart, if I may have my Right.

*Mr. Just. Jones.* If you do not plead, you refuse to plead.

*Colledge.* Pray, my Lord, let me have my Papers.

*Mr. Att. Gen.* Pray give the Court an Account, where had you those Papers.

*L. C. J.* Nay, we will not enter into any Examination of that Matter now, Mr. Attorney; he can have no Use of Papers to see whether he should plead Guilty, or Not Guilty.

*Mr. Serj. Jefferies.* We know nothing of those Papers, we desire that he may answer to the Question shortly, whether he be Guilty or Not Guilty; if not, we pray your Lordship's Judgment.

*Colledge.* I had them not all from one Person, they were received from my own Hands, some of them in the Tower; and being brought back to me, they were taken from me to Day; let me have but one of them: The Paper of Instructions in Point of Law, that I may know what is my Right: I would not throw away my Life, if I have any thing that is my Right that can preserve it.

*L. C. J.* You are to give a plain Answer, whether you are Guilty or Not Guilty, now for that you have no Use of Papers: For you can best tell whether you be Guilty or Not. If you can propose any Matter of Law that you can have to plead, do it.

*Colledge.* If I have any Plea; that I may plead besides Not Guilty, I desire I may have my Papers to consider of it, and that I may have Council assigned me.

*L. C. J.* If you have any such Plea; tell us the Matter and Substance of it.

*Colledge.* I do not know what really are Matters of Law; if I had those Instructions that are in my Papers, I could give you a direct Answer presently.

*L. C. J.* You ought not to have any Advice to decline your Trial: When you propose Matter of Law yourself, you may have advice upon it. But you ought not to have Advice to decline your Trial before-hand.

*Cl. of Cr.* Are you Guilty, or Not Guilty?

*Colledge.* Mr. Attorney, pray let me have a Copy of the Indictment.

*Mr. Att. Gen.* Apply yourself to the Court for it, we must receive our Directions from thence.

*L. C. J.* You have had the Opinion of the Court, you can't have it.

*Mr. J. Levinz.* You have been told nothing can be received from you; but a Plea of Guilty, or Not Guilty, and the Court have given you their Opinion, and that you cannot have a Copy of the Indictment, nor Council assigned you, till you offer something for them to be assigned upon.

*L. C. J.* And that was it which was done in the King's-Bench in the Case of Fitz-Harris, which I suppose you meant when you speak of the Judges Opinions.

*Mr. Just. Jones.* Nothing was done there till he himself assigned the Matter in Law that he would plead, and then Council was assigned him.

*Mr. Serj. Jefferies.* Mr. Colledge was in the Court at that Time, and can tell what was done.

*L. C. J.* If you desire the Indictment read over again distinctly, that you may have.

*Mr. Att. Gen.* Ay, with all my Heart.

*Colledge.* Pray let me hear it again, my Lord, if you please.

*L. C. J.* Read it over again to him, and read it distinctly.

*Cl. of Cr.* Thou art indicted by the Name of Stephen Colledge, late of Oxon, in the County of Oxon, Carpenter, as a false Traitor.

*Colledge.* I have observed one Thing already, my Lord, I pray I may have Pen and Ink.

*L. C. J.* Ay, give him Pen and Ink, let him make what Observations he can.

Then the Clerk read the Indictment through.

*Clerk of Crown.* Art thou Guilty of this High-Treason, or Not Guilty?

*Colledge.* This Indictment, if I understand it, says, there was a Plot and Conspiracy by me and others; now I know when my Lord Stafford was tried, they did proceed to prove, first, that there was such a Plot, and then that my Lord was guilty of it; first, that there was such a Conspiracy by the Papists, is it not requisite they should first prove such a Plot and Conspiracy there was, before they go to prove me guilty of it?

*Mr. Just. Jones.* What before you have pleaded?

*L. C. J.* When you have pleaded, the next thing is to try you, and to give the Evidence; but what Way the King's Council will take to manage your Trial, that we can't tell.

*Mr. Just. Jones.* But they are not to be directed by you, Mr. Colledge.

*Colledge.* It was so done, I say, in my Lord Stafford's Case.

*L. C. J.* He pleaded first, however, you have not yet pleaded.

*Cl. of Cr.* Are you Guilty or Not Guilty?

*L. C. J.* Do not trifle any longer, 'tis a plain Matter, and requires a very short and plain Answer.

*Colledge.* Your Lordships are my Council, as well as my Judges, and I do desire if I have any Right to plead any other Matter, you will be pleased to declare it to me, for I am ignorant in the Law.

*Mr. Just. Jones.* We have declared our Opinion already, that you have no Right to have any Solicitor or Council, till Matter of Law do arise.

*Colledge.* Is it your Lordships Opinion, that I have no Plea in Law?

*Mr. Just. Jones.* Have you no Plea in Law?

*L. C. J.* He would have our Judgment, whether there be any or no.

*Mr. Just. Jones.* You yourself know best; we know nothing you have to plead.

*Colledge.* I cannot, unless I have Council, and my Papers.

*L. C. J.* There does nothing appear to us.

*Colledge.* I know nothing of the Law.

*L. C. J.* Then plead Not Guilty, that is a ready Plea.

*Mr. Just. Jones.* You have had our Opinion over and over again. You have as much Council as is allowed in these Cases, for every Man is best Judge of his own Case, what to plead, whether Guilty or Not Guilty: You have had as fair Play as ever any Man had.

Y y

Mr. Att. Gen.



Mr. Att. Gen. Mr. Colledge has said, he knows of no Plea in Law he has, and therefore there is none; for *de non apparentibus & non existentibus*, the Reason is the same.

L. C. J. In Matter of Fact, there is no Plea, but Not Guilty.

Coll. The Court are Judges in Matter of Law, and they are my Council. Mr. Just. Jones. And the Court have all of them declared, they know of nothing in Law that you have to plead.

Coll. Is not Council to be allowed to one under my Circumstances?

L. C. J. If you have any thing for Council to be assigned upon, you shall have them.

Coll. If I am ignorant of that, and cannot propose it, shall I not have the Assistance of Council?

Mr. Just. Jones. No, we have told you the Law plainly, and that which is frequent in Practice in like Cases, and you must be contented with the same Measure.

Coll. My Lord, I am ignorant of the Law.

L. C. J. Then rely upon the Fact, and plead Not Guilty.

Coll. But if I have a Right to any Point in Law let me have it.

Mr. Just. Jones. You have a Right if you will propose any Matter of Law, but we cannot propose it for you.

Mr. Att. Gen. Mr. Colledge, no Man ought to propose your Plea for you; *Ignorantia juris non excusat*.

Coll. Shall my Ignorance destroy me, Mr. Attorney?

Mr. Sol. Gen. You have heard the Opinion of the Court, you have a Right to propose any other Plea that you can yourself; but you have no Right to ask Council before you have pleaded.

Mr. Serj. Jeff. If Mr. Colledge have such a thing as a Solicitor, I shall crave leave to put that Solicitor in mind of the Case of one that was indicted of High-Treason.

Mr. Att. Gen. We shall talk of that by-and-by.

L. C. J. The same Methods are used in our Case, as are in all Cases of the like Nature, as far as my Knowledge reacheth.

Coll. If I have a Right to the Law, I must not lose it for my own Ignorance of the Law; but if you deny me both my Council and my Papers, you take away the Means of my coming to that Right, and make me incapable of making my Defence.

L. C. J. You have been told you must plead before you do any thing.

Coll. This is the Person (pointing to a Person by him) that had the Papers. Be pleased to command him, that I may have them again: He said, he had Orders to take them from me, and bring them to your Lordship.

L. C. J. I know of no Use you could have of any Papers, to plead Guilty or Not Guilty.

Mr. Sol. Gen. If there be in those Papers Advice in Matters of Law, that you have been told you ought not to have, till the Court has assigned you Council to give you Advice.

Coll. Then if there be a Right in Law, and a Privilege which I ought to have, I must lose it by my being ignorant of it, and have no one to advise me about it neither.

L. C. J. You may propose it, if you have any, if not, you must plead to the Indictment.

Mr. Serj. Jeff. My Lord, it has not been usual for us, that are of the King's Council, to enter into Dialogues with Prisoners at the Bar. The first thing that is to be done in such Cases, is for the Prisoner to plead Guilty or Not Guilty, or to offer something to the Court that may be a matter in Law fit to be debated; and this we pray may be done in this Case, and that the Prisoner may plead presently, or else we desire your Judgment.

Coll. Pray let me have my Papers again, my Lord.

L. C. J. You go in a Circle, and run round from one thing to another, and will receive no Answer. We have told you our Opinion, and we must tell you, though you hold long Discourses, yet you will be judged lost and mute, if you plead not a legal Plea: Therefore you must plead Guilty or not Guilty, or offer something that may be a Plea in Law, and then you shall have the Assistance of Council, but you must have none till then.

Coll. But shall I not have my Papers, my Lord?

L. C. J. We know nothing of them.

Coll. Pray, my Lord, order the Man to give them to me, that took them from me.

L. C. J. We will order no such thing. He may be a Criminal perhaps that did give them you at first; but when you have pleaded, we will hear any Motion you will make about them.

Coll. It may be I ought to plead, that Words were spoken in another Place than the Place laid in the Indictment.

L. C. J. You will not need to plead any such thing; for if there be nothing proved of Treason that you said or did in *Oxfordshire*, you must be found Not Guilty.

Coll. Here is another thing, my Lord, I am indicted by the Name of Colledge, Carpenter.

L. C. J. What then?

Coll. I am not a Carpenter, but a Joiner; is that any Bar to it?

L. C. J. The Addition signifies nothing, I do not know any Difference betwixt a Carpenter and a Joiner in Law.

Mr. Just. Jones. They might have indicted you by the Name of Labourer, and it had been good.

Coll. Pray, my Lord, either give me my Papers or assign me Council, or else I may throw away my Life, for I am wholly ignorant of the Law.

L. C. J. When you have pleaded, we will hear any Motion you will make, and do that which is just upon it; but I see no Use you can have of Papers to plead Guilty or Not Guilty, which is the only Question is asked you.

Cl. of Cr. Are you Guilty or Not Guilty?

Coll. Will you promise me, my Lord, there shall no Advantage be taken against me, if I do plead so?

L. C. J. We will make no Bargains with you. Plead as you ought by Law to do.

Coll. If Matters of Law arise, shall I have Council to speak to them?

Mr. Just. Jones. Yes, you shall, you need not doubt it. Propose any Matter now fit to be argued, and you shall have Council to it.

Coll. I am not capable of doing it. I know not when I have any Right.

Mr. Just. Jones. The Court is of Council to you.

Coll. If you are my Council, then have I any Plea in Law to make?

Mr. Just. Jones. You have heard the Indictment read, what say you? For you must propose the Matter.

L. C. J. We know of none but Guilty or Not Guilty; if you can tell any, do.

Coll. I pray I may have my Papers again; if there be no other Plea for me, pray let me have my Papers again.

L. C. J. You have heard the Opinion of the Court, you must plead.

Mr. Att. Gen. Certainly, Mr. Colledge, you can't be guilty of these things, you need not to scruple it, to plead Not Guilty, sure.

Coll. My Lord, having been kept a Prisoner, as I have been, without Pen, Ink, or Paper, no Conversation with my Friends, or Knowledge of the Fact, and being ignorant of the Law, not knowing where I have a Right, nor when I have a Right, if you do force me upon this Plea, and it cost me my Life, at your Doors lie it.

Mr. Just. Jones. You will lose your Life if you do not plead; if you plead Not Guilty, and are not proved Guilty, you will save your Life by this Plea.

Coll. I am willing to plead what the Law requires of me to plead, and if I have a Right in Law, I would not lose it.

Cl. of Cr. Are you Guilty or Not Guilty?

Coll. Why then as they have laid it in that Indictment, in Manner and Form as 'tis there laid, I am not Guilty.

Cl. of Cr. Culprit, by whom wilt thou be tried?

Coll. By God and my Country.

Cl. of Cr. God send thee a good Deliverance.

Mr. Just. Jones. Not Guilty is his Plea.

L. C. J. Now he has pleaded, Mr. Attorney; he speaks of some Papers, if there be any Memorandums, or any Thing that must assist him, that is necessary for his Defence in his Trial in those Papers, it will be hard to deny him them.

Mr. Att. Gen. If your Lordships please to give me Leave, I will give you an Account of them. The Messenger just now did deliver these Papers to be delivered to the Court.

Coll. Pray speak out, Mr. Attorney, and let me hear.

Mr. Att. Gen. When he came to Prison he had none, but Mr. Aaron Smith, the Messenger informed me, did deliver them to him.

L. C. J. Whose Hand-writing are the Papers in?

Coll. He received them from me in the Tower.

Mr. Just. Jones. You received them from him first.

Coll. No.

Mr. Att. Gen. What were the Papers you delivered to him in the Tower.

Coll. The three Pieces joined together that contains Directions how to govern myself; there is another to the same Purpose, which instructs me to demand a Copy of the Indictment, and of the Pannel of the Jury, and those were Instructions to tell me what the Law allows me.

Mr. Att. Gen. Here is a Speech made for you that begins thus; *Before you speak, speak to this Purpose*. Pray, my Lord, I desire that may be examined, and Mr. Smith may be called to give an account how he came to give the Prisoner those Papers; for here are Abundance of Niceties proposed for him to move, and there will be a strange Sort of Proceedings at this rate, if Men go about to espouse the Cause of Traitors.

Coll. I am no Traitor, Mr. Attorney.

Mr. Att. Gen. You stand indicted of High-Treason.

Coll. That is by a Grand Jury made up that Morning, as I am informed.

Mr. Att. Gen. Here is a List of the Names of several Men of the County returned to be of the Jury, and particular Marks set upon them, who are good Men, and who bad Men, and who moderate Men.

Coll. Ought I not to have that Paper, my Lord?

Mr. Att. Gen. No, I hope not.

L. C. J. Whether they are material, or not material, if we should judge them not material for his Defence, yet it would look like an hard Point upon the Prisoner; and to deliver them into an Hand that they may be carried away or stifled, in case there were a Crime in the delivering of them, that would not do well on the other Side: Therefore I would have these Papers put into some safe Hands, that what may be for the Prisoner's Use he may not want, and yet they may not be taken away, if there be Occasion to use them upon another Account.

Mr. Att. Gen. But if it please your Lordship, I desire you would enter into the Examination of this Matter; for I have an Account from London by a special Messenger, that there are several Persons go up and down to procure Witnesses against the King's Evidence, making it a publick Cause; and here, my Lord, is another Paper which is a List of Men as Witnesses picked up together against the King's Witnesses.

L. C. J. He must have that, deliver him that presently.

Mr. Att. Gen. But, my Lords, others have gone about and framed Witnesses for him.

L. C. J. You must give him the List of his Witnesses, for I see not what Use you can make of it.

Mr. Serj. Jeff. This no Man will oppose sure, if any Thing that is delivered to him be fit to be delivered, the Person that delivers it must count and own it; but before any Person delivers any Papers to the Prisoner, let him make use of against the King's Evidence, we desire to know what those Papers mean, and who gave them.

L. C. J. Look you, Brother, we will have nothing of Heat till the Trial be over, when that is over, if there be any Thing that requires our Examination, it will be proper for us to enter into the Consideration of it. But in the mean while what hurt is there, if the Papers be put into some trusty Hands, that the Prisoner may make the best Use of them he can, and yet they remain ready to be produced upon Occasion: If a Man be speaking for his Life, though he speak that which is not material, or nothing to the Purpose, there will be no harm to permit that.

Mr. Serj. Jeff. With Submission, my Lord, that is assigning him Council with a Witness.

Mr. Att. Gen.

Then the Court

Coll. Pray

not make m

Chief Just



*Mr. Att. Gen.* If People are permitted to go up and down and ask Council of Persons, and bring it in Papers to the Prisoner, 'tis the same Thing as if Council came to him. Here is a busy Solicitor, and he gets Advice from Council, and then he delivers it to the Prisoner; 'tis the first of that Kind certainly that ever was allowed; and if this be not to assign him Council, I know not what is.

*L. C. J.* What think you of our perusing the Papers?

*Mr. Att. Gen.* With all my Heart, my Lord.

*Coll.* If you take away all Helps from me, you had as good condemn me without a Trial.

*Mr. Att. Gen.* You ought not to have Helps to plead Dilatories.

*Coll.* Not to help me to my right in Law?

*Mr. Att. Gen.* We are to go upon the Fact now: And, my Lord, I pray your Judgment about them, when you have perused them.

*Then the Judges looked upon that Paper that was called the Speech.*

*L. C. J.* We have read enough of this to suppress it, and to examine how this came to his Hands.

*Mr. Just. Jones.* Where is Aaron Smith?

*Mr. Att. Gen.* My Lord, here is another that is worse than that, charging the Justice of the Nation. Pray call Mr. Aaron Smith, and Mr. Henry Starkey.

*Mr. Smith appeared.*

*Mr. Att. Gen.* Mr. Smith, did you deliver these two Papers to the Prisoner?

*Mr. Smith.* Does any Body accuse me that I did?

*Mr. Att. Gen.* You are accused of it.

*Mr. Smith.* I desire Proof may be made against me.

*Mr. Att. Gen.* That will be done.

*L. C. J.* Look you, we will not interrupt the Trial with it. Mr. Smith must be taken into safe Custody, only to secure him till we can examine it, not as charged with any Crime, but only that he may be forth-coming to be examined.

*Mr. Att. Gen.* You do not make a direct Answer, Mr. Smith, in the Case, it will be proved upon you.

*Mr. Smith.* Mr. Attorney, I know not what Answer to make better than I have given; our Law says no Man is bound to accuse himself.

*Mr. Att. Gen.* But our Law says, you shall be examined.

*Mr. Smith.* I come to give no Informations here, Mr. Attorney; if I did I should be then examined.

*Mr. Att. Gen.* Here are Instructions given to the Prisoner, they say you gave them.

*Mr. Smith.* I desire to have it proved.

*L. C. J.* Mr. Attorney, you will take a Recognizance of Mr. Smith, to be forth-coming during this Sessions.

*Mr. Smith.* I will not depart, my Lord, I assure you; and I hope Mr. Attorney will take my Word.

*Mr. Att. Gen.* Indeed I will not, Mr. Smith, because you have broken it with me already; when I gave you leave to go to the Prison, I did not think you would have abused that Kindness, to give him Papers.

*L. C. J.* Well, take His Recognizance.

*Mr. Smith.* 'Tis high Time to have a care, when our Lives and Estates, and all are beset here.

*L. C. J.* What do you mean by that, Mr. Smith?

*Mr. Smith.* I said it not, meaning by it the Court, for I declare I abhor that Expression to be so interpreted, that I reflected upon the Court.

*L. C. J.* Why do you use such loose Expressions then, Mr. Smith?

*Mr. Smith.* Because I have been threatened since I came to Town, though I have not spoke one Word in any publick Company since I came.

*Mr. Just. Jones.* It seems you will reflect here in the Face of the Court, and in the Face of the Country, upon the Government, upon the Justice of the Kingdom.

*Mr. Smith.* No, my Lord, I have told you what I meant by it; I neither reflected upon the Court, nor upon the Government, nor upon the Justice of the Kingdom.

*L. C. J.* You should have done well to have forborn such Expressions as those were.

*Coll.* Shall I not have the Use of my Papers, my Lord: Will you not please to deliver them back to me now you have perused them?

*Mr. Just. Jones.* One of them is a Speech, and a most seditious libellous Speech, to spit Venom upon the Government in the Face of the Country. We cannot tell who made it, but it seems to be beyond your Capacity; and therefore we must enquire into it: But we do not think fit to let you have the use of that Paper.

*L. C. J.* For that which contains the Names of the Witnesses, that you have again: For the other Matters, the Instructions in Point of Law, if they had been written in the first Person, in your own Name, that we might believe it was your writing, it would have been something; but when it is written in the second Person, you should do so and so, by which it appears to be written by another Person, it is an ill Precedent to permit such Things; that were to give you Council in an indirect Way, which the Law gives you not directly.

*Coll.* If I am ignorant what Questions to ask of the Witnesses, shall not my Friends help me, my Lord?

*L. C. J.* We will sift out the Truth as well as we can, you need not fear it.

*Coll.* Some of those Things I took out of the Books myself: And if you are resolved to take away all my Helps, I cannot help it; I know not that Mr. Smith wrote one of those Papers.

*Mr. Att. Gen.* But Mr. Smith would have given four Guineas, it seems, as a Bribe, to the Goaler, and he offered four more to let him have the Liberty to come to him.

*Mr. Serj. Jeff.* 'Tis Time indeed for Mr. Smith to have a care.

*Keeper.* It was Mr. Starkey that offered me the four Guineas.

*Mr. Att. Gen.* Pray call Mr. Henry Starkey.

*(But he did not appear)*

*Then the Court took a Recognizance of 100l. of Mr. Smith to attend the Court during the Session.*

*Coll.* Pray, my Lord, let me have my Papers delivered to me, I cannot make my Defence else.

*L. C. J.* We are your Council in Matter of Fact, and to give you your Papers were to assign you Council against Law, they being not your own Papers, but coming from a third Hand.

*Coll.* Will you please to give me the Paper that has the Questions in it, to ask the Witnesses?

*L. C. J.* There are no Papers with any particular Questions to any one Witness, but only Instructions how to carry yourself in this Case.

*Coll.* A great deal of it is my own, my Lord.

*L. C. J.* Mr. Attorney, truly I think, that which does not contain Matter of Scandal, may be transcribed and given to the Prisoner.

*Coll.* My Lord, I desire I may have that, that has in the Margin of it, the Cases of *Lilburne* and *Stafford*.

*Mr. Just. Jones.* You shall not have the Instructions to scandalize the Government, all that is necessary for your Defence, you shall have.

*L. C. J.* If he had writ it himself I cannot well see how you could take it from him; and truly as 'tis, I had rather let him have too much than too little.

*Coll.* My Lord, I thought I might have had Council to have assisted me, but if I may have Council neither before my Plea nor after, I that am an Ignorant may be lost by it, but can't help it.

*L. C. J.* If Matter of Law arise, you shall have Council to it.

*Coll.* I know not but it might have admitted of an Argument, that which, if I had had my Papers, I should have offered to you.

*L. C. J.* Mr. Colledge, we shall not go any farther now, I know not how many Witnesses will be produced either of one Side or another, but 'tis too late to go on this Morning, and because we attend here only upon this occasion, we shall go on with the Trial at two o'Clock in the Afternoon.

*Coll.* My Lord, will you be pleased to order the Papers for me to peruse in the mean Time.

*L. C. J.* We have ordered that you shall have a Transcript of the Paper of Instructions, leaving out that which is scandalous.

*Coll.* I desire I may have a Copy of the Whole.

*Mr. Just. Jones.* No, we do not think fit to do that.

*Coll.* Pray let me know which you do except against.

*L. C. J.* Look you, Mr. Attorney, I think we may let him have a Copy of the Whole.

*Mr. Att. Gen.* My Lord, before you rise, I desire you would be pleased to take the Examination of Mr. Gregory about Mr. Starkey.

*L. C. J.* Swear him. *(Which was done.)*

*Mr. Att. Gen.* What do you know concerning Mr. Starkey, and what did he offer you?

*Gregory.* When they came by your Lordship's Permission to Mr. Colledge, they brought some Papers which they delivered to him: And afterwards Mr. Starkey took me aside, and told me, it was hard Usage that the Prisoner could not have his Council permitted to come to him: Do him what Favour you can, and I shall not be ungrateful; so he clapped four Guineas in my Hand, but I immediately laid them down upon the Table, and would not take them.

*Mr. Att. Gen.* My Lord, I desire you would please to send for Mr. Starkey.

*L. C. J.* Let him be sent for.

*Cl. of Cr.* You must go and take up Mr. Starkey.

*Messenger.* Must I keep him in Custody? I don't know him.

*Cl. of Cr.* No, you must order him from the Court to attend here.

*Mr. Just. Jones.* These Papers Colledge shall not be debarred of for his Defence, nor you Mr. Attorney from prosecuting upon them.

*L. C. J.* No, we will put them into such Hands as shall take care of that.

*Coll.* Very few, my Lord, have appeared to do me any Kindness, some have been frightened and imprisoned, others are now in Trouble for it.

*L. C. J.* Well, you shall have the use of your Papers.

*Coll.* May I have any Friends come to see me in the mean Time?

*L. C. J.* They must not come to you in the Prison, to give you Advice; but I'll tell you, since you move it, if my Brothers think it convenient, whilst the Court does withdraw, any Body of your Friends may come to you, in the Presence of your Keeper.

*Mr. Just. Jones.* Certainly you cannot think you can give a Privilege to any Friends of your's, to commit any Misdemeanor to offer Bribes to any Person.

*Coll.* I know not of any such Thing.

*Mr. Just. Jones.* We do not charge you with it, but Mr. Starkey did.

*Coll.* I have been kept a strict close Prisoner, and if my Friends are so kind to me, as to help me in order to my Defence, I hope you will not be against it. Pray, my Lord, let me have my Papers.

*L. C. J.* You shall have them, but they shall be put into such Hands as the Court may have command over; they shall be in the Sheriff's Son's Hands, and you shall have the immediate use of them.

*Coll.* If there be any Thing else in those Papers necessary for my Defence, I pray I may have it.

*L. C. J.* The Speech is not fit for you; what other Papers would you have?

*Coll.* Another Paper there is, that is something of Law.

*Mr. Just. Jones.* Nothing but libellous, and what is a Scandal to the Government.

*Mr. Att. Gen.* You are to have nothing of Matter of Law, but what you are to propose yourself.

*Coll.* If you take away all my Helps, I cannot propose any Thing.

*Mr. Serj. Jeff.* To allow you those Papers, is to allow you Council by a side Wind.

*L. C. J.* Look you, the Papers of Instructions shall be delivered to the Sheriff's Son, who shall let you peruse it in this Interval, and make use of it in your Trial; but it must be in safe Custody to be used upon further Occasion, as the King's Attorney shall think fit.

*Then the Court adjourned till two in the Afternoon.*

Post meridiem, At two o'Clock the Court returned, and Proclamation was made for Attendance, and for the Under-Sheriff to return his Jury.

*Coll.* My Lord, ought not I to have a Copy of this Jury?

*L. C. J.* No. \* They are to look upon you as they come to be sworn, and then you are to challenge them.

\* Chief Justice Pemberton said in Lord Russell's Case, p. 630. it was never denied in Case of Life, that he knew of, it was allowed to Count Coningsmark, Vol. III. p. 465.



Cl. of Cr. *Stephen Colledge*, hold up thy Hand, and hearken to the Court; those good Men that you shall hear called, and personally appear, are to pass, &c.

Coll. Pray Sir, let the Way be clear, that I may see them.

Cl. of Cr. Ay, ay.

Coll. Pray Sir, how many are there of the Jury that appear?

Mr. Att. Gen. There are enough.

Cl. of Cr. Make Proclamation for Information, (which was done.)

Cl. of Cr. *Henry Standard*, (who was sworn,) *Richard Croke*, (who was challenged by the Prisoner,) *William Bigg*, (challenged.)

Mr. J. Jones. Do you challenge him Peremptorily, or with Cause?

L. C. J. If he do not shew Cause, it must be supposed it is Peremptory.

Coll. I suppose he was upon the Grand Jury.

L. C. J. That would be a Challenge with Cause.

Mr. Bigg. No, I was not.

Coll. Then I do not challenge him; I know him not. (He was sworn.)

Cl. of Cr. *Thomas Marsh*, (challenged,) *Thomas Martin*, (did not appear,) *Gabriel Merry*, (being almost an hundred Years of Age, was excused,) *Robert Bird*, (sworn,) *John Shorter*, (sworn,) *William Windlow*, (sworn,) *Edward Ayres*, (challenged,) *William Ayres*, (challenged,) and *Richard Ayres*, (challenged,) *Charles Hobbs*, (sworn,) *Roger Browne*, (sworn,) *Timothy Doyley*, (sworn,) *Richard Dutton*, (challenged,) *Ralph Wallis*, (sworn,) *John Nash*, (challenged,) *John Benson*, (sworn,) *John Piercy*, (sworn,) *William Web*, (challenged,) and *John Lawrence*, (sworn.)

They were counted, and their Names in Order thus.

<i>Henry Standard</i> ,	<i>William Windlow</i> ,	<i>Ralph Wallis</i> ,
<i>William Bigg</i> ,	<i>Charles Hobbs</i> ,	<i>John Benson</i> ,
<i>Robert Bird</i> ,	<i>Roger Browne</i> ,	<i>John Piercy</i> ,
<i>John Shorter</i> ,	<i>Timothy Doyley</i> ,	<i>John Lawrence</i> .

L. C. J. Mr. Sheriff, there are a great many of the Jury that are not sworn, they are discharged, let them go out of the Court, and so you will make room for the Witnesses.

Cl. of Cr. Gentlemen, you of the Jury, look upon the Prisoner, and hearken to his Charge. He stands indicted by the Name of *Stephen Colledge*, late of *Oxford*, in the County of *Oxford*, Carpenter; for that he as a false Traitor, &c. prout in the Indictment, *Mutatis Mutandis*, and upon this Indictment he hath been arraigned, &c.

Mr. North. May it please your Lordship, and you Gentlemen, that are sworn, this is an Indictment against *Stephen Colledge*, the Prisoner at the Bar, for an Endeavour to raise a Rebellion within this Kingdom, wherein he is accused, and the Jury find that he as a false Traitor, against the King's Majesty, contrary to the Duty of his Allegiance, on the 10th of *March*, in the 33d Year of the King's Reign, at *Oxon* here did traiterously conspire, and compass the Death of the King, and the Subversion of the Government, and to raise a Rebellion in the Kingdom, and to slaughter his Majesty's Subjects, to put the King to Death, to levy War against him, and to deprive him of his Royal State and Government, and to alter the Government at his own Will and Pleasure; and to accomplish this, he did at *Oxon* here prepare Arms for the carrying on the War, and excited one *Edward Turberville* and others, to arm themselves against the Accomplishment of this Design (and did declare his Purpose was to seize the King's Person at *Oxon*, and that he was one of those that was to do it; and to bring the said *Turberville* and other Subjects to his Purpose, did falsely, maliciously, and traiterously declare in their hearing, That there was no good to be expected from the King, that he minded nothing but the Destruction of his People, and arbitrary Government, and to introduce Popery. And this is laid to be against the Duty of his Allegiance, against the King's Peace, and against the Form of the Statutes in those Cases made and provided. The Prisoner, you hear, upon his Arraignment hath pleaded Not Guilty, which Issue you are to try, and if the Evidence for the King, which are ready to be produced, prove that which is laid to his Charge, you are to find it accordingly.

Mr. Att. Gen. May it please your Lordship, and you Gentlemen of the Jury; The Prisoner at the Bar stands indicted of a very high Crime, no less than High-Treason, and that too of the deepest Dye; it is for an Endeavour to destroy the King, to subvert the Government, to raise a Rebellion among the King's Subjects. And, Gentlemen, these Instances that we shall give you, and produce our Evidence to, for the Proof of that, are these: He laid his Design to seize the King at *Oxon*; and he did not want his Accomplices to do it; but they were not Men, Gentlemen, that were Protestants, but Men that were Rebels in the late war, they were Men of such a Kidney, that he associated himself with, and these were the Persons that were to assist in this Attempt. In Order to this he had prepared Arms in an extraordinary Manner, Arms of a great Value, for one of his Condition, who is by Trade a Joiner; for if a true Estimate were taken of the value of the Arms, I believe they were worth twice his whole Estate; he prepared a good Horse, extraordinary Pistols, a Carbine, a Coat of Mail, an Head-piece; and so being armed Cap-a-pee, with that Design he came hither to *Oxon*. And you will judge whether these be fit Tools for a Joiner.

Coll. I beseech you, Sir, have you any body to prove this? If you have not, you do hurt to the Jury as well as me, to speak it.

L. C. J. Be patient, Mr. Colledge, and let Mr. Attorney go on to open the Charge. I will tell you and the Jury too, that what he says further than he makes good by Proof and Witnesses, will serve for nothing.

Coll. 'Tis hard the Council should plead against me, and open Things that he cannot prove.

L. C. J. I will do you all the Right imaginable, and therefore I do tell you again, if they do not prove it, all he says is nothing.

Coll. But I beseech you, my Lord, since there hath been such extraordinary Means and Methods used to contrive my Death, that the Witnesses may be examined apart, and far from the hearing of one another.

L. C. J. That we will take care of by and by.

Mr. Att. Gen. Mr. Colledge, this shews your Temper, you are inordinate in your way of expressing yourself.

Coll. Mr. Attorney, I should not interrupt you, if I were not afraid this was spoken to prepossess the Jury.

Mr. Att. Gen. I hope to prove what I have said; or every Word of it shall pass for nothing.

Coll. 'Tis impossible for all the Men on Earth to prove it.

Mr. Att. Gen. Gentlemen, These were the Particulars I was opening to you, in what manner he was armed, and how accoutred he came hither. We shall likewise shew you that he made it his Business to persuade others to undertake the Design, and join with him, as if open War was already declared; he gave out a Sign, which was a blue Ribbon, a wrought Ribbon with Letters in it, and this was the Mark and Sign they were to know one another by. This was given out by him frequently; and that it may not seem an extraordinary Thing, Gentlemen, though indeed it was a wild Attempt, yet you will cease to wonder when you have heard of the Exploits of *Venner*, who with a few Men raised such a Commotion, soon after the King's coming in, and the several Exploits that have of late in *Scotland* been carried on by a few discontented Persons. So that Men of the like Principles, as we shall give you an account of this Gentleman's Principles what they were, may well be thought to engage in such an extraordinary Exploit. And we shall prove what the Encouragement was he was to have; for he boasted of himself, that he should be in a little Time a Colonel.

Coll. What, Sir?

Mr. Att. Gen. A Colonel, a great Preferment for a Joiner.

Coll. Yes, it was so.

Mr. Att. Gen. We shall shew to you that this was not a sudden unpremeditated Thing; for we shall prove that he had entertained the horrid Malice against the King, that ever Subject entertained against his Sovereign: For we shall give this Evidence, and his Front will not oppose it, that he had made it his common Discourse in Coffee Houses, and Public-Houses, (and I believe I could bring you 40 and 40 Witnesses to it) to defame the King, and murder him in his Reputation, and was one of the Accomplices with *Fitz-Harris*, who was lately executed for that venomous Libel: We shall prove that he justified it, and maintained it to be as true as the Gospel. We shall give Evidence that he carried on the same Design with that Arch-Traitor who was a Papist; and I believe if this Gentleman were examined thoroughly, he would be found to be one of the same Stamp, and acted by the same Principle; for I think that no Protestant Subject would attempt such Things as we shall prove to you. I believe, Gentlemen, you have frequently heard, as none of us but have, that the King has been traduced as a Designer of arbitrary Government, and his Reputation blasted maliciously and falsely, as an Introducer of Popery: Whence comes all this generally, but out of the Popish Quiver; who make it their Business to set the King's good Subjects at Variance amongst themselves, and against their Prince, by styling the King a Papist, as this Prisoner hath done; nay, he hath been so impudent as to report that the King was in the Plot against his own Life. We shall prove to you, how here and at other Places he hath frequently done this; to go further, we shall produce to you the Evidence that he drew the King's Picture, and exposed him in all the reproachful Characters imaginable, and that the Picture might be the better understood, he adds a Ballad to it: and that he may not have the Confidence to say this is not true, we shall produce to you a whole Bundle of these Papers, among those which his Son made a Discovery of, when they were sent to his Uncle to be hid, and we shall prove him to be the Author of them; and yet this Man should have the Confidence to say he is a good Subject, and a good Protestant, when by all Ways imaginable he goes about to ruin the Government and defame the King? And Gentlemen, when we have given this Account by Witnesses, for I would have you believe me in nothing, but according as I prove it, you will not wonder then that he should say his Life was in Danger, (for so it is indeed?) And if any Man ever was Guilty of High-Treason, sure he is, and being Guilty of the greatest Treason, he deserves the greatest Punishment.

Coll. Pray, Gentlemen of the Jury, take Mr. Attorney General at his Word, and remember, Sir, you desire not to be believed yourself, but what you prove.

Mr. Serj. *Holloway*. May it please your Lordship, and Gentlemen, pursuant to what Mr. Attorney hath opened, we will call our Witnesses, and we will begin with Mr. *Dugdale*, who was a Witness against my Lord *Stafford*, at his Trial in Parliament, whose Credit Mr. *Colledge* did attest at that Trial, asserting him to be an honest good Man, and I believe his Evidence will go in a good Measure through all that Mr. Attorney hath opened, and when we have done with him, we hope to second him with other Witnesses of as good Credit, and that will say as much to the Purpose.

Then Mr. *Dugdale* was sworn.

Mr. Att. Gen. Mr. *Dugdale*, look upon the Prisoner, and tell the Court whether you know him.

Mr. *Dugdale*. Yes, I do know him, Sir.

Mr. Att. Gen. Will you give us an Account of your Knowledge of him?

Coll. My Lord, I humbly desire they may be examined a-part, and not in the hearing of one another.

Mr. Att. Gen. That, with Submission, ought not to be in the King's Case, though we think there are none of them that will speak any more than the Truth.

Coll. Here are several of them, my Lord, they are all of a Gang.

Mr. Serj. *Jefferies*. Not of your Gang, Mr. *Colledge*.

Coll. I pray they may go out, my Lord, (which was ordered accordingly.)

Mr. *Dugdale*. If your Lordships, please, whether or no I may deliver in these Papers?

Mr. Att. Gen. By and by, Time enough, when we ask for them; speak your own Knowledge.

Mr. *Dugdale*. My Lord, I have been, I think, acquainted with Mr. *Colledge* two Years or thereabouts. I have been several Times in Mr. *Colledge's* Company, and truly sometimes he hath been mightily bent against Popery; he hath at some Times uttered himself, because the King did not prosecute the Papists according as he thought sufficiently, that the King was a Papist himself, that he was as deep in the Plot as any Papist of them.



them all, that he had an Hand in Sir Edmundbury Godfrey's Death. This, Mr. Colledge, I appeal to yourself, whether you have not said it; And in this Town of Oxford you have several times told me, that nothing was to be expected from him, he would do nothing.

Mr. Just. Levinz. Who did tell you so?

Mr. Dugdale. Mr. Colledge did tell me, that there was nothing to be expected from the King but the introducing of Popery and arbitrary Government; this I believe Mr. Colledge will acknowledge to be true.

Colledge. Where was this spoken?

Mr. Dugdale. This was spoken at a Coffee-House called Combe's Coffee-House in this Town, and at the Angel-Inn in this Town at a Barber's Shop; that Day the King went out of Town, we were in the same Shop.

Colledge. Who was there besides?

Mr. Serj. Jeff. Do not interrupt our Witnesses, let us have done with him, and you shall have your Time to ask him Questions after.

L. C. J. For your Instruction I will tell you, your Time is not yet come, if you chop in and interrupt the Witnesses, you will disturb any Man living; but your Way is this, When he hath delivered his Testimony, ask him any Questions then; and he shall be bound to answer you, and in the mean time you shall have Pen, Ink and Paper, to help your Memory.

Mr. Dugdale. That Day the King went out of Town, presently after he went, you and I went into the Angel-Inn; and we went into the Barber's Shop that is just within the Inn, and being charging your Pistols there, you said Rowley was gone, the Rogue was afraid of himself, he was shirked away, and here I appeal to your own Conscience, whether you did not speak of it.

Colledge. I know nothing of it.

Mr. Att. Gen. Don't appeal to him, 'tis nothing for that.

Mr. Sol. Gen. Who did he mean by Rowley?

Mr. Dugdale. The King.

Mr. Serj. Holloway. Was that his common Appellation for the King?

Mr. Dugdale. It was his common Word concerning the King. And at other Times speaking that the King did not do those Things that were fair, he hath given mighty great Words against him: He hath told me, that there was no Trust to be put in him; for it was the People we must trust to, and we must look to arm ourselves, and that he would arm himself, and be here at Oxford; and he told me here in the Town accordingly when I came out of the Country, and he said that he had several stout Men that would stand by him in it. Their Intention was, as he said, for the rooting out of Popery, by which Name he always termed the Church that is now established by Law, as to be of the same Nature the Papists were. This I believe Mr. Colledge will acknowledge.

Mr. Att. Gen. Well, go on, Sir.

Mr. Dugdale. And at a Time when he had Dr. Tongue at his House, he told me, that as for Dr. Tongue, he had much ado with him, and he had been at a great Charge to keep him in Order, that he was forced to neglect his own Business to look after him; for if he had not done so, the Rogue, as he said, had a mind to sling all upon the Protestants, that is, the Dissenters, for he does not count the Church of England to be so; that he had much ado to keep him in Order; for he had said he had drawn Papers for that Purpose, but those Papers are secured, for where they are I can't tell.

Mr. Att. Gen. Who were they that were to be with him in that Design of his?

Mr. Dugdale. He told me, Captain Clinton, Captain Brown, and one Doctor Lewes, and he brought them into Town here, when he came with him.

Mr. Att. Gen. To what Purpose did he bring them?

Mr. Dugdale. Expecting there would be a Rising.

Mr. Just. Jones. Did he tell you that here?

Mr. Dugdale. Yes, the Friday, I think it was, after the first Parliament sat.

Mr. Just. Jones. How did he express himself what they had to do?

Mr. Dugdale. They were to be here, in case there were any Rising, which he expected.

Mr. Just. Jones. What Use did he say he would make of them?

Mr. Dugdale. For the Defence of the Protestant Religion, against the King and all his Adherents.

Mr. Just. Jones. What did he say he would do to the King? I would not lead you.

Mr. Dugdale. He did not say what particularly.

Mr. Just. Jones. What did he say, if the King did not yield to the Parliament?

Mr. Dugdale. If the King did not yield to the Parliament, he should be forced to it.

Mr. Just. Jones. Where did you hear him say that?

Mr. Dugdale. At Oxford.

Mr. Serj. Holloway. Did you hear him declare this at London?

Mr. Dugdale. He did say at London, he expected there would be something done at Oxford, and that he would go thither with his Horse and Arms, and those Gentlemen I named before would go with him. And he said, let them begin when they would, he did not care how soon, his Party was the greatest Party.

Mr. Att. Gen. What was that Captain Brown? Did you know him?

Mr. Dugdale. Yes, I knew him very well; he did much frequent Mr. Colledge's Company; he was in the late Army against the King.

Mr. Serj. Jeff. Did you see him have any Pistols?

Mr. Dugdale. Yes, I have seen him carry Pistols about him.

Mr. Serj. Jeff. Where, in his Pocket?

Mr. Dugdale. I saw them in the House.

Mr. Serj. Jeff. At Oxford?

Mr. Dugdale. Yes.

Mr. Serj. Holloway. Did you see them in his Hand?

Mr. Dugdale. I cannot tell that, he had them in the House, I saw them there.

Mr. Serj. Holloway. Did you see him in his Silk Armour about the Parliament-House, the Lobby, or any Place?

Mr. Dugdale. I cannot say that.

VOL. III.

Mr. Att. Gen. What did you know of his delivering any Marks or Signs for Persons to be distinguished by?

Mr. Dugdale. I had as much Ribband from him as came to 40s. with No Popery, No Slavery, wrought in it; and he gave it me to distribute among my Friends in the Country, that they might be known by other Persons that would wear the same.

Mr. Just. Jones. Where had you it?

Mr. Dugdale. At London, from Mr. Colledge.

Mr. Just. Jones. Where was it to be distributed?

Mr. Dugdale. Among those that I knew to be Dissenters in the Country.

Mr. Just. Jones. Were you to come to Oxford, by Agreement, with Mr. Colledge?

Mr. Dugdale. I promised him to come to Oxford, and did so.

Mr. Att. Gen. Well, go on. What more do you know?

Mr. Dugdale. At London, I was once at a Coffee-house with Mr. Colledge, and with some of the Members of the House of Commons; it was a little before they met; and they were earnestly talking of the Parliament at Oxford, and of some Disturbance that was likely to happen here. And it was then fully agreed, and Mr. Colledge was by, That it would be the best Way, out of every Country, where the Parliament had the best Interest in the People, to leave one in every County that might manage the People. This I appeal to Mr. Colledge, whether it be true.

Colledge. You appeal to me, shall I speak now, my Lord?

Mr. Just. Jones. No, you will remember it by and by.

Mr. Att. Gen. What do know of any Pictures?

Mr. Sol. Gen. Pray let him speak that over again which he mentioned last.

Mr. Dugdale. Being in a Coffee-house with Mr. Colledge, there were some of the Members of the House of Commons by; and speaking of a Disturbance that might happen here at Oxford, it was then agreed, That in every Quarter where the Parliament had the most Interest in the People, they should not all come up, but some remain there to manage the People.

Mr. Att. Gen. What do you know of any Pictures or Papers, have you any about you?

Mr. Dugdale. Yes, I have one thing I received from Mr. Colledge, that is, the Letter pretended to be intercepted to Roger L'Estrange.

Mr. Att. Gen. Pray, what Account did he give you of it? Who made it?

Mr. Dugdale. He told me he was the Author of it himself, and he shewed me it in Manuscript before it was printed; and he told me, he got one Curtis, or his Wife, to print it; but he would never trust them again, for they cheated him of some of the Gain.

Mr. Att. Gen. Who was the Author, did he say?

Mr. Dugdale. He himself.

Mr. Att. Gen. Pray produce it, Sir.

Mr. Dugdale. This and others he delivered to me to disperse.

L. C. J. What is it, Mr. Attorney?

Mr. Att. Gen. It is a Letter, and a great Part of Fitz-Harris's Libel is taken out; it seems Colledge was the Author, and this is the Original of the Libel.

L. C. J. Did he tell you, this was of his own making?

Mr. Dugdale. Yes.

Mr. Att. Gen. Did he disperse them to any Body else?

Mr. Dugdale. Yes, there was some given to one Mr. Boson, he had some at the same Time, and Mr. Baldwin had some.

Then the Paper was read.

Cl. of Crown. First Q. Whether they that talk—

Mr. Att. Gen. Pray give my Lord an Account what more Papers and Libels he delivered to you.

Mr. Dugdale. I received one like this, I cannot say it was the same, where all the Bishops were changing their Hats for Cardinals Caps.

Mr. Serj. Jeff. Where is Rary Shew, for it seems he hath expounded the Meaning of that?

(Then it was produced.)

Mr. Serj. Jeff. I suppose 'tis his own cutting too.

Mr. Dugdale. I heard Mr. Colledge sing it.

Mr. Serj. Jeff. Where?

Mr. Dugdale. In Oxfordshire, and in Oxford-Town, at my Lord Lovelace's?

Mr. Serj. Jeff. Where, at my Lord Lovelace's?

Mr. Dugdale. At his House in the Country.

Mr. Serj. Jeff. Who were in the Company there?

Mr. Dugdale. Sir Robert Clayton, Sir Thomas Player, Mr. Rouse, Mr. Colledge.

Mr. Serj. Jeff. You say you heard him in Oxford, and in Oxfordshire, and at my Lord Lovelace's, where is that?

L. C. J. My Lord Lovelace is here himself, and hears what he says.

Mr. Dugdale. I might mistake the County, but I heard him sing it at Oxford Town, and at my Lord Lovelace's House again.

L. C. J. Where is that?

Mr. Dugdale. I cannot tell the Town.

Mr. Serj. Jeff. How came you there?

Mr. Dugdale. Sir Thomas Player did invite me thither.

Mr. Serj. Jeff. Where is it in Oxfordshire?

Mr. Dugdale. I cannot tell, 'tis four Miles from Henley.

Mr. Serj. Jeff. Was my Lord at home?

Mr. Dugdale. Yes, he was.

Mr. Serj. Jeff. Now for the Cut, then; Did he shew you this Cut?

Mr. Dugdale. Yes, he told me he would get it printed.

Mr. Serj. Jeff. Was it before it was printed then that he sung it?

Mr. Dugdale. Yes, it was.

Mr. Serj. Jeff. Who did he tell you did make it?

Mr. Dugdale. He told me he was the Author of this Cut, and he gave me one, and we sang it together presently after it was printed.

Mr. Att. Gen. How did he describe it to you when he shewed it to you?

Z z

Mr. Dugdale.



Mr. Dugdale. That which hath the Pack on the Back of it, he described to be the King; those that follow him were *Topham, Cooper, Hugh, and Snow*, and that Company of Men there is the House of Commons.

Mr. Serj. Holloway. What was meant by the Pack?

Mr. Dugdale. The Parliament and all his Retinue; and then here is the King in the Mire again, according as 'tis represented in the Song—

Mr. Serj. Jeff. Ay, he goes on well. And this here is the Bishops which they thrust into the Pack, when they have got him down in the Mire, and then they thrust them all away, as it is in the Song, to hoot them away.

L. C. J. Did he make this Explication to you?

Mr. Dugdale. Yes.

Mr. Serj. Jeff. Who were the *All*?

Mr. Dugdale. King, and Clergymen, and all.

Mr. Serj. Jeff. Where was this that he explained it?

Mr. Dugdale. At London.

Mr. Serj. Holloway. Is there any Thing relating to *White-Hall*? What Name did he give that?

Mr. Dugdale. Yes, he said, *Louise-Hall* was *White-Hall*, because of its Poverty.

Then the Ballad was read.

Cl. of Cr. Barn Sherr. To the Tune of, *I am a Senseless Thing*—

Mr. Att. Gen. This shews you what a Sort of Man he is.

Mr. Serj. Jeff. Here you say he explained this with the Pack at the Back to be the King?

Mr. Dugdale. Yes, he told me so.

Mr. Serj. Jeff. What did he mean by the two Faces?

Mr. Dugdale. That he was half a Protestant, and half a Papist.

Mr. Just. Jones. Did he make any Comparison between his own Party and the King's Party?

Mr. Dugdale. He said, they were but a Handful to them.

Mr. Just. Jones. To whom?

Mr. Dugdale. To his Party, that was the Dissenters.

Mr. Att. Gen. Speak that out.

Mr. Dugdale. That their Party was but a Handful to their's.

Mr. Att. Gen. Their's and Their's, who did he mean?

Mr. Dugdale. He meant the Dissenters; for the Church of England he reckoned among the Papists.

L. C. J. Tell us the Words he said.

Mr. Dugdale. He said, his Party was the true Church of England, and that which is established by Law, were but Protestants in Masquerade.

Mr. Just. Jones. Tell us when he made the Comparison, what Words he did use, and upon what Occasion.

Mr. Dugdale. When he perceived the King at Oxford would not yield to the House of Commons, he said, Let him begin as soon as he would, he did not care how soon he did begin, for their Party, meaning the King and his Party, was but an Handful to him and his Party, calling them the true Protestants; the others were Protestants in Masquerade.

Mr. Att. Gen. What did he desire you to do? To be assisting in any Thing?

Mr. Dugdale. He always desired me to be true of that Side, he hoped I was, and to get good Arms for myself.

Mr. Serj. Holloway. Did he in Oxford desire this of you?

Mr. Dugdale. No, he did not.

Mr. Sol. Gen. For what Purpose did he desire you to arm yourself?

Mr. Dugdale. He said, the King had a Design on the People to introduce Popery and arbitrary Government, and he expected every Day when they would begin, and the sooner the better, he would be provided for them.

Mr. Just. Jones. Was that in Oxford?

Mr. Dugdale. He spoke it in Oxford, and in the City too.

Mr. Just. Jones. Did he tell you of any that were lifted?

Mr. Dugdale. He spoke of Captain Brown, and Captain Clinton, and Don Lewes, and Abundance more he said he had.

Mr. Just. Jones. Did he tell you he had them here?

Mr. Dugdale. Yes, about forty of them were there, he said,

Mr. Serj. Holloway. Did he tell you of any that were lifted, in order to the coming down of the Parliament at Oxford?

Mr. Dugdale. Not lifted, but were intended to come down; and at Oxford he told me they were come down.

Mr. Just. Jones. Were you in their Company in Oxford here?

Mr. Dugdale. Yes, I was.

Mr. Just. Jones. In the Company of whom? Name them.

Mr. Dugdale. Of Captain Brown, Don Lewes, and several others of that Gang; I know not their Names, but I know their Faces.

Mr. Sol. Gen. Did he take Notice to you that they were come down?

Mr. Dugdale. Yes.

Mr. Sol. Gen. To what Purpose?

Mr. Dugdale. He expected there would be a rising in Oxford, and to this Purpose; Mr. Colledge was one that debated it at Richard's Coffee-house, and it was to be carried from thence to the King's-Head Club, whether it were not best to leave a Parliament-man in every County?

Mr. Att. Gen. Where was this?

Mr. Dugdale. This was at Richard's Coffee-house in London, against they met here.

Mr. Att. Gen. We could give you an Account of a Volume of these Things, Abundance of scandalous Pamphlets, both Songs, Libels, and Ballads, that were made by this Gentleman, and all seized in his Custody.

Mr. Just. Jones. But he sung this Libel?

Mr. Att. Gen. All these, Gentlemen, (shewing a great Bundle) were to be dispersed over England.

Mr. Serj. Jeff. It was, it seems, expounded and sung by the Prisoner at the Bar; he gave you the Ballad at Oxford, you say, Mr. Dugdale.

Mr. Dugdale. No, I heard him sing it here.

Mr. Just. Jones. Pray, Mr. Dugdale, what was the Use was to be made of this Ballad?

Mr. Att. Gen. Come, go to the next, we call this Evidence to shew you the Malice of the Man.

Colledge. Pray, my Lord, let me ask some Questions of Mr. Dugdale.

Mr. Serj. Jeff. Ay, now let the Prisoner ask his Questions (to do him right) before we go to another Witness.

Mr. Dugdale. My Lord, I have a Word or two more about a Libel in Manuscript, that very Day the Sheriffs were to be chosen, it was to be printed, and he told me the Printer durst not print it, it was so dangerous.

Mr. Serj. Jeff. What was it, can you remember any Part of it?

Mr. Dugdale. No; but it was the worst I ever heard in my Life against the King and Government.

L. C. J. Now ask him what Questions you will.

Colledge. Pray, when was the first Time you gave this Evidence?

Mr. Dugdale. Truly, Mr. Colledge, I don't keep an Account of Time, I cannot give an Account of Time.

Mr. Att. Gen. As near as you can tell him.

Mr. Dugdale. I cannot tell whether it might be in June, I think it was.

Colledge. How long before I was taken?

Mr. Dugdale. It might be about the Time you were taken.

Colledge. Pray, who did you give it before?

Mr. Dugdale. I gave it to Sir Lionel Jenkins.

Colledge. Where did you swear these Things were done then?

Mr. Dugdale. What was done in the City, I swore to be done there.

Colledge. What City?

Mr. Dugdale. London; the same Words were said in the City of London, and over again here. I have repeated, for the most Part, only the Words you said here, but more was in the City than here.

Colledge. Did you swear then, that the Words you swore now were spoken at London?

Mr. Dugdale. It may be we might not name Oxford then.

Mr. Serj. Jeff. He says well, it might not be named then.

Colledge. Then you did give in your Information, that I spoke these Words at Oxford.

Mr. Dugdale. I was not examined about what was done at Oxford; I believe I have heard you speak the same Words to me at my Lord Lovelace's, but I do not know what County that is in.

Colledge. I ask you positively, Whether you did not swear that what you now say was spoken at Oxford, was spoken at London?

Mr. Dugdale. I did not name Oxford then.

Colledge. But did not you say that was done at London, that now you say was done here?

Mr. Dugdale. Truly, you said them both at London, and here.

Colledge. Pray, Mr. Dugdale, what had you to give this your Information?

Mr. Dugdale. Truly, I can't say I have received the worth of a Groat.

Colledge. Nor was ever promised any Thing?

Mr. Dugdale. No, I never received any Thing, nor ever was promised, but only what the King gave me for going down into the Country for my Charges.

Mr. Att. Gen. Was that the same Allowance you had when you were Witness for the popish Plot?

Mr. Dugdale. Yes.

Mr. Serj. Jeff. Have you any other Allowance than what you had before, when you gave Evidence at my Lord Stafford's Trial?

Mr. Dugdale. No, nor have got all that yet neither.

Colledge. But pray observe my Question, Mr. Dugdale, and answer it. Did you not swear at London that I spoke these Words there, which now you say I spoke here?

L. C. J. Pray observe, he says he did not then name Oxford; but in the giving of his Evidence now, he tells you a Series of what passed between London and Oxford; and I must tell you further, if a Treason be committed, and the Evidence prove it to be in two Counties, the King may choose which County he will prosecute and bring his Indictment in, and give in Evidence the Facts in both Counties. But you shall have your Objection to it afterwards, and we will take it into Consideration. I tell you this, that it may not seem to you that the Witnesses speak impertinently of what was done at London; but if nothing was done or said at Oxford, then it will be taken into Consideration, you shall have it said afterwards. I only hint it now, that you may not think it impertinent.

Colledge. I beseech your Lordship give me Leave to speak one Word. When he made his Affidavit before Sir Lionel Jenkins there about seizing the King, about the Party I had, and the Arms I had provided, ought not he at the same time to have said where I said those Words to him? But he did swear then it was in London that I said those Words to him, and coming before a Grand Jury of honest Gentlemen in London, they were so wise and honest as to do me Justice, and not find the Bill; in their Design failing there, then they changed it to Oxford.

L. C. J. You did not come to your Trial there; if you had so done then they would have asked him in particular what was said at Oxford, and what at London, as 'tis now, being done in both Counties. But you, if you will ask any particular Questions, do, for they have called Witnesses to produce.

Colledge. My Lord, I only ask this Question, Whether it be not rational to think, that when he swore before Sir Lionel Jenkins, he should have sworn the Words were spoken, and Things done?

Mr. Dugdale. He hath said the same Words to me at my Lord Lovelace's, as I lay in Bed with him, and this I never mentioned but now my Evidence.

Colledge. What Words did I say there?

Mr. Dugdale. If you must have them repeated, they were about the King.

Colledge. What were they?

Mr. Dugdale. That he was a Papist, and designed arbitrary Government.

Colledge. Did I say so to you at my Lord Lovelace's?

Mr. Serj.



Mr. Dugdale. Yes, as we lay a-Bed.

Mr. Sol. Gen. Did you lie together?

Mr. Serj. Jeffries. Yes, yes, they were Intimates.

Coll. I had not six Words with you when you went to Bed, for you said you were weary, and went asleep presently.

Mr. Dugdale. I say you said this in the Morning, for we had an Hour's Discourse when we were a-Bed, and all our Discourse was about the Parliament and the King.

Coll. Where was it I said these Words in Oxford?

Mr. Dugdale. At Comb's Coffee-House was one Place.

Coll. Was there no Body by?

Mr. Dugdale. No, but at the Angel-Inn there were several Persons standing by?

Coll. Surely then some of those heard the Words as well as you.

Mr. Dugdale. It may be so, I am sure many at London have been by, as Mr. Starkey by name, Mr. Bosam, Mr. Baldwin; they have rebuked you for it, and I have rebuked you too.

Coll. What Words have they and you heard, and rebuked me for?

Mr. Dugdale. When you have been railing against the King, and said, That the King designed nothing but the introducing of Popery and arbitrary Government, and that he was a Papist.

Mr. Serj. Jeff. He loves to hear it repeated.

Coll. What Arms did you see of mine in this Town?

Mr. Dugdale. I saw Pistols; you had some Pocket Pistols.

Coll. None but one I borrowed of you, and that you had again; had I? (Pray speak) did you see any more?

Mr. Dugdale. It may be there might not, but there were Pocket-Pistols in the Room, and you had them in your Hand.

Coll. He swore but now that he saw me have Pocket-Pistols, when it was but one, and that was his own.

Mr. Serj. Jeff. Hark you now, you talk of Pistols, do you know, that he had any Pistols in his Holsters at Oxford?

Mr. Dugdale. Yes, he had.

Coll. Yes, I know that, I don't deny it.

Mr. Serj. Jeff. I think a Chiffel might have been more proper for a Joiner.

Coll. You say I was confederated with Capt. Brown and other Men.

Mr. Dugdale. You have told me that Capt. Brown had a good Allowance, and it was pity he had not a better Allowance; and you would speak he might have a better Allowance, for he was able to do good Service when the Time came.

Coll. From whom?

Mr. Dugdale. Among you.

Coll. Among whom?

Mr. Dugdale. You know there were several Gatherings among you that I was privy to.

Coll. What do I know?

Mr. Sol. Gen. You know Money was gathered many Times.

Coll. For what Purpose?

Mr. Dugdale. You never told me Particulars; it was to distribute somewhere, I had none of it.

L. C. J. He does not say these Men were concerned with you, but you said so.

Mr. Dugdale. You know, Mr. Colledge, there were many Gatherings of Monies.

Coll. Did I tell you there were any Gatherings for Captain Brown?

Mr. Serj. Jeff. He says, you told him no Particulars; if you have a Mind to ask him any more Questions, do.

Coll. Pray Sir George, don't interrupt me I am here for my Life. Did I tell you there were any Gatherings for Captain Brown?

Mr. Dugdale. I do not say for him, nor whom you distributed it to; but you gathered Money one among another, and you have paid Money.

Coll. I have paid Money! When, and to whom?

Mr. Att. Gen. You will not deny that, you confessed, upon your Examination, that you gave a Guinea.

Coll. Sir, did you see me any more at Oxford, than in the Coffee-House, and at that Inn, when I went out of Town, and was going home with the City-Members?

Mr. Dugdale. Yes.

Coll. Were you in my Company any where but in those two Places?

Mr. Dugdale. I was with you at the Chequer.

Coll. Did you come a Purpose to speak with me, or had you any Business particularly with me?

Mr. Dugdale. Truly, Mr. Colledge, I have forgot whether I had or no; I was in the Room with you there.

Coll. Where is that Room?

Mr. Dugdale. I can't tell all the Rooms in that House.

Coll. Was it above Stairs, or below?

Mr. Dugdale. Both above and below, two Days I was there with you.

Coll. Was there any of this Discourse you speak of passed there between us?

Mr. Dugdale. I know I was with you in those two Places I mentioned before; you called me aside to drink a Glass of Mum, and there was none in the Room but us two at that Coffee-House.

Coll. Sir, you came to Town but on Friday, I think it must be Saturday, Sunday, or Monday, this was; for he stayed no longer in Oxford.

Mr. Dugdale. Nay, I came to Oxford either Wednesday Night, or Thursday Morning; and I saw you and Mr. Hunt together the same Day I came.

Coll. Did I explain any Pictures to you at London, or owned I was the Author of them?

Mr. Dugdale. Yes, upon my Oath, you have explained Pictures to me, and there is one Picture that I have not shewed yet, which you have explained what the meaning was.

Mr. Serj. Jeff. 'Tis your common Trade it seems.

Mr. Dugdale. You told me you got them done.

Clerk reads, *A Character of a Popish Successor*, &c.

Mr. Serj. Holloway. How did he explain it to you, Mr. Dugdale?

Mr. Serj. Jeff. I would see what Opinion he had of the Church of England; there are some Church-men, what are they a doing?

Mr. Dugdale. They are a Parcel of *Tantivy-men* riding to Rome; and here's the Duke of York, half Man, half Devil, trumpeting before them.

Coll. You have got some body to explain these things to you, Mr. Dugdale.

Mr. Dugdale. You did it, upon my Oath.

Coll. Oh, fie upon you, Mr. Dugdale, consider what you say.

Mr. Serj. Jeff. All this you did explain, it seems.

Mr. Dugdale. And in one Place of the other Libel the King was termed a Rogue; but they put him in by another Name.

Mr. Serj. Jeff. Where is it?

Mr. Dugdale. 'Tis in *Rary Shew*; in the Manuscript it was, *Now, now the Rogue is down*.

Mr. Serj. Jeff. Let me see it; I took Notice of it, *Now, now the Giant is down*, here.

Coll. I ask you, Sir, whether the Song which you say was sung at my Lord Lovelace's, and other Places, was the same with this?

Mr. Dugdale. For the general it is, I can't tell for every Word: You sang it half a dozen times there, and the Musick play'd to you.

Coll. I ask you, whether it was the same with this?

Mr. Dugdale. I can't tell for every Word you sang.

Coll. Was there any Body by at my explaining of these Pictures?

Mr. Dugdale. Mr. Baldwin was by, and reproved and corrected you, that you would be so open.

Coll. Was there any body at Oxford, when you did hear me talk of arming myself?

Mr. Dugdale. They were walking up and down in the Barber's Shop, and I know not whether they did hear or no.

Mr. Att. Gen. Was that Gentleman sworn at my Lord Stafford's Trial, Mr. Dugdale?

Coll. Yes, I was sworn there, I acknowledge it.

Mr. Att. Gen. Did he swear any thing on your Behalf, for your Credit, Mr. Dugdale?

Coll. That was by hear-say, Mr. Attorney, at the Tower; I know nothing of my own Knowledge; but I did believe him another Man than I find him.

Mr. Serj. Jeff. No Question, or else you would not have trusted him.

Mr. Att. Gen. Swear Stevens. (*Which was done.*) Do you give my Lord and the Jury an Account where you found this precious Ballad.

Stevens. The first Draught I found in his Bed-chamber.

Mr. Serj. Jeff. What of all of them? Which is it?

Stevens. The *Rary Shew*: We found the first Draught of it in his House, when we came to search his Papers, by Order of Council; and the Printer that printed the Ballad hath told me since, he had it from him—

Mr. Att. Gen. What say you yourself? speak your own Knowledge.

Stevens. And Mr. Atterbury was by when we searched the House.

Mr. Att. Gen. Well, Mr. Atterbury will tell his own Story.

Stevens. I have seen you on Horseback, with Holsters before you, with some hundreds of Men after you, coming out of the *Bell-savage-Inn*; they said, you were going to chuse Parliament-men: I have known you three or four Years, you were joiner to our Hall.

Mr. Serj. Jeff. We call you to that Particular of the Papers, and you run in a Story of a Cock and a Bull, and I know not what.

L. C. J. Will you ask him any Questions?

Coll. No, only this; Do you swear, upon your Oath, that you found the Original in my House?

Stevens. Yes, Sir, you will see it with my Hand to it, and some more of them.

Mr. Att. Gen. And you found too those that were printed?

Stevens. Yes, both our Names are to them that were concerned in the searching of them.

Mr. Serj. Jeff. You found the Paper in the House?

Stevens. Yes.

Mr. Serj. Jeff. That is *Towzer*; but have you the Original of the *Rary Shew*?

(*It was looked for, but could not be found.*)

Coll. Pray, Gentlemen, observe, he swears that is an Original.

Mr. Serj. Jeff. No, no, he found the Paper in your House.

Coll. I ask about the Original of *Rary Shew*.

Mr. Serj. Jeff. He says, he saw a Paper drawn with a Pencil that was like the Original.

Atterbury. There was an Original drawn with a Pencil, upon Dutch Paper, 'tis long since, for we do not see it here now, which at the same Time we found upon Colledge's Table in his Bed-Chamber.

Coll. Did you find an Original in my Chamber?

Atterbury. Yes, we found a Paper drawn with Black Lead.

Coll. Pray, where is it?

Atterbury. I did see it, it was drawn in Black Lead, it was upon Dutch Paper, and lay upon the Table in your Chamber.

Stevens. Sure I am, it was taken when we searched the House.

Coll. I am sure you could never find the Original of any such thing in my House.

Mr. Att. Gen. Then where is Mr. Sewell? (*Who was sworn.*) Sir, did you see that Trumpery taken?

Sewell. I had a Warrant to seize Mr. Spur, and his Brother-in-Law, Mr. Colledge. So I went down to seize Mr. Spur, and search his House for such Papers as I should find. I could not find them in the House; but I enquired of him, after I had searched, and could not find them, where they were; because I saw him at Mr. Colledge's when we first searched; he denied them a pretty while, but at last he told me, they were in the Hay-mow in the Barn. When I came there, he was bawling, and told me, his Wife, Colledge's Sister had taken them down, and carried them into a Room where I had searched before, but could not find them; and the Man was angry then, so we run after his Wife, and found her with all these Papers in a Bag.

Mr. Att. Gen. Are these the same Papers?

Sewell. Yes; and there were two other Cuts, the Man himself is about the Place somewhere.

Mr.



Mr. Att. Gen. Swear Mr. John Smith.  
(Which was done.)

Mr. Just. Jones. Come, Mr. Smith, do you know Mr. Colledge?

Mr. Smith. Yes.

Mr. Serj. Jeff. Give us an Account what Dealings you have had with him, where, and when; what he hath said about the King; and tell us first, whether you be intimately acquainted?

Mr. Smith. We were intimately acquainted. The first Time I heard Mr. Colledge discoursing any Thing of this Nature, that is, concerning Treason, or any such Thing, was once at a Coffee-house by Temple-Bar; there I met Colledge, and he told me he was invited to Dinner, and he likewise invited me to it. I asked him, who provided the Dinner; he told me it was one Alderman Wilcox; I told him I was a Stranger, and did not care for going: he told me, I should be very welcome there; and at last prevailed upon me to go: And as I was going along, I asked him what the Alderman was; he told me, he was a Man that was as true as Steel, and a Man that would endeavour to root out Popery: Said I, That may be done easily, if you can but prevail with the King to pass the Bill against the Duke of York. No, no said he, you are mistaken, for Rowley is as great a Papist as the Duke of York is, (now he called the King Rowley) and every Way as dangerous to the Protestant Interest, as is too apparent by his arbitrary Ruling. This was the Discourse between the Coffee-House and the Tavern where he went to dine. When we came in I asked Colledge again whether the Alderman was there; he said he was not there at that Time: I asked him the second Time, what Kind of Man he was; he said, he was one that lived in his Country House, and gave freely to several People to buy Arms and Ammunition: And I asked him to what Purpose? And he said, it was to bring the King to Submission to his People: Adding thereto, that he wondered Old Rowley did not consider how easily his Father's Head came to the Block, which he doubted not would be the End of Rowley at the last. After this Discourse the Alderman came in; we dined, and every one went his own way about his own Business. Mr. Colledge then told me, if I would go with him to his own House, I should see how he was prepared with Arms and Provision. Soon after I met with him, and he desired me to go along and dine with him; and I did so, and there he did shew me his Pistols, his Blunderbuss, and his great Sword; and he shewed me his Armour, Back and Breast; and he shewed me his Head-piece, which, if I am not mistaken, was covered over with Camblet, it was a very fine Thing; and, said he, these are the Things which will destroy the pitiful Guards of Rowley, that are kept up contrary to Law and Justice, to set up arbitrary Power and Popery.

Coll. What did I say, Sir, about my Armour?

Mr. Smith. Thus you said; It was to destroy Rowley's Guards, (those were your Words) that were kept up contrary to Law and Justice, to set up arbitrary Power and Popery. After I had dined with him, I parted with him. A little before the Parliament was to meet at Oxford, I met him again; and we were discoursing of several Things, what Preparations the City were making, how they were provided with Powder and Bullets, and for his Part he would go down to Oxford, for he expected a little Sport there, upon the Divisions that were like to be between the King and Parliament. Then, said I to him, Why, what is the Matter there? Why, said he, we expect that the King will seize upon some of the Members, and we are as ready as he: And, says he, for my Part, I will be there, and be one that shall seize him if he secure any of the Members; (and I believe he did go down;) says he, you know how the City is provided: I told him, no, not so well as he; but he told me all was very well. After he came up again, I met him another Time, and he told me, he went down in Expectation of some Sport; but Old Rowley was afraid, like his Grandfather Jamy, and so ran away like to beslit himself.

Mr. Serj. Jeff. Did he say, if he had not run away he would have seized him?

Mr. Smith. He said nothing of that; but before, he said, he would be one of them should seize him, if he seized any of the Members. After this he told me, that Fitz-gerald and he had had a Quarrel at the Parliament-Door of the House of Lords at Oxford; that Fitz-gerald had called him Rogue; and, said he, Fitz-gerald made my Nose bleed; but before long, I hope to see a great deal more Blood shed for the Cause. After this again, when there was a Discourse of disarming the City, that my Lord Feverham was to come to do it, he told me, he was well provided, and if Feverham, or any Man, nay, Rowley himself should attempt any such Thing, he would be the Death of him, before any Man should seize upon his Arms.

Mr. Serj. Jeff. Did he discourse any Thing to you about Arms to provide for yourself?

Mr. Smith. Yes, he did, I had an Armour from him.

Mr. Serj. Jeff. What did he say to you about it?

Mr. Smith. He did desire me to get me Arms, for I did not know how soon I might make use of them. I had an Armour from him upon Trial; he said it cost him 30 or 40s. I had it upon Trial, but it was too big for me, so I gave it him back, and bought a new one.

Mr. Att. Gen. Did he tell you to what Purpose you should arm yourself?

Mr. Smith. No, he did not name any Purpose; but he told me, I did not know how soon I might make use of it.

Mr. Att. Gen. What did he say to you about any one's seizing the King?

Mr. Smith. He told me the Parliament were agreed to secure the King, and that in order to it, all the Parliament-men came very well armed, and accompanied with Arms and Men; and he told me of a great Man that had Notice from all the Gentlemen of England how well they came armed.

Mr. Just. Jones. What did he say of himself?

Mr. Smith. He would be one that should secure the King, if he seized any of the Members.

Mr. Just. Jones. When he had been there, what did he say?

Mr. Smith. If they had had any Work, he was ready provided for them.

Mr. Att. Gen. But pray, tell us again what he said of the King's running away?

Mr. Smith. He said, Rowley was afraid, like his Grandfather Jamy, and run away ready to beslit himself.

L. C. J. If you have done with him, Mr. Attorney, let the Prisoner ask him what Questions he will.

Coll. Mr. Smith, where was this Discourse I had with you?

Mr. Smith. Which do you mean, the former Part, or the latter?

Coll. The first Discourse you talk of, what I told you going to Mr. Wilcox's to Dinner; and when it was?

Mr. Smith. You know best when it was, I can't exactly remember the Time; but you know 'tis true.

Coll. Where was it?

Mr. Smith. As we went along thither we had the first Part of it, and when we came thither, you and I talked till Alderman Wilcox came in; and you and I were alone together, and several Persons that were there, were drawn into Cabals, two by two.

Coll. Where?

Mr. Smith. In the Room where we dined; and you know there was a little Room by, where some were drinking a Glass of Wine.

Coll. You say by two and two, the Company were drawn into Cabals.

Mr. Smith. I tell you, most of them were in Cabals, two and two together, only those two Gentlemen that belonged to the Alderman went up and down, and gave Wine.

Coll. What Religion are you of?

Mr. Smith. Is it for this Man, to ask me, my Lord, such a Question?

L. C. J. Yes, answer him.

Mr. Smith. I am a Protestant.

Coll. You were a Priest?

Mr. Smith. Yes, What then? and I am in Orders now.

Coll. That was from the Church of Rome.

Mr. Smith. Yes, and that is a good Ordination; I came in voluntarily to discover the Popish Plot, and was no Pensioner, nor received any Salary from the King. I have spent several Pounds, several scores of Pounds, but received no Recompence: And I was the Darling at one Time all over the City, when I did adhere to what they would have me to do.

Mr. Serj. Jeff. Did not you swear against my Lord Stafford?

Mr. Att. Gen. Were you not a Witness, Mr. Smith, at my Lord Stafford's Trial?

Mr. Smith. In that Case I did give a general Account of the Design of the Papists; they did not then question my Reputation, and I defy all the World to say any thing against it.

Coll. Pray hear me, Sir, if you please; the first Discourse that you speak of about Mr. Wilcox's being a good Man for the Cause, and contributing Money, this was when we were at Dinner.

Mr. Smith. This was that Day when we went to Dinner with him, you know it very well.

Coll. Where were the other Discourses I had with you?

Mr. Smith. Which part of them?

Coll. When I came from Oxford?

Mr. Smith. By the Ditch-side, by your own House, I have two or three to prove it, we were an Hour or two discoursing together about this Business?

Coll. What Business?

L. C. J. He tells you of two Discourses, one before you went to Oxford, and one after you came from thence.

Coll. He does say, that I did discourse him about our coming down hither to Oxford, that the Parliament would secure the King, and that I would be one of them that should seize him, and this was the Time when we dined with Alderman Wilcox.

L. C. J. Not so, he says, after that Time, and before you went to Oxford, he had such a Discourse with you.

Mr. Smith. Yes, my Lord, so it was.

Coll. And does he speak of another Time, when I shewed him the Back, Breast, and Arms?

Mr. Smith. Yes.

Coll. But he said, I discoursed then, that the City was provided with Arms, and that the Parliament were resolved to bring the King to Submission.

Mr. Smith. When I was in the House with him, he then said Mr. Wilcox gave Money to provide Arms: I asked, for what? he said, it was to bring the King to Submission to his People; and then he added, he admired that Rowley did not remember how easily his Father's Head came to the Block; and he doubted not but that would be the End of him too.

L. C. J. He spake of several Times, you know.

Coll. I do not know one Word of it, nor can I distinguish the Times: But, Mr. Smith, the last Discourse, you say about Oxford Business was by the Ditch-side.

Mr. Serj. Jeff. The Discourse about bringing the King to Submission, was in the Way as you went to Dinner.

Mr. Smith. The last Discourse, when you returned from Oxford, was by the Ditch-side; but both before and after you spake to me at that Place about this Design of bringing the King to Submission.

Coll. You said, it was at Wilcox's at Dinner.

Mr. Serj. Jeff. You mistook him then.

Coll. Nay, Sir George, you took him not right.

Mr. Serj. Jeff. I have taken him right, I assure you, and you shall see it by and by.

Coll. He is the falsest Man that ever spoke with a Tongue.

Mr. Att. Gen. Swear Bryan Haynes. (Which was done.) Tell my Lord and the Jury whether you know this Gentleman, what Converse you had with him, and what Discourse he hath had with you. Apply yourself to Mr. Colledge's Business only.

Haynes. I suppose he will not deny but that he knows me very well; I have been acquainted with him ever since March last, before the sitting of the Parliament at Oxford. My Lord, there was a Warrant against me for High-Treason, and I made my Application to Mr. Colledge, and desired him to go to a Person of Honour in England, and ask his Advice, whether I might supersede the Warrant by putting in Bail, and carry the Supersedeas in my Pocket: Mr. Colledge told me, he would go to this Person of Honour, for he would do nothing of his own Head; and he bid me come to him the next Day. My Lord, I came to Mr. Colledge the very next Day, and I met him at his House, and I asked him what was the Result, and what Advice he had from that Person of Quality: He bid me be of good cheer, that the Parliament would be, and sit at Oxford soon; that I should not value the King a Pin; for, said he, the King is in a worse Condition than you or I; for you shall see, said he, he shall be called to an Account for all his Actions.



Mr. Serj. Jeff. Who should? The King; for all the World may see, says he, that he does resolve to bring in arbitrary Power, and Popery: And, said he, unless he will let the Parliament sit at Oxford, since he hath called them together, and put the People to charges in choosing of them, and them in coming down, we will seize him at Oxford, and bring him to the Block, as we did the Logger-head his Father: The Parliament shall sit at Guild-Hall, and adjust the Grievances of the Subject, and of the Nation: And you shall see, said he, that no King of his Race shall ever reign in England after him:

L. C. J. Where was this he said so?

Haynes. At his own House I met him; and he and I did walk all along from his own House, over the Bridge that is against Bridewell, and so went all along till we came to the Hercules Pillars, and we had some discourse there; we went up one Pair of Stairs and called for some Beef; and all this discourse was in that very Place of the Hercules Pillars.

Mr. Serj. Holloway. Do you know any thing of any Arms he had, and for what?

Haynes. But, Sir, said I to Mr. Colledge, how can this be done, 'tis a Thing impossible: You pretend, you say, to the Duke of Monmouth, that he is a fine Prince, and stands up for the Protestant Interest. Alas, said he, we make an Idol of him to adumbrate our Actions, for fear we should be discovered: Do you think the wise People of England shall ever make a Bastard upon Record King of England? No, said he, for though we praise his Actions, yet we cannot endure him, because he is against his own Father. But, said he, further, unless the King do expel from his Council the Earl of Clarendon, cunning Lory Hyde, the Earl of Halifax, that great Turn-coat Rogue, that was before so much against the Papists; a Rascal, we shall see him hanged, and all the Tory Counsellors, except the King do it, we will make England too hot for him.

Coll. Who did I say this to? To you?

Haynes. Yes, to me.

Coll. Pray, how could this be possible?

Haynes. Yes, you knew my Condition; and I intimated to you at that Time, that I was as much for Treason and Villainy as you: But then said I to him, how can this be done? Here you have neither Officers, nor Men of Experience, nor Men of Knowledge; nor you have no Ammunition, Sea-port Towns, nor any Ships. And besides, the King, said I, hath a great Party in the Land, and the Duke of York likewise; and for all the Men of Estates, and the ancient Gentlemen, they will not be disturbed, and quit their Ease for a Civil War. Oh, says he, you are mistaken, for we have in the City 1500 Barrels of Powder, and we have 100,000 Men ready at an Hour's Warning; and we have ordered every Thing in a due Method against the sitting of the Parliament at Oxford; and you shall see England the most glorious Nation in the World, when we have cut off that beastly Fellow Rowley; and speaking of the King, he said, he came of the Race of Buggerers, for his Grandfather King James buggered the old Duke of Buckingham; and he called him Captain, and sometimes the King, and sometimes Rowley.

Mr. Serj. Jeff. This was pure Protestant discourse, upon my Word.

Haynes. Then he railed at Judge Pemberton; and, said he, let him try Fitz-Harris if he dare; I shall see him go to Tyburn for it, I hope a Turn-coat Rogue; he was for the Plot whilst he was *puisse* Judge, but now he is Chief Justice, he is the greatest Rogue in the World. He is like one of the Pensioners in the Long Parliament. So one Day I went along with Mrs. Fitz-Harris, and Mr. Ivy, and he sent a Man to me, and desired me to come to the *Hog in Armour*; thither we came, and met him, and went to his Lodgings, and there we dined. Then they made some Persons of Honour believe, that I was a Person so and so qualified, and was brimful of the Plot; and he would put me upon charging the King with the firing of London, and the Murder of Sir Edmundbury Godfrey; and, said he, such and such Lords shall live and die by you; and besides, said he, you need not fear, England shall espouse your Cause. But, said I, the Law is like a Spider's Web; that catches the little Flies, but the great Flies run through the Net, and make their escape; so it is with these Lords, they put you and me on the danger of acting; and when they got off by Interest, a Jury of 12 Men will hang us by the Neck, and so I should perish, whilst others triumphed, and only be a Martyr for the Fanatics. So in discourse we were talking of the Libel of Fitz-Harris; the Devil take me, said he, every individual Word is as true as God is in Heaven; and, said he, if you do not join with Fitz-Harris in his Evidence, and charge the King home, you are the basest Fellow in the World, for he makes you Slaves and Beggars, and would make all the world so; and 'tis a Kind of Charity to charge him home, that we may be rid of such a Tyrant.

Mr. Serj. Jeff. Mr. Colledge, if you will ask him any Questions, you may.

Coll. Certainly, my Lord, the thing speaks it; he is not to be talked withal; is it probable I should talk to an *Irishman* that does not understand Sense?

Haynes. 'Tis better to be an honest *Irishman*, than an *English* Rogue.

Mr. Serj. Jeff. He does it but to put you in a Heat, don't be passionate with him.

Haynes. No, I am not, I thank God, he hath not put me into a Heat.

Coll. Where was this discourse about superseding your Warrant?

Haynes. At London.

Coll. When?

Haynes. It was before the Parliament sat at Oxon.

Coll. How long?

Haynes. I can't tell positively to an Hour or a Day.

Coll. What Month, as near as you can?

Haynes. It was in the Month of March.

Coll. Had you ever seen me before?

Haynes. Can you deny that?

Coll. I ask you whether you have or no?

Haynes. Yes, I have seen you in the Coffee-Houses bawling against the government.

L. C. J. Were you an intimate Acquaintance of his before March last?

Haynes. No intimate Acquaintance.

Coll. Then this is the first Time you discoursed with me.

Haynes. Oh, no my Lord. One and I fell out at the *Queen's-Head* Tavern at *Temple-Bar*, and he set me upon the Business, and John Macnamarra and the others; and truly I did the Business for him: For we fell out and did Box, and our Swords were taken from us, and I went to John

VOL. III.

Macnamarra, and told him, yonder is such a Man at such a Place; now you may seize upon him.

Coll. What Man was that?

Haynes. One Richard Ponre.

Coll. He belonged to my Lord Tyrone, I think, there were Warrants to take him. Do you say I set you upon that?

Haynes. Yes, you were with me the Night before, and Capt. Brown, and they gave us a Signal, a blue Ribband, to distinguish that we were Protestants, from the Bishops Men.

L. C. J. When were you to make Use of it?

Haynes. When the King was seized.

Mr. Serj. Jeff. Well, go on, have you any more?

Haynes. But, my Lord, further, after he came from Oxon I met him; and, said I, Where are now all your Cracks and Brags? Now you see the King hath made a Fool of you; now you know not what you would have done. Says he, What would you have us to do? We have not done with him yet; for, said he, no Servant, no Man living did know whether he would dissolve the Parliament that Day. I was that very nick of Time at the Lord's House, and there was a Man came in with a Gown under his Arm, and every one looked upon him to be a Taylor, and no Body did suspect, no, not his intimatest Friends, except it were Fitz-gerald, that he would dissolve the Parliament that Day; but presently he puts on his Robes, and sends away for the House of Commons; and when he had dissolved them, before ever the House could get down, he took Coach and went away, otherwise the Parliament had been too hard for him; for there was never a Parliament-Man but had divers armed Men to wait on him, and I had my Blunderbuss and my Man to wait upon me. But well, said he, there is a God above that will rule all.

Mr. Att. Gen. Call Mr. Turberville.

Coll. Hold, Sir, I desire to ask him some Questions. You say, the first Time that I saw you, you had this discourse with me?

Haynes. Do not use Tautologies; 'tis not the first Time I have been examined, I know how to speak as well as you.

Coll. Answer my Questions, Sir.

Haynes. You know it was after I had made Affidavit before the Recorder of London, a Copy of which was carried to that Nobleman; and you came from him and returned me his Thanks, and told me it was the best Service I could do him. I would not trouble the Court with circumstantial Things; and you told me I should be gratified not only in my own Property, but a Reward for me and my Heirs for ever.

Mr. Att. Gen. For what?

Haynes. I made Affidavit before the Recorder of London.

Coll. About what?

Haynes. Concerning one Fitz-gerald.

Mr. Att. Gen. Is this to this Matter?

Haynes. No, nothing at all.

L. C. J. Let him ask any Questions what he will.

Coll. I ask when it was the first Time you were acquainted with me, so much as to know me well?

Haynes. As to the first Time of Intimacy, here is Macnamarra will take has corporal Oath that I was as well acquainted with him as any one in the World.

Coll. Pray answer me, Sir, when was the first Time I talked to you?

Haynes. The first intimate Acquaintance we had, was when you put me upon the Design about Fitz-gerald.

Coll. Pray, Sir, you go too fast already, as you are still galloping; where was this discourse about his Majesty?

Haynes. I told you before.

Coll. Where was it?

Haynes. I went to you after the Affidavit was made, and told you there was a Warrant out after me, and desired you to go to that Nobleman and desire his Advice what I might do, or whether I might supersede the Warrant. You told me you could do nothing without Advice, and you would go and advise with that Nobleman.

Coll. My Lord, here is Mr. Turberville come in, they will over-hear one another; pray let me have fair play for my Life.

(Whereupon Turberville withdrew.)

L. C. J. Can't you answer him? When was the first Time you came acquainted with him?

Mr. Serj. Jeff. When was the first Discourse you had with him?

Haynes. In April last.

Coll. You say it was before the sitting of the Parliament, and that was in March?

Haynes. I meant in March.

Coll. So indeed you said at first.

Mr. Serj. Jeff. He never did say the Day of the Month, nor the Month neither.

Mr. Jones. How long was it before the sitting of the Parliament?

Haynes. Mr. Jones, Truly I do not remember precisely how long it was before the sitting of the Parliament; but I am sure it was before.

Mr. Serj. Jeff. I did take it that he said it was before the sitting of the Parliament, and now he says in the Month of March. Pray when he talked to you, did not he tell you of the sitting of the Parliament, and that they would stand by you?

Coll. He hath said it already, you need not direct him, Sir George, he goes fast enough. But you say, Sir, the first Time I was ever acquainted with you, was in March; then Gentlemen, consider, whether it be probable that at that Time I should discourse to him after this Manner.

L. C. J. No, I did tell you what he says; he said the first Time he was intimately acquainted with you, was in March; he said he had before seen you in Coffee-Houses, and he is sure it was before the sitting of the Parliament; for he tells you the Discourse you had, and by that Discourse it appears, it related to a Parliament that was afterwards to sit. And then to give you a more particular Circumstance, he says, that you put him upon the making the Affidavit about Fitz-gerald, and so you came acquainted.

Haynes. Ask Mr. Attorney. My Lord, that Day he was taken and carried to White-hall before the Secretary of State, he said, I do not know who it should be that should accuse me, I believe it is Ivy; as for Haynes, he was taken t'other Day, he was an honest Man.

Coll. You say I desired you to make an Affidavit; Was it after that, or before I had that Discourse with you?

Haynes. It was after: For I came and desired you to go to such a Person of Quality, and you went to him and advised with him; and then the

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next



next Morning such Discourse as I told your Lordship and the whole Court of, he told me.

Coll. Did I speak these treasonable Words after the Affidavit was made?

Haynes. You said I must make such an Affidavit concerning Fitz-gerald.

Coll. But was this treasonable Discourse before you made the Affidavit, or after?

Haynes. After the Affidavit made, you told me this: When I came to his House, and from thence we went to the Hercules Pillars.

Mr. Sol. Gen. Will you ask him any more Questions, Mr. Colledge?

Coll. Did you ever speak with me in your Life before Macnamarra did call me out of the Coffee-house to go along with you, where you would discover a design against my Lord Shaftesbury's Life?

Haynes. I told you I never had any intimate Acquaintance with you in my Life before, nor did I ever speak with you before.

Coll. When was that Discourse, I ask you once again?

Haynes. After the Affidavit made.

Coll. That Night?

Haynes. Within a Week or thereabouts after the Affidavit made.

Mr. Att. Gen. Call Mr. Edward Turberville. But Mr. Haynes, I would ask you one Question. Did he deliver you any Ribband as a Mark of Distinction?

Haynes. Yes, here it is. (And it was shewn to the Court.)

Then Mr. Turberville was sworn.

Mr. Serj. Jeff. Pray Mr. Turberville, will you tell my Lord and the Jury what Discourse you had with Mr. Colledge; and where, and when?

Mr. Turberville. When the Parliament sat in Oxon about the middle of the Week, I can't be positive in the Day, but I think it was in the middle of the Week I dined with Mr. Colledge, Capt. Brown and Don Lewis, Clerk of Derby-House, at the Chequer-Inn. After Dinner Don Lewis went out about some Business, and Captain Brown went to sleep, Mr. Colledge and I fell to talking of the Times, and I was observing, I thought the Parliament was not a long-lived Parliament. Said he, There is no good to be expected from the King; for he and all his Family are Papists, and have ever been such, you know it, Sir.

Mr. Serj. Jeff. Nay don't apply to him.

Mr. Turb. Said I, The King will offer something or other by way of Surprise to the Parliament. Said he, I would he would begin; but if he do not, we will begin with him, and seize him; for there are several brave Fellows about this Town, that will secure him till we have those Terms that we expect from him.

L. C. J. Where was this?

Mr. Turb. At the Chequer-Inn.

L. C. J. What said he further?

Mr. Turb. He said he had got a Case of Pistols, and a very good Sword, and a Velvet-Cap; and I can't be positive he had Armour on, but I believe he had.

Mr. Att. Gen. Did he tell you he came down for that Purpose to seize the King?

Mr. Turb. Yes, and he gave me a piece of Blue Ribband to put in my Hat. He had a great Quantity of it.

Mr. Att. Gen. What was that for?

Mr. Turb. To be a Distinction if there should be any Disturbance when the Thing should be done.

Coll. What Thing done?

Mr. Turb. I know nothing but of your telling me of it.

Coll. Where was this?

Mr. Turb. At the Chequer-Inn in Oxon, Mr. Colledge. You talk much and can't remember all you say.

Mr. Att. Gen. What did he discourse to you about Arms and a Horse?

Mr. Turb. I told him I had never an Horse, and nothing but a Case of Pistols; he bid me I should not trouble my self, for he would get me an Horse.

Coll. What to do?

Mr. Turb. To carry on your Design, I know not what it was, but by your Words.

Mr. Att. Gen. Tell what he said of it at the Chequer-Inn.

Mr. Turb. He said, there was a Design to seize the King.

Mr. Att. Gen. Did he desire you to be one of them?

Mr. Turb. He did desire me to be ready to assist.

Mr. Just. Jones. And how much of that Ribband had he, pray?

Mr. Turb. A very great Quantity, 40 or 50 Yards.

Mr. Sol. Gen. Pray, Mr. Turberville, will you give your Evidence over again, and let Mr. Colledge attend to it.

Mr. Turb. When the Parliament sat at Oxon, about the middle of the Week, I cannot be positive to a Day, I believe it was either Wednesday or Thursday, I dined with Mr. Colledge, Captain Brown and Don Lewis, who was formerly Clerk of Derby-house. Don Lewis after Dinner went out, and Captain Brown lay down on the Bed, and Mr. Colledge and I fell to talking of the Times, and I told him, I thought this Parliament would be no long-lived Parliament. Upon which Colledge told me, the King and all his Family were Papists, and there was no good to be expected from him. Then I replied, the King would perhaps surprize the Parliament, or use some Stratagem to bring them to his Terms. Said Mr. Colledge again, I would he would begin; but if he do not, we will secure him till he comes to those Terms we would have from him; for here are several brave Fellows, and many more are coming down that will join with it.

Mr. Att. Gen. Did he name any one?

Mr. Turb. No indeed, he did not; he himself had a Case of Pistols, a Sword, and I believe he might have his Armour on.

Coll. Did I discourse who were to join with me?

Mr. Turb. No, Mr. Colledge, you did not name any body to me, but Capt. Brown was with you.

Mr. Att. Gen. Were you examined in my Lord Stafford's Trial?

Mr. Turb. Yes, I was.

Mr. Att. Gen. Was this Gentleman sworn to your Reputation there?

Mr. Turb. No, not to mine.

Coll. Pray, how came we to talk of such things? What Occasion was there that I should talk Treason of the King to you? Was there any body besides us two there?

Mr. Turb. No, Capt. Brown was gone to sleep, and Lewis was gone out.

Mr. Att. Gen. It was not at Dinner that you talked so, Mr. Colledge, he says.

Coll. Had they been at Dinner with us there?

Mr. Turb. Yes, and we had a Leg of boiled Mutton to Dinner.

Coll. Did you stay after Dinner?

Mr. Turb. Yes, and I lay with you afterwards upon the Bed.

Coll. I thought you had said Capt. Brown went to sleep there.

Mr. Turb. Yes, but he was gone too, when we laid down together.

Coll. God forgive you, I can say no more, I never spoke one Word of any such Discourse in my Life.

Mr. Att. Gen. Will you ask him any more Questions?

Coll. Mr. Turberville, when did you give in this Information against me?

Mr. Turb. I gave it to the Grand Jury.

Coll. Not before?

Mr. Turb. Yes, I did.

Coll. When was it?

Mr. Turb. Truly I can't well tell, I believe it was a Day or two before I came to Oxon.

Coll. Why did you make it then, and not before?

Mr. Turb. I'll tell you the Occasion. Mr. Dugdale told me the Grand Jury of London would not find the Bill: I did admire at it extremely; for I thought every one that conversed with him might be an Evidence against him; he was always so very lavish against the King and the Government. So then Colonel Warcup came to me and took my Depositions, and then I came for Oxford.

Coll. What was the reason you did not discover this Treason before?

Mr. Turb. There was no reason for it, it was not necessary.

Coll. You were not agreed then.

Mr. Turb. There was no Agreement in the Cafe, there needs nothing of that, I think, but I am not obliged to give you an Account of it.

Coll. God forgive you, Mr. Turberville.

Mr. Turb. And you too, Mr. Colledge.

Mr. Att. Gen. Then call Sir William Jennings.

Mr. Serj. Jeff. Mr. Attorney, if you please, till he comes, I will acquaint my Lord here is a Gentleman that hath not yet been taken notice of, one Mr. Masters, that is pretty well known to Mr. Colledge; now he is a Man, he must acknowledge, of an undoubted Reputation, and I desire he may give your Lordship and the Jury an account what he knows of the Prisoner; because he is so curious for Englishmen, we have brought him an Englishman of a very good Repute.

Coll. My Lord, I am charged with Treason in this Indictment; here are a great many Things made use of that serve only to amuse the Jury, I can conjecture nothing else they are brought for; I desire to know whether the Pictures produced are part of the Treason.

L. C. J. Stay till the Evidence is given, and we will hear what you can say at large when you come to sum up your Defence.

Mr. Serj. Jeff. Pray, my Lord, will you be pleased to hear this Gentleman: He will tell you what discourse he hath had with the Prisoner at the Bar.

Then Mr. Masters was sworn.

Mr. Masters. Mr. Colledge and I have been acquainted for a great many Years; and we have often discoursed. I have told him of his being so violent as he hath been several Times. But a little before the Parliament at Oxford, about Christmas last, after the Parliament at Westminster, at Mr. Charlton's Shop the Woollen-Draper in Paul's Church-Yard, we were discoursing together about the Government, and he was justifying of the late long Parliament's Actions in 40; and he said, That Parliament was as good a Parliament as ever was chosen in the Nation. Said I, I wonder how you have the Impudence to justify their Proceedings that raised the Rebellion against the King, and cut off his Head. Said he, They did nothing but what they had just Cause for, and the Parliament that sat last at Westminster was of their Opinion, and so you would have seen it.

Mr. Serj. Jeff. What did he say of the Parliament since?

Mr. Masters. He said the Parliament that sat last at Westminster was of the same Opinion that that Parliament was.

Mr. Serj. Jeff. Pray afterwards what Discourse had you about his Colonelship?

Mr. Masters. We were talking at Guild-Hall that Day the Common-Council was, the 13th of May as near as I remember, so I came to him. How now, Colonel Colledge, said I, what do you make this Bustle for? You mistook me, and said, Cousin, how long have you and I been Cousins? Nay, prithee said I, 'tis not yet come to that, to own Kindred between us, I only called you Colonel in jest. Marry, mock not, said he, I may be one in a little Time.

Mr. Serj. Jeff. Have you any Thing to ask Mr. Masters? You know he is your old Acquaintance, you know him well.

(Then Sir William Jennings was sworn.)

Mr. Just. Jones. What is that you know concerning Mr. Colledge at Oxford, Sir?

Sir W. Jennings. My Lord, the first Time that I heard any Thing of Mr. Colledge was, there was some Company looking upon a Picture, for I knew him not, nor never had any Word of discourse with him in my Life any more than seeing him in a publick Coffee-House. But there was a Picture looking on by 7, or 8, or 10 People, I believe more or less, and I coming and crowding in my Head among the rest, looked upon this Picture. After the Crowd was over, Mr. Colledge takes a Picture out of his Pocket, and said he, I will give you one of them if you will. So he gives me a Picture; which Picture if I could see, I could tell what it was; it was written Mac a Top, and there were several Figures in it.

(Then the Picture was shewed him.)

This is one of the same that I had of him, and I had not had it long in my Custody, but meeting with Justice Warcup, I shewed it him, who gave it me, and so I did. The next Thing that I did see Mr. Colledge do, was in the Coffee-House, not the same Day, but another Time. I saw him bring in a Parcel of blue Ribband which was wrought, and the Words eight Times wrought in it, twice wrought in every Quarter, a Yard, No Popery, No Slavery. I saw him sell to a Member of Parliament as I took him to be, a Yard of that Ribband for 2s. and truly I was thinking he would ask me to buy some too, and I saw that Gentleman take him to be a Parliament-Man take this Ribband and tie it upon his



Sword. As to the other Thing I have to say of Mr. Colledge; that very Day the Parliament was dissolved, he had been in a Quarrel, as he told me, with Mr. Fitz-gerald; and I was standing in the School-House Yard, and he comes directly to me without my speaking to him or any thing; but he comes and tells me Mr. Fitz-gerald had spit in his Face; and, said he, I spit in his Face again; so we went to Loggerheads together, I think that was the Word, or Fifty-cuffs. So, said I, Mr. Colledge, your Nose bleeds; he takes his Handkerchief out of his Pocket and wipes his Nose, and said, I have lost the first Blood in the Cause, but it will not be long before more be lost.

L. C. J. Where was this?

Sir W. Jennings. In the School-House Yard at Oxon. I never discoursed with him afterwards till I met him at London in Fleet-Street one Sunday in Afternoon, and I remember Captain Crescett was along with me. And when he came up to me, How now, said I; honest Joiner? Says he, You call me honest Joiner, some call me Rogue and Rascal, and I have been beating some of them; so that I believe they will be aware of it. So I told Captain Crescett, I never met this Man but he was always in a Quarrel.

Coll. Was it on a Sunday that I told you I had been beating somebody?

Sir W. Jennings. You told me so, Capt. Crescett was by.

Coll. I do remember I met you, but I did not tell you I had then been beating any one. But pray, Sir William, when I met you after the Parliament was dissolved, and Fitz-gerald and I had quarrelled, did I say, That I had lost the first Blood in the Cause, but it would not be long e'er more were lost? Sir William, you are a Gentleman, as for the other Men, they don't care what they say, nor do I so much regard them; but you value your Word and Honour: These were my Words, and pray will you recollect yourself before you be positive in the Thing, whether I did not say, I have lost the first Blood for the Parliament, (for it was upon my vindicating of the Commons and Dr. Oates, whom Fitz-gerald had abused, and upon that the Quarrel began; so I said when you met me, and told me my Nose bled, I have lost the first Blood for the Parliament) I wish it may be the last.

Sir Will. Jennings. Mr. Colledge, if you please I will answer you as to that; I do assure you 'tis the first Time that ever I came upon this Occasion in my Days, and I have declared it before, and do declare it now, I would rather have served the King in three Engagements, than come in against you or any Man upon such an Occasion. But I declare to you upon the whole Memory of the Truth, the Words were as I spoke them at first, and no Parliament named or mentioned. And, my Lord, moreover, I will tell you, when I did tell this Story, because that Mr. Crescett is able to tell you whether I did not relate the Words within half an Hour, or a little Time after. Now I never had a Prejudice against you in my Days, nor other Concern; but having told Mr. Justice Warcup this Story, I am brought hither to testify it.

Coll. Sir William, I am very sorry you did not observe and remember my Words then.

Sir Will. Jennings. I must needs say, I could not imagine what the Words meant when they were spoken, nor do I understand them to this Day; but soon after they were spoken, I related them to Justice Warcup, he being a Justice of Peace.

Mr. Serj. Holloway. Gentlemen, we shall rest here, and conclude our Evidence for the King at present, to hear what the Prisoner says to it; only with my Lord's Leave, I shall explain the Words to you that are in the Indictment, and tell you what is meant by compassing and imagining the Death of the King. The seizing the Person of the King is in Law a compassing and intending his Death; and so it hath been adjudged in several Cases, as in *Jacob's*, my Lord *Cobham*, and my Lord *Grey's* Case, and several other Cases; and so you may fully apprehend what the Charge is, and may understand the Words in the Indictment, That if you are not satisfied with the general Words of compassing the King's Death, you may know, that the seizing his Person extends to it.

Mr. Serj. Jeff. My Lord, we have done with our Evidence, now let him go on with his.

L. C. J. Now, Mr. Colledge, you may say what you will for your Defence, and call your Witnesses that you have to produce.

Coll. My Lord, I have heard the Evidence that is against me, and I would desire your Lordship to resolve me some Questions upon it. I think the Indictment is for treasonable Practices, for a Conspiracy; now I desire your Lordship will be pleased that I may know from you and the Court, whether in all this Evidence given in Proof against me, a Conspiracy is proved; or if any Thing appears besides what they say I said.

L. C. J. For a Conspiracy in you, if the Witnesses speak Truth, there is a plain Proof, and of the Degrees of it: First of all, by your publishing Libels, and Pictures to make the King odious and contemptible in the Eyes of the People, and that you should be the Author of some of those Pictures, and they were found in your Custody.

Coll. I conceive that is not proved.

L. C. J. If the Witnesses say true, it is proved.

Coll. They do not produce that, they do but say it.

L. C. J. Mr. Dugdale swears, That at Oxford here, you shewed him the Picture, you sung the Song here, and expounded it at my Lord Lovelace's, and a great many of them are found in your Custody. Then that you prepared Arms, that you shewed Smith the Arms of your House, and having those Arms, you said, you would go to Oxford, and if there should be a Disturbance there, you would secure the King. And you did come to Oxford, where you hear what is said; for I observe Stephen Dugdale and Edward Turberville speak of what was done at Oxford. John Smith and Bryan Haynes speak of what you said at London before you went to Oxford, and after you came from Oxford. Now I say, if these Witnesses speak true, 'tis a strong Evidence against you, both upon the Statute of the 25th of Edw. the IIIrd, and that of this King too. For my Brother Holloway told you true, That whereas the imagining the Death of the King is High-Treason, by the 25th of Edw. the IIIrd. so a seizing of the King, and endeavour to do that, is a constructive Intention of the Death of the King; for Kings are never Prisoners, but in order to their Death. And therefore it hath been held in all Times, that by the Statute of Edw. the IIIrd that was Treason; but then the Statute of this King, in the 13th Year of his Reign, is more strong; for there it says, If any Man shall by

any Words, or malicious speaking shew the Imagination of his Heart, that he hath any such Intention, that is Treason too.

Coll. My Lord, the Foundation of this Indictment is said to be laid here in Oxford, as I suppose; pray, my Lord, here is only Mr. Dugdale and Turberville that swear against me for what I should say in Oxon, all the rest speak to Things said and done at London. Now, my Lord, I desire to know whether they have proved any Treasonable Practices, Conspiracy or Design in me against the Government, I would fain know that, whether there be Matter here to ground an Indictment upon; for the one says in one Place, the other in the other, which may be distinct Matters, and none of them swear Facts against me, but only Words.

Mr. Just. Jones. Yes, providing Arms for your self, and offering others Arms.

Coll. That I shall make this Answer to, I had only a Case of Pistols and a Sword, which every Footman and Horseman had, that came from London, I think. But further, my Lord, I would ask your Lordship, whether there ought not to be two Witnesses distinct, to swear Words at one and the same Time.

Mr. Just. Jones. No, no, the Resolution of the Judges in my Lord Stafford's Case is quite contrary.

L. C. J. Look you, it hath been often resolved, That if there be one Witness that proves one Fact which is an Evidence of Treason; and another proves another Fact, which is an Evidence of the same Treason, though they be but single Witnesses to several Facts, yet they are two Witnesses to an Indictment of Treason, that hath been often publicly resolved, particularly in the Case of my Lord Stafford, mentioned by my Brother. And I'll tell you my Opinion further, If there be one Witness that proves here what you said at Oxford, and another that proves what was said in London, if they be in order to the same Treason, it is sufficient; for if you do conspire to commit such a Treason in London, and you come with such an Imagination in your Heart to Oxford to complete this Treason, though your Design was not first formed here, I think 'tis enough to maintain an Indictment of Treason, and they are two good Witnesses, though but one speak to what was done at Oxford; but I must tell you, in your Case, there are two full Witnesses, to that which was done at Oxford, besides Sir William Jennings.

Coll. That which Sir William Jennings speaks of I told you before what it was I said, It was the first Blood that was shed for the Parliament.

Mr. Just. Jones. The Parliament was dissolved before that which Sir William Jennings speaks of, therefore you could not say it was to defend the Parliament.

Coll. Mr. Dugdale did say that I spake such and such Words in the Barber's Shop in the Angel-Inn; there I was indeed at the Time that he does speak of, and the Barber was by, I do think indeed it were convenient to have him here; but I know not where he would charge me, or what it was he would charge me with, because I never said any thing in my Life that was like Treason.

L. C. J. Mr. Colledge, call what Witness you will.

Coll. But, my Lord, pray let me ask you one Question more; You take these Words distinct from any Matter of Fact, don't you?

L. C. J. No, complicated with the Fact, which was the Overt-Act, the coming to Oxon, with Pistols to make one, if there had been any Disturbance, and to seize the King.

Coll. Then, my Lord, I would ask you, Whether any Act of Treason done at London, shall be given in Evidence to prove the Treason for which I am now indicted, and which was given in Evidence before the Grand Jury, upon which the Trial was grounded.

L. C. J. Any Act of Treason that is of the same kind. And I'll tell you, That was resolved in Sir Henry Vane's Case; those that gave you that Paper understand it. But I speak now to your Capacity, and to satisfy your Question. He was indicted for levying War against the King, he conspired in Westminster, the War was levied in another County; the Conspiracy upon the Trial was proved in the County of Middlesex, and the War in another Place, and yet it was held sufficient to maintain the Indictment in the County of Middlesex.

Coll. There was a War really levied; but God be thanked, here are only bare Words.

Mr. Just. Jones. Yes, Actions too.

Coll. What Actions, my Lord?

Mr. Just. Jones. Arming yourself, and coming to Oxford.

L. C. J. Well, I have told you my Opinion; my Brothers will speak their's, if they think otherwise.

Mr. Just. Jones. That is not your Case neither, though I am of the same Opinion with my Lord; for here are two Witnesses have proved plain Matter of Fact at Oxford; the providing Arms yourself, and encouraging others to take Arms.

Coll. They name no Persons.

Mr. Just. Jones. You will have my Opinion, and yet you will give me no leave to speak; I had Patience to hear you: You are told there are two Witnesses, Turberville and Dugdale, that prove your providing and having of Arms at Oxon, and persuading others to take Arms, particularly Turberville. He told you, he had no Arms, or but a Case of Pistols, and he had no Horse; but you told him you would provide him an Horse. And then there are two other Witnesses, Smith and Bryan Haynes; they do not tell you of any thing done at Oxford, but they tell you what you said in their Hearing of what you had done in Oxon, and so I think, if the Witnesses are to be believed, there is a very full Proof against you.

Mr. Just. Raymond. I am of the same Opinion truly, and I cannot find, but that there is Proof enough by two Witnesses, Turberville and Dugdale, of what was done at Oxford. They swear Matter of Fact, not Words only, but Actions also.

Coll. No Fact, but that I had Pistols and a Sword, and that I should tell Mr. Turberville I would provide him an Horse, which is still but Words.

Mr. Just. Jones. But you shall hear anon for the full Conviction of you and all others, the Statute of the 13th of this King read to you, and you shall then see that such Words are made Treason.

Coll. But I beseech your Lordship to tell me, whether there must not be two Witnesses to the same Words at the same Time.

Mr.



Mr. Just. Jones. No, it was the Resolution of all the Judges in the Case of my Lord Stafford in the Presence of the Parliament, and the Parliament proceeded upon it.

Mr. Serj. Jeff. In the same Trial where Mr. Colledge was a Witness.

Mr. Att. Gen. All the whole House of Commons prayed Judgment upon my Lord Stafford, pursuant to that Resolution.

L. C. J. Come, will you call any Witnesses?

Coll. My Lord, I do not question but to prove this one of the hellishest Conspiracies that ever was upon the Face of the Earth, and these the most notorious wicked Men, an absolute Design to destroy all the Protestants of England, that have had the Courage to oppose the Popish Plot. In which no Man of my Condition hath done more than I have done. I was bred a Protestant, and continued so hitherto, and by the Grace of God I will die so. If that they had known of these Words that I should speak, and such a Design that I should have before the Parliament sat at Oxon, and be with me in Oxon when the Parliament sat, if they had been good Subjects, they ought to have had me apprehended. *Turberville* came several times indeed, and dined with me. I did not bid him go out of Doors, nor invited him thither; he was a Man I had no Disrespect for; nay, he was a Man I valued, thinking he had done the Nation Service against the Papists; that this Man should hear me speak such Words against his Majesty, who was then in this Town, and know of a dangerous Design to attempt the seizing his Person, or that I should discover a great Party that were ready to do it, I think there is scarce any Man of Reason, but will say, if this were really done and spoken by me, neither of them would or ought to have concealed it, but discover it; none of them has ever charged me with any such thing, they have been in my Company since. I never had any Correspondence with any of them but *Dugdale*; then pray consider how improbable it is, that I should talk of such things to Papists, Priests, and Irishmen, who have broke their Faith with their own Party, that Faith which they gave under the Penalty of Damnation; Men that have been concerned in Plots and Treasons, to murder and cut the Throats of Protestants, that I should be such a Madman to trust these People, when I could receive no manner of Obligation from them, nor could give any Trust to them, they having before broke their Faith; especially considering I could lay no such Oaths and Obligations upon them, who was a Protestant; then 'tis the greatest Nonsense, to believe that I would say these things before Persons whom I could never hope would conceal my Treasons, having discovered their own. If they speak Truth concerning the general Popish Plot, that could be no Obligation upon me to trust them with another; and they cannot say, that they ever obliged me in any respect. My Lord, I thank God, I have had some Acquaintance in the World, and have been concerned with some Persons of Honour, Noblemen, and Parliament-Men, that I know are as good Subjects as any his Majesty has; these never found me a Fool, nor a Rascal, so great a Knave as to have any such Thoughts in my Heart, nor so great a Madman, or so foolish, as to go to discover them to Papists, Priests and Irishmen, to Men of their Condition, that were ready to starve for Bread. As for *Haynes* and *Smith* that run so fast through all their Evidence, the first time that ever I set my Eyes on *Haynes*, was in the Coffee-House that he speaks of; *Macnamarra* comes in, and desires me to go out with him, and I should hear the greatest Discovery of a piece of Villainy against my Lord *Shaftesbury's* Life, that ever I heard in my Life. This Captain *Brown*, who is now dead, a Man that I had known but a Month before (for I think it was in March last when this was) could testify for me; for I came to him, Captain said I, here is a Discovery offered to be made to me, of a Design to take away my Lord *Shaftesbury's* Life. *Macnamarra* asks me to go to the *Hercules-Pillars*, I went along with him, and took Captain *Brown* with us. Afterwards he fell sick in April, and is now dead, so I lost a main Evidence in the case. He was the only Man that was by at the Time; God knows my Heart, I speak nothing but the Truth, I took him with me; *Haynes* began to discover to us, that *Fitzgerald* had employed him to fetch over *Macnamarra*, and if he would come in, and swear against my Lord of *Shaftesbury*, which was his Design, it would not be long ere his Head were taken off, and he said, he had given in a Paper of High-Treason against my Lord of *Shaftesbury*. I asked what it was? He told me, that my Lord should tell *Fitzgerald*, that he had a Design to bring this Kingdom to a Commonwealth, and to root out the Family of the *Stuarts*. This he said *Fitzgerald* had given in in a Paper, under his own Hand; and I think he said, he had sworn it, and sent *Haynes* to fetch *Macnamarra* to swear against my Lord the same things too. I writ down all the Heads of the Discourse, which Capt. *Brown* heard as well as I. After he had said it, he desired us to conceal it. Sir, said I, You are a Stranger to me, and these are great and strange things that you do tell us; *Macnamarra*, and *Brown*, and *Ivy*, and others were there, which (if they were honest Men) they would come and testify. I thought them honest Men, and that they had none of those wicked Designs in their Hearts, that now I find they have. So, says, *Haynes*, I do not know this Man, meaning me: *Macnamarra* told him, I was an honest Man, he might lay his Life in my Hands. After he had spoken all this, he desired us to conceal it: Said he, I will not only discover this, but a great deal more of their Rogueries, that I know very well. Said I to him again, I will not conceal it, nor do you no wrong; for if this be true, my Lord *Shaftesbury* shall know it to Night: for where there is a Design to take away a Peer of the Realm, I will not conceal it; but if it be false, and you have said more than comes to your share, recant it again, and we will take no notice of it, only say you are a Knave for speaking of it; he swore, Damn him, it was all true, that, and a great deal more, which he said he knew, about seizing and destroying the Parliament at Oxon, about an Army in the North that was to be raised about the Time of the Sitting of the Parliament at Oxon, of a French Army that was to land in Ireland at the same Time, that the Duke of York was to be at the Head of them, and the Intention was to destroy all the Protestants. Upon this, I was resolved, if I lived, to come along with the Parliament, and if there was any such Design, I was resolved to live and die with them; but I had no more than common Arms, a Sword and a Case of Pistols; my Cap was a Velvet-Cap, and nothing else. My Lord, I had the Honour to be sent for, when the Parliament sat last at Westminster, the Sessions in October, it was an

honourable Occasion; and I thank those worthy Gentlemen that sent to me, for the Honour of it; there I began to be popular as to my Name; for from that Time they began to call me the Protestant Joiner, because the Parliament had entrusted me. My Lord Grey was pleased to send his Footman for me to the Crown-Tavern behind the Exchange, where there were several worthy Lords, Peers of the Realm, and one hundred of the Commons, that had dined there that Day, it was the Day before they sat, after they had dined I came to them, and the Duke of Monmouth told me, They had heard a good Report of me, that I was an honest Man, that understood Building, and they did confide in me to search under the Parliament-House; they did not really know of any Design, but they would not be secure, there might be some Tricks play'd them by the Papists; though we are not afraid of them, said the Duke, yet we think fit to employ you to search under the Houses, and thereabouts, whether you can find any such Practices. So accordingly, my Lord, I did go; my Lord Lovelace was one of the Honourable Lords and my Lord Herbert that went with me, and some of the Gentlemen of the House of Commons; and those worthy Protestant Lords were pleased to thank me for my Service, and did believe I was active and zealous to find out and discover the Bottom of the Popish Plot, so far as it came legally in my Way to do it. My Lord, upon this Occasion there was a great Kindness from them to me, and I had upon all Occasions Testimonies of it; and this very Man who swears Treasons against me (which God Almighty knows is all false) did swear in his Affidavit before Sir George Treby the Recorder of London (I did never see the Affidavit, indeed I was over-night at Sir George Treby's, but he was not then at leisure, but he drew it up next Day, and swore it) that there was a Design to destroy the Parliament at Oxon, and there was not only his Oath for it, but it was the general Belief, that some Evil was intended them. All Men had Cause to fear and to suspect, the Papists did bear them no Good-Will; and making use of their own Observations, they were generally armed with a Pistol, or a Sword, for themselves, in case they should be attacked by the Papists. In order to this, I did come down with my Lord Howard, my Lord of Clare, my Lord of Huntingdon, and my Lord Pagett, those four worthy Protestant Lords, and it was two Days after the Parliament was sat, that we came, and I went out of Town again with my Lord Lovelace, Sir Thomas Player, and Sir Robert Clayton; and I am sure they were in so great a Fear that London should be surprized and seized on by the Papists, but there was no mortal Man that ever heard of the King's being seized, or thought of it, till these Men come and tell me, that I had such a Design, and came hither with that Purpose; but, my Lord, I declare, as God is my Judge, I would not have it thought I speak it to save my Life, were it as certainly a Truth, as 'tis most wickedly a Falshood, that I had a Design to seize the King, I know not of one Man upon the Face of the Earth, that was to stand by me, Parliament-man or other Person whatsoever; and how is it possible for me to attempt that, being a single Person, with only a Sword and a Case of Pistols, let any Man judge. And I do declare, I know of no Conspiracy or Design against the King or Government, I never spoke one of the treasonable Words in my Life, that is laid against me, nor had ever any Thoughts of any such Thing. God, that is my eternal Judge, knows, that what I speak is true.

L. C. J. Well, Mr. Colledge, will you call your Witnesses, for I must tell the Jury as I did at your Request concerning Mr. Attorney, that as nothing he said, so nothing you say is to be believed upon your Allegation: for then no Man would ever be guilty, if his own Purgation by Words were to be believed.

Coll. My Lord, I thank God, I know my own Innocency, and hope to prove it. I have a Soul that must live to Eternity, either in Joy or Misery; I act according to those Principles, and I hope I have some Assurance of my own Salvation when I die, I would not call God to witness a Lie, to save a thousand Lives. My Lord, this is a villainous Conspiracy against me, and if it takes place against me, it may go a great way, God knows how far: This is the 17th or 18th Sham-Plot the Papists have made against the Protestants, to get over their own; but I hope, my Lord, God Almighty will never suffer it. If they can make me a Traitor, they will try it upon others, and so hope to sham off their own Treasons; but I say, I hope God Almighty will never suffer it. My Lord, I think the first Witness that swore against me was Mr. *Dugdale*; and I must call my Witnesses as I have them here; I know no Person of them hardly, and this that is done for my Defence was done abroad. My Lord I have been kept close Prisoner in the Tower, and none of them suffered to come to me, whilst the Popish Lords have had the Liberty and Privilege to talk with their Friends. Here are Witnesses, I hope, will prove that these are suborned Men; for *Macnamarra* did tell me presently after the Parliament broke up at Oxon, and whispered it to me in the Coffee-House, said he, there is a Design laid to make us retract our Evidence, and go over to *Fitzgerald*. Said I, I suppose they have been at that Sport a great while. Ay, said he, they make large Offers. Said I, by whom? Said he, Colonel *Warcup* hath been at me, and tells me—

Mr. Just. Jones. *Macnamarra* is not produced as a Witness at all.

Coll. No, but he told me this, that there was such a Design, and, said he, I will get you and some other honest men; and he desired me to be by when he had something more to tell which would do his Business for him, but the next News I heard of him was, he was put into Newgate.

L. C. J. Call your Witnesses, Mr. Colledge, and prove what you can.

Coll. Call Mr. Hickman.

Mr. Att. Gen. My Lord, I desire he may observe the same Rule he do fired about our Witnesses; that he may call but one at a time.

Coll. Yes, yes, I will call them one by one.

L. C. J. Are not your Witnesses together? send to them.

Coll. My Lord, I don't know, I have not seen one since I come. This is not the first Time, my Lord, the Papists have designed to take away my Life, though it is the first Time they went about to take it away by Law.

L. C. J. I know not one Papist that is a Witness against you.



Coll. There is never a Man of them, except Sir William Jennings, but what was a Papist.

Mr. Att. Gen. What say you to Mr. Masters?

Coll. Mr. Masters says nothing material, it was only a jocose Discourse.

Mr. Serj. Jeff. It was very pleasant Discourse, upon my Word; you were as merry as when you were singing of the *Rary Shew*.

Mr. Just. Jones. What do you make Mirth of the blackest Tragedy that ever was; that horrid Rebellion, and the Murther of the late King?

Coll. I never justified that Parliament in any such Thing that they did contrary to Law.

Mr. Just. Jones. He swears it.

Mr. Att. Gen. Hickman does not appear, call another.

Coll. Call William Shewin, (who appeared.)

L. C. J. Look you here Friend, you are not to be sworn; but when you speak in a Court of Justice, you must speak as in the Presence of God, and only speak what is true.

Coll. I would not have any Body speak any Thing for me, but what is Truth.

L. C. J. Now ask him what you will.

Coll. I don't know the Gentleman. But pray, Sir, will you tell what you know of these Witnesses?

Mr. Shewin. Name any of them that I know, pray, Sir, I'll tell you.

Coll. Do you know Bryan Haynes?

Mr. Shewin. I know there is such a Man, but I have nothing to say to him.

Coll. Do you know Turberville?—Mr. Shewin. Yes.

Coll. Pray tell what you know of him.

Mr. Shewin. My Lord, I was in Turberville's Company on Thursday Night last at the *Golden Posts* at *Charing-Cross*, and there I heard him say, that if I were at *Oxford* I should hear strange Things against *Colledge*, and he would lay ten to one that Mr. Bethel and Mr. Wilmore should be hanged at *Christmas*, and he would lead him by the Gold Chain along *Fleet-Street*, and down with his breeches in the middle of the Coffee-House, with a Band about his Neck and a Cloak.

Mr. Serj. Jeff. Did he say all these Things against Mr. Sheriff Bethel? I assure you he is a bold Man.

Coll. What do you know of Mr. Smith?

Mr. Shewin. I know him by Sight, but I have nothing in particular to say concerning him. I have something to say to *Macnamarra*, Sir, if he were here.

Coll. Do you know any Thing of this Conspiracy in general?

Mr. Just. Jones. What of your Conspiracy?

Mr. Shewin. I know they did lay who should be hanged at *Candlemas*, who at *Christmas*, and who at several other Times.

L. C. J. What did you hear Mr. Turberville say?

Mr. Shewin. Those Words I spake before about Sheriff Bethel, and about the *Amsterdam* Coffee-House.

Coll. Did they say what Time I should be hanged? For the Discourse rose about me.

Mr. Shewin. One told me that there was one that did design to be returned upon this Jury, that was resolved to hang him right or wrong.

Mr. High-Sheriff. My Lord, I did hear there was such a one, and I left him out of the Jury.

L. C. J. For Mr. Sheriff's Honour, we must take Notice of what he hath said. He says he heard of a Man that spoke something of that Nature, and therefore he left him out of the Jury.

Coll. Now 'tis possible these Witnesses were at the same Sport.

Mr. Shewin. Was Mr. Peacock, Mrs. Fitz-Harris's Maid's Father, or the here, either of them Witnesses against you?

Mr. Serj. Jeff. No, they were not, Sir.

Coll. They did swear against me at the finding of the Bill.

Mr. Serj. Jeff. We have only called these Witnesses, if you can say any Thing against them, do.

Coll. Call Henry Hickman, (who appeared.)

Mr. Serj. Holloway. Where do you live, Sir?

Mr. Hickman. At *Holborn-Bridge*.

Mr. Att. Gen. What Trade are you?—Mr. Hickman. A Cabinet-maker.

L. C. J. What do you ask him?

Coll. Do you know Haynes?

Hickman. Yes, very well; because he used to come to my House to a Popish Widow that was a Lodger in my House where I live now; and this Person was a Prisoner at Haynes's when he was a Prisoner in the Fleet. I always had a Suspicion he was a Priest, not that I could accuse him really of any Thing, but he several Times using to come to my House, I thought so of him, and discoursing with my Landlady.

L. C. J. Your Tenant you mean?

Mr. Hickman. Yes, my Tenant. I asked her, what this Fellow was; said she, he is a very dangerous Fellow, though he is a Papist, and I am one myself, yet he is a dangerous Person, and he does not much care what he swears against any one.

Mr. Just. Jones. This your Tenant told you, what do you know yourself?

Mr. Hickman. Another Time he came to speak with my Tenant Mrs. Scot, who is now gone into *Ireland*; when he came to the House, he asked me, is Mrs. Scot within? Yes, said I, Mr. Haynes, she is above; and up he goes and there they locked the Door, and plucked out the Key; so I went off my Shoes, for I thought there might be more Danger from such people than I could discover any other Way. So I went up Stairs, and stood at the Door, and hearkened, hearing my Landlady talk something to him, he raps out a great Oath, *God damn me*, said he, *I care not what I swear, nor who I swear against; for 'tis my Trade to get Money by swearing*. Whereupon, my Lord, I came down as fast as I could, and a little after saw him go out, and as soon as my Landlady came down, said I, Mrs. Scot, I desire you would provide yourself as soon as you can; I would be civil to you, and I would not put you to a Nonplus, because your Goods by the Law will be seized for not departing according to the King's Proclamation. So a while ago since this Business of Haynes's swearing against my Lord of *Shaftesbury*, I bethought myself of some other Businesses I had heard: To find out the Knavery I went to the Fleet, where he hath very ill Character as well amongst the Papists as the Protestants. Whereupon I asked one Fellow that was a Kind of a Porter, if he knew any Thing of him; said he, Go to such an one—

Mr. Serj. Jeff. We must not permit this for Example sake, to tell what others said.

L. C. J. Nothing is Evidence, but what you know of your own Knowledge; you must not tell what others said.

Hickman. This I do say, I heard him say; and there are those that can produce a Letter—

Mr. Serj. Jeff. Bring those People, but you must speak nothing, but upon your own Knowledge.

Hickman. I was at the Chamber-Door, and looked in at the Key-Hole, and he sat down at the Window.

L. C. J. How long ago was it, pray?—Hickman. A Year and a half.

Mr. Att. Gen. You are an Eves-dropper I perceive.

Hickman. I did not know what Danger he might bring Men into, because he was a Papist. I have taken an Oath to be true to the King, and I will as long as I live. For this Gentleman, I never beheld him till last Night, in all my Days; though he lived by me, I never saw him.

L. C. J. Well, call the next.

Coll. I never saw this Gentleman; but you see what Haynes hath declared.

Mr. Serj. Jeff. This Man says, he did say so.

Coll. And, for ought I perceive, he does accordingly. Call Elizabeth Oliver. (Who appeared.)

L. C. J. Mrs. Oliver, stand up. What do you ask her?

Coll. Do you know Haynes, pray? Bryan Haynes?—Mrs. Oliver. Yes.

Coll. Pray tell the Court what you know of him.

Mrs. Oliver. I know him very well.

L. C. J. What do you know of him?

Mrs. Oliver. He writ a Letter in my Father's Name, unknown to my Father.

L. C. J. Did you see him write it?—Mrs. Oliver. I saw him write it.

L. C. J. Read it. By whom is it subscribed?—Clerk. By no body.

L. C. J. Why, how is it written in your Father's Name, when it is not subscribed at all?—Mrs. Oliver. He writ it as from my Father.

Mr. Serj. Jeff. Whither did he bring it?

Mrs. Oliver. He sent it into the Country.

Mr. Serj. Jeff. Can you write and read, Mistress?

Mrs. Oliver. Yes.

Mr. Serj. Jeff. Who did he send it by?—Mrs. Oliver. The Carrier.

Mr. Serj. Jeff. When is it dated?—Clerk. In 77.

L. C. J. Read the Letter, (Which was done.)

Clerk reads.

L. C. J. What is all this to the Purpose, unless your Father were here to prove it was done without his Knowledge?

Mrs. Oliver. My Father did not write it.

L. C. J. Was your Father in the Fleet then?

Mrs. Oliver. Yes, my Lord, he was a Prisoner then.

Coll. Mrs. Oliver, do you know any thing more of him?

Mrs. Oliver. I have known him a great while; I know him to be a very ill Man.

Mr. Serj. Jeff. Must she tell you all she knows?

Mr. Att. Gen. Did you ever know him forswear himself?

Mrs. Oliver. No, I don't know that.

L. C. J. Come, call another; this is nothing to the Purpose.

Coll. Call Mrs. Hall. (Who appeared.) Pray, do you know Mr. Bryan Haynes?—Mrs. Hall. Yes, if I see him I know him very well.

Coll. What do you know of him?

Mrs. Hall. He lodged at my House, and came there the Day before *Fitz-Harris* was tried, and there was a great Discourse about his Trial, and I was enquiring of him; and I told him, I must expose my Ignorance, I did not know what it was he was tried for: And said he, if you please to sit down, I will tell you: Madam *Portsmouth* came to him, and went upon her Knees, and begged of him, if he had any Kindness for his Majesty, that he would now shew it at this Juncture; and she told him she heard he had formerly Acquaintance with one Mr. *Everard* abroad, and therefore desired him to go now and renew it, and endeavour to get him over; and, if he could possibly, to get over some others to make a Presbyterian Plot of it. This is true, I very well know it; as for this Gentleman, I never saw his Face before; but those were the Words I am sure.

L. C. J. What were the Words?

Mrs. Hall. That they might make a Presbyterian Plot of it.

Coll. Did he say so?

Mrs. Hall. He said that the Duches of *Portsmouth* did so.

L. C. J. What a Story is this?

Coll. Did not he say, that the Duches of *Portsmouth* had employed him too?—Mrs. Hall. No, this was about *Fitz-Harris*.

Coll. What do you know more about Haynes?

Mrs. Hall. One Night he had been about some Business for me in Law with one Mr. *Woodward*, an Attorney at Law, and when he returned I was busy in the Kitchen with my Maid about the House, and he came up to me; Madam, said he, this Night I had a Message from the King; a Justice of Peace met me, one brought me Word, that the King had sent into *Ireland* to enquire into the Loyalty of my Family, and he hath heard, that my Father was a loyal Subject, but he understood strange Things of me; but if I would come in, he would grant me my Pardon. I told him, said he, I did not value his Majesty's Pardon a Pin, for I had done nothing that might make me stand in need of it; but I would do any thing that might tend to the Preservation of his Majesty's Person or Honour; but to do such base Things as are beneath a Man, I will never do it; and he whispered me in the Ear (as the accusing of several Persons) and since he sent me a Letter by his Mother-in-Law, Mrs. *Wingfield*, that I should not believe it, if I heard he should accuse any body; but I might be confident he had not, nor would accuse any body.

Coll. Was he to swear against the Protestants?

Mrs. Hall. I did not enquire any Questions; but he said, such base Things he would never do as the accusing several Persons.

Mr. Att. Gen. Pray, Mistress, did you believe him when he told you he was so honest a Man?

Mrs. Hall. How do you mean, Sir?

Mr. Att. Gen. When he said he would not do those base things, did you believe him?

Mrs. Hall. I never saw his Face before he came there to lodge; but I saw him to be a Man that made but little Conscience of what he said or swore.—Mr. Att. Gen. Did you find him a bragging Man?



Mrs. Hall. I had little Discourse, but what he said of himself. But there is one thing more about an Intelligence: When *Thompson* had written something in his Intelligence concerning *Bryan Haynes*, he said, he would write an Answer to it; and accordingly he reads it to us: He said, he was going that Evening to get it put into one of the Intelligences: The Words were to this Purpose: 'Whereas one *Nathaniel Thompson* had falsely and maliciously accused one *Bryan Haynes* for speaking treasonable Words; he the said *Bryan Haynes* doth declare, that he challenges any Man to charge him with it; but he owned he had an Hand, or was employed to put the Plot upon the dissenting Protestants.'

L. C. J. Did he publish that in the Intelligence?

Mrs. Hall. I never read it published; but he had writ it, and read it to us several times.

Mr. Att. Gen. Do you you go to Church, Mistress?

Mrs. Hall. I hope I do.

Sir Geo. Jeff. To what Church?

Coll. Call *Mary Richards*, Mrs. Hall's Maid. (Who stood up.)

L. C. J. What will you ask her?

Coll. Do you know this *Bryan Haynes*, pray?

*Richards*. Yes, he lodged there where I lived.

Coll. What do you know of him?

*Richards*. I know he writ that in the Intelligence my Mistress spoke of; *Thompson*, in his Intelligence, accusing him of having spoken Treason, he reads what he said he would put into the Intelligence, That he never spake one Word of Treason, and he writ it for his own Vindication; that whereas *Nathaniel Thompson*, in his Intelligence of the 18th of June, had maliciously accused one *Bryan Haynes* of treasonable Words; there was no such thing.

L. C. J. And that was to vindicate him, that he never did speak any treasonable Words.

*Richards*. Yes.

L. C. J. Will you ask her any thing else?

Coll. I cannot tell what she says.

L. C. J. She says, he writ something that was in Answer to *Thompson's* Intelligence, to vindicate himself that he never did speak any treasonable Words.

Coll. But did you hear him say any thing of these Words, that he was employed in a Plot against the Protestants?

*Richards*. I read that, in what he writ to put in the Intelligence, that he challenged any one to appear, and charge him with Treason; but, said he, I own that I was employed, or had a Hand in putting the Plot upon the dissenting Protestants; and he telling my Mistress he had a Message from the King, offering him his Pardon, I asked him why he did not accept the King's Pardon? Alas! said he, you do not understand what I was to do for it; I was to do such base Things, so beneath a Man, that I will never do them: I had five hundred Pounds offered me, besides the King's Pardon, to do such base Things as are beneath a Man to do.

Coll. What were the base things he said he was to do, and would not do?

*Richards*. I cannot tell, he did not say to me what they were.

Mr. Att. Gen. When was this?

*Richards*. It was a Week before he was taken.

Mr. Att. Gen. That is two Months ago.

Coll. It was since the Parliament sat at Oxford: But what was that he was employed to do, did he say?

*Rich*. Why, he said in his Answer to the Intelligence, he was one that had an Hand to put the Plot upon the dissenting Protestants.

Coll. Call Mrs. Wingfield. (Who appeared.)

L. C. J. What is your Christian Name?

Mrs. Wingfield. Mary.

L. C. J. What do you ask her?

Coll. Do you know this *Bryan Haynes*, pray?

Mrs. Wingfield. Yes, very well.

Coll. What do you know of him?

Mrs. Wingfield. I know nothing of him, but he is an honest Man; he married my Daughter, and always carried himself like a Gentleman; he scorns the Thing that is unhandsome, and never did any thing that is unhandsome in his Life.

Mr. Serj. Jeff. Pray how came you by this Witness? Have you any more of them?

Coll. I never saw her before, but I believe she hath said something else in another Place. Did you ever say the contrary, pray?

Mrs. Wingfield. Nobody can say so; and I had done the Gentleman a great deal of Wrong, if I had.

Coll. Call Mr. Whaley. (Who appeared.)

L. C. J. What is your Name, Sir?

Mr. Whaley. John Whaley.

Coll. Did you know *Bryan Haynes*?

Mr. Att. Gen. Where do you dwell, Sir?

Mr. Whaley. At the Hermitage, beyond the Tower.

Coll. I don't know you, Sir; but what do you know of him?

Mr. Whaley. I never saw you, Sir, till To-day; but that which I think I am called for is this, though it was upon Sunday that I received this same Subpœna to come down hither; but about six Years ago, *Bryan Haynes* was a Prisoner in the King's Bench, and he came down to the Cellar which I had taken of the Marshal to sell Drink in; and coming down to drink in one of the Rooms of the Cellar that belonged to me, he took away a Tankard, and went up with it. One of the Men followed him up; so I went to the Marshal to complain, and told him of it; and the Marshal took him from the Master's Side, and put him into the common Side. That is all I know of him any Way, directly or indirectly.

L. C. J. Why did you not indict him of it?

Mr. Whaley. I acquainted the next Justice of the Peace, who was the Marshal; and he put him from the Master's Side, into the common Side.

L. C. J. He was no good Justice of the Peace in the mean time.

Coll. Call Mr. John Lun. (Who appeared.)

Do you know *Bryan Haynes*, Mr. Lun?

Mr. Lun. I have seen him twice; the first Time I ever saw him was, I went into the *Derby Ale-House*, to enquire for one *Micklethwayte*, a Kinsman of mine, and there this *Bryan Haynes* was, in a little Room next the Ditch, near the Door that goes out there, as if he were asleep, and he roused himself up; and, as I was walking there, Sir, said he, will you take Part of a Tankard with me (that was his Expression.) With that, said I, I do not care if I do. And the first thing he began was the King's Health, then the Queen's, then the Duke of York's; then he

fell very foul against the Grand Jury, because they had not found the Bill against *Colledge*, who is a Gentleman that I never saw before in my Life but once, as I know of: And he said, my Lord *Shaftesbury* was a little Toad, but he would do his Business very suddenly. Then he railed upon the Parliament, and said they were a Company of Rogues, they would give the King no Money, but he would help him to Money enough out of the Fanaticks Estates. And he said, they would damn their Souls to the Devil before their Catholick Cause should sink.

Mr. Serj. Holl. When was this?

Mr. Lun. It was three or four Days after the Bill was brought in *Interimus* by the Grand Jury.

Mr. Just. Jones. Was he alone?

Mr. Lun. Yes, he was.

Coll. Is that all you have to say?

Mr. Lun. One Thing more, my Lord. On Monday last I was at *Uxbridge*, and a Gentleman sent his Man on Purpose to let me know I must go to *Colebrook*, and stay till they came thither. When I came there, I met *Bryan Haynes* at the Crown Kitchen-Window, and he was stirring a Glass of Brandy, and sweetning it with Sugar; said he, Sir, will you drink? Here is the King's Health to you: So I drank, and asked him how he did. Do you know me, Sir, said he? Yes, said I, I drank with you once. Says he, you have a good Memory: So then a Pint of Sack was called for, and after that another, and then came down Mrs. *Peacock*; and being very fine, all in her flowered Silks, I asked what Gentlewoman that was? Said he, it is Mrs. *Fitz-Harris*. No, says I, 'tis not; they say she is gone. But, said he, it is her Maid; and Sheriff *Bethel* is to marry her: As I have a Soul to save, I tell you nothing but what is Truth. Thereupon, said I, Sheriff *Bethel* is able to maintain her, he hath a good Estate: But, said he, it shall be the King's ere long.

Coll. So that here is a plain Design against all the Protestants.

Mr. Lun. So with that, my Lord, if it please your Honour, I clapped my Groat down at the Bar, and went out of the Room. Nay, said he, let us have one Health more; and so he had his Tankard, and I had mine.

*Haynes*. I humbly desire you to call for Mr. *White*, the King's Messenger, who was by. I never saw the Man before he was at *Uxbridge*; and asking Mr. *White* who he was? said he, his Name is *Lun*, he was my Prisoner two Years.

L. C. J. What say you to the Discourse he talks of at *Fleet-Bridge*?

*Haynes*. My Lord, I am upon my Oath, and I never saw him in my Life before I saw him at *Uxbridge*.

Mr. Lun. I will take my Sacrament upon it, that what I have averred is true.

Mr. Serj. Jeff. I suppose you are both known, and then your Credit will be left to the Jury.

Mr. Att. Gen. There is Mr. *White*; pray swear him. (Which was done.)

L. C. J. Do you remember that *Haynes* asked who Mr. *Lun* was?

Mr. *White*. It was at the Bar of the *Crown-Inn* at *Uxbridge*; and I being there, Mr. *Lun* came into the Yard, and I knowing Mr. *Lun*, asked him how he did; he said he was glad to see me, and he called for a Pint of Sack to make me drink. *Haynes* stood by, and he asked who he was, and I told him; and we drank the King's Health; but for any thing of those Words that were spoken there, Sir, I did not hear one Word of them; but he thanked me for my Civility when I summoned him up to the Court; and seeing Mr. *Haynes* by, he asked who he was?

Mr. Serj. Jeff. And you take it upon your Oath, that he asked who *Haynes* was?

Mr. *White*. Yes, I do.

Mr. Serj. Jeff. Pray, did you hear any Discourse that Time, as if there had been a Meeting upon *Fleet-Bridge*?

Mr. *White*. Not one Word of that.

Mr. Lun. I will take the Sacrament upon it, what I say is true.

Mr. Serj. Jeff. We know you, Mr. *Lun*; we only ask Questions about you, that the Jury may know you too, as well as we. We remember what once you swore about an Army.

Coll. I don't know him.

Mr. Lun. I don't come here to give Evidence of any Thing but the Truth; I was never upon my Knees before the Parliament for any thing.

Mr. Serj. Jeff. Nor I neither for much; but yet once you were, when you cried, Scatter them, good Lord.

Mr. Coll. Call Mr. Broadgate.

L. C. J. What is your Christian Name, Sir?

Mr. Broad. Jeremiah.

L. C. J. What do you ask him?

Mr. Broadg. My Lord, I am a Stranger to the Prisoner at the Bar, what I have to say is concerning Mr. *Turberville*, whom I met one Day, and he asked me how I did? Said he, I owe you a little Money, but I will pay you in a short Time; but if you will go to drink a Glass of Ale. No, said I, I am in haste, and do not care for going to drink. Said he, you shall go; so away we went, and when we were fat, said he, When did you see *Turberville*, that was my Lord *Powis's* Butler; said he, he was a great Rogue to me, and when I stood up for the Nation's good, he vilified my Evidence, and afterwards he came to me with Dr.

to beg my Pardon; but I would not forgive him for the whole World. And, speaking of the King's Evidence, said he, the King's Evidence are looked upon as nothing, as poor inconsiderable mean Fellows, and their Salaries are lessened; and, said he, I have had the greatest Professions from Court of Preferment and Rewards, if I would go from what I have said, and come upon the contrary; and he repeated it, yes, upon the Faith of a Man, and from the highest: But, said he, I have a Soul and a Body for a Time, but my Soul for Eternity, and I cannot go from what I have said; I might have what I would, if I would go from what I have said, and come upon the contrary.

Mr. Att. Gen. But he does not go from any thing of what he hath said.

Coll. Did he say what he was offered, and by whom?

Mr. Broadg. He said, he had very great Offers from the Court if he would disown the Plot, and go upon the contrary.

L. C. J. But he does not disown it?

Mr. Just. Jones. Nay, he had a Soul to save, and could not go from what he said.

Mr. Serj. Jeff. You talk of the contrary, and the contrary; What do you mean by that? What Plot should he disown?

Mr. Broadg. The popish Plot.

L. C. J. He does not disown it, nor never did disown it.

Coll. He would make a Presbyterian Plot of it now, for he cannot go from what I have said. Sir, do you know any thing more of him? Or that he was to swear against me, or any Protestant?

Mr. Broadg.



Mr. Broadg. No, only he said the King's Evidence were vilified, and looked upon as poor inconsiderable Fellows; but it seemed, if he would go on the other Side, he might have great Preferments and Rewards.

L. C. J. You make a wrong Comment upon it, Mr. Colledge; it was if he would retract his Evidence, and disown the Plot.

Coll. I leave it to your Lordship and the Jury, to make the Sense of it.

Mr. Broadg. I saw Mr. Turberville since I came hither, and he asked, Are you come, Mr. Broadgate, to give Evidence against me? Says I, I am come to declare the Truth, and nothing but the Truth.

Mr. Serj. Jeff. You might have staid at home for any Thing material that you do evidence.

Coll. Call Mr. Zeal. (*Who appeared.*)

L. C. J. What is your Christian Name, Sir?

Mr. Zeal. John.

L. C. J. What would you ask him?

Mr. Serj. Holl. Where do you dwell, Sir?

Mr. Zeal. In London.

Mr. Serj. Jeff. Whereabouts?

Mr. Zeal. In Fetter-Lane.

Mr. Serj. Holl. What Countryman are you, Sir?

Mr. Zeal. Somersetshire.

Mr. Att. Gen. Whereabouts in Somersetshire were you born?

Mr. Zeal. By Sir William Portman's, within six Miles of him.

Mr. Serj. Jeff. What Trade, Sir?

Mr. Zeal. No Trade.

Mr. Serj. Jeff. Have you any Estate?

Mr. Zeal. My Father has. I was bred to wait upon a Person of Quality.

Coll. Do you know Turberville, Sir?

Mr. Zeal. Yes, Sir, I do.

Coll. What do you know of him?

Mr. Zeal. Sir, I know nothing but what Mr. Ivy told me with his own Mouth.

L. C. J. Do you know any Thing of your own Knowledge?

Mr. Att. Gen. Has Mr. Turberville told you any Thing?

Mr. Zeal. Not concerning Mr. Colledge he has not.

Coll. Ivy was amongst them.

Mr. Zeal. Yes, my Lord, he was the first that swore this Presbyterian Plot.

L. C. J. We know of no Presbyterian Plot.

Coll. Can you say any thing of your own Knowledge concerning Turberville?

Mr. Zeal. Nothing but what Mr. Ivy told me.

Mr. Serj. Jeff. That is not of your own Knowledge, and so it is nothing, for he is not produced in this Cause.

Coll. Pray, my Lord, give me Leave to call Mr. Ivy.

Mr. Serj. Jeff. Do, if you will. (*He stood up.*)

Coll. What was that you heard Turberville say of me, or of any Presbyterian Plot?

Ivy. I never heard him say any thing concerning a Presbyterian Plot in my Life.

Coll. Did not you tell Zeal of such a Thing?

Ivy. No, I never did.

Coll. Hark you, Mr. Ivy, you have sworn against me, have you not?

Ivy. What I have sworn against you, or any other Person, is true.

Coll. What have you sworn against me?

Ivy. I am not bound to answer you.

Coll. Did not you call me out with Macnamarra and Haynes, to the Hercules Pillars?

L. C. J. Look you, Mr. Colledge, I will tell you something for Law, and to set you right; whatsoever Witnesses you call, you call them as Witnesses to testify the Truth for you; and if you ask them any Questions, you must take what they have said as Truth: Therefore you must not think to ask him any Questions, and afterward call another Witness to disprove your own Witness.

Coll. I ask him, was he the first Time with us, when I was called out of the Coffee-House to hear Haynes's Discovery?

L. C. J. Let him answer you if he will; but you must not afterwards go to disprove him.

Coll. If he were sworn against me, I would not ask him any Questions, for he is among them.

L. C. J. Ask him what you will.

Coll. I desire not if he have sworn against me, for truly I can't expect a good Answer from him; but he was by when Haynes made his Discovery.

L. C. J. Will you ask him any Questions?

Coll. I ask whether he hath given any Evidence against me any where?

Ivy. I am not bound to answer you.

L. C. J. Tell him if you have.

Ivy. Yes, my Lord, I have.

Coll. Then I think he is no good Witness for me, when he hath sworn against me.

Ivy. I have sworn against him and others. You know that you and have had a great many Intrigues about this Business in Hand, and how we dealt with Mr. Haynes.

L. C. J. Look you, he does not call you for a Witness for him, you can testify nothing, and so you must be quiet.

Coll. Call Mr. Lewes. (*Who appeared.*)

L. C. J. What is your Christian Name?

Mr. Lewes. William.

Coll. Pray, Mr. Lewes, what do you know about Turberville?

Mr. Lewes. I know nothing at all I assure you of him that is ill.

Coll. Do you know any thing concerning any of the Evidence that hath been given here?

Mr. Lewes. If I knew any thing relating to you, I would declare it; but I know something of Mr. Ivy; it has no Relation to you, as I conceive, but against my Lord of Shaftesbury.

L. C. J. You would call Ivy for a Witness, and now you call one against him; and that I told you, you must not do; but Ivy is not at all this Case.

Coll. Do you know any thing of the rest of them, Haynes, or Smith, Dugdale?

Mr. Lewes. No more than what Mr. Zeal told me was told him.

Coll. Do you know any Thing of a Presbyterian Plot?

Mr. Lewes. If the Court please to hear me, I will tell my Knowledge that; but I know nothing that affects him in the least, only that which concerns my Lord of Shaftesbury.

L. C. J. That is nothing to the Purpose, call another.

Mr. Lewes. There was not, to my Knowledge, a Word mentioned of your Name: I will do you all the Justice I can; if I knew any Thing concerning you, I would be sure to relate it.

Coll. I cannot say who can, or who cannot; I am a Stranger to all of it.

L. C. J. Well, call your next Witnesses.

Coll. My Lord, there was a Petition presented to the Common Council of London, wherein they set out, that they were tampered withal about a Plot against the Protestants.

L. C. J. A Petition, from whom?

Coll. I cannot tell from whom; from some of these Witnesses.

L. C. J. Who preferred and signed it?

Coll. Mr. Turberville was one. Pray call Dr. Oates.

L. C. J. The Prisoner calls upon you, Mr. Oates. What would you ask him, Mr. Colledge?

Coll. Where is the Petition to the Common Council, Doctor?

Dr. Oates. I have it in my Hand.

L. C. J. By whom was it presented?

Dr. Oates. It was given by Mr. Turberville and Mr. Macnamarra, to Mr. Wilmore.

L. C. J. Was you present when it was delivered?

Dr. Oates. Mr. Wilmore did deliver it to me before he was apprehended; for, being to come down as a Witness, he was taken up and committed to Prison.

L. C. J. Whose Hands are to it?

Dr. Oates. I know Mr. Turberville's Hand, he will not disown it.

Clerk reads. It is subscribed Edward Turberville, John Macnamarra.

L. C. J. Look you, Mr. Colledge, what Word is there in all this Petition that is a Contradiction to what they have said now?

Coll. I did not hear it, my Lord.

L. C. J. They say, they are constant Witnesses for the King against the Papists; and they have been tempted to unsay what they have said: How does that contradict what they say now?

Coll. I suppose they say they have been tempted to turn the Plot upon other People, and to make a Plot upon the Protestants.

L. C. J. They have been tempted, they say, by the Papists, to unsay what they have said; but the Jury heard it read, and will give it its due Weight. Will you ask Mr. Oates any Questions?

Coll. What do you know of Mr. Turberville?

Dr. Oates. As to Turberville, my Lord, a little before the Witnesses were sworn at the Old Baily, I met with Mr. Turberville, I was in a Coach, but seeing Mr. Turberville, I stepped out of the Coach, and spoke with him; for, hearing that he was a Witness, I did ask him, whether he was a Witness or no against Colledge? Mr. Turberville said, he would break any one's Head that should say so against him; for he neither was a Witness, nor could give any Evidence against him. So after he came from Oxon, I met with Mr. Turberville again; and hearing he had been there, I asked him if he had any thing against Colledge? He said, Yes, he had been sworn before the Grand Jury. Said I, did not you tell me so and so? Why, said he, the Protestant Citizens have deserted us; and God damn him, he would not starve.

L. C. J. Would he say so to you?

Dr. Oates. Yes, my Lord, he said those very Words.

Mr. Serj. Jeff. 'Tis Mr. Oates's saying, 'tis Mr. Turberville's Oath.

Dr. Oates. Several times he did repeat it; but when I asked him what he had sworn, he said, I am not bound to satisfy People's Curiosities.

L. C. J. What say you to it, Mr. Turberville?

Mr. Turb. My Lord, the first Part of the Doctor's Discourse in Part is true; I met him just at my Lodgings, and the Doctor alighted out of his Coach, and spoke to me, and invited me to come to my old Friends; for he told me, they had some Jealousy that I was not true to them: And he told me, if I would come to the King's Head Club, I should be received with a great deal of Kindness: And never afterwards did I speak with the Doctor a Tittle about any Evidence.

L. C. J. He said, you said you would break any one's Head, that said you were an Evidence against Colledge; for you were not, nor could be.

Mr. Turb. There was no such Thing said by me.

Mr. Att. Gen. Upon your Oath, did you tell him so?

Mr. Turb. Upon my Oath, I did not.

Mr. Serj. Jeff. Did you tell him that other Passage, when you swore you would not starve?

Mr. Turb. No, I did not.

Dr. Oates. Upon the Word of a Priest, what I say is true. My Lord, I do say, as I am a Minister, I speak it sincerely, in the Presence of God, this Gentleman did say these Words to me; which made me afraid of the Man, and I went my Ways, and never spake with him afterwards, nor durst I; for I thought he that would swear and curse after that Rate, was not fit to be talked with.

L. C. J. 'Tis very improbable that he should say so to you.

Mr. Turb. I always looked upon Dr. Oates as a very ill Man, and never would converse much with him.

L. C. J. Will you ask him any thing more?

Coll. Do you know any Thing of the rest, Doctor?

Dr. Oates. I know nothing of Turberville further, but that he did present this Petition, wherein he says, he lay under great Temptations to go on the other Side, and accuse some Protestants. And truly till I heard he was an Evidence at Oxon, after what he had said to me, I did not believe it.

Mr. Att. Gen. Doctor Oates, Mr. Turberville hath not changed Sides, you have; he is still an Evidence for the King, you are against him.

Dr. Oates. Mr. Attorney, I am a Witness for Truth, against Falshood and Subornation; and it can plainly be made to appear there is Subornation against the Protestants. And, moreover, my Lord—

L. C. J. Mr. Oates, you would do well to explain yourself.

Mr. Serj. Jeff. If there be any Subornation relating to Mr. Turberville, or any of the other Witnesses that have now sworn against Colledge, make it out, Doctor.

Dr. Oates. There is, my Lord, and there will be made further to appear in Time to come. To my own Knowledge, as to Mr. Smith, Mr. Colledge and Mr. Smith had some provoking Words passed betwixt them at Richard's Coffee-House, and Mr. Smith comes out and swears, God damn him, he would have Colledge's Blood. So, my Lord, when I met him, said I, Mr. Smith, you profess yourself to be a Priest, and have stood at the Altar, and now you intend to take upon you the Ministry of the Church of England, and these Words do not become a Minister of the Gospel: His Reply was, God damn the Gospel: This is Truth, I speak it in the Presence of God and Man.



L. C. J. Can you say any thing of any of the other Witnesses?

Dr. Oates. As for Mr. Dugdale, I was engaged for him for 50*l.* for last Lent-Assizes, he wanted Money to go down to the Assizes, having paid some Debts, and paid away all his Money; and so I engaged for 50*l.* that he borrowed of Richard the Coffee-man. After he came from Oxon, I called upon him to hasten to get his Money of the Lords of the Treasury, which, as near as I remember, was ordered him upon his Petition, for so I heard. And that Time, said he, Sir, I hear there is a great Noise of my being an Evidence: Against whom, said I: Against several Protestants, my Lord Shaftesbury, and others: Said I, I never heard any Thing of it: Says he, there is no Body hath any Cause to make any such Report of me, for I call God to Witnefs I know nothing against any Protestant in England. After that I met with Dugdale at Richard's Coffee-House, and pressing him for the Money, and he saying he had it not just then, but would pay it in a little Time: Mr. Dugdale, said I, you have gone, I am afraid, against your Conscience, I am sure against what you have declared to me: Said he, it was all along of Colonel Warcup, for I could get no Money else.

Mr. Att. Gen. Mr. Oates is a thorough-paced Witnefs against all the King's Evidence.

Mr. Serj. Jeff. And yet Dr. Oates had been alone in some Matters, had it not been for some of these Witnesses.

Dr. Oates. I had been alone perhaps, and perhaps not; but yet Mr. Serjeant, I had always a better Reputation than to need their's to strengthen it.

Mr. Serj. Jeff. Does any Man speak of your Reputation? I know no Body does meddle with it; but you are so tender?

Coll. Sir George, now a Man is upon his Life, I think you do not do well to affront his Witnesses.

Mr. Serj. Jeff. I do not affront him; but now, my Lord, pray give us leave to call our Witnesses. Mr. Smith, pray stand up.

L. C. J. Mr. Smith, do you hear what Mr. Oates hath said?

Mr. Smith. No, my Lord.

L. C. J. Then speak it again, Mr. Oates.

Dr. Oates. Yes, my Lord. I will speak it to his Face. He said coming out of Richard's Coffee-House, they having had some provoking Words, as I understood when I came in, *God damn that Colledge, I will have his Blood*: And, my Lord, when I did reprove him, and said to him, Mr. Smith, you have been a Priest, and stood at the Altar, and intend to be a Minister of the Church of England; these Words do not become a Minister of the Gospel; and he replied, *God damn the Gospel*; and he went away.

L. C. J. What say you to it, Mr. Smith?

Mr. Smith. Not one Word of this is true, upon my Oath. 'Tis a wonderful Thing you should say this of me; but I will sufficiently prove it against you, that you have confounded the Gospel, and denied the Divinity too.

Mr. Serj. Jeff. Mr. Dugdale, you heard what was said against you?

Dr. Oates. My Lord, now Dugdale is come, I will tell you something more. There was a Report given out by Mr. Dugdale's Means, that Mr. Dugdale was poisoned; and in truth, my Lord, it was but the Pox. And this Sham passed throughout the Kingdom in our Intelligences; and this I will make appear by the Physician that cured him.

Mr. Serj. Jeff. That is but by a third Hand.

Dr. Oates. He did confess that he had an old Clap, and yet he gave out he was poisoned; but now, my Lord, as to what I said before of him, I was engaged for 50*l.* for Mr. Dugdale; do you own that?

Mr. Dugdale. I do own it.

Dr. Oates. I did press upon you to hasten the Payment of it.

Mr. Dugdale. Yes, you did.

Dr. Oates. And did not you come to me and tell me there was a Noise of your being an Evidence? It was in Time just before my Lord Shaftesbury was taken up.

Mr. Dugdale. I never spoke to you till you spake to me.

Dr. Oates. My Lord, he came and said to me, there is a Noise of my being an Evidence; now I had not heard it then, but the Day after I did hear it; and I did justify Mr. Dugdale, because he had said to me that he had nothing against any Protestant in England. So I did stand up in Vindication of him; but my Lord, after he had sworn at the Old Bailey, I met him again, and pressed him for the Money, and urged him with it, why he had sworn against Colledge, when he had told me so and so before; and he said it was all along of Colonel Warcup, for he could not get his Money else; and Colonel Warcup did promise he should have a Place at the Custom-House.

Mr. Dugdale. Upon the Oath I have taken, and as I hope for Salvation, it is not true.

Mr. Serj. Jeff. Here is Dugdale's Oath against Dr. Oates's Saying.

Dr. Oates. Mr. Serjeant, you shall hear of this in another Place.

Mr. Att. Gen. 'Tis an unhappy Thing that Dr. Oates should come in against these Men that supported his Evidence before.

Mr. Dugdale. My Lord, I say further, if any Doctor † will come forth, and say he cured me of a Clap, or any such Thing, I will stand guilty of all that is imputed to me.

L. C. J. Mr. Colledge, will you call any other Witnesses?

Coll. My Lord, I think this is not fair Dealing with a Man for his Life; because these Men be upon their Oaths, and deny the Things again that my Witnesses prove; therefore what they swear must needs be taken for Truth: But if my Witnefs comes and says such a Thing upon the Word of a Minister, and in the presence of God, and which he is ready to maintain by an Oath, sure it is not to stand for nothing, nor to be hooted out of Court, because Mr. Dugdale denies it upon his Oath; I do suppose he will not acknowledge it. But, my Lord, I am the Prisoner, and cannot be heard as a Witnefs for myself: But God is my Witnefs; he hath said a great deal more to me formerly; and he hath told me, when I have seen him with Warcup, and asked him why he kept Company with Warcup, and others; said he, I know they are suspected Men, but I must keep Company with them to get my Money; what, would you have me

starve? And when I lent him Money out of my Pocket, and trusted him with my Horse, I dur'd him for Money and could not get it; said I, Will you pay me the 5*l.* I lent you? He put me off; said he, I shall have it, for the Attorney General hath made up his Accounts, and is very kind to me. Why then, said I, why have you it not? said he, he is my Friend, and I do not question the getting of it; but here is new Work to be done, such Work as my Conscience will not serve me to do; there is more Roguery, they will never have done plotting, and counterplotting; but they will make a thousand Plots if they can to destroy the real one.

L. C. J. Can you prove this now?

Coll. No, it was spoken to myself; and nobody was by but myself.

L. C. J. Then you should not speak it. But you asked the Question whether a Man may not be believed upon his Word, as well as he that is upon his Oath. Your Witnesses are not upon their Oaths, but they may be Witnesses, and their Weight is to be left with the Jury; they will consider how improbable it is, that these Men should come, three Men to one Man, and all of them should speak that which would make themselves Rogues and Villains; and that one Man of them, Smith, should say such vile Words, as *God damn him, he would have his Blood*; and, *God damn the Gospel*: That Dugdale should confess he was wrought upon by Warcup to testify against his Conscience; and that Turberville should say to that Purpose, he would not starve; they have sworn the contrary, and so there are all these three Men's Oaths against one Man's Affirmation; but it must be left to the Jury.

Coll. There is his Affirmation against what they three say. He charges every one of them, and 'tis but the single denial of every one of them to his Charge.

L. C. J. 'Tis impossible they should own themselves such Villains to him.

Dr. Oates. They must be so, if they will do what they have undertaken. I hope my Word will be believed as soon as their Oaths.

Coll. It is not to be thought, but when they have sworn so against me, they will deny any such Thing when they are charged with it.

L. C. J. Have you done with your Witnesses? Or will you call any more?

Coll. What is said upon an honest Man's Word in the Face of a Court, is certainly to be believed as well as what is sworn.

L. C. J. 'Tis a Testimony, that is most certain, and must be left to the Jury, they must weigh one against the other. But pray, Mr. Colledge, will you call your Witnesses, for it begins to grow late?

Coll. There is Mr. Wilmore, that was a material Witnefs for me, who was Fore-man of the Grand Jury, that would not find the Bill upon this Evidence. What he had to say I don't know, but I am informed it was very material for me.

L. C. J. It will be enough for him to clear himself, for he is charged with High-Treason, and by two Witnesses too.

Coll. Call Alexander Blake.

L. C. J. What do you ask him?

Coll. Do you know John Smith?

Mr. Blake. Yes, Sir.

Coll. Pray will you tell the Court what you know of John Smith.

Mr. Blake. I suppose you mean this Gentleman. Mr. John Smith, Gent. came to me one Morning, and told me there was one Haynes under Examination, and this Haynes had discovered very material Things against some great Persons: This passed, and within few Days after I met Mr. Smith at the Exchange Coffee-house, and having saluted him, I desired him to drink a Glass of Wine, and so we went to the Sun-Tavern, and when we were there, I asked him, what his Sense was of Haynes and his Discovery? Said he, 'tis a Sham-Plot: I asked him, what he meant by that Sham-Plot: Said he, it is a Meal-Tub Plot. This is all that I know.

J. C. J. Would you ask him any Thing else?

Mr. Blake. I know nothing more.

Coll. Do you know any thing of Turberville or Dugdale?

Mr. Blake. Sir, I have no Acquaintance with him, nor desire it: But I was acquainted with this Gentleman, Mr. Smith, I know him very well.

Mr. Serj. Jeff. You say well, stand down.

Coll. Call Mr. Samuel Smith.

L. C. J. What ask you him?

Coll. What he knows of Mr. Smith.

Mr. S. Smith. Mr. John Smith and I have had an Intimacy and Acquaintance several Months, and since Mr. John Smith swore at the Old Bailey against Mr. Colledge, and was gone out of Town, several People have talked with me concerning him; and asking me what I thought of him? I told them, I believed he was an honest Man; however I would not believe otherwise till I knew a Reason of it. They told me, that he had sworn against Mr. Colledge, that he was to seize the King at the Parliament at Oxford, and that there was 1500 Barrels of Powder, and it was to carry on a Presbyterian Plot: Said I, I will never believe it, and the rather because he hath said to me often, there was a Popish Plot, but he does not believe any Presbyterian or Protestant Plot; and, said I, further, as to his giving any Evidence with Irishmen, I believe it less for that, for I have heard him often say, they were a Company of Rogues that had done the Protestant Interest more harm than ever they could do it good, and bid me have care of coming into their Company, and many other such Things that Mr. Smith here knows to be true. Then, my Lord, when Mr. Smith came home (for I was very impatient till he did come home, to hear every Day such Things said against him) I went to him to see him. Said I, Cousin Smith, I have had great Confronts about you since you went away, but I hope you can't be that ill Man you are represented to be, and truly I would be sorry it should be so: Pray, Cousin, said I, I have put every Man off with this, that I would suspend my belief of you, till I had spoken with you yourself; what is the Evidence you have given? They say you have sworn a Presbyterian Plot, or a Protestant Plot, a Design of seizing the King at Oxon, and of so many Barrels of Gun-powder that were provided. Says my Cousin, I did swear no such Thing, nor need a Word of any such Thing as a Protestant Plot, or a Presbyterian Plot, and pray do not believe it of me. No, said I, I thought you could

† Dr. Lower, the most noted Physician then in London, proved it at the Council Board both by his Bills, and by the Apothecary, that he had been under cure in his Hands for that Disease; which was such a Slur upon Dugdale's Credit, that he was never used as a Witnefs more.



swear any such Thing, because you have said often to me, you believe there was no such Thing. I do not believe it yet, said he; and as to what Colledge said, I did not believe it, for he did not believe it himself. And Mr. Smith told me after his return, that he did not know of any Protestant concerned in the Plot.

L. C. J. He does not say now 'tis a Protestant Plot.

Mr. S. Smith. So far from that, that he told me after his return, he did not know any Protestant concerned in the Plot.

L. C. J. Mr. Smith, thus I understand you: You say that he said to you, that he had not testified any Thing of a Protestant Plot, nor did believe there was any Protestant Plot, for he did not believe what Colledge said himself: So by that Discourse there seems he did not deny, but he had testified against Mr. Colledge; but he did not believe there was any Protestant Plot?

Mr. S. Smith. No, my Lord, he did not deny but he had sworn against Colledge.

Mr. Just. Jones. Nor that what he had said against Colledge was true?

Mr. S. Smith. No, my Lord, but he did not believe him, and he thought Colledge did not believe it himself.

Mr. Serj. Jeff. It seems Mr. Colledge thinks the whole Protestant Interest concerned in him.

L. C. J. The question is, Mr. Colledge, what you had in your Mind, not what was in the Mind of all the Protestants.

Mr. S. Smith. This, I do say, I would not speak more or less than the Truth, he did not deny but he had heard Colledge speak those Words he swore, but he did not believe him, and I think Mr. Smith hath said that at another time before Mr. Gardner.

Coll. If he knew of no Protestant Plot, it was very unlikely that I should attempt such a Thing myself.

Mr. S. Smith. My Lord, I find Mr. Smith hath been very passionate and very inveterate of late against other Men that he hath given me a very good Report of before; and when I was talking of this, I was saying, if it be true that People say of you, a Man goes in Danger of his Life to converse with you. Mr. Smith, said he, I do not care for all the Men between Wapping and Charing-Cross, there is never a Man that will forbear my Company, but would do or say as much as Colledge hath done or said.

Mr. J. Smith. 'Tis true, and I say so still.

Coll. 'Tis a Contradiction in itself, that there should be such a Design, and none but myself to do it. God my righteous Judge knows my Innocency.

Mr. Just. Jones. You might say those Words in Hopes they would be of your Party, and made so by your Libels and poisonous Pictures.

L. C. J. Come, call another Witness.

Coll. Call Mr. Tho. Gardner. But my Lord, how likely is it that I should say, that I would seize the King, when he, it seems, says, he did not believe there was one Man to stand by me?

L. C. J. What say you to this Gentleman?

Coll. I never saw him in my Life.

Mr. Gardner. Nor I you, Sir.

Coll. I know not three of all that come here.

L. C. J. Well, will you ask him any Thing?

Coll. Pray do you know Mr. Smith?

Mr. Gardner. Yes.

Coll. What do you know of him? Can you say any Thing concerning this Matter that is sworn against me of Treason?

Mr. Gardner. My Lord, that Day-Fortnight I think it was, Mr. S. Smith, the Gentleman that was just now up before me, sent for me to the Rummer in Queen-Street, to drink a Glass of Wine, where when I came, I found him and Mr. J. Smith, that is here, whom they call Narrative Smith, talking very briskly concerning one Colledge, I suppose that is the Gentleman, and the Jury that acquitted him, and he said that two or three of the Jurymen were Rascals and Villains; and, says he, they talk up and down the Town, as if I did intend to sham the Popish Plot, and to make a Protestant Plot, which, said he, I vow to God, and I will justify it before God and all the World, that I know of no Protestant Plot, nor is there any Protestant concerned in a Plot to my Knowledge, but this Colledge, and upon his Trial I believe he will be made appear to be more a Papist than a Protestant: But, says Mr. Smith to him, Now you are known to be a Witness in this Case, it will be a dangerous Thing for a Man to converse with you.

Coll. Will it be now known that I am a Papist? No Man could ever say so in this World.

Mr. Gardner. Says he, I care not what all the World says of me, and I do not value all the Men from Wapping to Charing-Cross, but that Man that will shun my Company, will say and do as much to the King as Colledge hath done. But then I was saying, methinks it seems an improbable Thing, that such a Man as Colledge should seize upon the King, or provide 1500 Barrels of Powder, and those other Things. Upon my Word, said he, with some Passion, clapping his Hand upon his Breast, when Mr. Colledge did say it, I did not believe a Word of it, and upon my Faith I believe Colledge himself did not believe it when he told me so.

Coll. Do you know any Thing more, Sir?

Mr. Gardner. No, indeed Mr. Colledge.

Coll. Call Dr. Oates again.

L. C. J. Well, what say you to him?

Coll. Pray Dr. Oates, Mr. Smith charges me that I should speak some reasonable Words that Time that Alderman Wilcox gave you a Treat at the Crown Tavern; you were there, and pray how long ago was it?

Dr. Oates. My Lord, I heard Mr. Smith speaking of it at the Old Bailey, and if you please to take Notice, it was thus: This Summer was Twelve-Month, or I am sure a great while before Christmas, the Alderman had invited me several Times to give me a Treat, and I had not time, other Business calling me off; but finding a Time, I sent him word I would come and see him. He said he was a Brewer, and troubled home with Customers, but he would give me a Dinner at the Crown Tavern without Temple-Bar, that was the Place fixed upon; there was Mr. Smith the Counsellor, who had been serviceable to me in several Instances, I did get him to go along with me, and Mr. Colledge was with me, and I heard Smith swearing at the Old-Bailey that Mr. Colledge and he had discoursed from the Rainbow Coffee-House where we met, and went together.

Coll. There I was invited by Alderman Wilcox.

Vol. III.

Dr. Oates. But, my Lord, I will tell my Story, I am not to tell Mr. Smith's. Colledge did tell me he was invited; said I, you shall be welcome as far as I can make you welcome. So Colledge and I went together from the Rainbow Coffee-House to the Crown Tavern: Now indeed, Colledge was very pleasant and merry, and as I think, the Discourse between the Rainbow Coffee-House and the Tavern was betwixt Mr. Colledge and me; for Mr. Smith stayed somewhat behind, or walked before, I cannot tell which: When we came to the Crown Tavern, we did, to divert ourselves till Dinner came up, enter into a Philosophical Discourse with one Mr. Savage, who was formerly a Romish Priest, but this Savage is since pardoned by the King, and is a Member of the Church of England, and hath been Professor of Divinity and Philosophy beyond Sea. This, as I remember, was the Discourse before we dined, till we went to Dinner; it was concerning the Existence of God, whether that could be proved by natural Demonstration, and whether or no the Soul was immortal. My Lord, after Dinner, Smith went away, I did not hear the least Discourse of any such Thing as he speaks of, and Mr. Smith and Colledge had no Discourse in my hearing from the Coffee-House to the Tavern; and when we were in the Tavern, we did discourse about those two Points. Counsellor Smith, my Lord, will justify a great deal of this, and my Brother too, who was with us. But when I heard Mr. Smith swear as he did about this Matter at the Old Bailey, I did really, my Lord, in my Conscience, look upon him to be forsworn in that Particular.

Mr. Serj. Jeff. And he does swear you are out in this.

L. C. J. Will you ask him any more Questions?

Dr. Oates. If your Lordship please, he speaks of Mr. Wilcox to be a Man that contributes Money to buy Arms, Powder and Shot. I think, Sir George Jefferies knows Alderman Wilcox is a Man of another Employment.

Mr. Serj. Jeff. Sir George Jefferies does not intend to be an Evidence, I assure you.

L. C. J. Do you ask him any more Questions?

Dr. Oates. I do not desire Sir George Jefferies to be an Evidence for me, I had Credit in Parliaments, and Sir George had Disgrace in one of them.

Mr. Serj. Jeff. Your Servant, Doctor, you are a witty Man, and a Philosopher.

Coll. Call Mr. Tho. Smith.

L. C. J. What would you ask of him now?

Coll. Counsellor Smith, here is John Smith, or Narrative Smith, which you please to call him, hath charged me with speaking Treason at our going to Dinner at Mr. Wilcox's; I remember you were there, and I think you and I, and Dr. Oates and his Brother, and Mr. Goodwin Wharton went together; I did tell Mr. Smith of it, but I did not stir a Step out of the Coffee-House with him, but went away before him. How long ago is it since we had that Dinner?

Mr. T. Smith. My Lord, if your Lordship please, I do very well remember Mr. Alderman Wilcox, so they called him, did desire to give Dr. Oates a Treat, with some other of his Friends at the Crown Tavern without Temple-Bar; but really, my Lord, as to the certain Time I do not remember it, but to my best Remembrance, my Lord, it was before Christmas last, and some Time before Christmas last. And, my Lord, I was there all the Time; Mr. Smith was at that Time somewhat a Stranger to me, something I had heard of his Name, and I did stay there all the while; I remember Mr. Alderman Wilcox was to go out of Town that Day; and truly, as to any Matter of Treason, or treasonable Words, or any Thing tending towards it, I am confident nothing was, or could be spoken, and the Room was a very small Room, and our Company did fill it up, and the Table was so big, that there was little more than for the Servitors to go about; so that any Man might easily hear from the one end of the Room to the other. I remember there was some Discourse betwixt Dr. Oates and Mr. Savage, who, I think, hath been a Jesuit, and it was about some Points of Philosophy and Divinity; but for Treason, I do not remember the least of it, and I am confident Colledge said not any Thing at that Time; and my Reason is this, I very well remember Mr. Colledge did set himself down upon one Side of the Table, and fell asleep; and unless he talked Treason in his sleep, there could not be any such Thing said, and if it had been said, it would have been heard.

Mr. Att. Gen. Mr. Smith, did you never hear Mr. Colledge speak an ill Word of the King?

Mr. T. Smith. Never in my Life. And if I were now to take the Sacrament upon it, I could say so.

Mr. Serj. Jeff. Yo used to converse with him, Mr. Smith, did he never say any Thing like it to you?

Mr. T. Smith. Good Mr. Serjeant, you know I can take the Sacrament; pray, let us have no Reflections.

Mr. Serj. Jeff. Who did reflect upon you? I did not reflect upon you.

Mr. Just. Jones. Mr. Smith, did he never deliver you any of those Pictures?

Mr. T. Smith. No, Sir, he never did.

Coll. Good Sir George, don't reflect upon my Evidence. It seems Mr. Smith is mistaken in the Time; for he says it was at Christmas; but Mr. Smith says it was some Time before.

L. C. J. Mr. Smith does not say so, the certain Time he cannot tell exactly; but your Witnesses say it was then.

Mr. T. Smith. I do speak as much as if I were upon my Oath; and I do know what an Oath is, I thank God, and what it is to speak before a Court of Judicature; and I know, and do speak Truth as much as if I were upon my Oath; and I do say I did not hear Colledge, or any one else that was in that Company, at that Time, speak any Thing reflecting upon the King and Government, or any Thing tending towards it.

Mr. Just. Jones. Can you remember Matter so distinctly, which Dr. Oates says was a Year and Half ago?

L. C. J. No. this Summer was Twelve-month.

Mr. Just. Jones. And can you tell so long ago, not only your own Actions, but testify to all other Men's Actions too that were in the Room?

Mr. T. Smith. I cannot tell what Dr. Oates's Memory is as to the Time; but I remember the Place, the Occasion, and the Persons that were there.

Mr. Just. Jones. And you take upon you to have such a perfect Memory, as to the Actions of all the Persons that were in the Room.

Mr. T. Smith. I do not speak of all that was done, but I say, I remember no such Thing that was said, and I believe no such Thing was said,

C c c

and



and I have given you my Reasons why. But, my Lord, that which I say further for Mr. Colledge, is this; I do hear something pretended, as if he provided arms to go to Oxford. I have known him these three Years, or thereabouts; and, my Lord, I do know that he did usually ride with a Case of Pistols before him. And before that Time I had occasion to borrow his Horse of him, at the Election for Westminster the last Parliament that sat there, and I had it then with a Case of Pistols. I likewise borrowed it at Michaelmas last, the same Horse, and the same Pistols they were, I did at the same time see a Suit of Silk-Armour, which he told me he did provide against the Papists; for he said, he did expect we should have a Brush with them. Said I, do not trouble yourself for that, they dare not meddle; said he, they will do no Harm. And as I remember, it was a Suit of Armour made of Silk to wear under a Coat.

Coll. It was Silk-Armour only for the Thrust of a Sword. And I assure you, my Lord, I had but one Suit, but one Case of Pistols, and but one Horse. I had two before; but they did not then make a Traitor of me, that was all that ever I had; but if I had had ten Horses, and never so many Armours, I declare it upon my Salvation, I intended it for nothing but against the Papists, if they should make a Disturbance; and whatever I did, was with that Design, and truly, by the Grace of God, I would not have been the last Man then; but I see, whatever I provided myself with for that, they have turned it all another way, that it may be believed the Protestants were against the King and the established Government.

L. C. J. Those Observations may be proper for you at last. Go on now with your Evidence.

Coll. My Lord, I am not a Man of that great Memory, I may forget it, and therefore I speak it now whilst I think on it.

L. C. J. Set it down in your Paper.

Coll. Smith says, I talked with him coming from Richard's Coffee-House till we came to the Tavern; I do declare it, I went away before him, and went away with Dr. Oates.

L. C. J. Ask Mr. Smith that Question, if you will.

Coll. Pray Sir, do you know who went together thither?

Mr. T. Smith. I dare not undertake to say that, I cannot tell whether he went from the Rainbow-Coffee-House with us, or no.

Coll. He says, after we had dined, we divided ourselves into Cabals, two and two together; I do declare, it is that which is the real Truth, I fell asleep behind the Table; if any body was divided, it is more than I know; but, Mr. Smith, you can tell, because he says I spoke Treason to him when I was in the Room, he and I in one Cabal.

Mr. T. Smith. My Lord, I remember nothing of that, nor do believe it; for I told you the Room was so little, that we could not divide ourselves: And it is impossible in such a little Compass where we was so many as we were, fourteen or fifteen of us; it may be one might talk to another that was next to him, but then the Company must hear; and whether they did so or no, I cannot tell, I do not remember Mr. Smith's saying any thing to any particular Person; but the great Engagement was between Dr. Oates and Mr. Savage, and about some Questions in Divinity, and that is the great Matter I took Notice of.

Coll. However, my Lord, I declare it, that was above a Twelve-month ago, and I hope your Lordship and the Jury do observe, that there was no new Arms were found but what were provided a great while ago; all that know me, know I was never without a Case of Pistols and an Horse, though I was but a Joiner, and there is no more that you see now. And to what Smith said about going into Cabals, that you hear Mr. Smith denies.

L. C. J. Will you call any other Witnesses?

Coll. Yes, if it please your Lordship. Do you know no more, Sir?

Mr. T. Smith. I know no other thing, if I did, I would declare it.

Coll. Call Dr. Oates's Brother, Mr. Samuel Oates. My Lord, thus you see Smith's Testimony is false.

L. C. J. I do not see this contradicts his Oath, for he speaks of several Times that he did speak with you; one was at Wilcox's, which is this they speak of.

Coll. Mr. Smith says, there was only that great Discourse going on in the Room, and there was no such Thing as Cabals which he speaks of.

L. C. J. What do you say to this Witness?

Coll. Do you know Narrative Smith?—Mr. Oates. Yes, Sir.

Coll. What do you know of him? Were you at the Dinner which Mr. Wilcox gave your Brother?—Mr. Oates. Yes, yes, I was at that Dinner.

Coll. Were you at the Coffee-House when I went along with your Brother?—Mr. Oates. Yes, we went with you.

Coll. Did Mr. Smith go with us?

Mr. Oates. Yes, Mr. Smith followed us.

Coll. Did you hear any treasonable Discourse between us?

Mr. Oates. Not the least of a little Word.

Coll. Did we go into Cabals two and two together there?

Mr. Oates. There was nothing at all of Cabals, that I saw, from the Time of going to Dinner; for we came just as Dinner was going into the Room, as I remember.

Mr. Serj. Jeff. What do you mean by Cabals?

Mr. Oates. That is, as I discern by Mr. Colledge, as if there had been Cabals amongst the Company.

Mr. Just. Jones. That is going by Couples?—Mr. Oates. Yes, yes.

Mr. Serj. Jeff. What did they talk of?

Mr. Oates. There was nothing at all spoken of.

Mr. Serj. Jeff. What did they say nothing all the while?

Mr. Oates. Nothing but Matter of common Discourse, Matters of Eating and Drinking, and talking of Country Affairs; there were several that had Lands in the Country, and they were talking of those Things.

Mr. Just. Jones. Were you there all the while?—Mr. Oates. Yes.

Mr. Serj. Jeff. Hark you, Sir, Were there no Disputations in Divinity?

Mr. Oates. Not at all.

Mr. Serj. Jeff. Nor of Philosophy?—Mr. Oates. No.

Mr. Serj. Jeff. Why, pray Sir, did not Dr. Oates and Mr. Savage talk very pleasantly of two great Questions in Divinity, the Being of God, and the Immortality of the Soul?

Mr. Oates. There was not a Word of that, but only common Discourse.

Mr. Serj. Jeff. Are you sure there was no such thing?

Mr. Oates. Not that I know of, in the least, I sat at Table with them.

Mr. Serj. Jeff. Was it such a little Room that you could hear all was said?

Mr. Oates. There was Room enough.

L. C. J. People cannot give a perfect Account of all things that have passed so long ago.

Coll. I did not hear that Discourse myself, because I was asleep behind the Table; and perhaps Mr. Oates cannot remember it.

Mr. Sol. Gen. Was it before Dinner, or after Dinner that Colledge fell asleep behind the Table?

Mr. Oates. He was not asleep to my Remembrance all the while.

Mr. Serj. Jeff. Recollect yourself pray, was Mr. Colledge asleep there?

Mr. Oates. I do not remember he was.

L. C. J. 'Tis impossible to give an Account; and therefore Witnesses in Negatives are of little Value.

Coll. Did Mr. Smith and you and I go together?

Mr. Oates. Mr. Smith followed us.

L. C. J. How do you know that?

Mr. Oates. For you and I, and my Brother went together; you were a saying, when we came out of the Coffee-House, in a jocose way, Come, Doctor, I will go along with you, and be one of your Guard. You spoke it in a jesting way. So you may, if you please, said my Brother. And so he went by my Brother's Side, and I went by Mr. Colledge's Side.

Coll. Do you remember how long ago that was?

Mr. Oates. It was the last Summer; but to say exactly what Month I cannot.

Mr. Sol. Gen. Mr. Oates, answer me this Question, pray, Sir.

Mr. Oates. Yes, Sir.

Mr. Sol. Gen. From what Place did you go?

Mr. Oates. From Richard's Coffee-House.

Mr. Sol. Gen. Who went along with Colledge?

Mr. Oates. He came along with my Brother and me; for he said to my Brother, I will be one of your Guard.

Mr. Sol. Gen. Who went along with Mr. Smith?

Mr. Oates. I don't know, I took very little Notice of Things.

Mr. Serj. Jeff. 'Tis sufficient that he can tell who went with Colledge.

Mr. Oates. I remember one Thing: Mr. Smith would fain have persuaded me into something that my Brother should talk, but I heard nothing; said I, do not examine me upon such things, for I took little Notice of any thing; but this I can say, whereas he doth charge Mr. Wilcox, the Gentleman did not speak five Words all the Time he was there.

Mr. Serj. Jeff. He does not use to be so melancholy, I assure you.

Mr. Oates. I did wonder at it myself, but he was not long with us; for I do not think he was there a quarter of the Time; it seems he had a Son sick in the Country, and he was going thither.

Coll. Have you any thing against Macnamarra?

L. C. J. He is no Witness here.

Coll. Do you know any thing against Mr. Dugdale?

Mr. Oates. No, not I.

Coll. Then I can say no more to you.

L. C. J. Call another Witness.

Coll. Call Bolron.

L. C. J. What do you ask him?

Coll. Do you know John Smith?—Mr. Bolron. Yes.

Coll. What do you say against him?

Mr. Bolron. May it please your Lordship, the last 25th of July, Mr. Smith, and Mr. Mowbray, were travelling from York towards London. We lay the 24th at and the 25th we were travelling towards London.

Mr. Smith did ask me if I did remember what Discourse there was betwixt Sir John Brooks and I at Ferry-bridge when we were coming up before to London? I desired him to tell me what Discourse, and I would tell him if I did remember it or no. So, my Lord, he did say, the Discourse was, that Sir John Brooks did say, there would be cutting of Throats at Oxford, and that the Parliament did go provided some with 8, some with 6, some with 4 Men, and they were to meet at Grantham, and go together. This Discourse I did remember, That Sir John Brooks said, they went with Horse and Arms to secure them from Highway-men; and Sir John Brooks did then further declare, that the Discourse was, there would be cutting of Throats, at Oxford, which made them go with Arms to defend themselves. Mr. Smith did further upon the 25th, 26th, 27th and 28th of July (and it was our frequent Discourse) tell me, that he had given his Majesty an Account of it, which occasioned the dissolving of the Parliament: That Discourse that was made to the King, was, That Sir John Brooks should say, that there would be cutting of Throats at Oxford, and that the Parliament-men went provided with 4, or 5, 6, or 10, men apiece; and he did tell me, that he had given a further Account, that there was to be a Consult at Grantham, wherein it was resolved, that it was better to seize the King, than to let him go on. Now, this I knew nothing of, but he would have persuaded me to have given in this Evidence against Sir John Brooks, as to this Discourse. But I declare, I did never hear it, and Mr. Smith was the first Man that ever I heard it from, I never heard it before in my Life.

Coll. Would he have had you been an Evidence, and swore it?

Mr. Bolron. Yes, he said, he had given an Account of it to the King, and if I did manage it rightly against my Lord Shaftesbury and Colledge, he would make me for ever; those two Persons were mentioned all along. But I do declare it, I did never hear him speak Treason against the King in my Life. And he did further tell me, that I must say so and so; for if we did not agree, it would signify nothing. But, my Lord, I know nothing of the Matter, I never heard any one speak of it but Mr. Smith. My Lord, this is true, Mr. Mowbray was the Man that was by when it was discoursed.

Mr. Just. Jones. He would have had you sworn it, would he?

Mr. Bolron. I discovered it to my Lord-Mayor.

Mr. Att. Gen. When did you discover it?

Mr. Bolron. Soon after I came to Town.

Mr. Att. Gen. When was it?—Mr. Bolron. Some time last Week.

Mr. Att. Gen. Was it on Sunday last?

Mr. Bolron. It was the beginning of the Week.

Mr. Serj. Jeff. Thou art such a Discoverer.

Mr. Bolron. My Lord, 'tis very true what I say. If I had known any such Thing, I would have discovered it.

Mr. Serj. Jeff. Thou wouldst have discovered it before that Time, my Conscience.

Coll. My Lord, he hath been an Evidence against the Papists as well as Mr. Smith; and therefore, pray, Sir George, don't make your Flourish upon him.



Mr. Serj. Jeff. He was an Evidence, but had the Misfortune never to be believed.

Mr. Att. Gen. Do you know of any Pictures of Mr. Colledge's making? Have you seen Rary Shew?—Mr. Bolron. Never in my Life.

Mr. Att. Gen. Did not you shew it in Oxford?

Mr. Bolron. No, never in my Life.

Mr. Serj. Holl. Did you never declare to any Gentleman of Oxford, that Colledge made this Picture?

Mr. Bolron. I have seen the Character of a Popish Successor, but I never saw Rary Shew.

Mr. Serj. Holl. Here is the very Gentleman that will make Oath of it.

Mr. Bolron. He was supposed to make them, I did not know that he did.

Mr. Serj. Jeff. I do only desire one Thing, I do not say that you ever had Rary Shew, but did you ever tell any body that Colledge made any of these Pictures?

Mr. Bol. I have heard of such a Paper, but I did never see it in my Life.

Mr. Serj. Jeff. Do you know that Gentleman, Mr. Bolron?

Mr. Bolron. I know him not.

Mr. Serj. Jeff. I would ask you, whether you ever had any Discourse with that Gentleman?—Mr. Bolron. Never in my Life.

Then the Gentleman was sworn, being a Master of Arts.

Mr. Serj. Jeff. What is the Gentleman's Name?

Mr. Serj. Holl. Mr. Charlett, of Trinity College.

Mr. Serj. Jeff. Pray, Sir, do you know that Person there?

Mr. Charlett. My Lord, in the New Coffee-House that was by the Schools, that was set up in the Parliament-time, there was a Gentleman that is in the Court (I think) one Mr. Dashwood, and one Mr. Box, were there, together to drink a Dish of Coffee, and hearing that some of the Evidence were there, we desired their Company up, and that Gentleman was one; and among other discourse, they were speaking of some Pictures, and they shewed us the Picture of the *Tantivies*.

Mr. Serj. Jeff. Did this Man shew it you?

Mr. Charlett. This very Man. It was the Pictures of the *Tantivies* and the *Towzer*, and he told me they were made by Colledge, he was a very ingenious Man.

Mr. Bolron. I know nothing of it; the Character of a Popish Successor I have seen, but never the other, I never shewed him any such Thing.

Then the Pictures were shewn him.

Mr. Char. It was something like this, but I cannot say for any of the other.

Mr. Bolron. The Character of a Popish Successor, I say, I have seen, and Colledge himself hath told he made the Character of a Popish Successor, I do not deny that I have seen that.

L. C. J. Would you ask him any more Questions?

Mr. Bolron. My Lord, I have something to say concerning Mr. Bryan Hoynes; in January, February, and April last, several times I was in his Company, and I heard him say, he knew nothing of a Popish Plot, nor of a Presbyterian Plot neither; but if he were to be an Evidence he did not care what he swore, but would swear and say any thing to get Money.

Mr. Just. Jones. Did he tell you so?

Mr. Bolron. Yes, I did hear him say, To Day he would be a Papist, to morrow a Presbyterian, he did not Care for Religion, he would never die for Religion, he would be of that Religion that had the strongest Party. My Lord, he told me so at my own House in Fleet-Street.

Coll. He would say any Thing for Money; pray, my Lord, take Notice of that, for so I find he does.

Mr. Bolron. Then there is Dennis Macnamarra, and John Macnamarra.

Mr. Serj. Jeff. We have nothing to say to them.

Coll. They have been Evidences against me; though you do not now produce them, they are all in a String, but they are not now brought, because my Witnesses are prepared to answer them.

L. C. J. Will you call your next Witness?

Coll. Mr. Mowbray, pray, Sir, do you know Narrative Smith, as he calls himself?—Mr. Mowbray. Yes, my Lord.

Coll. What do you know of it?

Mr. Mowbray. I came up from York with him when I returned, after I was commanded down upon the King's Account to give in Evidence against Sir Miles Stapleton, he came to me the third of August, and called at my House in York-shire, and was very importunate for me to come up to London with him; for he said, he had a Letter come to him which commanded his Presence at London very suddenly, and he produced that Letter which he said came from a Gentleman of the Court, or some Court-Dependent; so he read the Letter in Mr. Bolron's Hearing. We set forward on Sunday, and upon our Journey to London he told me he had something of Importance to impart to me; so upon the Road he began to discourse of the Parliament and of the illegal Proceedings and arbitrary Power of the two last Parliaments; he said, their Proceedings were very illegal and arbitrary, and he began to open some of the Votes, as that which they voted, that those that should lend the King Money upon the Crown-lands, should be Enemies to the King and Kingdom, and those that counselled the King to dissolve the Parliament; and he repeated many Votes, and, said he, these are Signs of arbitrary Power, and certainly they design to take off the King; so he proceeded further to ask me, what was the Discourse of Sir John Brooks, when he came up before, and he did much importune me to say, that Sir John Brooks did affirm there could be cutting of Throats at Oxford, and that the King was to be seized there; I told him I could have no plausible Pretence, because I had no Acquaintance with Sir John Brooks, nor did I come up with him; upon which he applied himself to Bolron, and importuned him for the same; he asked me who I came up with? I told him, I came up with three Members of Parliament, my Lord Fairfax, Sir John Hewley, and Mr. Stern; he asked me what Discourse we had upon the Road? And he asked, whether they had any Discourse that tended to justify their former Votes? For he said, if they did think to justify any of these Votes, or if they would allow the King Money, and stood upon the Bill of Exclusion, he said, that was Pretence enough for any Man to swear that there was a design against the King, and that the King was to be seized at Oxford.

Coll. An excellent Pretence indeed, and like the rest.

Mr. Mowbray. He would have tempted me to swear against my Lord of Shaftesbury the same. And he said, it would be well if I did appear on Colledge's Trial at Oxon, for it was a Thing of great Consequence; the Popish Plot was thrown out of Doors, and no Man was looked upon that speak of it.

Mr. Just. Jones. Was all this in the Presence of Mr. Bolron?

Mr. Mowbray. No, my Lord. When he was discoursing about Sir John Brooks, Mr. Bolron rid up to us, and he applied himself to him, because I told him I had no plausible Pretence to swear against him, having no Acquaintance with him.

Mr. Serj. Jeff. Pray, Sir, let me ask you one Question, When came you from York?

Mr. Mowbray. We set forward the third Day of August from Wentbridge.

Mr. Serj. Jeff. Pray, who came with you in the Company?

Mr. Mowbray. Mr. Bolron.

Mr. Serj. Jeff. That was a Sunday, as I take it.—Mr. Mowbray. Yes.

Mr. Serj. Jeff. Then pray, how long did you continue before you came to London?—Mr. Mowbray. I think we came in on the Thursday after.

Mr. Serj. Jeff. When was the first Time Mr. Smith came into your Company?—Mr. Mowbray. Upon the Road on Sunday.

Mr. Serj. Jeff. Was that the first Time?

Mr. Mowbray. Yes. He had been at York, and went farther, and afterwards came to us.

Mr. Serj. Jeff. When did you come from York?

Mr. Mowbray. About the Thursday before, if I be not mistaken.

Mr. Serj. Jeff. Was it in a Week before?

Mr. Mowbray. Yes, within a Week it was.

Mr. Serj. Jeff. And you and Mr. Bolron came together?

Mr. Mowbray. Yes.

Mr. Serj. Jeff. And you left Mr. Smith behind?—Mr. Mowbray. Yes.

Mr. Serj. Jeff. And he overtook you upon the Road?

Mr. Mowbray. Yes, he was to go further into the North as soon as the Trial of Sir Miles Stapleton was over, and therefore he did very much importune me to stay in the Country till he came to go up with me.

Mr. Serj. Jeff. What Day was the Trial of Sir Miles Stapleton?

Mr. Mowbray. On the Monday before.

Mr. Serj. Jeff. You are sure of that, and that Mr. Smith went further into the North?—Mr. Mowbray. I see him take Horie.

Mr. Serj. Jeff. But he did not come into the Company of you and Mr. Bolron till the Sunday after that.

Mr. Mowbray. See ye, Sir, he did desire me to stay in the Country till he came, for he had a Business of great Concernment to impart to me, but it would be a Week or a Fortnight, e'er he came, but yet he came in a shorter Time, for he said he had received a Letter that brought him up.

Mr. Serj. Jeff. You are sure of this?—Mr. Mowbray. Yes.

Mr. Serj. Jeff. And you did not see him from the Monday before, till that Sunday?—Mr. Mowbray. No, no.

Mr. Serj. Jeff. Now then, I ask you, where was that Place he met with you?—Mr. Mowbray. At Wentbridge.

Mr. Serj. Jeff. And then you came from thence towards London the next Day?—Mr. Mowbray. Yes.

Mr. Serj. Jeff. Now would I desire to know of you, for I perceive he did attack you to say something against Sir John Brooks, and finding that you could not do it, because you had no Acquaintance, he applied himself to Bolron. I would know, was it between that Place and London?

Mr. Mowbray. Yes, it was.

Mr. Serj. Jeff. And after the third of August?

Mr. Mowbray. Yes, it was after he set out.

Mr. Serj. Jeff. I thought it had been the 24th of July that you set out, and continued your Journey the 25th, 26th, 27th, 28th, and 29th. Alas, we have lost a great deal of Time between Mr. Bolron and Mr. Mowbray. Bolron said, it was the 25th they lay at such a Place, and you are gotten to the 3d of August; you are mistaken certainly, as to Point of Time.

Mr. Mowbray. See, Sir, I will look in my Almanack, 'tis all set down there.

Mr. Serj. Jeff. Let us see now if your Oxford Journey be as well set down, as your Journey to London is.—Mr. Mowbray. Here is my Almanack, Sir.

Mr. Just. Jones. Here, look upon his Almanack.

Mr. Serj. Jeff. Mr. Jones, I don't care for his Almanack, I had rather Mr. Mowbray and Mr. Bolron could bring their Almanacks together, and I would have them compared, to see whether the 3d of August in one be the 25th of July in the other. Did you discourse with him upon the Road the 3d of August, and not before, and Bolron, that came up with you, discoursed with him the 25th of July?

Mr. Mowbray. I am mistaken, I find.

Mr. Serj. Jeff. Ay, that you are, one of you, most grossly.

Mr. Mowbray. See, Sir, here is my Almanack, whereby I find that it is my Mistake; but pray, see, Sir, here it is set down, the Day we came out, was the 24th, the Day we came up to London was the 27th.

Mr. Serj. Jeff. How didst thou set out the 3d of August from that Place, and yet come to London the 27th of July?

Mr. Mowbray. I will refer myself to Mr. Smith, as to the Time we came up, and here is my Almanack.

Mr. Serj. Jeff. I will believe thy Almanack to speak Truth, though it have never so many Errors about the Changes of the Weather, sooner than I will believe thee.

Coll. I perceive the Man is mistaken in the Month and the Times; but pray, my Lord, will you please to see, for Justice sake, if the Almanack be new writ.

L. C. J. Look you, here is the Matter, Mr. Colledge, he was asked again and again, what Day it was, and he was positive to the 3d of August.

Coll. He was mistaken, but his Almanack is right.

L. C. J. He speaks rashly, that is the best can be said.

Mr. Mowbray. It was a Mistake of mine, Sir George, but my Almanack is right.

Mr. Serj. Jeff. Nay, Mr. Mowbray, don't enter into Dialogues with me, I only make a little Observation upon your Almanack.

Mr. Mowbray. It was only my Mistake.

L. C. J. You are a rash Man to affirm so; if you had an Almanack, you should have consulted it, or referred to it.

Mr. Serj. Jeff. Nay, we have lost a Day even by your Almanack; for your's says, it was the 27th you came to Town, Bolron the 28th.

Mr. Mowbray. I refer myself to Mr. Smith, he can't deny but he came up with us at that Time.

Mr. Serj. Jeff. You were Examined at Sir Miles Stapleton's Trial, was you not, Mr. Mowbray?—Mr. Mowbray. I was an Evidence there.

Mr. Serj. Jeff. Did the Jury believe you?

Mr. Mowbray. They did acquit Sir Miles Stapleton.

Coll. That is nothing to the Purpose, so was Mr. Smith too.

L. C. J. Would you ask any thing further?—Coll. Call Mrs. Bolron: L. C. J.



L. C. J. If you have any more Witnesses, pray call them.  
Mr. Just. Jones. Mr. Mowbray, was Mr. Bolron's Wife by when this Discourse was?

Mr. Mowb. No, she was in Town, she did not go down with him at all.  
L. C. J. Are you Mr. Bolron's Wife?—Mrs. Bolron. Yes.

L. C. J. Well, what do you ask her?

Coll. Mrs. Bolron, pray do you know Mr. John Smith?

Mrs. Bolron. Yes, I do know him.

Coll. What can you say of him?

Mrs. Bolron. He sent several times for my Husband and Mr. Mowbray to my House, something he would have them be concerned in, some Business he had in hand.

L. C. J. When was that?

Mrs. Bol. Within these three Weeks, since he came up from York-Affizes.

Coll. You may see there was an Understanding between them then.

Mr. Just. Jones. Did they go accordingly?

Mrs. Bolron. Now and then they have gone to him, but they knew his Business, because they had Discourse with him, as they said, upon the Road, and they would not go.

L. C. J. Would you ask her any thing else? What do you know more?

Mrs. Bolron. Nothing, for I am not one that stirs much abroad.

Coll. Call Mr. Everard.

L. C. J. What do you ask him?

Coll. As for Mr. Everard, I need not ask him whether he knows him, for they know one another well enough. But Mr. Everard, that I would ask you is this, What do you know of Mr. Smith, and of this Contrivance against me?

Mr. Ever. Mr. Smith I have been to see of late, and he told me, he knew of no Presbyterian or Protestant Plot, and when my Lord Howard was tried, that is, the Bill brought against him, he said, he wondered how my Lord Howard could be guilty, and that both himself and I were joined as Evidence, to that Jury, only to put a gloss upon the Evidence; for, says he, I have nothing material to say.

Coll. Mr. Everard, do you know any thing more concerning him, what he hath said at other times concerning me?

Mr. Ever. I have told you already, what I have heard him say, that he thought there was no Protestant or Presbyterian Plot, and that now of late within this little while.

Coll. Pray, Sir, was there not some Discourse betwixt Justice Warcup and you in Lincoln's-Inn Walks?

Mr. Ever. Is Justice Warcup an Evidence here?—L. C. J. No, no.

Coll. 'Tis but the Evidence of a Presbyterian Plot; therefore pray, Sir, what was the Discourse between Justice Warcup and you? What would he have had you do?

L. C. J. I think it is not material, there is nothing of Mr. Warcup in his Trial.

Mr. Ever. If the Court does allow of it, I will freely tell it.

Coll. My Lord, the Papists Design is to make a Protestant Plot to turn off their own, and they begin with me; but if I should go, they would not be satisfied with me, they would be at others.

L. C. J. There is nothing concerning a Presbyterian or Protestant Plot in the Case.

Coll. My Lord, if there be no Presbyterian Protestant Plot, and others to join in it, how could I do it myself? 'tis impossible I should have such a Design of seizing the King, and improbable I should speak it. Now, my Lord, this Man was solicited to come in for an Evidence of such a Plot.

Mr. Ever. That is true.

L. C. J. I tell you 'tis not material, Mr. Warcup is not concerned in your Trial.

Mr. Ever. Justice Warcup would have persuaded me to have sworn against some Lords a Presbyterian Plot; but I deny that I know any such thing of them.

Coll. The Papists Aim is not at me only, but at others.

Mr. Serj. Jeff. We have nothing to do with what you and Justice Warcup talked of. For Example's sake, my Lord, let us have no Discourses that concern third Persons brought in here.

L. C. J. Would he have persuaded you to say any thing that was not true?

Mr. Ever. He did not say positively those Words; but this he said, I knew several Lords—

Mr. Just. Jones. Now here is Mr. Justice Warcup's Fame traduced behind his Back, in the Face of the Country, and it is nothing to this Cause before us.

Coll. My Lord, I desire to know what he knows of these Things, and that he may speak it out; 'tis a material thing for me and others: Here is a Design of the Papists to turn a Plot upon the Protestants; they begin with me, and if they have my Blood, who may feel the effects of it next I cannot tell.

L. C. J. Truly I think it not material to your Case, and indeed it is of ill Consequence to have any Man traduced behind his back, as Mr. Warcup is.

Coll. My Lord, Macnamarra told me, that that Man would have seduced him to have retracted his Evidence; upon my Salvation 'tis true.

L. C. J. We meddle not with Macnamarra neither, he is no Evidence against you.

Coll. Macnamarra hath sworn against me at the Old-Bailey, and at the finding the Bill; but they have laid him by upon some trick or other. I desire Mr. Everard may tell what he knows.

Mr. Ever. I would not reflect upon any Person, nor will I answer it, if the Court do not think fit.

Coll. My Lord, this is foul Play, if I die myself for my Country's sake, I can do it freely, and the Will of God be done; I would have the Truth out for the sake of the Protestants.

Mr. Ever. I am very willing to tell the Truth, if the Court think fit.

L. C. J. I see not that he says Mr. Warcup would have had him swear that which was not true.

Mr. Ever. But this he said, if the Court will allow me to speak it, Justice Warcup said, that certainly there was a Presbyterian Plot, and such Things; and that some Lords, some of the Protestant protesting Lords must be guilty of it; and, said he, certainly you know much of it, you know such and such Things, therefore you may safely swear it, since you know it; so by argument he would prove first there was a Plot and Combination among those Lords, and then said he, this you may safely swear.

Mr. Just. Jones. What is this to your Purpose, Mr. Colledge? only Mr. Warcup's Name is brought upon the Stage when he is not here to vindicate himself.

L. C. J. Would you ask him any thing else?

Coll. If he does know any thing more of any of them, I desire he would speak it.

Mr. Ever. Concerning Mr. Haynes, he told me it was necessity that drove him to speak any thing against the Protestants, and the hard P. and the Gratitude he did receive from the Citizens.

L. C. J. Where did he tell you this?

Mr. Ever. In the Fields near Gray's-Inn.

L. C. J. How long since?

Mr. Ever. About three Weeks ago. I asked him, Mr. Haynes, said I, I would not draw you from your Testimony in any thing, but how can this be congruous to what you have said formerly, that you knew nothing by them? The Truth is, said he, I will not say much to excuse myself, but my Wife was reduced to that Necessity, that she begg'd at Rouse's Door, and craved some Salary, and Mr. Rouse would not give her any; and said he, mere Necessity drove me to it.

Coll. He found better Pay in another Place.

Mr. Ever. And, says he, 'tis Self-Preservation in the next place; for I was brought in Guilty when I was taken up, and therefore I was obliged to do some things to save my Life.

Coll. Pray, my Lord, and Gentlemen, observe what this Gentleman says, Haynes takes this Course to destroy innocent Persons for his own Preservation.

Mr. Ever. Besides, he told me there is a Judgment impending upon the Nation, said he, either upon the King, or upon the People, I know not which; but these Irishmen's swearing against them, is justly fallen upon them for their Injustice against the Irish in ousting them of their Estates.

Coll. So he did it then by way of Revenge; for his Countrymen; I have nothing of their Estates, I am sure; therefore they had no Cause to swear against me. But, Mr. Everard, have you any more to say concerning any of them?

Mr. Ever. No more concerning those Persons that have sworn against you; I can say no more.

Coll. As to Dugdale or Turberville?

Mr. Ever. No, indeed.

Coll. As to this Presbyterian Plot, Sir?

Mr. Ever. If the Court does allow concerning other Persons; but I would not intrude any thing but what the Court shall think fit.

Coll. I know not but they may come in against me; therefore pray tell what you know. Mr. Everard, do you know any thing more? Pray let me know what you know.

Mr. Ever. Nothing of any Person that has appeared against you as yet, but what I have told you.

Coll. They may do so, Sir.

L. C. J. And then we may properly hear him to them, and not before.

Coll. I desire to know who they are; pray let me know their Names?

Mr. Ever. Fitz-gerald.

L. C. J. He hath been no Witness here.

Coll. Call Thomas Parkhurst.

L. C. J. What do you ask him now he is here?

Coll. What do you know concerning Mr. Dugdale?

Mr. Park. Sir, the latter end of the last November, when the Parliament sat at Westminster, several times Mr. Dugdale having promised me his further Narrative to publish, which he printed, I met him several times; one time I met him at Richard's Coffee-house, and it was towards the Evening before we went away; he told me and Mr. Symonds, that he was to speak with Dr. Tongue; and he told us, that this Dr. Tongue did lie at Mr. Colledge's; and he having spoke the Day before, and several times, of the Danger he was in of his being assassinated by the Papists, Mr. Symonds and I offered to go with him, and we took a Coach; for we did not know where Mr. Colledge lived: He had then a Rheum in his Eyes, and was not well; so we accompanied him to Mr. Colledge's to speak to Dr. Tongue. It was the Evening when we went; and whilst we took a Pipe of Tobacco, in our Discourse we were speaking of the Times, and the Danger of the Papists; so Colledge took down a Steel-Hat, that hung up there, which he said he had, and he said he had a quilted Coat of defensive Armour, and he said he had a Blunderbuss in his House, and two Pistols. But I little thought of any thing of this; neither did I know well what I was subpoena'd down for: But these Arms I saw in his House, and it was only in Discourse that he was provided against the Papists; so I put the Steel Hat upon my Head, and pulled it off again, and so did Mr. Symonds.

Coll. Did I say any thing, Sir, who I had those Arms against?

Mr. Park. At that Time there was no Discourse in the World, but of the Danger of the Papists; and he said he was provided for them, if they did come to make any Disturbance.

L. C. J. When was it, Sir?

Mr. Park. It was about the latter end of November, I have the Narrative that I printed, which was the 23d or 24th, and I have no Directions but that to remember the exact time. So we carried Mr. Dugdale home again in a Coach, and gave him a Pint of Wine at his Lodgings.

L. C. J. This does not contradict Mr. Dugdale at all.

Mr. Park. Mr. Dugdale does own this for a Truth.

Mr. Serj. Jeff. So may any body own it.

Coll. Where is Mr. Symonds? Pray, Sir, what do you know of Dugdale?

Mr. Symonds. What about, Sir?

Coll. I have your Name here, Sir, but I know not for what.

Mr. Symonds. I can say the same that Mr. Parkhurst did; that I suppose is the Business. All I know of it is this; I was with Mr. Parkhurst and Mr. Dugdale at Richard's Coffee-house some time in November; I think it was about the printing of Mr. Dugdale's further Information; and Mr. Dugdale was saying, Dr. Tongue had sent for him, but spoke to him if he was fearful of some Danger in going alone; so we proffered to go along with him, and we took a Coach at the Coffee-house Door, and went with him to Dr. Tongue, who lodged at Mr. Colledge's. When he came into the Room, Mr. Parkhurst and I thought fit we should in civility withdraw, which we did; and Mr. Colledge brought us down into another Room, where we sat and took a Pipe of Tobacco, and talked about the common Discourse of the Times, about the Papists, and the Danger from them, there hung up in Mr. Colledge's Room some Arms; what they were, I dare not charge my Memory with to swear particularly; but I do think there was a Silk Coat of Mail, and there was a Cap of Steel, and as I take it, it was covered with Cloth.



or some such Thing, what else I can't well say; I think there was a Blunderbuss and a Case of Pistols. And all the Discourse that I remember then, was only this, speaking of the Papists, and some Fears as if there would be an Insurrection amongst them, said he, Let the Papist Rogues begin when they will, I am ready to defend myself for one. This is all I know.

Coll. Pray, Sir, how long ago was this? Dr. Tongue died before Christmas at my House.

Mr. Sym. I cannot tell exactly when it was; but during the Session of Parliament I am sure it was, and, as I take it, in November, the latter End.

Coll. So then, pray, my Lord, see that these Arms they charged me withal, were provided before Christmas.

L. C. J. But there is nothing that Contradicts Dugdale's Testimony in all this.

Coll. It does sufficiently contradict him.

L. C. J. I do not see that this does at all contradict what he hath said; but do you observe what you will upon it, when you come to make your Defence.

Stranger. A Gentleman below desires you to call Mr. Yates.

Coll. Pray, Sir, what do you know concerning Dugdale?

Mr. Yates. I know that Mr. Dugdale sent for me to a Coffee-house to bespeak a Pistol for you, and told me, that when I had made the Pistol, I should deliver it to Mr. Colledge, and Mr. Dugdale promised to pay for it when I had done it. Now some time after I did some small Matter for Mr. Dugdale, cleaned his Pistols, or some small Business, and Mr. Dugdale asked me, if I would have a Pint of Wine, which I agreed to; and being at the Tavern, Mr. Dugdale asked me, if Mr. Colledge's Pistol was done. I told him, no, it was not, as yet. So I asked Mr. Dugdale, because he had promised to give Mr. Colledge a Pistol, what Obligation there was betwixt Colledge and him, that he should give him a Pistol? To which he answered, that Mr. Colledge had been serviceable to him, in lending him a Pair of Pistols to ride withal sometimes: So he gave him a Pistol to satisfy him for the wearing of his Pistols now and then. I thought, said I, Mr. Colledge did impose upon your Good nature too much, not but that I believe Mr. Colledge is a very honest Man, and stands up for the Good of the King and the Government. Yes, said Mr. Dugdale, I believe he does, and I know nothing to the contrary.

Mr. Att. Gen. When was this?

Mr. Yates. A little after the Parliament sat at Oxford; for I never knew Mr. Colledge before Mr. Dugdale set me at Work for him.

Coll. Mr. Yates, pray, was there nothing in the Coffee-house about one that he asked to go with him, when he said he knew nothing against me?

Mr. Yates. I heard one say—

Mr. Serj. Jeff. You must speak your own Knowledge, you must not tell a Tale of a Tub of what you heard one say.

Mr. Yates. I heard it affirmed—

Mr. Serj. Jeff. By whom?

Mr. Yates. By a Person in the Coffee-house.

Mr. Serj. Jeff. Who was that Person?

Mr. Yates. By one of the Servants of the House.

L. C. J. This is no Evidence at all; if you know any Thing of your own Knowledge, speak it.

Mr. Serj. Jeff. Is he here?—Mr. Yates. No, I think not.

Mr. Just. Jones. How long do you think must we sit here to hear other People's Stories?

L. C. J. If you know any thing of your own knowledge, I say, speak it.

Mr. Att. Gen. Pray let me ask you that Question again; When was it that he said he believed he was an honest Man?

Mr. Yates. It was about three Weeks after the Parliament at Oxford.

Coll. Then he does me Wrong now; for if I were an honest Man then, cannot be true that he says of me.

L. C. J. Who do you call next?

Coll. Pray, my Lord, who hath been sworn against me?

L. C. J. There is Stephen Dugdale, John Smith, Bryan Haynes, Edward Turberville, Sir William Jennings, and Mr. Masters.

Coll. Call Mr. Clayton, My Lord, at his House it was I lay in Oxford, and that Dugdale says I spake some of the treasonable Words. Pray, Sir, do you know what Time I came to Oxford?

Mr. Clayton. I remember it very well, it was at the Time the Parliament sat at Oxford, about two or three Days after it began.

Coll. Pray what Arms did I bring to your House, Sir?

Mr. Clayton. As to the Matter of Arms, there was no other but a Sword and a Pair of Pistols, a Pair of Pistols in his Holsters, and his Sword by his Side.

Mr. Att. Gen. Was there no Silk Armour?

Mr. Clayton. I saw none, if it please you; such a Thing might be.

Coll. My Lord, I continued at his House from my coming in to my going out, and that was till after the Parliament was dissolved; and I came after they were sat: But hark you, Mr. Clayton, Mr. Dugdale says, he was with me at your House, did you ever see him there?

Mr. Clayton. I remember I have seen Dugdale at my House, but never in your Company.

Coll. Did you sell any Mum?

Mr. Clayton. No, I never did sell any in my Life.

Coll. Because he says, we had Mum there.

Mr. Clayton. I never saw him there with you, nor changed a Word with him as I know of.

L. C. J. Was he never in the Company of Colledge at your House?

Mr. Clayton. Not that I saw.

Mr. Just. Jones. You don't know all the Companies that come into your House?

Coll. My Lord, I am told there are some that came from the Town where I was born, that know me, and have known me for 24 or 25 Years together; if you think that material for me to prove whether I am a Protestant or no.

L. C. J. If you will make that out, you may: But 'tis your Loyalty that is in Question. If you will produce any that can make it appear, that you used to honour the King in your Discourses, or so, that is something.

Coll. If I am a Protestant, then the Design is plain, these Men swear to make a Protestant Plot, and turn the Plot off the Papists.

Mr. Serj. Jeff. What Church do you frequent in London, to hear Divine Service?

Vol. III.

Coll. I have received the Sacrament several times, Sir George.

Mr. Serj. Jeff. When were you last at the public Church?

Coll. I hope I may be a Protestant if I have not gone thither; but however I do use to go to Church.

L. C. J. Well, call whom you will.

Coll. Is Thomas Deacon there?

Mr. Deacon. Yes.

Coll. He lives, my Lord, in the Parish where I was born. If you please, Mr. Deacon, to give my Lord an Account what you know of me from my Childhood.

Mr. Deacon. I have known Mr. Colledge ever since he was a Youth; he was born in the Town where I live.

L. C. J. Where is that?

Mr. Deacon. At Watford, a Town in Hertfordshire. There he lived till he was a Man, and married a Neighbour's Daughter of mine, and lived there while he had two Children; I never knew but that he was a very honest Man, frequented and kept to the Church of England all along, and paid every Man his own.

Mr. Att. Gen. How long is it ago since he left that Place?

Mr. Deacon. I can't directly tell how long it is, truly, but I think 'tis eighteen Years since you left Watford.

Coll. 'Tis fourteen Years ago.

Mr. Just. Jones. You say fourteen, and they say eighteen.

Mr. Deacon. I say, I can't exactly tell.

Coll. But, Mr. Deacon, I have been in your Country lately.

Mr. Deacon. He used to come there once or twice a Year generally to see his Friends. I have heard him declare himself against the Popish Church always very much.

L. C. J. Did you never hear him talk against the Government?

Mr. Deacon. No, never in my Life.

Mr. Serj. Jeff. Nor against the King?

Mr. Deacon. Nor against the King.

Mr. Just. Jones. Was he in your Country the last Easter?

Mr. Deacon. I think it was about Easter he was there.

Mr. Just. Jones. Was he at Church there then, and received the Sacrament?

Mr. Deacon. I know not whether he was there on the Lord's Day or no: He did quarter at another Town, at Busby, where he has a Brother-in-Law.

L. C. J. Well, call another.

Coll. Mr. Whitaker.

L. C. J. What is your Christian Name?

Mr. Whit. William.

L. C. J. What do you ask of him?

Coll. Whether he knows me and my Education?

Mr. Whit. Sir, I have known him this 26 Years: I knew his Parents, I know his Mother, she lives now at Watford: I have known his Behaviour to be very civil and good; a very good Churchman he was when he lived with us; and I have enquired, and find he has the same Reputation in the Parish where he last lived in Black-Friars: He was no Jesuit nor Papist, I dare aver; he hath flouted them and mocked them with their wooden Gods, and the like; for he could never endure that Persuasion.

L. C. J. He is not questioned for that, but for Treason.

Coll. Did you ever hear me speak any thing against the Government?

Mr. Whit. I never knew any ill Behaviour of him in my Life.

Coll. But did you ever hear me say any thing against his Majesty or the Government?

Mr. Whit. Never, that I know of. I knew him a Soldier for his Majesty, in which Service he got a Fit of Sickness, which had like to have cost him his Life; he lay many Months ill, to his great Charge.

Mr. Serj. Jeff. Where was it he was in his Majesty's Service?

Mr. Whit. At Chatham Business.

Coll. It was under my Lord Rochester. But, my Lord, I have a Testimonial under the Hands of seventy People of Watford, to give an Account of my good Behaviour.

Mr. Just. Jones. He hath been gone thence these eighteen Years.

Mr. Whit. He hath come there almost every half Year, sometimes three or four times in a Year, because his Mother lives there now, and he came to pay his Respects to her. His Children lived and went to School with us.

L. C. J. Come, who do you call else?

Coll. Mr. Neale.

Mr. Neale. I can say no more than the other Men before me. I know the Man, he was bred and born at Watford, he lived there several Years, he married a Wife out of the Neighbourhood, frequented the publick Worship.

L. C. J. How long ago is this?

Mr. Neale. Sixteen or seventeen Years ago. But then he used to come once or twice a Year into the Country.

Coll. Did you ever hear me speak any thing against the King or the Government?

Mr. Neale. No, never in my Life.

Coll. How long is it ago since you were in my Company last?

Mr. Neale. When you were in Town last, I never heard you say any thing that was ill.

Coll. How long ago is it since we were at the White-Hart together?

Mr. Neale. It was about Spring.

Coll. I said right, my Lord, I was there about Easter. Pray, did you ever hear me speak for the King?

Mr. Neale. Truly, the Discourse we had I never used to keep in my Mind; but I never heard him speak any thing against the King or the Government.

L. C. J. Were you much conversant with him?

Mr. Neale. When he came down to give his Mother a Visit, and see his Neighbours, we used always to see one another.

Coll. Pray, will you call Mr. Tanner and Mr. Remington.

[Mr. Remington stood up.]

Mr. Remington. I say, I have known Stephen Colledge these forty Years, and I have known that he always was an honest Man. He was a Soldier some time, but he always went to Church, was no Conventicler; and used to visit his Neighbours when he came down to see his Mother, and was always looked upon to be a very good Man.



Mr. Serj. Jeff. You say, you knew him a Soldier, pray when was that?  
Mr. Remington. About the Time of *Harwich* Business. That is all I can say.

[Then Mr. Tanner stood up.]

L. C. J. Come, what say you? What do you ask him, Mr. Colledge?  
Mr. Tanner. I have known Stephen Colledge from a Child, Forty Years, he was born at *Watford*, his Father worked with my Father, and great intimate Acquaintance we had with him; and saw him very often; I never knew any Fault in him, and I never heard a bad Report of him in all the Town of *Watford*.

Mr. Serj. Jeff. Have you seen him at Church lately?

Mr. Tanner. No, I have not.

Mr. Att. Gen. I would fain know whether this Man hath been at Church himself: he looks as if he had not.

Coll. I know not whether he hath been at the Church you mean, or no; but he may be an honest Man and a Protestant for all that.

L. C. J. Call another.

Coll. Mr. Peter Norreys.

L. C. J. What do you ask him, Mr. Colledge? here he is.

Coll. Do you know any thing concerning Mr. Smith?

Mr. Norreys. I was once in the *Hercules Pillars*, where was Sir *William Waller*, *Macnamarra*, Mr. *Ivy*, and five or six of us together: And Mr. *Smith* was there, and we were talking concerning the Parliament approaching at *Oxon*.

Mr. Serj. Jeff. Tell the Names of the rest.

Mr. Norreys. Sir *William Waller*, *Macnamarra*, Mr. *Ivy*, *Lewes*, *Macnamarra's* Brother, and I, and Mr. *Smith*.

Mr. Serj. Jeff. Well said; we don't meddle with any of these, but Mr. *Smith*.

L. C. J. Was *John Smith* there?

Mr. Norreys. He was there.

L. C. J. Well, go on then.

Mr. Norreys. We were talking of the Parliament at *Oxon*: Says Sir *William Waller*, Most of the Parliament-men are afraid to go up to the Parliament. Truly, said Mr. *Smith*, I hope they will be provided to go, if they do go. Says Sir *William Waller*, I shall be provided with the rest of my Friends: And Mr. *Colledge* said, I will go up with the rest of the Parliament-men; I shall be provided too, says most of the Evidence: Says Sir *William Waller*, Will you go along with me, and I will provide you with an Horse? Said he, I have a Horse of my own, and if it please God I will have nothing else to do, but to go with the Parliament, and I will not neglect it. This was all the Discourse of the Company for that Night.

Coll. Did you hear Mr. *Smith* say any thing against me?

Mr. Norreys. No, not a Word at all.

Coll. But this were a material Evidence against others of the Confederates, if they had been examined.

Mr. Norreys. My Lord, I was at the *Amsterdam-Coffee-House* the twenty-third of *June* last, and there was Mr. *Dennis Macnamarra*; said he, Will you go, and I will give you a Pot of Ale.

L. C. J. There is nothing of *Dennis Macnamarra* in Question before us. If you have any thing to say against any of the Witnesses that have been sworn, go on with your Evidence, we must not hear Stories of other People.

Coll. He would speak against some Men that have sworn against me, but are left out, for some Reasons I know not. Pray call Mr. *Thomas Norreys*.

L. C. J. What do you ask him?

Coll. My Lord, he knew me in this Country some fifteen or sixteen Years ago.

Mr. T. Norreys. My Lord, I have been acquainted with Mr. *Colledge* about sixteen or eighteen Years, and he hath always carried himself very civilly and well, and he kept to the Church for a considerable Time, as duly as any Parishioner did.

L. C. J. How long have you known him?

Mr. T. Norreys. This sixteen Years.

L. C. J. You live in this Country; don't you?

Mr. T. Norreys. Yes, at *Aylworth*.

Coll. I was at *Astrop-Wells* last Year. I believe Mr. Justice *Levinz* saw me there.

Mr. T. Norreys. Yes, I was there with you.

Coll. We did discourse commonly then concerning the Papists. Pray, Sir, did you find me inclined to the Popish Interest?

Mr. T. Norreys. You spoke very much against them.

Coll. Did you ever hear me speak against the King or the Government?

Mr. T. Norreys. No, I never heard it; for if he were my Brother, I should have discovered it.

L. C. J. How often have you seen him?

Mr. T. Norreys. Very often, and conversed much with him.

Coll. My Lord, as to the Papers charged upon me that they were mine, I declare I know not of them. *Dugdale* says, I owned them, and the Letter and several Prints; but truly, my Lord, I had done myself a great Injury if I had done or owned those Things he hath charged me withal. I never could make a Picture, nor never did draw a Picture in my Life; and that very Person that he says I owned I got it to be printed by, hath denied it before the King and Council; for he there testified, that he did not know the Person that caused it to be printed.

L. C. J. How came you to have so many seized in your House?

Coll. My Lord, here is *Elizabeth Hunt*, the Maid by whom they were taken in, and who can give you an Account of it. I cannot deny but that they were in my House; but that I was the Author, or did take them in, is as great a Mistake as ever was made. Call *Elizabeth Hunt*. I do not know whether *Curtis* be in Town; but this I am confident, he was examined before the King and Council, and he and his Wife denied it.

L. C. J. He shall be called if he be here.

Coll. I know nothing of the printing of them, nor was I the Author of them.

L. C. J. They were dispersed by you up and down.

Coll. That they were in my House, I believe, my Lord; and this Woman will tell you how, my Lord. Pray tell the Court how these Papers that are called the *Rary Shew* came to be in my House.

El. Hunt. A Porter brought three Bundles to our House, and asked, whether my Master was not within. I told him, no, he was not. Said

he, These Papers are to be left here; said I, Who do they come from? said he, 'tis all one for that, you must pay me, and I must leave them here; so I gave him Six-pence, and he left the Papers, but I never saw the Man since nor before. And, my Lord, I never read them what they were, but I saw they were such Sort of Prints as those.

L. C. J. How long was it before they were seized?

El. Hunt. A matter of seven or eight Weeks.

Coll. My Lord, it seems they were put in a Box and left in my Counting-House: I never touched them, but there they staid, for ought I know, till they were taken.

L. C. J. You were *Colledge's* Servant, were you not?

El. Hunt. Yes, my Lord.

Coll. My Lord, I never knew the Printer nor the Author; but I heard a Man was in Trouble about them, upon a Bye-Law in the Stationers Company.

Mr. Att. Gen. How came you by that Original?

Coll. Have you it there? I know of none was produced: But if I were a Person concerned, it were no Treason, and, my Lord, I hope you will do me that Justice, to let the Jury know they are not Treason, none of these Papers. And I do declare I know nothing of the Original, the Printer, nor the Author.

L. C. J. You spend Time in making Observations out of Order of Time: When you have given your Evidence, then make your Observations.

Coll. I confess, I may err, as to Matter of Order, for I never was in this Capacity before. But pray, do you tell the Court how the Papers came there, and all the Transactions. For I was a Prisoner when they came and searched.

L. C. J. No, it was eight Weeks before you were taken they were left there.

Mr. Serj. Jeff. Did you not tell your Master soon after they were left there?

El. Hunt. No.

Mr. Serj. Jeff. Within what Time did you tell him?

El. Hunt. I believe it was a Week or a Fortnight.

Mr. Att. Gen. Where was your Master all that Time?

El. Hunt. He was in the Country.

Coll. My Lord, I did see them there, I must confess, I do not deny but I saw them there, but I knew not whence they came, nor whose they were. Nor did I ever intend to meddle with them, nor concern myself about them. What have you to say more?

El. Hunt. Concerning Mr. *Dugdale*, if I may speak:

L. C. J. Ay, go on.

El. Hunt. I went to receive the Money of Mr. *Dugdale*, that he owed my Master, and asking him for it, he said, he would pay me such a Time To-morrow Morning, if I would come for it; but when I came, he had not the Money ready for me. Sir, said I, I think it is very hard that you should keep my Master's Money from him, and yet you go and swear against his Life too: What do you think we shall do at home in the Family, if you keep my Master's Money and he be in Prison? Said he, There is a great deal of do about my Swearing against your Master, more than needs; but as I hope for Salvation, I do not believe Mr. *Colledge* had any more Hand in any Conspiracy against his Majesty, than the Child was born. Here is *Dugdale*, let him deny it if he can.

Mr. *Dugdale*. As I hope for Salvation I did not say so.

El. Hunt. Upon my Salvation 'tis true what I say.

Stevens. This was the Maid that hid her Master's Papers when they were searched for.

Mr. Serj. Jeff. Be quiet; art thou got into Dialogues with the Maid now?

Coll. Mr. Stevens, 'tis well known what a Man you are to propagate Witnesses. My Lord, she gave me an Account of this in the Tower, before I came away, that *Dugdale* desired to speak with Mr. *Smith*, and told her, that nothing that he had to say would touch my Life.

El. Hunt. As I am alive 'tis true.

L. C. J. Mr. *Dugdale* denies it now.

El. Hunt. He is not a right Man if he denies it, for he told me it twice.

Coll. I told Mr. *Smith* of it, when he had leave to come to me: I told him what the Maid said he had to say to her, and this was three Weeks ago; said he, I will speak with him with all my Heart, if he has a Mind to speak with me; for he hath said that he hath nothing against her Master that he can touch an Hair of his Head, nor nothing that can touch his Life, that he knew nothing of a Plot or Contrivance against the King; and if I could help it, I had as lieve have given a hundred Pounds I had never spoken what I have. This he said to her.

L. C. J. You tell her what to say.

El. Hunt. Sir, he does not tell me; for Mr. *Dugdale* said those Things to me.

Coll. This is an Account I had when I was Prisoner; I could not reach her.

L. C. J. Do you deny what they say to be true, Mr. *Dugdale*?

Mr. *Dugdale*. My Lord, she came to me for Money; I told her I had it not ready, but would pay her: And in the Shop, before the Apprentice-Boy, she desired of me that I would write two or three Words which would say against her Master; and I told Mr. *Graham* of it. So said I cannot tell, I have not the Papers, nor what Informations I have given against him. So she came again the next Morning, and she was at me write down what I said. I wonder, said I, your Master will send you not he as good fend Mr. *Smith*, who is his Counsel? And this was the Words we had.

El. Hunt. My Lord, I do solemnly assure you, he said he would write down what he had said against my Master, and would fain speak with Mr. *Smith*; for there was more ado made about it than needs.

Mr. *Dugdale*. Mr. *Graham* can tell what it was; for I came and told him immediately.

L. C. J. Did you tell her you had nothing to say against her Master that would touch his Life?

Mr. *Dugdale*. I could not say that I had said nothing against her Master; for she asked me that I would write down what I had said; but I told her I knew not what was Treason, that must be referred to the Court.

Mr. Just Jones. Did he speak it openly or privately to you?

El. Hunt. He did not speak it loud; no Body heard him but myself.

Mr. *Dugdale*.



Mr. Dugdale. It was in the Shop, and the Apprentice-boy was by.

Mr. Just. Levinz. Was this after he had been at the Old Baily, or before?

El. Hunt. Yes, it was after he had been at the Old Baily, and after he had been at Oxen too.

Mr. Just. Levinz. Then it was before the Court, what could be made of it?

Coll. She hath gone forty Times for the Money I lent him out of my Pocket; and I lent him that when I had little more myself.

El. Hunt. I did tell him, Mr. Dugdale, if you can't let me have my Master's Money, if you please to tell me what you have made Oath against my Master. Said he, I can't let thee have it now; but thou shalt have what I have to say against him: I will draw it up in Writing, and thou shalt have it To-morrow Morning. The next Morning I came to him again, and, said I, I am come again; what must I do? said he, I have no Money; such an one hath not helped me to it. Sir, then said I, I hope you will be as good as your Word, to let me know what you have made Oath against my Master. Said he, I was about it Yesterday, but could not do it: But, Sweetheart, said he, (and took me by the Hand) I will give you a Copy of it To-day at Ten of the Clock; and if I do not, I will tell it thee by Word of Mouth. So I came to the House at ten, and staid till eleven, but did not see him.

Mr. Just. Jones. You had a great Mind to be tampering.

El. Hunt. The first Time, he asked me who was his Counsel; I told him Mr. Smith; then, said he, I have a great Desire to speak with him. So I told my Master of it.

Coll. My Lord, you see it is but black and white, all this whole Contrivance upon me. She hath proved I knew nothing of the Papers; and indeed I did not.

L. C. J. Do you call any more Witnesses?

Coll. There is my Brother-in-Law that received those Papers. Call George Spur and Sarah Goodwin.

[Mrs. Goodwin appeared.]

Coll. Do you know any Thing of the Papers that were carried to my Brother George Spur's?

Mrs. Goodwin. Yes, I do. The Saturday after my Brother's Confinement, about eight of the Clock in the Morning, I having heard of it, came into the House, and in a Quarter of an Hour's Time in comes a Waterman, and desires an Handful or two of Shavings. I knowing not who he was, nor what he desired them for, told him, he should have them; so he went up to the working Shop to gather them, for he pretended that to be his Business.

L. C. J. Whose Waterman was it?

Mrs. Goodwin. A Waterman, I suppose, that belonged to his Majesty, for he had a Coat marked with R. C.

Coll. This is after I was in Custody?

Mrs. Goodwin. Yes, it was the Saturday after. So no sooner had he the Shavings, but he goes out of the Shop, and comes in again with three of his Majesty's Messengers; and they made Enquiry after Papers, and I being innocent of concealing any Papers, or any Thing, said, I know of none; so they came to one Box that had the Tools for the Men to work with, and they demanded the Keys. I told him I knew not where the Keys were. So they went to the next, and found it open, but nothing did they find there; there was a Bed wherein formerly my Brother's Servants did lie: Said one to the other, Look well whether there be not something hid in that Bed; said I, I suppose there is no such Thing as you enquire for: If you please, you may take off the Clothes, and gave them free Toleration to look; but for the Chest, I would not deliver the Keys, because the Man was not there that owned it. In their searching, they flung down the Waincoat, and did a great deal of Damage to his Goods. Gentlemen, said I, I suppose you have Order to search, but none to spoil a Man's Goods. When they were gone, having found none, they threatened, God damn them they would have them, for there they were. But I being ignorant of the Concealment of the Papers, I requested the Maid and my Brother's Son, whether they knew of any Papers, and they satisfied me they knew of some Prints that were brought by a Porter, to be left at my Brother's, but they knew not whence they came, nor what they were: And the same Answer gave my Brother's Son, that he did not know whose the Papers were. But since his Father's Confinement they were laid up sure and safe, for they knew not what they concerned. Upon this, my Lord, my Brother-in-Law, George Spur, he comes into the House, and if it please your Honour, I requested him to carry them into the Country to his House, to secure them till we knew what they did concern, and who they did belong to. Whereupon he replied, my Lord, That he was fearful to carry any Thing out of the House; said I, if you will please to take them of me, I will carry them out of the House for your Security, because his Wife looked every Hour (being with Child) when she should be delivered, and he was fearful of troubling her. So I carried them out of the House, and delivered them to him.

L. C. J. To whom?

Mrs. Goodwin. To my Brother-in-Law, Mr. George Spur. So at my going out, after I had delivered them to him, in my Way back again, I found a small Paper-Book, and a small Parcel of Writings; who dropped them, or who laid them there, I cannot tell. But taking them up unadvisedly, I put them among the Prints which I carried out, I delivered them to my Brother-in-Law. This is all I have to say as to the Papers.

Stevens. Three Parts of what she hath said is false.

Mr. Serj. Jeff. Well, hold your Tongue.

Stevens. Mr. Atterbury is here, my Lord, that searched the House.

Atterbury. Be pleased to give me my Oath, I will tell you what passed.

Mr. Att. Gen. We don't think it material, but you were sworn before, and up.

L. C. J. Tell the Manner of finding the Papers. This Woman gives an Account of a Waterman that came in, pretending to fetch Shavings.

Atterbury. Upon my Oath it was not so. The Waterman was a Waterman that brought me and two more of my Fellows, and the Water-

man followed us into the Yard, but came after us: And being ordered to look for Papers, I did search the House; for I had Intelligence that there were Papers there, but I did not find them there. But upon finding the first Papers, I made the more diligent Search, but could not find the rest I most chiefly sought after.

Mr. Serj. Jeff. Did the King's Waterman take any Shavings by himself?

Atterbury. We were all together, we did not move out of any one Room, but together; this Gentlewoman was in the House when I came, and there was a little Child, a Girl, and this Maid was there.

Mr. Serj. Jeff. Did you come for Shavings there, pray, Mr. Atterbury?

Atterbury. No, I did not.

Mrs. Goodwin. The Waterman did though first.

Coll. Call George Spur. (But he did not appear.) But, Mr. Atterbury, before you go down, pray tell the Court, did you take any of these Papers at my House, or at my Brother-in-Law Spur's House?

Sewel. My Lord, I took the Papers, and I took them at Busby at Spur's House. And this Woman carried out one Half to Spur, and the Maid carried out the other.

L. C. J. When did he carry them?

Mrs. Goodwin. The same Day they searched for them, for my Brother came in at the same Time.

L. C. J. How do you know Spur carried any away?

Mrs. Goodwin. He carried none out of the House, I carried them out of the House, and delivered them to him.

L. C. J. Then they were in your House?

Mrs. Goodwin. They were in the Compting-House.

Coll. My Lord, if they were in any other Place, I know not how they came there, for this was all done after I was a Prisoner; and Sewel says, they were removed when I was a Prisoner. Where is George Spur?

Mr. Serj. Jeff. It is admitted they were at your House, and taken thence, and afterwards carried to Spur's.

Coll. They carried them abroad, and handed them from one to another, and took them into the Country, I know not what they did with them: But, my Lord, I neither know the Printer, nor the Author, I declare it upon my Life.

L. C. J. Have you any more Witnesses?

Coll. No, my Lord, I have not.

L. C. J. Will you that are of Council for the King call any more?

Mr. Att. Gen. One or two, if you please, my Lord. Call John Shirland. And it is to this Purpose; it seems very lately Mr. Bolron would have tempted him to have forsworn himself.

Coll. My Lord, I hope, if they bring in any Persons of new Evidence, I may have Leave to contradict them.

L. C. J. You need not fear but you shall be heard to them.

Mr. Att. Gen. We shall prove Bolron to be a Suborner of Witnesses; and that the Jury may know what he is, he and Mowbray have gone to give Evidence at several Trials, and the Jury would never believe \* them when they were on their Oaths.

Mr. Serj. Jeff. I think it needs not, Time hath been spent enough already.

Coll. No Whispering, good my Lord.

Mr. G. Jeff. Good Mr. Colledge, you are not tell me my Duty here.

Mr. Just. Jones. Is it not lawful for the King's Council to confer together?

Coll. Not to whisper, my Lord; all ought to be spoken out.

L. C. J. Nothing ought to be said to the Jury indeed privately.

Mr. Att. Gen. But shall not we talk among ourselves?

Coll. No, I hope not, of any thing that concerns my Trial.

Mr. Just. Jones. You are deceived in that.

Coll. I think 'tis Law, that all ought to be publick; I beg your Pardon, if I am in the Wrong.

Mr. Att. Gen. Swear John Shirland. (Which was done.) Pray give the Court and the Jury an Account of Bolron, what you know of him.

Shirland. Bolron, my Lord, last Whitsun-Tuesday would have given me ten Pounds and a Horse to go down and swear against Sir Miles Stapleton. I was to swear I was suborned by his Friends, and several other Persons which I have discovered upon my Oath.

L. C. J. Is this Man sworn?

Mr. Att. Gen. Yes.

L. C. J. Now call Bolron to confront him.

Coll. He offered you an Horse, as much as I offered Turberville an Horse, and I never offered him an Horse in the World.

[Then Bolron appeared.]

L. C. J. Is this the Man, Shirland?

Mr. Att. Gen. Did he give you ten Pounds to swear?

Shirland. He bid me ten Pounds and an Horse to swear against Sir Miles Stapleton.

Mr. Just. Jones. Did you ever see him, Bolron?

Mr. Bolron. Yes, my Lord, he was to have been a Witness against Sir Miles Stapleton, and he pretended that he was suborned by Sir Miles, or some of his Friends.

Coll. What are you, Sir? Mr. Bolron, what is Mr. Shirland?

Mr. Bolron. He is a Man that lives by his Shifts: He hath been whipt in Bridewell.

Coll. Do you know him, Sir? What is he?

Mr. Bolron. Even an idle Man.

Shirland. You, once when you saw me, drew your Sword on me, because I would not do as you would have me:

Mr. Bolron. I profess, my Lord, 'tis not so.

Mr. Att. Gen. Here is Mr. Smith, hear what he says against Mr. Bolron.

Mr. Smith. As we were coming up along, he was speaking to me of Colledge, and told me, he had as much to say against him as any Body, and if I would speak for him, he would evidence against Sir John Brooks for a Discourse at Ferry-Bridge.

Mr. Bolron. I never did hear any such Thing.

\* What the Attorney here says, and the Solicitor, in summing up the Evidence, repeated after him, is notoriously false; for at the Summer-Assizes at York the Year before, Thomas Tbowing was convicted solely upon the Testimony of these very Men in their own Country, as was afterwards executed.



Mr. Smith. No Man in your own Country will believe you.

Coll. They believed you no more, it seems, neither.

L. C. J. Do you call any more Witnesses, Gentlemen?

Mr. Serj. Jeff. No, I think we need not.

L. C. J. Look you, Mr. Colledge, as I understand it, the King's Council will produce no more Witnesses. You may make what Observations you will upon the Evidence to the Court, and then must let them make what Observations they will to the Court; and then we will give the Charge to the Jury.

Coll. My Lord, I have only Innocence to plead; I have no Flourishes to set off my Defence. I cannot take the Jury nor the Court with an Oratory; I am unhappy in those Things. But, my Lord, I do declare, as to my own particular, in the Presence of God Almighty, that as to whatsoever is sworn against me, as to the seizing his Majesty, providing Arms, or having any Design either at Oxford or London, or any other Place in the World, to seize upon the Person of the King, or to rebel against the Government established; I vow to God Almighty, I never had such a Thought in me: 'Tis a Truth, my Lord. My Lord, they have sworn desperately against me, and it hath appeared, I think, by very credible Persons, that they have contradicted one another. It hath been proved that this was a Design; that they were tampered withal; that they complained they were in Poverty, that they wanted Maintenance; and they did confess they were tempted to come over to swear against Protestants: And now the Lord knows, they have closed with it, and they begin with me. I hope the Jury have taken Notice, that I have contradicted them sufficiently in what they have sworn; and that it is not possible, if I had a Grain of Sense, for me to discover myself to be such an one to Haynes, that was an Irish Man, and should speak all the Treason that he hath galloped through at first Sight, that as soon as ever I saw him, that I should speak so to him; I hope you will consider whether it consists with common Reason, when there would be no Probability of making any Use of him in the World. My Lord, all my Witnesses that I have brought, your Lordship can, and I hope will sum them up better than I can; for I declare it, I have been so concerned, that I have not been able to write half of it down. But I think there is never a Man that hath sworn against me, but hath been sufficiently confuted by Persons of Integrity and Honesty, Men of Principles, and Men of Religion; they are such, my Lord, that make Conscience of what they say: They are Persons altogether unknown to me, most of them, as to what they had to say, it was what they offered voluntarily; and I am certain they had nothing but their bare Charges, if they had that, for their Pains, in coming hither; and, my Lord, there is no Probability that they should come and attest any Thing that is false, for me who am a Stranger, for nothing: No Man is a Knave for nothing, as I believe these Men are not. My Lord, I do declare it, I was bred a Protestant, and have lived so; I am so to this very Day; I have been a Lover of the Church of England, and of all the fundamental Points of Doctrine believed in it; I own the same God, the same Saviour, the same Gospel, and the same Faith; I never had a Prejudice against any Man in the Church in my Life, but such as have made it their Business to promote the Interest of the Papists, and such I must beg Leave to say there are amongst them: For there is no Society in the World without some bad Men; and these do promote the Interest of the Papists, by dividing the Protestants, and allowing none to be true Protestants but those that are within the Church of England established by Law; which is a Notion so wide I could never close with that. I never had a Prejudice against any Man but a Knave in my Life. I have heard, I confess, some of the Dissenters, and I have found very honest, just, pious, godly Men among them; Men free from Oaths and all Debauchery; Men that make a Conscience of what they say: Not like some Persons that say they are of the Church of England, that carry themselves in their Lives and Actions so as that no credit can be gained to the Church by them. My Lord, I have been an hearty Man against the Papists; I have been an hearty Man as any Person of my Condition, for Parliaments, which I look upon to be my Birth-right, and under God Almighty, the Bulwark of our Liberty; and I am sorry if any Man should be an Instrument to create a Misunderstanding betwixt the King and the Parliament; For I always thought I served my Country, when I served the Parliament, and I served my King when I served my Country. I never made any Difference between them, because I thought them both one. I had the Honour to be entrusted by them before, and upon that Account I came voluntarily down hither. I rid my own Horse, I spent my own Money, and eat my own Bread; I was not beholding to any Man for the value of six Pence all the while I was here. My Lord, I have ever since the Plot hath been discovered, endeavoured with all my Heart, and all my Power, to detect and come at the very Bottom of it: I have spared for no Time nor Pains, what lay fairly in my way, in every Thing to encourage those that discovered the Villainies of the Popish Plot against the Life of the King, and for the Subversion of the Religion and Government established by Law. Now certainly it is not strange to the World; for I think all Christendom is aware how plain the Popish Plot hath been proved. These Men that swear against me, were they that used to follow me sometimes; they would say, it was they that had come to save our Lives, and yet we let them want Bread. That Argument, my Lord, was so fair, that I thought it unreasonable to see them starve: And I have said sometimes to some honest considerable Men, That it was hard they should have this to say of us, that they should want Bread to eat that were the King's Evidence, to detect a Popish Plot wherein we ourselves were concerned; and that when they had saved our Blood in our Veins, they should be suffered to starve. And one Time, I think, some three or four Gentlemen of the City did give me 42s. or 40s. and 18d. or thereabouts; which I did distribute amongst them: And they never came to me in my Life, but to seek Relief, they knowing that I had a general Acquaintance. And sometimes they thought it might be fit to petition the Common-Council of the City of London to take care of them: Sometimes they would speak to me to speak to particular Men, that care should be taken of them. At other Times indeed it was not this Sort of Dis-

course they had with me; but they would pretend they had something to discover of the Popish Plot, and so they would apply to me as a Man of some Acquaintance. And the first Time I saw Haynes, was upon such an Account, the beginning of March last, and it was thus: I was at Richard's Coffee-House at Temple-Bar, where Macnamarra did desire me to go out, and I should hear such a Piece of Roguery I never did hear in my Life, against my Lord Shaftesbury. So I did go out with them, and I called Captain Brown, who is since dead, to go with me; and we went to the Hercules-Pillars, and Haynes there discovered what I told your Lordship before, a Design to destroy the Parliament at Oxford; an Army that was to land in the North, and another in Ireland, and the Duke of York was to be at the Head of them. My Lord, after I had heard all out, he did desire us all to conceal what he had said till the Parliament sat, and then he would not only discover this, but much more. He at the same time told us, that there was a Design of Fitz-gerald's against my Lord Shaftesbury to take away his Life, and he was employed to come to his Cousin Macnamarra to get him over to join in the Design, and he should never want for Money, if he would but come over and do as they would have him. After he had discovered himself, Sir, said I, You are a Stranger to me; and I never saw him before in my Days, if he had seen me I can't tell: But, Sir, said I, either this is true, or this is false. If it be true, said he, 'Tis all true, and much more. So he up and told us much of Coleman, and of the Reconciliation between the Duke of Ormonde and the Duke of York, and how he came to be Lord Lieutenant of Ireland, and how Plunket came to be Primate, and by Means of whom, and the Letters that passed, and how so much a Year was given to Plunket for carrying on the Correspondence; and he told us so much, that I did wonder to hear any Man talk after that rate. After I had heard what he had to say, I told him, Sir, said I, this is either true or false that you have said: If it be true, my Lord Shaftesbury shall know it to night; for I will not conceal such a Thing concerning a Peer of the Realm: And if it were a Colour, he should know of it. And I did send him word that Night; and, said I, Sir, you ought to go, for your own Security and our's too, to swear it before a Magistrate. Said he, if I should, I should be discovered. Said I, I can't think you would be discovered. If you swore it before Sir George Treby or Sir Robert Clayton, they will not discover you. So he agreed he would swear before Sir George Treby; and he did go accordingly: But he being out of Town, I cannot have the Affidavit to produce it. There was a Letter sent last Saturday Night to Sir George to Bristol, and I hoped he might have been here to Day. This was the first Acquaintance I ever had with Haynes. The next Time I heard of him, was upon this Occasion. Ivy comes to me in Richard's Coffee-House, and, said he, Yonder is the Man that made that Discovery, which I told you before that Haynes had said to me; it was about a Month or three Weeks before the Parliament was at Oxford. After the Parliament was dissolved at Oxford, Ivy comes to me, and I think it was betwixt the two Terms wherein Fitz-Harris was arraigned and tried: I know not the Names of them; but he comes to me, and tells me he had been with my Lord Shaftesbury, and that there was a Friend of his that would confirm all that Fitz-Harris had discovered concerning the Murder of Sir Edmundbury Godfrey; and, says he, my Lord of Shaftesbury hath sent me to you to acquaint you with it. Where is your Friend? Said I. He is without, said he. So we went out of the Coffee-House; and when we came out of Doors, there was this Haynes: We went to the Crown Tavern without Temple-Bar; it was in the Forenoon. When we came there into the Room, he examined all the Corners and Cupboards, and Places about the Room, to see that no Body was there. When he thought all was secure, he began to tell me he had been to acquaint my Lord Shaftesbury that there was a Friend of his that would discover the whole Intrigue of the Murder of Sir Edmundbury Godfrey, all that Fitz-Harris had said, and much more. And he desired me that I would intreat my Lord Shaftesbury to be instrumental to get him his Pardon before he discovered particularly. Then I told him, I think 'tis convenient, said I, that you discover something in Writing, and under your Hand, what you can say. He was not willing to do that. Can you believe, said I, that my Lord of Shaftesbury will betray you? Says he, I will not trust any Body; I shall be assassinated. Said I, if you will not give it to any Body else, Will you give it to Mr. Michael Godfrey, Sir Edmundbury Godfrey's Brother? You can have no Jealousy of him that he will ever discover you. Said he, if my Lord Shaftesbury will engage to get me a Pardon, I will tell the whole Truth. Said I, I will go to my Lord, and acquaint him: So I went to both my Lord and Mr. Godfrey; and Sir Edmundbury Godfrey's two Brothers both met me at my Lord of Shaftesbury's House. This is the Thing that he tells me; he would have me get my Lord's Protection and a Pardon for Treason; but the real Truth is, he sent me upon this Errand. So I came to my Lord Shaftesbury, and the two Mr. Godfreys were in the Room; and after I had told my Lord what Discourse I had with him, says my Lord Colledge, these Irish Men have confounded all our Business; and thou must have a care they do not put a Trick upon us: This must be a Trick of the Papists to ruin us; and if they have such a Design, if they will put it upon you and I, they are Fools. Upon your Lordship, said I, they may; but I am a poor inconsiderable Fellow. Says my Lord, I'll tell you, Mr. Godfrey, Mr. Colledge hath not only been an honest Man, but an useful and an active Man for the Protestant Interest. So I told my Lord how far I had gone with him, and that I desired it might be put in Writing. Says my Lord Shaftesbury, if he will put it in Writing, I will once again; for I have been since I saw the Fellow with my Lord Maclesfield, and my Lord Chief Justice Pemberton, and my Lord Chancellor, and I have told them that there is such a Person in general, but I know not the Man; as indeed my Lord did not, for only Ivy was the Person betwixt them that my Lord knew: And I told them, says my Lord, that he can confirm all that Fitz-Harris has said concerning the Death of Sir Edmundbury Godfrey, and that he would prove my Lord of Danby in it, if he might have his Pardon; and my Lord said, They promised to speak to his Majesty that it might be granted. But some Time the la-



end of the Week I heard it would not be granted; and both of these Men followed me to know what they should do. Said I, my Lord *Shaftesbury* knows not but that it may be a Trick; and said I to *Ivy*, I wonder why he should conceal it all this while, being a necessitous Man, and so forth proffered by the King in his Proclamation. Why, says *Ivy*, do you think there is no Truth in it? Says *Ivy*, 'tis not my Judgment, but my Lord *Shaftesbury's* and Mr. *Godfrey's* Judgment too. He answered me again, *Fitz-Harris* hath desired he may have a Pardon granted for himself and a *Frenchman*; and if so be there were nothing in it, Do you think he would move for a Pardon? Says I, Did Mr. *Fitz-Harris* move for *Haynes's* Pardon? How do I know that, says *Ivy* again: *Fitz-Harris's* Wife told me so. Says I, let me speak with *Fitz-Harris's* Wife, let me hear her say so, and I will believe you. The next Day he did bring her to me to my House: And this was the Time and the Occasion that brought *Fitz-Harris's* Wife, and *Haynes*, and *Ivy*, and Mr. *Fitz-Harris's* Maid to my House; and I never saw *Fitz-Harris* in my Days, till his Trial, nor had any Communication with him. But, my Lord, she did talk with *Haynes*, and confirmed it to me, that her Husband had desired a Pardon for him: Why then, said I, he would do well to discover what he knows to my Lord *Shaftesbury*; for I was with my Lord, and he says he will meddle no more, unless he will give it under his Hand what he has to say. And he did confess to me in my own Yard (for there we were together) that he saw my Lord of *Danby* come into the Chapel at *Somerfet House*, when the Body of Sir *Edmundbury Godfrey* lay under the Altar.

L. C. J. Here hath been nothing of this made appear by Proof.

Coll. My Lord, I only tell you which way they introduced themselves into my Acquaintance.

L. C. J. You may observe what you will upon the Evidence, as we told you; but you ramble from the Matter you are to speak to. And as we told Mr. Attorney, that what he said should go for nothing, unless he made it out by Proof; so must we say to you, what you say goes for nothing, further than you have proved it. Now you have quitted the Proof quite, and not spoke to that, but run into other Stories. I would have you keep yourself to your Proofs, and make your Observations upon them.

Coll. 'Tis, as I humbly conceive it, to my Purpose, but I hope my Ignorance may excuse me if I err. I tell you the Truth of things, thus it was.

L. C. J. Truth! Why if your's or any Man's Word in your Case should go for Truth, no Man that stands at a Bar, could be convicted: For every Man will say he is an honest Man, and all the plausible Things in the World. Make you your Observations upon the Proof, that is proper for you to do; and urge it as well as you can, and to the best Purpose you can: But to tell us long Stories of Passages between you and others that are not a whit proved, that is not usual, nor pertinent.

Coll. I thought it had been to the Point, when this Man pretends to have a Familiarity with me, to shew how his Acquaintance begun.

Mr. Just. Jones. Why do you think 'tis an Answer to him in what he proves upon his Oath? Have you proved one Jot of it? Not that I have heard. 'Tis your Part to sum up the Evidence on your own Side, and to answer that which is proved upon you, if you can. Do that, and we will hear you speak to it as long as you can. But to tell Stories to amuse the Jury with that are not proved, and to run out into rambling Discourses to no Purpose, that is not to be allowed, nor ever was in any Court of Justice.

Mr. Just. Raymond. Not one of your Witnesses have mentioned any Thing that you say.

Mr. Just. Levinz. I wonder, Mr. Colledge, you should forget yourself so much: For you found Fault with Mr. Attorney at the beginning for opening the Evidence, and you were told, and the Jury were told at your Request, that what he said, and did not prove, passed for nothing. But must tell you, 'tis much worse in your Case: For Mr. Attorney only opened what he might prove afterwards, but your Observations are upon that hath been proved already; and yet you run out into Stories of what hath not been proved at all, after our Proof is past.

Coll. Sir, I could not prove this otherwise than by *Ivy*, who hath been sworn against me.

Mr. Just. Jones. Would you have the Jury to believe you upon your Word?

Coll. There is no more than his Oath against me; and why my Oath, being an *Englishman* and a Protestant, should not be taken as well as his that is an *Irishman*, and hath been a Papist, I know not.

L. C. J. You go upon that Ground that your Word is to be taken, as appears by your Defence; but I must tell you, all the Course of Justice ere destroyed, and no Justice against Malefactors were to be had, if the Word of him that is accused should pass for Proof to acquit him.

Coll. My Lord, I have given your Lordship an Account of these Fellow's Conversations; and what other Proofs to make I know not: For I saw not what they would swear against me, and I had not Witnesses in my Pockets to confront them.

Mr. Just. Levinz. Well, the Jury have heard it over and over again, first on your Request, that nothing is to be taken Notice of that is not proved.

Coll. Pray, my Lord, then as to *Haynes*. My Lord, I do observe that there was a Witness for me that did prove, he owned he was one that was employed to make a Protestant Plot, and another that did hear him swear, and him, he would swear any thing against any Body for Money, for it was his Trade.

Mr. Just. Levinz. Now you are right; speak as much as you will as your Proofs.

Coll. My Lord, I think *Turberville* and *Dugdale* swear as to the tenth of *March* in *Oxon*; I desire it may be proved I was in *Oxford* the tenth of *March*.

Mr. Just. Jones. You yourself came down the middle of *March*.

L. C. J. I do not remember that they said the tenth of *March*.

Coll. Did not the Indictment say so?

Mr. Att. Gen. It is only in the Indictment.

L. C. J. As to the Time mentioned in the Indictment, it is not material; that is the constant Rule in Trials upon Indictments; as if an Indictment be laid to be stole, the tenth, if it be proved the Prisoner stole it

another Day, it will be sufficient, the Time is not material; the Question is, whether the Indictment be true in Substance. Mr. Colledge, my Brothers will all tell you that the Law is so.

Mr. Just. Levinz. Though it is laid the tenth of *March*, yet if it be proved the first or twentieth before or after, it is all one; so the Thing be proved, they are not bound to a Day.

Coll. My Lord, the Punctilios of Law I know not, but it was the twenty-fourth or twenty-fifth ere I came down.

L. C. J. Well, go on, Sir.

Coll. *Dugdale* says I meant by the Word *Rowley*, the King.

Mr. Just. Jones. He does so.

Coll. How does he come to know, that by that Word I meant the King?

L. C. J. That we did ask him, and he says, you used so to expound it.

Mr. Just. Jones. Why, look you, he said you and he used to have frequent Communication concerning the King, and you did most frequently speak of the King by the Name of *Rowley*.

Coll. But, I say, my Lord, I never spake of the King by the Name of *Rowley* in my Life.

Mr. Just. Jones. You say it, and he swears the contrary.

Coll. I don't remember that he says, I declare it so; but he said, I meant it; for if I had declared it, then it had been the same Thing for me to have named the King downright.

Mr. Just. Levinz. Look you, Mr. Colledge, as to that, when any Witnesses had done his Evidence, you had Liberty to cross-examine him.

L. C. J. Would you have him called up again to clear this?

Coll. Yes, if you please.

L. C. J. Stand up, Mr. *Dugdale*. I understood by your Testimony, when Mr. Colledge and you discoursed of the King, you sometimes discoursed of him by the Name of *Rowley*, and that he explained that Name to be the King.

Mr. *Dugdale*. The first Time I ever heard what *Rowley* meant, was from him; for I asked him what he meant by the Name *Rowley*; I heard it before, but I did not understand it.

Mr. Just. Jones. Where was it?

Mr. *Dugdale*. At *Richard's Coffee-House*.

Mr. Just. Jones. What was the Answer he made you?

Mr. *Dugdale*. He said it was the King.

Coll. Upon what Occasion did I explain it to you?

Mr. *Dugdale*. Upon the Account of the Pictures.

Coll. I know not which of the Pictures has the Name of *Rowley* in it.

Mr. *Dugdale*. It was then we were talking of one of the Pictures you brought in *Rowley*, and *Mac* and *Mac* was the Duke of *York*, and *Rowley* was the King.

Coll. Upon what Picture was it, that I took Occasion to explain the Name *Rowley* to you?

Mr. *Dugdale*. I am not certain.

Coll. Remember, you have an Account to give as well as I.

Mr. *Dugdale*. You have so many Pictures, that I can't remember them; you have shewed me more than have been produced in Court.

Coll. Where had you that Picture from me that they call the *Rary Shew*?

Mr. *Dugdale*. Truly I received of them twice at *Richard's Coffee-House*.

Coll. Twice, do you say?

Mr. *Dugdale*. Yes, two of them at two several Times; for you having promised me one, you brought it according to your Word.

Coll. When was that?

Mr. *Dugdale*. I did not keep an Account of the Day of the Month; and another I do remember, at the *Green Dragon Tavern* you thrust into my Pocket, and Mr. *Baldwin* was by at that Time. And, said he, Mr. Colledge, you will be so open, that you will come to be discovered at last.

Coll. Then will I be willing to die for it, if he and I and Mr. *Baldwin* were at the *Green Dragon Tavern* together. When was it that I gave you any Pictures there? Was it since the Parliament at *Oxon*?

Mr. *Dugdale*. Do I charge you since the Parliament?

Coll. I never saw the *Rary Shew* before the Parliament at *Oxford*.

Mr. *Dugdale*. I do not say it was that; you gave me one of the others.

Coll. 'Tis strange you will stick to nothing; When was it we were at the *Green Dragon Tavern*?

Mr. *Dugdale*. We were there before the Parliament sat at *Oxon*; it was since *Christmas*.

Coll. What Picture was it I gave you there?

Mr. *Dugdale*. It may be, I can't remember which of them it was, it was not *Rary Shew*; I suppose you gave me one of them concerning the Bishops, where you put Bishop *Mew* kissing the Pope's Toe; for it was a Bishop with a Patch on, and that you told me was Bishop *Mew*.

Coll. I put it, did I make it?

Mr. *Dugdale*. You said you were the Author.

Mr. Just. Jones. Mr. Colledge, will you consider upon what Mr. *Dugdale* was called up about, the Exposition of the Name *Rowley*?

Coll. I did examine him, and he hath contradicted himself; for he hath said at the *Green Dragon Tavern* I gave him a Picture of *Rary Shew*.

Mr. Just. Jones. He said no such Thing; he said, he did not know which it was.

Coll. I am certain he meant that then when he spake it; for he named it before, that he had two from me at *Richard's Coffee-House*, and one I thrust into his Pocket at the Tavern; and I say, I never was at the *Green Dragon Tavern* with Mr. *Dugdale* and Mr. *Baldwin*, nor in the Tavern these three quarters of a Year.

Mr. Just. Levinz. Mr. Colledge, you were in the right Way just now to manage your Evidence, in Opposition to the other Evidence; go on in that Way.

Coll. My Lord, I don't know well what was said, for I could not hear half, nor write a quarter of it; but, my Lord, I hope your Lordship hath taken Notes of it, and will remember it for me. You are my Counsel as well as my Judges.

L. C. J. In Matter of Fact we are.

Coll. My Life and your Souls lie at Stake to do me Justice; therefore I hope you will take Notice of what I have not had the Opportunity to write down. I have observed that every one of my Witnesses have spoken materially to contradict what they have said, to prove that this



was done for Money, and that there hath been Confessions from every Man of them, that they were hired to do it; that they did it for a Livelihood; and one of them said, it was a good Trade, damn him, he would do any Thing for Money: And I hope then you will consider the Improbability, that I should speak to an *Irishman* whom I had never seen before in my Life; and that I should at the first Dash utter that Treason that he gives in Evidence, I think it cannot consist with any Man's Understanding to believe me so mad or so weak.

Mr. Just. *Levinz*. That is as to *Haynes* only.

Coll. As to *Smith* now, I suppose, it does not come within the Reach of the Statute; for the Dinner that was made by Alderman *Wilcox*, was made before last July was Twelve-month; all the Witnesses do say it was before *Christmas*, and Dr. *Oates* says, it was in the Summer; I know it by a very good Observation; because I went to *Astrop* Waters after that; and I saw Sir *Creswell Levinz* at the *Wells*: Now, Sir, you were there before this Time Twelve-month. So then whatever he says I said to him there, I cannot be charged withal by the Statute, more or less, if I had never a Witness against him; but I have Witnesses that have contradicted him sufficiently that he is forsworn in that; and if so, he is not to be believed in any Thing else; for he says, he and I went to the Coffee-house together, and we discoursed such and such Things, which is not above Half a Bow's Shot, and he made it, I say, a Quarter of a Mile's Discourse; if I had had all the Talk, the Discourse could not be so long, though he had said never a Word: So you see what a Kind of Witness he is. And Dr. *Oates*'s Brother did say, That I did go along with Dr. *Oates*, and offered to be one of his Guard, and I did say so, and went along with them; but Mr. *Smith* he came after. And as to what he says, he is sufficiently confuted; that is, about the going into Cabals after Dinner; for it is proved, that I fell asleep behind the Table, and Dr. *Oates* was discoursing with Mr. *Savage* upon Points of Divinity; but I take no Notice of it, neither did I see *Smith* any more; but he went away, and so did the rest of the Company. But, my Lord, when *Haynes* was taken, *Smith* came to me that Day to my House at the *Ditch-side*, and sends in a Man for me, his Man; I was writing in my Parlour, and drawing the Design for *Wainscotting* *Alhallow's* Church, a Platform for it; this Man told me, His Master would speak with me, and *Haynes* was taken that Morning: But, as I understand since, it was by Agreement and his own Consent, though he hath pretended otherwise. You hear, says he, *Haynes* is taken? Yes, says I, I do, he hath been ever since nine o'Clock before the Secretary upon Examination, and he was till five o'Clock at Night examining, said he: I believe he confesses a great deal, said I: Of what, said he? Of some Design of the Protestants, said I, What, against the Government? I do not know what they may affright him into; he is a great Rogue, if it be true all that he hath said of himself: He says, he was concerned in the *Fire of London*, and knew of a Design to destroy the Protestants then; of a Rebellion that was to be in *Ireland*; of *Plunket's* being made *Primate*, and a great many of those Things: So that if he speaks Truth, he hath been a great Rogue, and as he hath pretended also, he was a great Coward. So then, I believe, he may say any Thing to excuse himself; says Mr. *Smith*, I with you are safe: This was the very Night before I was taken.

Mr. Just. *Jones*. Have you proved any Thing of this?

Coll. My Lord, pray give me Leave to tell you what is Proof.

Mr. Just. *Jones*. You are not to repeat this, unless you prove it, Sir.

Coll. He spake cautiously to me, as if he would have intimated to me, he would have had me run away. Said he, I believe you are not safe, I would have you take Care of yourself: For you were concerned with him. Now, my Lord, if I had been a guilty Person, I had Time enough to get away; and to prove this, I can only say, this was betwixt him and I. But, my Lord, you hear, Dr. *Oates* says, that this very *Smith* did swear he would have my Blood, and that was upon this Occasion of my vindicating *Sampson*, whom he had struck and abused; and I asked, Why he did it? Said he, I value no Man's Life, if he affront me, if 'tis any Man in *England*, I value him not. My Lord, upon this Occasion the Words rofe between us; and when he came out of Doors, and was going away, Dr. *Oates* said, he swore he would have my Blood, and that was the Occasion of his speaking that Blasphemy.

L. C. J. Dr. *Oates* did say so.

Mr. Just. *Levinz*. Well, you are right now, if you will go in that Way.

Coll. My Lord, this is for *Smith* and *Haynes*, that *Haynes* should say it was a good Trade, and damn him he would swear any Thing for Money, and that *Smith* should swear, damn him, he would have my Blood. I cannot sum up the rest of them, for I have not them here.

Mr. Just. *Jones*. There is *Turberville*, and *Dugdale*, and *Smith*; we will help you as to the Persons.

Mr. Just. *Levinz*. Pray keep to the Business, and do not run out.

Coll. Pray, my Lord, I have one Thing to say about *Smith*; he says, I shewed him my Arms, which I have had for any Time almost these three Years, ever since the Plot brake out. I have been armed ready to oppose the Papists, and I did my Duty in the City in Person in the Trained-Bands; but *Smith* says, these Arms were to destroy the King's Guards; but he does not prove that I was Confederate with any other Person; but instead of that, there were other Persons that say, with his own Mouth, that he did not believe there was any Protestant Plot; nay, he did believe I said it only in Wantonness. This is all; then how probable was it, that I myself should seize the King, or destroy his Guards?

Mr. Just. *Jones*. You remember Captain *Brown*, Captain *Clinton*, and Don *Lewes*, Mr. *Colledge*.

Coll. Did he swear they were all in my Company at *Oxon*?

Mr. Just. *Jones*. Yes, *Dugdale* did.

Coll. My Lord, Captain *Brown* and *Lewes* were Friends to my Lord *Howard*, with whom and other Company I came down to *Oxon*, and they lay with me at the *Chequer*, and they were in my Company, because they were guests in the House, and we came along together; but he does not say they were either of them armed more than myself, nor was he ever in Company with us; how then does he know we were in a Conspiracy?

Mr. Just. *Jones*. Because you told him at *London* first that they were such Persons.

Coll. I never saw *Lewes* in my Days, till I saw him that Morning I

came down from *Oxon*; and *Brown* I was not acquainted with a Fortnight before. This is a Truth; but however, they have sworn a Plot upon me at *Oxon*, and then come and prove I declared these were the Men, and spoke such and such Words at *London*; I desire your Lordship's Judgment in this Matter of Law, whether what be done at *London* can be sufficient Matter of Proof in Law to maintain an Indictment against me at *Oxon*? And if not, they do not prove legally that I have spoken such Words. Besides, I conceive 'tis not a good Proof, because there is but one Witness.

L. C. J. Yes, look you, there are two Witnesses, *Dugdale* and *Turberville*, as to what you said at *Oxon*, and two Witnesses as to what you said at *London*, *Haynes* and *Smith*, who testify what you said you would do at *Oxon*. Now in Case you came to *Oxon* with any such Intention, that coming to *Oxford* is an Overt-Act, and the Witnesses that speak what you said in *London*, is Evidence to maintain the Indictment here, and to prove what your Intention was.

Coll. Does that become an Overt-Act, if I go to *Oxon* upon an honest Occasion, any other Occasion, though I had said those Words before?

L. C. J. If you came with that Intent to join with others, and with a real Purpose to seize the King, that is the Overt-Act, and the Words before prove the Intention.

Mr. Just. *Jones*. He declared it himself by his Words.

Coll. *Smith* says, that about a Week after *Wilcox's* Dinner, I discoursed with him at the *Ditch-Side*, that comes not within the Compass of the Statutes. Then there is twice of the three Times he speaks of; the last Day, I do not remember when it was.

L. C. J. All was in *London* that *Smith* speaks of you.

Coll. How comes that to be Proof here? Then nothing he says is to go for any Thing.

Mr. Just. *Jones*. Nothing will serve your Turn, we have declared our Opinions once already, that if the Witnesses swear true, here are two Witnesses; nay, if one were of what was done at *London*, and the other of what was done at *Oxon*, if they be to the same Treason, they are two Witnesses in Law.

Coll. My Lord, I observe one Thing upon *Turberville's* Evidence; he swears there was a Discourse in the Room when *Brown* was upon the Bed; but afterwards, if your Lordship minds it, he says, I discoursed with him as he and I lay upon the Bed. Before he said, when *Brown* lay upon the Bed, and in the Room, and afterwards when we lay upon the Bed.

Mr. Just. *Jones*. Both the one and the other.

Coll. But he first said one Way, and then the other.

Mr. Just. *Jones*. Whilst *Brown* lay upon the Bed, and when he was gone, whilst you both lay upon the Bed.

L. C. J. We will do you no Wrong; therefore if you will, *Turberville* shall stand up and clear it.

Coll. My Lord, I believe those that have taken the Passages, can prove he contradicted himself in that.

L. C. J. He said both. But the Jury have taken Notes of the Evidence, and will take Notice of it.

Coll. As to Mr. *Masters*, the Evidence he gives was, he says, that he and I should discourse of the Parliament in 40.

Mr. Just. *Jones*. And the Justifiableness of the late King's Death, that they had done nothing but what they had just Cause to do.

Coll. He swears that I did say to him, that the late Parliament did not cut off the King's Head.

Mr. Just. *Jones*. And you said the last Parliament that sat at *Westminster*, was of the same Opinion with that in 40.

Coll. I dare appeal to Esquire *Charleton*, in whose Shop the Discourse was. I did not know that Mr. *Masters* was to be an Evidence against me; and truly they have taken that Course with me, by which any Man may be destroyed with half this Evidence, were they of good Credit, let his Innocence be what it will. I have been used so barbarously in the *Tower*, kept from all Conversation, and so in an utter Ignorance of what was sworn against me; for else I could easily have disproved Mr. *Masters*, if I had been in *London*, and had Liberty to provide for my Defence; but they have taken a Course to prevent that, and brought me hither, because 'tis impossible I should here defend myself.

L. C. J. You have not offered at any Witnesses to impeach Mr. *Masters's* Credit.

Coll. Mr. *Masters's* Discourse he speaks of was in Mr. *Charleton's* Shop, I durst have appealed to him about it; for I knew if he were here he would do me right. Mr. *Masters* did say, the Parliament cut off the late King's Head. We held a Dispute upon that, which I was not willing to enter into; I said, they did not, and we did then dispute whether they began the War against his Majesty: I said, they did not that I knew of, neither were they the Persons, but the Papists that began that War, and that broke the Treaty at *Uxbridge*, and that the Papists carried it on to that sad Issue, and put it upon the Protestants, that they had the Odium of it; but it was another Sort of Men that carried it on. I said, that I did always understand that Parliament to be an honest Parliament, that minded the true Interest of the Nation, and much of the same Opinion with the Parliament that sat last at *Westminster*. But before I said this, I said they were Persons altogether innocent of the King's Murder, and raising the War against the King; I did always understand that so the Parliament in 40 were.

L. C. J. But they were guilty of a Rebellion, and are declared so by Act of Parliament since his Majesty came in.

Coll. My Lord, I am unacquainted with the Law, I speak only my Sense of it. And, my Lord, I did excuse them as to the Murder of the King, and the Beginning of the War, that according to my Understanding they were not guilty of it; and from thence I did maintain they were an honest good Parliament, and much of Opinion with the Parliament that sat last at *Westminster*, which was for the true Interest of the Nation.

L. C. J. And was that the true Interest of the Nation to cut off the King's Head?

Coll. I did argue that with him some Time, and did tell him that it was the Papists that did all the Mischief.



Mr. Just. Jones. But he says no, upon his Oath, that when he had said the Parliament begun the Rebellion, and the Parliament did cut off the King's Head, you said, the Parliament did nothing but what they had just Cause for, and the Parliament that sat at Westminster was of the same Mind.

L. C. J. Those were his Words.

Coll. Pray let him be called again.

L. C. J. Let Mr. Masters stand up again.

Coll. Pray, Sir, relate the whole Discourse that passed between you and I, whether I did not argue with you it was not the Parliament cut off the King's Head, nor begun the War, but the Papists.

Mr. Masters. No, you did not say any such Thing. We had a great deal of Discourse in the Shop, and under the Arch, and the Thing that was said, Mr. Colledge, was this: You did say to me, that you did justify the late long Parliament of 40, and their Proceedings; and you said, they were a Parliament that did nothing but what they had just Cause for. Said I, How can you be so impudent to say so, when they raised the Rebellion against the King, and cut off his Head? Said he again, They did nothing but what they had just Cause for, and the Parliament that sat last at Westminster were of the same Opinion.

Mr. Just. Jones. I did you no Wrong in repeating the Evidence, you see, Mr. Colledge.

Coll. Did I not first dispute with you that they did not begin the War, nor cut off the King, but the Papists did it.

Mr. Masters. Look you, Mr. Colledge, you would have had it the King began the War.

Coll. Don't you say so; for I said the Papists began the War. Sir, say no more to me than what you will answer to God Almighty; for I always said the Papists did all the Mischief in the late Times; and I wonder, Sir, you would not be so just to his Majesty, as to detect me for what I said then, if you apprehended it to be as you now say; but I am sure you do not, nor could not.

Mr. Masters. Mr. Colledge, it was so far from that, that I was afraid it was of dangerous Consequence, and I gave some Persons of Honour an Account of it; and I was sent to but on Friday last, to know what it was was said, and I was desired and commanded to come down hither.

Coll. Pray, Mr. Masters, you are upon your Oath, do me but Justice, and speak upon your own Conscience; look you to it that you speak the Truth.

Mr. Masters. I will do you all the Right I can in the World.

Coll. Then before the Court do you declare, whether we did not discourse at that Time as I said, for this Discourse was at Mr. Charlton's Shop at the further End.

Mr. Masters. No, it was at the Entrance into the Shop, Mr. Colledge; and did not we go into the Arch, and talk there?

Mr. Serj. Jeff. Mr. Masters, don't trouble yourself, your Reputation is not upon the Level with that Gentleman's.

Coll. I desire he may speak the very Truth, and nothing but the Truth.

Mr. Masters. I do, as near as I can, and do you no Wrong; you did in your Discourse say the Parliament did not begin the War, nor cut off the King's Head.

Coll. You did say to me, they did cut off the King's Head; and I told you no, the Papists did.

Mr. Masters. I think you did say that the Papists had an Hand in it; but, Sir, you have left out the most material Part of our Discourse, which was, that you said they did nothing but what they had just Cause for.

Coll. I do say, and it was my Sense always, that the Parliament did not cut off the King's Head; for they were long out of Doors before that came to pass, and a new unhappy War was begun.

L. C. J. The War was a Rebellion on the Parliament's Part, let us not mince the Matter, and so it was declared by Act of Parliament; and if you argued after that Rate, it shews your Temper, and that you are a very ill Man; for they that justify such Things, as to the Time past, would lead us to the same Things again if they could. Therefore don't go about to palliate it, *ad faciendum Populum*; here it is nothing to the Matter, but only to shew your Principles, and the Jury have heard what Mr. Masters says.

Coll. I was then a Child, and do not know all the Passages, but I speak my Sense.

L. C. J. You should not have justified such Things.

Mr. Just. Jones. Who appointed the High-Court of Justice that tried the King, and condemned him, but the Parliament?

Mr. Just. Levinz. It was the Garbage of that Parliament, I am sure, that is the Rump; but they called themselves the Parliament of England, and the Parliament it was that begun the War.

Coll. My Lord, I did not know, nor don't know, that it is proved yet, that the Parliament were those that did cut off the King's Head. I don't know, Mr. Masters is pleased to say this of me; but I thought no Evil, nor did he understand it so, I believe, at that Time, for he did not seem to take Advantage of my Discourse. I know he talked violently and passionately with me, as he used to do; and for Mr. Masters to say this of me now, is a great Unkindness; for I thought he was so much a Gentleman, that if I had spoken any Thing that had not become me, he would have taken Notice of it then.

Mr. Serj. Jeff. He did then, he tells you.

Coll. Had I known of it, I am sure Mr. Charlton would have done me Justice, and set Things right; but this I say, I did first excuse the Parliament from being concerned in the Murder of the King, or that they did begin the War, but the Papists did it: If it were otherwise, it was more than I understood: And after that I said, I thought that the Parliament that sat last at Westminster did stand up for the People's Rights, after the same Manner that the Parliament in 40 did.

Mr. Just. Jones. What, just after the same Manner, in raising War and Rebellion against the King?

Coll. After I had discoursed it thus, my Lord, as I told you, it could not be understood that I thought that Parliament would cut off the King's Head: And therefore you that are my Jury, pray consider, and take it all together, there could be no such Meaning made of my Words; for I did not conceive that that Parliament were concerned in those Things, but

were a Parliament that stood up for the Rights of the People: Now, if it were so, then the Parliament at Westminster were of the same Opinion.

L. C. J. I tell you, the Long-Parliament's levying War, is declared Rebellion by Act of Parliament.

Coll. My Lord, if there hath been an Act since, that says they were guilty of Rebellion, I declare 'tis more than ever I knew before: This is the first Time that ever I heard of it.

Mr. Serj. Jeff. You are a mighty learned Gentlemen, to talk of those Points indeed.

Coll. My Lord, I desire to know whether any Words that were spoken six Months before they gave their Depositions, can be a sufficient Evidence in Law against me now?

L. C. J. 'Tis upon the Act of the 13th of this King you speak.

Coll. Yes, my Lord, I take it upon that Statute.

L. C. J. I tell you, as to that Part of the Statute which concerns Misdemeanors, there is a particular Clause for Prosecution by Order of King and Council; But as to that Part of the Statute that concerns Treason, it must be prosecuted within six Months, and the Indictment within three Months after.

Coll. What Statute is this Indictment grounded upon?

Mr. Just. Jones. All Statutes that concern Treason.

L. C. J. Upon the Statute of the 25th of Edw. III. which declares the Common Law, and the Statute of the 13th of this King, which when you have done, I will have read to the Jury.

Coll. Then, pray, my Lord, let me ask you one Question, Whether the Statute of 25 Edw. III. does not say, that there shall be two positive Witnesses to Treason?

Mr. Just. Jones. No, but there is another that does.

Coll. I am ignorant of the Law, and therefore I ask the Question.

L. C. J. Well, I will tell you, there must be two Witnesses in the Case, but one Witness to one Fact at one Time, and another Witness to another Fact at another Time, will be sufficient Evidence to maintain an Indictment of Treason; this was told you in the Morning.

Mr. Just. Jones. And it was told you withal, That it was the Resolution of all the Judges in the Case of my Lord Stafford, when he was tried in Parliament.

Coll. They proved Fact in that Case, writing of Letters, and offering Money to kill the King; but nothing of Fact is proved against me, but riding in the Country with Arms that I had three Years before.

L. C. J. We will read the Statute of the 13th, wherein Words are declared to be Treason.

Coll. I pray it may be read, if you please. (Which was done.)

L. C. J. Look you here, To compass or imagine the Imprisonment of the King, and to express it by malicious and advised Speaking, when proved by two lawful Witnesses, is Treason by this Act.

Coll. Now whether you will distinguish, that there must be two Witnesses to distinct places or Times, or whether the Statute intends two Witnesses to every particular Fact and Words.

L. C. J. We told you our Opinion before, That one Witness to one Fact, and another to another of the same Treason, was sufficient. We are upon our Oaths in it, and speak not our own Opinions, but what hath received publick Resolution in Cases of the like Consequence.

Coll. What lies before these Gentlemen of the Jury, as done at Oxon, 'tis but upon a single Testimony.

Mr. Just. Levinz. Nay, Mr. Dugdale and Mr. Turberville both swear the same Thing, your Design to seize the King at Oxon. And it would be the difficultest Thing in the World to prove Treason against any Man, if the Law were not so, and a Man might commit all Sorts of Treasons securely; for to be sure he would never say the same Things before two Witnesses in one Time, and the King would be in no Sort safe; for there would never be two Witnesses to one and the same Thing. But that hath been resolved often and often, over and over again, particularly in my Lord Stafford's Case, as you have been told.

Coll. My Lord, you say the King is not safe upon those Terms, and no private Man is safe in the other Way.

Mr. Just. Levinz. We say, that the Law is so, and there is good Reason for it.

Mr. Just. Jones. We must not alter nor depart from the allowed received Law.

L. C. J. I say, the Thing hath been considered in other Cases, and the Law hath been adjudged and settled. It was so resolved in my Lord Stafford's Case, when the Judges, by the Command of the Parliament, did deliver their Opinion upon that Point moved by him.

Coll. There is nothing of Fact proved against me, but a Pair of Pistols, a Sword, and an Horse.

L. C. J. We have told you the Law, and answered your Question.

Coll. But as the Case stands, if that be the Law, all Society and Conversation must be ruined by it.

Mr. Just. Jones. Pray go on, when do you think we shall have done else?

Coll. However I do not insist upon that so much, as that the Testimonies and Oaths of these Men are altogether invalidated, by substantial Persons that have here testified against them. I do declare upon my Salvation (I have nothing else to say) I am wholly innocent, and the Jury are my Judges, and I beseech them, as they will answer it at the great Day of Judgment, where they must appear as sure as I stand at this Bar now, that they do me right, and go according to their own Consciences; for if a Man shall be sworn against by such Fellows as these are, no Man is safe.

Mr. Serj. Jeff. The worse, the better to be trusted by you.

Coll. I am sure it cannot be thought by Men of common Reason, that I should speak Treason at that Rate that they have sworn, and to such Men, Men of their Profession, Irishmen, and Papists, Traitors that have declared they have been in all Manner of Rogueries, Murders, Plots and Treasons. Therefore, my Lord, I cannot do any more for myself, because I have no Notes, and cannot recite what hath been said for me or against me; but I do depend upon your Lordship, and I hope you will inform the Jury rightly, and do me Justice; and I do pray the Jury, that they will let their Conscience be satisfied, as they are Englishmen, and as they are Christians, to consider how the Case lies with



with me, whether there has not been more Occasion of talking of late, and whether a Slip of the Tongue may be called a premeditated, malicious, advised Speaking. I mean, my Discourse with Mr. *Masters*. He talked with me as hot as Fire, he was so violent, and I did discourse him at that Rate I have told you, and that is Truth, as I have a Soul to be saved: I did excuse the Parliament, that as I understood it, they had no Hand in the beginning of the War, or the Murder of the King. My Lord, as for the rest that have sworn against me so desperately, I must say, that if the Jury did not as well consider my Evidence as their's, yet they might well consider, whether it consists with common Sense and Reason, that I should speak to these Men after this Rate, when I could lay no Obligation upon them, nor have any Confidence in them; necessitous Persons, that could not assist me one Mite, Men that were beholding to me to borrow Money of me, and that eat of my Cost, that I had always been obliging to, and not they to me. But I hope I need insist upon this no further; the whole Nation is sensible what is doing, and what this does signify: They have begun with me in order to the making of a Presbyterian Plot, which they would carry on to stifle the Noise of the Popish Plot; and this is not the 1st, the 2d, nor the 10th Time that they have been at this Game; how many Shams have they endeavoured to raise—

*Mr. Att. Gen.* Who do you mean by they?

*Coll.* The Papists.

*Mr. Att. Gen.* There is nothing of Popery in the Case; they are all Protestants.

*Mr. Just. Jones.* They are all Persons that have lately received the Sacrament.

*Coll.* They were all Papists, and I believe are so still; for Mr. *Dugdale* did justify to me the Church of *Rome* in several Things: And when I told him that they were all Knaves and Fools that were of that Religion, he told me, that many of their Priests were holy good Men.

*Mr. Just. Jones.* Have you proved that?

*Coll.* I can't prove it, it was betwixt him and me, my Lord.

*Mr. Just. Jones.* Then I hope you have done.

*Coll.* If I had sworn against him, he had stood in my Place.

*L. C. J.* Have you done, Mr. *Colledge*?

*Coll.* My Lord, I only desire the Jury to take all into their serious Consideration; I expect a Storm of Thunder from the learned Council to fall upon me, who have Liberty to speak, and being learned in the Law, understand these Things better than I, who must defend myself without Council. I know not whether it be the Practice in any Nation; but certainly 'tis hard Measure, that I being illiterate and ignorant in the Law, must stand here all Day, they being many, and taking all Advantages against me, and I a single Person, and not able to use one Means or another either of writing or speaking. But, Gentlemen, I do declare and protest, as I shall answer it at the Day of Judgment, that as to what these People have sworn against me either as to Words, or as to any Manner of Treason against the King, the Government, the Laws established, I take God to witness I am as innocent as any Person upon Earth. And therefore I must beseech you, be not frightened nor flattered; do according to your Judgments and your Consciences; you are to be my Judges both in Law and Fact; you are to acquit me or condemn me, and my Blood will be required at your Hands. And whatever is said to you by others, you are my true Judges, you must give an Account of the Verdict you give; and therefore you must see that you do Justice, as you will answer it at another Bar, where you must all certainly appear, and the Lord Almighty direct you that you do me true Justice, and I ask no more.

*Mr. Sol. Gen.* May it please your Lordship, and you Gentlemen of the Jury. Here hath been a great deal of Time spent, and truly I think for no other Reason but to divert you from the Matter that is before you, and that you might forget the Evidence that hath been given. And therefore I will briefly repeat it to you, that I may refresh your Memories about what hath been sworn. Gentlemen, the Crime charged upon Mr. *Colledge* is High Treason in imagining and compassing the Death of the King; the Proof of that hath been by a Conspiracy to seize the King here at *Oxon*, which Conspiracy he declared he was in, by shewing Arms prepared for that Purpose, and by coming down to *Oxon* with that intent, that is the Proof of his Design to kill the King.

*Coll.* Is the Conspiracy proved of that, Mr. Solicitor?

*L. C. J.* Mr. *Colledge*, We have had a great deal of Patience with you, you have spent a great deal of Time, you must contain yourself now, and let them go on.

*Coll.* Do not let him do me wrong, my Lord.

*Mr. Sol. Gen.* I will do you no wrong, Mr. *Colledge*.

*Coll.* Sir, there is no Conspiracy proved.

*L. C. J.* Look you, Mr. *Colledge*, you have taken up a great deal of Time, and we have had much Patience, because we consider your Condition, and had rather hear too much, than be hard upon you, and because the Evidence was long and difficult to repeat; now we have heard you, you must have Patience to hear what the King's Council repeat and observe upon it.

*Mr. Sol. Gen.* As I was saying, the Fact that is charged upon him, is a Design to kill the King, the Manifestation of that Design is by preparing Arms to that Purpose, and by coming down to *Oxon* to seize the King here; and that this was his manifest Intent to seize the King, the Proof of it hath been by Witnesses, that I think by and by you will have no Objections against. These Witnesses were *Dugdale*, *Turberville*, *Smith*, and *Haynes*, these are the most material Witnesses to the Treason, there are two other Witnesses indeed, but they are to other circumstantial Matters that I will take Notice of to you by and by, and make my Observations upon them in their proper Place.

*Mr. Dugdale* was the first that was produced, and his Evidence is very full, he proves that Mr. *Colledge* declared to him at the Coffee-House here, that he was come down with an Intent to seize the King, that he had an Expectation something would be done, that he was armed, and that he did advise Mr. *Dugdale* to be armed too, for he was provided for the rooting out of Popery, which he explained himself what he meant by it, that was the Church of *England*, and the King and all his Adherents. He came hither armed for that Purpose, Gentlemen, and did advise Mr.

*Dugdale* to arm himself too, that he did declare to him the King was a Papist, and all his Family were Papists, he was as deep in the Plot, and as guilty of the Murder of *Sir Edmundbury Godfrey*, as any Body else. This was what he declared to *Dugdale* here, and this he swore to you when he gave his Evidence.

The next Witness is Mr. *Turberville*, and he is positive to the Matter that is laid in the Indictment, and swears to you expressly, that he did declare it to him at the *Chequer-Inn*, that they came down here in Expectation of some Sport, that something would be done, that they did expect the King would begin with them; but if he did not, they would begin with him, and they would secure him till they had brought him to Compliance. He shewed him his Arms, that he was ready to engage in that Design, and advised *Turberville* to be ready too. And rather than *Turberville* should not be ready, he offered to procure him an Horse.

*Coll.* Every Man had the same Arms that I had, and I had had them long before that Time.

*Mr. Sol. Gen.* But every one had them not with the same intent. But, Gentlemen, because Mr. *Colledge* interrupts me with an Objection, I will take notice of it now by the Way. He says, those Arms he had before, and therefore they were not provided for this Purpose. Gentlemen, we do not pretend to prove when this traitorous Intent first began, and how long this Design hath been hatching; but such a Design there was, and such a Design he manifested to be in himself when he made the Declaration to *Turberville*, and advised him to arm himself; whether he prepared them against that Time or no, is not material, if he had them before; and if he had them first innocently, yet if he afterwards designed them for such a Purpose, and shewed them in a readiness for it, that is a sufficient Evidence to prove this Treason.

So here are two Witnesses, you observe, against the Prisoner of this Matter that is laid against him in the Indictment, an intent to kill the King, they both prove it positively upon him at *Oxon*. Mr. *Dugdale* speaks to Matters precedent to; for he tells you, his Discourse before they came down, that they would come down for that Purpose, that they had an Expectation something would be done, and therefore he came down in an Equipage not suitable to his Profession; for you see he was by Trade a Carpenter or a Joiner, but armed on Horseback with a Case of Pistols, Things that don't become such Men to travel with, and he did declare to Mr. *Dugdale* for what Purpose he came down. The next Witness is Mr. *Smith*, and Mr. *Smith* is as positive and full to this Matter of Treason as any of the rest.

*Coll.* There is scarce a Carpenter or a Joiner in *London* but hath Pistols when he rides.

*L. C. J.* Mr. *Colledge*, we must not suffer this, we had so much Patience with you that we expect you should be quiet now, and not interrupt the Council.

*Coll.* My Lord, let me not be overborn upon, there is scarce a Poulterer in *London*, but what hath Pistols.

*Mr. Sol. Gen.* We had great Patience with you, Mr. *Colledge*, and did not interrupt you, I am sure, but let you say what you would. I think I do you no wrong, if I do, I am under the Correction of the Court, they will reprove me if I do that which does not become me.

*Mr. Just. Jones.* Did not you ramble I don't know how, and yet you were suffered to go on?

*Mr. Sol. Gen.* He tells you of a Discourse as he came from the Coffee-House to go to a Dinner whither he was invited by Alderman *Wilcox*; and the Discourse was, that the King was as great a Papist as the Duke, and much more to that Purpose, vilifying the King. That Alderman *Wilcox* was a Man that gave Money to buy Arms to bring the King to Submission. He objects against this, and says 'tis impossible such a Discourse should be, and that all this should be talked in so little a Time, as in passing from the Coffee-House to the *Crown Tavern* without *Temple-Bar*.

*Coll.* Pray remember whose Company it was proved I went in, Mr. Solicitor.

*Mr. Sol. Gen.* But, Gentlemen, when you consider, how busy a Man he was, and how ready at talking of Treason, you will not think, but that this Man might talk much more than this; but this I mention to do him right, it being one of the Arguments he used; and, to give an Answer to it, though when you consider it, I believe you will think it not to need an Answer. But I would do him all the right I can, and now you have heard it, you will consider the Weight of it.

Gentlemen, he tells you of another Discourse afterwards, that does relate to his being here at *Oxon*, he tells you he had Arms in his House, and was ready upon all Occasions, and shewed Mr. *Smith* his Arms, and told him, these were the Things that were to destroy *Rowley's* Guards, as he said, which by the Evidence is made to appear he meant the King by that Name, his Arms he said were for that Purpose. That he would go down to *Oxon*, and there he expected some Sport. I know not what Sport he thinks there is in Rebellion; you see what Principles he is of, that does maintain and justify the greatest and horridest Rebellion that ever was in *England*, and says they did nothing but what they had good Cause for. He tells *Smith*, that he thought the King would seize upon some Members, and with that Expectation he came down, but yet was as ready as the King, and would be one in the securing of him, if he meddled with any of the Members. This Proof Mr. *Smith* made; and that after the Parliament was dissolved, he said, that the King ran away and was very much afraid. This is proved by *Smith* likewise, and that *Colledge* did declare after he came to Town. *Smith* proves further, that he did wonder the King did not consider how easily his Father's Head was brought to the Block; and for Mr. *Colledge's* Part he did declare, that he did believe this King would be served so shortly. And this does confirm what his other Witnesses have spoken of his Words at *Oxon*. Thus there are three Witnesses, though two are enough to convict a Man, they be positive to the Treason.

Mr. *Haynes* is the fourth Witness, and he is as full as any of them. I do but repeat it in short; you have had it so often canvassed by *Colledge*, that I believe you will easily remember it. He did advise *Haynes* that he should not value the King at all, for the King should be called to account for all his Actions; he said he would seize the King, and bring him to the Block, as they did his Father, with an indecent Expression of that



bleſſed King, not fit to be repeated. And he ſaid, they did intend, when they had cut off him, never any more of his Race ſhould reign. This it was *Haynes* ſays, though there are other Matters. I would take Notice of one thing more, and I need not but mention it, you will remember it, and that is about the Libel of *Fitz-Harris*. *Haynes* tells you upon Diſcourſe of that Libel, he ſaid, That every Word of it was true; as ſure as God was in Heaven. Now that was a Libel made by a Papiſt, an *Iriſh* Papiſt, who had been tried, convicted, and executed for it, and the horriſt Libel it was that ever was writ. And this is the Libel which this Gentleman, who is ſo very converſant in Libels, and Books of that ſort, avers to be as true as God is in Heaven. This is the Subſtance, Gentlemen, of that Proof which hath been made to you, we have other Circumſtances to prove, That as he came down with that Intent to ſeiſe the King, and as he expected, what he calls, ſome Sport, ſo he did endeavour to begin the Sport, he did quarrel in the Lobby of the Houſe of Lords with *Fitz-Gerald*, ſome Blows paſſed, and Sir *William Jennings* telling him his Noſe bled, he did declare, I have loſt the firſt Blood in the Cauſe, but it will not be long before there be more loſt. Thus, after he had come down, he endeavoured to begin a Commotion; for from little Matters great Things do ſometimes ariſe; and when all Men were poſſeſt with an Expectation, ſuch as he himſelf did declare, he and others came down with an Expectation that the Parliament ſhould be attacked; a little Matter might have begun ſuch a Commotion, which no Man knows what End it would have had.

Gentlemen, this hath been our Proof. Now the Objection made to this Proof by Mr. *Colledge*, is, That this is a Popiſh Deſign to raiſe a new Plot, and caſt it upon the Proteſtants, and that theſe Witneſſes are now to deny all the Evidence they have given of the Popiſh Plot, and throw all upon the Proteſtants. This is that he would perſuade you to believe, but which I think when you do conſider a little of it, it will be impoſſible for you in the leaſt to have ſuch a Thought. For what are the Evidence that have proved this? Who are they? Men of Credit, that have been Evidences againſt the Popiſh Plotters, and againſt Men that have ſuffered for that Plot, Men that ſtill ſtand to the Evidence they have given, and affirm it every Word to be true, and one of the very Men that he brought, ſays, that they ſtill ſtand to it; for *Turberville*, who was one of the Witneſſes againſt my Lord *Stafford*, was tempted by ſome Perſons to deny the Evidence he had given againſt the Papiſts; but his Answer was, No, I can never depart from it, I have a Soul to ſave, that was true which I ſaid, I cannot deny it. If then the Witneſſes which he would have you to believe to be guilty of denying the Popiſh Plot, do confirm what they have ſaid as to that Diſcovery, that Objection is taken off, and they do ſtand ſtill to it, that every Part of it was true, and aver the ſame Thing; and yet forſooth theſe Men are going about to ſtiſle this Plot.

Gentlemen, theſe are the Men the whole Nation have given Credit to, the Parliament having impeached my Lord *Stafford*, upon the Credit of them (for it was upon the Credit of *Dugdale* and *Turberville* that they impeached him, for there was not two Witneſſes till *Turberville* came in and made a ſecond, and upon their Credit) after ſo ſolemn a Trial, where all the Objections that could poſſibly be made was made, the Houſe of Lords thought fit to find my Lord *Stafford* Guilty, and my Lord *Stafford* ſuffered for it, and died upon the Credit of theſe Men. Theſe are the Witneſſes, Gentlemen, that this Man thinks ought to be blown off with that frivolous Objection, that they are Perſons he would have you believe, who are guilty of a Deſign to throw the Plot upon the Proteſtants. But becauſe he hath deſired to ſave himſelf in an Herd, by numbering himſelf among the Proteſtants, I muſt a little obſerve to you what a ſort of Proteſtant he is, a Man, he would have you to believe, ſo popular for his Religion, that he has obtained the Name of the Proteſtant Joiner. But when you have conſidered what his Actions are, I believe you will a little ſuſpect his Religion. If the Proteſtant Religion allow any Man to vilify the King, to arraign the Government, and to throw off all Manner of Allegiance, then this Man is a Proteſtant. But if this be to act the Part of a Papiſt, and if the Papiſts could with that ſuch an Infamy might be put upon the Proteſtant Religion, that it ſhould juſtify ſuch a Rebellion as the late horrid one was, and own ſuch a Principle that it is lawful for any Subject to aſperſe and vilify the King, and this Man by thoſe many ſcurrilous Libels ſeems to do: If they could with this Nation overturned, and the Government in Confuſion, and the Church of England deſtroyed, the beſt Bulwark now in the World againſt Popery, and the beſt only Refuge at this Day left for the poor afflicted Proteſtants abroad; then whiſt Mr. *Colledge* does thus act the art of a Papiſt, he does very ill to call himſelf a Proteſtant. Gentlemen, I cannot but obſerve one Thing to you, and it was the Evidence of Dr. *Oates*, when he did firſt diſcover the Plot, and without his Evidence you would eaſily believe the Thing. He told you, there were two Ways they had to accompliſh their Deſign, by direct murdering of the King, or if that failed, by putting all Things into Confuſion here, and raiſing Rebellion and Diſturbance amongſt us; and the Way to effect that Rebellion, it was by having Emiſſaries ſent among us, to work us into a Diſlike of the Church, and by that Means into a Rebellion againſt the State. That ſome Men were ſent abroad for that Purpoſe to preach at Conventicles, ſome whereof were caught, and ſome did ſuffer. Now without this Evidence it would not be hard to believe, that ſuch there are, and have been; for all that know the Hiſtory of our Reformation, do know that it was an early Practice among them, to raiſe Sects amongſt us, to bring Confuſion firſt into the Church, and then in the State. And we have already found the ſad Effects of it.

Now, Gentlemen, if *Colledge* has all this while under the Name of a Proteſtant acted the Part of a Papiſt, though I cannot ſay he is a Papiſt, nor that he is one of thoſe Emiſſaries, yet I may ſay, he is not that good Proteſtant he pretends to be. Gentlemen, I muſt now, to do him Right, come to repeat the Evidence that he hath given againſt our Witneſſes; for Mr. *Haynes* he hath produced ſeveral Witneſſes, one is Mr. *Hickman*, who ſays, he over-heard *Haynes* ſay to one that was his Tenant, that it was his Trade to ſwear, and he muſt get Money by it. This he over-heard him ſtanding and liſtning at a Door. You have another Man, *Lun*,

that is the next Witneſs, and he ſays, that at the *Fleet-Ditch* where he ſaw him, there he declared the ſame Thing to him, that he would ſwear any Thing for Money, and damn his Soul rather than the Catholic Cauſe ſhould ſink; and now he comes to prove a Plot upon him that is a Proteſtant, and in his Perſon upon all the Proteſtants of England; and this Man would ſain throw off the Credit of the Popiſh Plot, and turn it upon the Proteſtants. But, Gentlemen, it is ſtrange, that Mr. *Haynes* ſhould have this Diſcourſe with *Lun*, the firſt Time that ever he ſaw him; for I am ſure his own Witneſs *Lun* ſays it was the firſt Time, and that he ſhould immediately talk to him at this Rate is ſomewhat ſtrange: But for an Answer to it, this *Lun* we have confronted with the Evidence of *White* the Meſſenger, who ſwears, that afterwards meeting him at *Uxbridge*, *Lun* asked him what Gentleman that was, and did not know Mr. *Haynes*, and yet he takes upon him to prove, that he had ſpoke ſuch Words to him before. I think there is never another material Witneſs againſt *Haynes*, except *Whaley*, who was an under-Officer in the *King's-Bench*; and he ſays, that *Haynes*, while he was a Priſoner there, ran away with a Silver Tankard, but he never was indicted or proſecuted for it, though he remained afterwards in the Houſe, and this was five or ſix Years ago.

Now, Gentlemen, I think the Nature of this Evidence hath not that Weight, as to take off the Credit of what this Man hath ſaid upon his Oath, eſpecially when this Man's Evidence is ſo backed with the Evidence of other Men, that I think there is no Objection at all againſt it. For the other Witneſſes, *Dugdale*, *Smith*, and *Turberville*, are Men whoſe Credit has not been impeached, and they have confirmed in Subſtance what the Evidence of *Haynes* is; ſo that he does not ſtand alone in what he here ſwears, but 'tis confirmed with concurrent Evidence with it.

Then, Gentlemen, for the Objection againſt *Dugdale*, *Turberville*, and *Smith*, they have produced Dr. *Oates* to you, and he muſt vilify the Credit of thoſe Men, whoſe Teſtimony as to what he gave at firſt in diſcovering the Popiſh Plot, received Credit by being ſeconded by theſe Men. And I cannot but obſerve it as a ſtrange Thing, that this Man comes now to vilify the Teſtimony of thoſe, who have given Evidence, and been credited by the whole Kingdom; that he ſhould come here upon the Word of a Prieſt to declare, that Mr. *Dugdale* was a Man of very lewd Converſation, and was a Perſon that had a foul Diſeaſe on him, when he pretended he was poiſoned. I remember, this was an Objection that hath been made by the Papiſts to him, and I believe you have heard it often out of their Months; but it is the firſt Time that ever I heard it from any one that is a Witneſs of the Popiſh Plot, and pretends to ſtand up for the Proteſtant Religion. Gentlemen, if any ſuch Thing as this could have been made out againſt him, it had been made out e're now, the Papiſts would have taken Advantage of it, and when the Wit of all that Party was bent againſt him, he could not have eſcaped the having it proved. If it had been true, yet Dr. *Oates* takes upon him now to vilify his Credit, and takes up thoſe Arguments the Papiſts have maliciously ſuggeſted, but yet were never able to make out. This looks as if the Doctor were again returning to St. *Omers*, that he is thus going about to diſparage the Evidence of Mr. *Dugdale*, which in great Meaſure verified the Truth of that Diſcovery, himſelf firſt made of the Popiſh Plot.

Againſt *Turberville*, Gentlemen, I think there hath been very little at all objected that can have Weight with you. Mr. *Broadgate*, as I ſuppoſe you obſerve, has ſaid enough to confirm *Turberville's* Credit; for he hath proved to you, that when he was tempted to renounce his Evidence againſt the Papiſts, he reſuſed to do it, he had more Conſcience than to do it, he knew well enough what he had ſaid was true, and as he had a Soul to ſave, he could not go from it. This is the Evidence that he gives, and which certainly ſerves much to confirm the Truth of *Turberville*, beſides the ſtrict Examination he hath been under, and beyond any Thing that Dr. *Oates*, I think, has been able to contradict him in.

Dr. *Oates* contradicts *Smith* about his coming from the Coffee-houſe to *Wilcox's* Dinner. He ſays, he did not come along with Mr. *Colledge*, but *Colledge* came along with Dr. *Oates*, and *Smith* followed them. But, Gentlemen, you hear what *Smith* hath declared upon his Oath, That they came both together out of the Coffee-houſe; and you hear what his Witneſs Mr. *Smith* the Counſellor ſays: He does not poſitively remember that Circumſtance, yet one would think he ſhould; for *Oates* ſays, Mr. *Smith* the Lawyer walked juſt before them, and *Colledge* followed. Mr. *Smith* that is the Witneſs for the King, he ſwears he came along with *Colledge*, but Mr. *Smith* the Lawyer being asked that Queſtion, he does not remember that. Then another Thing is, Dr. *Oates* ſays, when they were there, *Colledge* was ſo far from diſcourſing of any reaſonable Matters, that he was very merry in the Company, and talking innocently; but Mr. *Smith* ſays, he was ſo far from being merry, or talking Treafon, that he fell aſleep, and ſlept behind the Table. Gentlemen, theſe Objections you ſee what the Weight of them is, and how little the Evidence agree one with another; but there is nothing that does contradict Mr. *Smith* in his main Evidence. 'Tis poſſible they may not remember particular Circumſtances, whether Mr. *Colledge* and Mr. *Smith* came together, ſo they might come together for ought they know, and they may not remember any Circumſtance about their retiring, but they can't take upon them to ſwear it is not ſo, and their not remembering it does not prove it was not ſo, and the Circumſtance itſelf is ſo trivial, that there was no Neceſſity they ſhould remember it. So then no Evidence that comes from Dr. *Oates* can take off that that is given by *Smith*; though if Mr. *Smith* were out of the Caſe, and Mr. *Haynes* too, yet there is Evidence ſufficient from Mr. *Dugdale* and Mr. *Turberville*, who are not impeached, and are both of them poſitive both to the Faſt and to the Place.

There are two Witneſſes more that I muſt mention, and they are *Bolton* and *Mowbray*; they ſwear that *Smith* travelling upon the Road with them, would have ſuborned them to ſwear againſt *John Brooks*, about a Diſcourſe at ſome Place; but it happened, Gentlemen, they differ in point of Time in their Teſtimony; the one ſaid it was the 25th of July, the other was poſitive it was the 3d of Auguſt. But I think I need ſay no more to theſe Men, but only to deſire you to weigh their Credit.



Balron and Mowbray, I confess, have been Evidence against several Men that have been accused of the Popish Plot, but they have been so unfortunate as never to gain Credit with any Jury. Mr. Smith hath been believed by the whole Court of Parliament: But if there were no more in the Case, these are two Men that never were yet believed, Men that have been sworn and their own Jury have rejected the Credit of their Testimony: But besides that, comparing the Testimonies and the Difference that was between them, is a sufficient Evidence to confront all that they have said.

I think, Gentlemen, this is the Substance of what hath been offered by his Witnesses, against the Witnesses produced for the King, except that of Mr. Everard, who says something against Haynes, that Haynes should say, he swore for self-preservation. And against Mr. Smith he says, that he heard him say, he did not know of any Presbyterian Plot. I believe that may be true, and yet it does not contradict Smith's Evidence against Colledge; for Mr. Smith does not tell you, that he was privy to any such Design of the Presbyterians, that he knows of any Consultations that they held, or the Ways and Means by which they would arrive at the Treason charged upon the Prisoner at the Bar; but his Evidence is, That this Man declared there was such a Design, That there was a party would do it, and That he would be sure to be one, and armed himself for that Purpose: But his not being privy to any Plot, or knowing the Particulars, is no Contradiction to what he said.

This is that he hath produced for his Defence, and by these Things he hath endeavoured to take off the Credit of our Witnesses, and he would have you believe that he is a very good Protestant, though he does that which no Protestant would do, and which is the Papists Work; he hath produced you Witnesses, that he has gone to Church, but I do not see he hath produced any Witnesses at all that are now conversant with him, his own Parishioners in London; but if he had brought never so many Witnesses of his going to Church, and of his Conformableness to the Church, yet if he were guilty of these Practices, he must give me Leave to suspect the Truth of his Profession; and I think it a great Piece of Arrogance for him to take upon him the Title of a Protestant, when he hath abused that Title by such unsuitable Practices: And, Gentlemen, if such Practices as these are, which we have fully proved, are such as all good Men must abhor, I cannot but reflect upon the Condition of this Man, whose only Hope is, that you should now forget yourselves, and become as ill as he is. But as that cannot be presumed, so I shall not need to say any more to you; you are Men of that Consideration, that can judge between Things, and the Appearances of them, and you know very well how to give the due Weight to the Evidence we have given to you, as well as the Objections made by the Prisoner; and so, Gentlemen, I shall leave it to you.

Mr. Serj. Jeffries. May it please your Lordship, and you Gentlemen of the Jury, it hath been a long Time that hath been spent in the Course of this Evidence; whether there has been any Art or Design in protracting the Time, on Purpose to obtrude upon the Patience of the Court, or that you, Gentlemen, should forget the Force of the Evidence that hath been given against the Prisoner at the Bar, when there hath been so much Time taken up unnecessarily, when there was no Occasion, as I must needs say, there was not for such a tedious Defence, I leave it to you to determine: But which was truly intimated by the Court at the Beginning of the Trial, must in the End of this Cause be repeated, and indeed go through it all, that what we of the King's Council, and what the Prisoner has affirmed, that has not been given in Proof, signifying nothing, and is not to be any Guide at all to you. You are upon your Oaths, and by the Oath you have taken, you are bound in Conscience to give a Verdict according to the Evidence that has been given to you, and that is your Guide; so that what we opened and have not proved, is no more to be believed, than what the Prisoner has said for himself in his own Defence; and whatsoever he says, if he make not good Proof of it, is no more to be regarded, than what we who are for the King have alledged, and not made out.

So then this being in the first Place premised, I shall take Care as near as I can to save the Time of the Court, and not to trespass on your Patience, Gentlemen, unnecessarily, in a Case whereupon as great a Concern does depend, as perhaps ever came to Trial at any Bar: For, I say, 'tis a Case wherein the Life and the Liberty of the King is concerned, and that is the great Concern of the Nation; then the Religion of the Nation is concerned; I would be understood aright, I mean the Protestant Religion established by Law; for I know of no other Religion men ought to sacrifice their Lives and Fortunes for, but the Protestant Religion established by Law; and when these Things are concerned, 'tis a Case of great Consequence: God forbid any Person, Protestant or other, should attempt the Life of the King, and the Subversion of our Religion, and by stiling themselves by the Name of Protestants, should excuse themselves from any such Crimes.

For the Evidence that has been given, I shall not enumerate the Particulars against the Prisoner at the Bar, other than such as have been omitted, (if I mistake not) by Mr. Solicitor.

In the first Place, there are the Things that happened at Oxon, for you have had it already sufficiently told you by my Lords the Judges who are up on the Bench, and who (under Mr. Colledge's Favour) are the Prisoner's Judges in Point of Law, as you are his Judges in Point of Fact. They have (I say) already told you what the Law is in Relation to Treasons; that in Case the Treason be in two Counties, if the Witnesses speak to the self same Treason, though to different Facts, that will be two Witnesses to prove High-Treason; and that there hath been such a Case, the Prisoner at the Bar, who says he is a Protestant (for his own Soul's Sake I wish he were a good one) must take Notice, that Gawan, the great Priest who was tried at Newgate, and convicted, by what Evidence? By one of them that is a Witness now against the Prisoner at the Bar, that is, Dugdale; his Treason was committed part in London, part in the Country, of which part Dugdale gave Evidence; but being both to the self same Purpose, by the greater Part of the Judges, who were in the Commission, and present at the Trial, they were reckoned a sufficient Testimony to prove him guilty of High-Treason: And I hope we do not live to that age, that any Protestant whatsoever should come to trip up the Heels of the Popish Plot; by saying, that any of them who suffered for it, did die con-

trary to Law, or without sufficient Proof: For if Mr. Dugdale was not a Person fit to be believed; or if the rest of the Judges who tried Gawan were out in the Law, then that Man died wrongfully; for he had as much Right to have been tried according to the Law, as any other Person whatsoever. Therefore, Gentlemen, as to that Matter, we must submit it to my Lords the Judges, who are to give you an Account what the Law is in all Particulars before you; but as to the Fact whereof you are Judges, that is the great Matter we shall apply ourselves to, and for that it stands thus.

Here is Dugdale that does give you an Account what his Design was in coming to Oxford; how he came to be armed as an Index (Gentlemen) of his Mind. And pray give me Leave to put you in Mind of one Thing. You have first a Libel produced and read to you; a pretended Letter, wherein there are Queries that have been taken Notice of, and which seem to back the Evidence given by Mr. Masters: For there is a Vindication in those Queries of the Proceeding of the Parliament of 41, which he has Confidence enough now at the Bar to justify too. But, Gentlemen, you were told by the Court, and you know it, that that Parliament was guilty of high Rebellion; and even in those Queries he asperses not only the Government, but every Man that has any Concern in it; for it takes Notice not only of the King, but of all his Council. Never a Judge nor an Officer in the Nation but is traduced by it; and which is the most material, it was the Foundation of that Libel which has been mentioned to you, and which Fitz-Harris was so justly condemned and executed for; that most traitorous and infamous Libel in part of it has these Queries, and a great Paragraph of this Libel makes up Part of that Libel of Fitz-Harris, which our Witnesses say, Mr. Colledge was pleased to affirm was as true as God is in Heaven. Another Thing is this, this Gentleman, whose proper Business it had been to manage his Employment at London for a Joiner, is best seen in his proper Place, using his proper Tools of his Trade. I think it had been much more proper for him, and I believe you will think so too, than to come with Pistols and those Accountments about him, to be regulating of the Government; what have such People to do to interfere with the Business of the Government? God be thanked, we have a wise Prince, and God be thanked he hath wise Counsellors about him, and he and they know well enough how to do their own Business, and not to need the Advice of a Joiner, though he calls himself the Protestant Joiner. What had he to do to engage himself, before his advice was required? How comes he to concern himself so much that after he had writ this Libel, wherein he is pleased to take notice of Tyrants, afterwards should go to make a Print, I mean the Rary Shew? And when Dugdale comes to enquire of him, what do you mean by such a Thing, The Tyrant shall go down? Says he, I mean by that, the King. And what do you mean by having them to go to Breda? Why, there he explains it, that he puts all the Government, the Lords and the Bishops upon the King's Back, and being asked what he meant to have done with them, Why, the Bishops, and the King, and all were to go to Breda. These are the Things that himself did acknowledge he was the Author of, and these Prints he did cause to be made, and he is the Person that gives you an Account, that it was but the Conception and Imagination of Dugdale, that Rowley meant the King; but Dugdale being called again, he tells you after some Time, that he was under some Difficulty to know the Meaning of it; and then Colledge tells him it was meant the King, and some expounded it to him. And so Smith tells you of the same Name of Old Rowley again. Gentlemen, thus I tell you what hath been omitted. The Evidence hath been long, and therefore we must be pardoned, if we can't exactly repeat it. This is the Evidence that was done at Oxon, the next is Mr. Smith, who speaks of what was done in London, and he is an Evidence both as to the Word Rowley, as to the coming with arms, and as to the declaring to what End he came, and what he had done. Mr. Haynes, he tells you, both before and after the same, and that I must take Notice of to you, Mr. Smith does particularly say, he used those Words, which I hope every honest Man, and every good Man, that desires to preserve the Government according to Law, will hear with the greatest Detestation and Abhorrence; he talked of the taking away the Life of the late King of blessed Memory at such an impudent Rate, that every true Protestant's Blood would curdle at the hearing of it. And this he said not only to Mr. Masters, but he justified it to Mr. Smith too.

In the next Place you have Turberville, who gives you all the Reasons, how he did not only tell of these Things himself, but encouraged him to prepare himself accordingly, and he gave him a Mark, a Ribbon with No Popery, no Slavery. These were Marks whereby they were to be known, and they were to be one and all, as they call it, that when such a Blow was struck, they would be ready to fall in. There is one Thing more that I take Notice of, that is, what was said by a Gentleman, Sir William Jennings, which is a Confirmation of all the other Evidence, that Gentleman who hath appeared to you to be a Man of Honour, even by the Confession of Mr. Colledge himself, and by his own Words; for he said like an honest Man, and like a loyal Man too, that he would rather engage himself in three Dangers for the Service of the King at Sea, than come in cold Blood to give Evidence against a Man for his Life at the Bar. And yet this Man who tells you of this himself, and that very Person whom Colledge himself calls a worthy Person, hath given you this Account, that when he told him his Nose bled, he answered him, It was the first Blood lost in the Cause, but it would not be long ere there was more lost: An excellent Cause for a Man to venture his Blood in. When he was told of this, he began to put it off, and to use his own Words, had a great Mind to sham off the Business, but in Truth there was no Answer given to it. Gentlemen, the Objection that hath been made against the Evidence that have not been taken Notice of, I desire to take Notice of. I think against three of them there has been only Mr. Oates, and Mr. Oates, I confess, has said, in verbo Sacerdotis, strange Things against Dugdale, Smith, and Turberville: I have only the Affirmation of Mr. Oates, and as ill Men may become good Men, so many good Men become ill Men; or otherwise I know not what would become of some Part of Mr. Oates's Testimony. And in the next Place



Place, if these Men have not sworn true, I am sure Mr. Oates must stand alone in the greatest Point, in which all the Evidence agree, that is, the Popish Plot.

But, Gentlemen, I must take Notice to you, that it is strange to me, that ever you, upon your Consciences, should perjure three Men, who positively upon their Oaths deny any such Discourses as Mr. Oates speaks of against them, I do put that upon your Consciences, whether you, upon the bare Affirmation of Mr. Oates, in this Place, will convict three Men, upon whose Testimony the Lives of so many as have suffered, have been taken away, and, as we Protestants do believe, justly. I say, whether you will do it upon the bare Affirmation of Mr. Oates, against their Oaths.

In the next Place, Gentlemen, I must tell you, besides the positive Evidence of these Gentlemen, there is Circumstance of Improbability in the very Words he speaks of. Will any Man tell me, that after such Time as Men have given their Oaths, as Smith had given his that he was concerned, and so had Dugdale and Turberville too, that these Men should come and voluntarily tell Mr. Oates they were all forsworn, are these Men such great Coxcombs as he would have us to believe? Is it so probable a Thing, that any Men of common Knowledge would do it? Do you think a Man of that Knowledge and Consideration, as Smith is, an allowed Scholar, and a Man of known Learning; and Mr. Dugdale, who has been reckoned by all Men to be a good Evidence; Do you take these Men to be such absolute Novices, that they must seek an Occasion to tell him they were bribed off, and were forsworn? If you can think this, and if a bare Affirmation against these positive Oaths can prevail; Gentlemen, upon your Consciences be it.

In the next Place, 'tis a strange Sort of Thing to believe Mr. Smith should come out of a Coffee-house, where a Quarrel is pretended to have been between him and Colledge; but Mr. Smith does, upon his Oath, say, he never had any such Quarrel with him, and that he should fall a damning and sinking against Colledge, and against the Gospel, that there should be such Impudence in the World in any Man as to desire or wish such a Thing: Gentlemen, these are strange Sorts of Apprehensions, and Men must have very strange Thoughts, that can strain themselves up to the Belief of them.

In the next Place, here it is said by the Prisoner, *Good Lord! What a Conviction we shall be in! Here is a Plot upon the Protestants!* I hope in God there is no Protestant Plot, but I also hope the whole Interest of the Protestant Religion is not involved in the Prisoner at the Bar, and all will be destroyed, if Mr. Colledge dies for Treasons. Gentlemen, the Question is not, whether there be a Presbyterian or a Protestant Plot, we declare we know of none; but whether the Prisoner at the Bar have spoken such Words, and done such Things as are sworn against him. And I would fain know what all the Discourses we have had about Irish Witnesses and Papists signify, when in all the Course of our Evidence, there has been but one Irish, and never a Papist: But here have been great Discourses about Macnamarra, and Denis, and what it hath been for, but to make a Noise and raise a Dust, I can't tell, for in this Case there has not been one Irish Man besides Haynes, and never a Papist throughout the whole Evidence: So that it is easy, if Men think it will take with the Auditory, for a Person to cry out, *O Lord! We are all like to be undone, here are Irish Witnesses brought against us.* And yet, after all this Stir, there is but one Irish Witness, and never a Papist. And as for him, truly, Gentlemen, I must take Notice, that even Colledge himself, till such Time as he was taken, reckoned him an honest Man.

Colledge. Never in my Life.

Mr. Serj. Jefferies. It was so said. But I do say, Gentlemen, suppose (which I do not admit) that the Irish Man he speaks of be out of the Case; not that the Country is an Objection against any Man's Testimony, God forbid it should be so affirmed; for Truth is not confined to Places, nor to Persons neither, but applied to all honest Men, be they Irish Men or others; but I say, set Mr. Haynes out of the Case: Suppose there was no such Man as Haynes in this Case; yet I must tell you, Gentlemen, you have as great a Proof as possibly can be.

In the next Place, I must take Notice to you of some Account that hath been given of him by himself: It is wonderful strange, when there was that Kindness of Intimation given by the Court, that he should do well to prove his Loyalty, as well as his Religion, but he did not produce some of his later Acquaintance. If this Man that makes himself a Protestant, would have it believed he is such, I wish he would have brought some of these Men that knew him at London, to give you some Account of him, and not to stretch backward sixteen Years to prove his Birth and Education; that is not the best Account sure a Man can give of himself, to say, after he hath been talking at this disloyal Rate, that he is a good Protestant, because he was thought so eighteen Years ago.

Again, in the next Place, here is an Account of the Libel given by the old Woman that is his Sister; truly she would have it, and that is another Libel at the Bar, as though the Man in the red Coat, with R. C. upon it, had dropped this Kind of Libel in his House, and so he, or some Body else, put a Trick upon him; and because she would inveigle you to such an Interpretation, she says, that they staid behind till the Man in the red Coat had fetched away the Shavings, and so here is a new sham Plot to be put upon the Prisoner, by dropping Papers in his House; a pretty Kind of Insinuation. But, Gentlemen, against the Evidence of this Woman, you have the very Person that was there, the Officer, who swears, that he and his Fellows came before the Waterman into the House: But I suppose, you observe how that notable talking Maid and she do agree; for the Maid tells you, there came a strange Fellow seven Weeks before, delivered these Things into her Hands, her Master was abroad, and she was not to enquire whence they came, or what they were, but paid him six Pence for bringing those Things. Now 'tis very strange that the Maid should pay for the bringing of those Things, and yet after all should imagine that Somebody else should put them there.

But now, Gentlemen, in the next Place, I must tell you another Thing, which I would beg you to take Notice of: Here are two Gentlemen, Mr. Bolton and Mr. Mowbray, and they have given you an Account, that they have been Evidence against the Papists; they did well in

it; but it hath been their Misfortune, hitherto they have not been believed; but whether they have been believed or not before, is no Guidance to you at this Time: But that which is to guide you is, whether or not they have given you now a Testimony that you in your Consciences can believe. Now, can you believe what they have said? Nay, can you believe it without any Circumstance to confirm it, against those express Objections that arise from themselves, and against the Oath of the Person, when the one tells you so exactly of the 25th, 26th, 27th, and 28th of July; and the other tells you, that Smith took Post, and yet overtook them not till the Sunday after, which was the third of August; and when the Almanack is produced, it was so far from making out what they spake of to be the same Time, that whereas one said he came to London the 28th, the other's Almanack says it was the 27th? Then pray how do these Persons agree, when the one says, that Mr. Smith talked with him upon the Road the 28th, and the other says, that they came to London the 27th? These are Circumstances, Gentlemen, that you must weigh; and you may bring the North and South together, as soon as their two Testimonies, they are so far asunder. Besides, Gentlemen, I hope you take Notice of a Person that was sworn, a Person of some Quality, a Scholar in the University here, that says Bolton (though he denied it) did shew him one of these Pictures, and did discover they were Mr. Colledge's; and Bolton himself, his own Witness, tells you, that he did acknowledge one of those Pictures was his. It appears then how busy he was, and concerned himself in what belonged not to his Profession.

So that, upon the whole Matter, after this long Evidence that hath been given, I must wholly appeal to your Lordships and the Jury; as to the Law, to your Lordship and the Court; and as to the Fact, to the Jury: For I do not desire any Sort of Evidence should be strained against a Prisoner at the Bar, who there is to be tried for his Life. God forbid, if he be innocent, but he should be acquitted; but, on the other Side, consider the Murder of that great King of ever blessed Memory is before you, and remember that base Reflection which the Witnesses tell you of upon that horrid Action; and as a great Evidence, remember that seeming Vindication of it at the Bar, which certainly no Englishman, no Protestant, according to the Church of England, can hear without having his Blood stirred in him. And these Things are not only testified by Dugdale and Smith, but by Gentlemen of known Reputation and Quality; and he hath a little discovered himself by that Defence he hath made against their Testimony. But know, Gentlemen, that the King is concerned, your Religion is concerned, that Plot that is so much agreed to by all Protestants is concerned; for if Dugdale, Smith, and Turberville be not to be believed, you trip up the Heels of all the Evidence and Discovery of that Plot. Then I will conclude to you, Gentlemen, and appeal to your Consciences; for according to the Oath that has been given to you, you are bound in your Consciences to go according to your Evidence, and are neither to be inveigled by us beyond our Proof, nor to be guided by your Commiseration to the Prisoner at the Bar against the Proof; for as God will call you to an Account, if you do an Injury to him, so will the same God call you to Account, if you do it to your King, to your Religion, and to your own Souls.

L. C. J. Gentlemen, I shall detain you but a little, and shall be as short as I can, for your Patience has been much exercised already: It is a Burden, and a necessary one, that lies upon us all, for there is nothing more necessary, than that such Trials as these should be intire and publick, intire for the Dispatch of them, and publick for the Satisfaction of the World, that it may appear no Man receives his Condemnation without Evidence, and that no Man is acquitted against Evidence.

Gentlemen, there are these two Considerations in all Cases of this Nature; the one is, the Force of the Evidence; the other is, the Truth of the Evidence. As to the Force of the Evidence, that is a Point of Law that belongs to the Court, and wherein the Court is to direct you; as to the Truth of the Evidence, that is a Question in Fact arising from the Witnesses, and must be left upon them, whereof you are the proper Judges.

As to the Force of the Evidence in this Case, it must be considered what the Charge is; it is the compassing the Death of the King, and conspiring to seize the Person of the King, which is the same Thing in Effect; for even by the Common Law, or upon the Interpretation of the Statute of the 25th of Edw. III. that mentions compassing the Death of the King to be Treason, it hath always been resolved, That whosoever shall imagine to depose the King, or imprison the King, are guilty of imagining the Death of the King; for they are Things that depend one upon another: And never was any King deposed or imprisoned, but with an Intention to be put to Death; they are in Consequences the same Thing.

Now, Gentlemen, in Cases of Treason the Law is so tender of the Life of the King, that the very Imagination of the Heart is Treason, if there be any Thought concerning any such Thing; but then it must be manifested by some Overt-Act, upon the Statute of the 25th Edw. III. but upon the Statute of the 13th of this King, made for the Preservation of the King's Person, if it be manifested, be malicious and advised speaking, 'tis sufficient. This is as to the Charge, and as to the Law concerning that Charge, I must tell you, there must be two Witnesses in the Case.

Now then, for the Force of the Evidence, the Question will arise here, whether this Evidence, admitting it to be true, is sufficient to maintain the Indictment; so that if there be two Witnesses, you must find him guilty. Now as to this, Gentlemen, the Prisoner has before-hand called upon the Court, and had their Resolution; and I hope you will remember what hath been said, and I shall have Occasion to trouble you the less.

I here have been six Witnesses produced for the King; there are two of them, Sir William Jennings and Mr. Masters, that are some way applicable to the Case, though they do not go to the Treason, they are only to infer the Probability of the Treason. This of Sir William Jennings, was upon the Occasion of the bleeding of the Prisoner's Nose, after his Quarrel with Fitz-Gerald, when he said, *He had lost the first Blood, and it would not be long ere there would be more lost*; which shews there were some extraordinary Thoughts in his Heart, concerning some Divisions, Quarrels, and Fighting



Fighting that he expected should be. That which Mr. Masters has said besides what he offered concerning his Principles in justifying the long Parliament) was this, That when he called him Colonel, *Marry mock not*, said he, *I may be Colonel in Time*; that shews some extraordinary Thoughts were in his Heart.

Colledge. *Will not that bear a more favourable Interpretation, my Lord? Must that necessarily follow upon my saying, I might be a Colonel in Time; and that more Blood would be lost? if I had expressed it so.*

L. C. J. I say, you had some extraordinary Thoughts in your Heart.

Colledge. *I am, sure, fittest to explain my own Thoughts.*

L. C. J. You would have done well to have explained it which Way you expected to be a Colonel.

Colledge. *Is was not an Expectation, for a may be may not be; my Word was, Mocking is catching: I thought he had called me Cousin.*

L. C. J. Well, Gentlemen, these are Witnesses, I say, that go not to the Treason, but only relate and reflect somewhat, to shew there were Thoughts in his Heart; but nobody could tell what they were, or know what he meant by them.

Colledge. *Then they are always to be taken in the best Sense.*

L. C. J. For the other Witnesses, *Stephen Dugdale, John Smith, Bryan Haynes, and Edward Turberville*, they are all of them, taking what they say to be true, very full Witnesses. The Prisoner hath objected as to two of them, because they speak to nothing that was done in *Oxfordshire*; but *Turberville* and *Dugdale* they speak to what was said in *Oxfordshire*. Now for that I must tell you, if you believe any of these Witnesses, as to what was said in *Oxford*, and any of them as to what was said in *London*, relating to the same Fact of Treason, they will be two good Witnesses to maintain the Indictment, though the one is in the one County, and the other in another; for if a Treason be committed in two Counties, it is the King's Election where he will exhibit the Indictment, and the Evidence from both Counties is good Evidence; that I take for Law; and these four Witnesses, with that Consideration that they are true, as I think, are full Witnesses to maintain this Indictment.

Why then, the next Head is concerning the Truth of this Evidence of which you are to be Judges, and you are the proper Judges whether the Witnesses speak true or no; therefore you must have your own Consciences to direct you in that Case, and what I shall say about them, shall be only for your Assistance.

Gentlemen, I shall not take upon me to repeat the Evidence to you, it has been long; and for me to speak out of Memory, I had rather you should recur to your own Memories, and your own Notes; only I shall say something in general to contract your Consideration of it.

And, as I told you at first, you must mind nothing of what the King's Council said, for nothing must have Impression upon you, but what they proved; so you are not to consider any thing of the Facts the Prisoner speaks of, that are not proved neither; for common Justice is concerned in it, and no Justice can be done at that Rate, if the Prisoner's own Affirmations or Purgations should be taken. No Man ever can be accused, but he will be ready to say he is innocent, and say as flourishing and popular Things as ever he can for himself. And therefore these Things must not weigh with you farther than as was said, argues upon the Proofs you have had. And you are to consider upon the Proofs what the Prisoner has produced, not what he says; on the other Side, for the Proofs you have heard a great many Witnesses in general produced by him, that say he was bred a Protestant, and has been an honest Man, that they knew no ill by him; that will be of little Weight in a Case of this Consideration; for unless he was a Man that had committed Treason to the Knowledge of all the World, there is no Man but can produce Witnesses that know no ill of him, nor any Treason nor Harm in him; wherefore the Question will lie upon the Credit of the Witnesses produced for the King barely, and that will be the Consideration you are only to have, and you are to weigh them in the Balance against the Witnesses produced against them.

Now, Gentlemen, for these Witnesses, I shall not repeat them to you; but only this I shall observe in general, that *Dugdale* and *Turberville*, that are the two most material Witnesses relating to what was spoken in *Oxfordshire*, have the least said against them. I do not remember, I profess to you, I do not (but your own Notes must guide you) that there was any very material thing said against them, except what is said against them by *Dr. Oates*, and *Dr. Oates* does say against *Smith*, that he came out of the Coffee-house, and swore damn him he would have *Colledge's* Blood; and when he reproved him, he said it was not fit for a Minister of the Gospel to use such Expressions, he said, God damn the Gospel; if that be true, 'tis a great Reflection upon the Credit of *Smith*. He says as to *Dugdale*, that when he was expostulating with him about his Evidence, he excused himself, that he was in want of Money, and was pressed to it, and being asked, he did say, he was pressed to swear against his Conscience, he said yes; and much of the same Kind he says as to *Turberville*, that he said he was deserted, and would not starve. Now all these three Witnesses being called upon their Oaths, deny that which *Dr. Oates* testifies. Now if it were in an indifferent and probable Matter to have three Men condemned, and set aside by the Testimony of one, is not equal, unless the Man were of mighty extraordinary Credit, and his Testimony of more than ordinary Weight. But then I must tell you, this Matter is very improbable, that after Witnesses had sworn a Thing, they should voluntarily acknowledge themselves to be forsworn, and that without any Provocation, they should at several Times come to this one Man, and declare themselves Rogues and Villains; but if it were probable, here are three Men's Oaths against one Man's Affirmation; this I say, as to what concerns *Dugdale* and *Turberville*, I do not see any Thing material against them; besides, now if you believe them, they are two Witnesses to the full Matter of the Indictment, and two Witnesses to what was done in *Oxfordshire*, and that satisfies all the Considerations of the Law.

As to the Rest of the Witnesses, *Bryan Haynes* and *John Smith*, you have had many Witnesses produced against them, I shall not undertake to repeat the Evidence, 'tis your Place and Duty to weigh their Testimony, and I shall leave it to your Consideration.

Mr. Just. Jones. I shall add nothing to what my Lord hath said, nor indeed can.

Colledge. My Lord, I wish you would look upon your Notes, you would then find there was much more Evidence, that you have not repeated, against *Turberville* and *Dugdale*, besides what your Lordship urged.

L. C. J. If there be, I refer it to the Memory of the Jury, I can remember no more.

Colledge. I desire nothing but Justice, and true Justice.

L. C. J. I am sure I design nothing else, you are a Stranger to me; I believe I have seen your Face, but I never knew you by Name till now. Look you, if the Jury be like to stay, they may take something to refresh themselves at the Bar before they go.

Colledge. My Lord, I did see when the Bill was brought against my Lord Howard, Mr. Attorney General and Mr. Solicitor were an Hour and Half with the Grand Jury.

Mr. Serj. Jeff. You must say nothing now.

Colledge. Let me have Justice done me, my Lord, that's all I crave, that nobody may be with the Jury.

L. C. J. Look you, Mr. Colledge, they might be with the Grand Jury, but as to the Petty Jury, there shall be a Bailiff sworn, and neither Mr. Attorney, nor Mr. Solicitor, nor nobody else shall come to them till they be agreed of their Verdict.

Mr. Just. Jones. If that be the Thing you ask, you shall have it according to the Law.

Colledge. And any Friend of mine may be by.

L. C. J. There shall be an Officer sworn to keep them.

*Then the Court called for two Bottles of Sack, which the Jury divided among themselves at the Bar, for their Refreshment, in the Presence of the Prisoner.*

After which a Bailiff was sworn, and the Jury withdrawing to consider of their Verdict, the Court adjourned for Half an Hour, and when they returned, Proclamation being made for Attendance, the Court sent to see whether the Jury were agreed, who immediately came into Court.

Cl. of Cr. Gentlemen, are you agreed of your Verdict?

Om. Yes.

Cl. of Cr. Who shall say for you?

Om. Foreman.

Cl. of Cr. *Stephen Colledge*, hold up thy Hand. Look upon him, you of the Jury: How say you, is he Guilty of the High Treason, whereof he stands indicted, or Not Guilty?

Foreman. Guilty.

Cl. of Cr. Look to him, Gaoler, he is found Guilty of High Treason; what Goods, &c.

*At which there was a great Shout given; at which the Court being offended, one Person who was observed by the Crier to be particularly concerned in the Shout, was committed to Gaol for that Night, but the next Morning having received a publick Reproof, was discharged without Fees.*

Then, it being about three o'Clock in the Morning, the Court adjourned to ten. At which Hour, the Court being sat, and first Mr. Aaron Smith having entered into a Recognizance of 500*l.* to appear the first Day of the next Term, at the Court of King's Bench.

L. C. J. Where is the Prisoner, *Stephen Colledge*?

Cl. of Cr. Set up *Stephen Colledge*.

*Then the Prisoner was brought to the Bar.*

Cl. of Cr. Harken to the Court, and hold up thy Hand: Thou hast been indicted and arraigned of High Treason, and for thy Trial hast put thyself upon thy Country, and they have found thee Guilty; what canst thou say for thyself, why the Court should not give Judgement on thee to die according to the Law?

Colledge. My Lord, I have nothing more to offer, but only that I am innocent of what is laid to my Charge; I think it was severe against me, now contrary to what was sworn at *London*: They swear now, I was to seize the King at *Oxon*, in *London* they swore I would pluck the King out of *Whitehall*, but 'tis altered since, and now 'tis to seize the King at *Oxon*; but be it either one or t'other (for the one is as true as the other) I am wholly innocent of either, I never had such a Thought in my Life, God forgive them that have sworn against me; I have no more to say, my Lord.

L. C. J. Look you, Mr. Colledge, it is too late to profess your Innocence, you have been tried, and found Guilty; but because you say so now, 'tis necessary for me to say something in Vindication of the Verdict, which I think the Court were all very well satisfied with: There were sufficient Proofs to warrant it, and the Jury did according to Justice and Right. I thought it was a Case, that as you made your own Defence, small Proof would serve the Turn to make any one believe you Guilty. For as you would defend yourself by pretending to be a Protestant, I did wonder, I must confess, when you called so many Witnesses to your Religion and Reputation, that none of them gave an Account that they saw you receive the Sacrament within these many Years, or any of them particularly had seen you at Church in many Years, or what Kind of Protestant you were. If we look to your Words and Actions, it is true, they did prove this, that you were mighty violent and zealous in crying out against Popery and the Papists; but if we look to your Actions, they favoured rather to promote the Papists Ends. For I must tell you, the Papists are best extirpated, and suppressed by a steady Prosecution of the Laws against them, not by violent Cryings-out, and putting the People into fervent Heats and Confusions, for that is the Thing the Papists aim at; they have no Hopes any other Way to creep into the Kingdom, but by Confusion, and after the Church is destroyed, that is under God the best Bulwark against them. But you that cried so



loud against the Papists it was proved here, who you called Papists. You had the Boldness to say that the King was a Papist, the Bishops were Papists, and the Church of England were Papists. If these be the Papists you cry out against, what a kind of Protestant you are, I know not, I am sure you can be no good one. But of that thing, when you called so many Witnesses to that Purpose, and if we look to your Politicks, what Opinion you had of the King, it was proved by your Discourse, and by Witnesses, that you could have no Exception to their Testimony, that you did justify the late horrid Rebellion, and the Consequence of that was the Murder of the best King in the World, that you should go to justify the Proceedings of that Parliament, and affirm that they did nothing but what they had just Cause to do. I say, he that will justify such a thing, if there were the same Circumstances, would do the same thing again.

Then if we look upon another Part of your Defence, as to your Arms, it was objected, you went armed to *Oxon*, and that was made the Evidence of the Overt-Act when you said by Words your Intentions what you would do, that you would make one to seize the King; that you did go armed, you did confess; I expected you should have said, you only wore those things for your own Defence upon the Road as a Gentleman travelling, or went with your Friends to accompany them out of Town, and defend them from Robbery; but you said, you went to guard the Parliament. I did not understand what you meant by it. I do not believe the Parliament sent for any Guard, or intended to have any Guard. I do not believe that any of them in their Hearts thought they needed a Guard; for I believe there was not a Man that had any thing that looked like that, or any thing of that Nature. For we saw, that when the King by the Necessity of his Affairs, when the two Houses differed so much, was pleased to dismiss them; they all departed quietly, not a Man was seen to be disturbed; there was no Appearance of any such thing; and how it should come into your Head, that were but a private Man, to go to guard the Parliament, I much wonder. Suppose all Men of your Condition should have gone to have guarded the Parliament, what an Assembly had there been? what a Bustle might they have made, and what confusion might have been on a sudden? And though you say you are no Man of Quality, nor likely to be able to do any thing upon the King's Guards, or the King's Person, yet if all of your Quality had gone upon the same Design that you did, what ill Consequences might have been of it? We see what has been done by *Massinella*, a mean Man in another Country, what by *Wat Tyler* and *Jack Straw* in this Kingdom. I confess, I know not what you meant by it, but very ill things might have happened upon it.

So that these Things, when I look upon them, and consider the Complexion of your Defence, it makes an easy Proof have Credit. But I think there was a full Proof in your Case; yet I say if there had been a great deal less Proof, the Jury might with Justice have found you Guilty. And because you now declare your self innocent of all you are charged with, I think myself bound to declare here in Vindication of the Country, and in Vindication of the Justice of the Court, that it was a Verdict well given, and to the Satisfaction of the Court, and I did not find my Brothers did dislike it. This I say to you out of Charity, that you may incline your Mind to a Submission to the Justice that has overtaken you, and that you may enter into Charity with all Men, and prepare yourself for another Life.

There is nothing now remaining, but to pronounce the Sentence which the Law provides for such an Offence, which is this, and the Court does award,

*That you Stephen Colledge shall be carried from hence to the Place from whence you came, and from thence you shall be drawn on an Hurdle to the Place of Execution, where you shall be hanged up by the Neck, and be cut down alive, your Privy Members shall be cut off, and your Bowels taken out and burnt before your Face, your Head shall be cut off from your Body, your Body be divided into four Quarters, which are to be at the King's Dispose, and the Lord have Mercy upon you Soul.*

Colledge. Amen. My Lord, I would know what Time your Lordship is pleased to appoint for my Execution.

L. C. J. That will depend upon the King's Pleasure, we do not use in these Cases of High-Treason to precipitate the Execution; but we will leave such Order with the Sheriff to receive the King's Pleasure and obey it. He will not do it so sudden, but that you shall have Notice to prepare yourself; but that depends upon the King's Pleasure, for your Body is to be at his Disposal.

Then the Court adjourned.

On Wednesday 31 of Aug. 1681. being the Day appointed by His Majesty for his Execution, he was according to Sentence Executed over-against the Gate of the Castle at Oxford.

When he was come to the Place of Execution, the High-Sheriff spoke to him as follows:

Mr. High-Sheriff. **M**R. Colledge, it is desired, for the Satisfaction of the World, because you have professed yourself a Protestant, that you would tell what Judgment you are of.

Colledge. Dear People, dear Protestants, and dear Countrymen, I have been accused and convicted for Treason; the Laws adjudge me to this Death, and I come hither willingly to submit to it: I pray God forgive all those Persons that had any Hand in it. I do declare to you, whatever hath been said of me, I was never a Papist, or ever that Way inclined; they have done me Wrong; I was ever a Protestant, I was born a Protestant, I have lived so, and so by the Grace of God I will die, of the Church of England, according to the best Reformation of the Church from all Idolatry, from all Superstition, or any thing that is contrary to the Gospel of our blessed Lord and Saviour.

VOL. III.

I do declare I was never in any Popish Service, Prayers, or Devotions, in my Life, save one Time; about some seventeen or eighteen Years ago, as near as I remember, I was, out of a Curiosity, one Afternoon at St. James's Chapel, the Queen's Chapel at St. James's; except that one Time, I never did hear any Popish Service, any thing of the Church of Rome, Mass or Prayers, or any thing else, private or publick. I know you expect that I should say something as to what I die for: It hath been charged upon me, when I was apprehended and brought before the Council, some of the Council, the Secretary, and my Lord *Killingworth*, and Mr. *Seymour*, they told me there was Treason sworn against me; truly, they surprized me when they said so: For of all things in the World, I thought myself as free from that as any Man. I asked them if any Man living had the Confidence to swear Treason against me? They said several, three or four, as I remember: Then they told me, it was sworn against me, That I had a Design to pull the King out of *White-Hall*, and to serve him as his Father was served, or to that Purpose, the Logger-Head his Father, or that kind of Language: I did deny it then, and do now deny it upon my Death. I never was in any Manner of Plot in my Days, neither one way nor another; I never knew any such Persons, nor ever had such Communication with any Man hitherto: I know of no Plot in the World but the Popish Plot, and that every Man may know as much as I: If I had such a Design as these Men have sworn against me, to have seized his Majesty, either at *London*, or this Place at *Oxford*, I take God to Witness, as I am a dying Man, and upon the Terms of my Salvation, I know not any one Man upon the Face of the Earth that would have stood by me; and how likely it was that I should do such a thing myself, let the whole World judge.

*Dugdale* swears, that I spoke Treason to him, treasonable Words in the Coffee-house, and in the Barber's Shop by the *Angel*; he could not pretend to see me any where else; but it is false, and a very unlikely thing that I should speak Treason to him. I must confess I was in his Company at the Coffee-house and that Barber's Shop, before I went out of Town: But there could be no Communication between us; for he was writing at one End of the Room, and eating a Piece of Bread, and I lighted a Pipe of Tobacco at the other End, and took it, till Sir *Thomas Player*, and Sir *Robert Clayton* came to me, and we went to my Lord *Lovelace's* out of Town that Night; So when they came, we took Horse, and went out of Town with the rest: For my Part, I can't sum up my Witnesses; I was under most strange Circumstances as ever any Man was; I was kept Prisoner so close in the *Tower*, that I could have no Conversation with any, though I was certain the Popish Lords had it every Day there, but I could have none: I could not tell the Witnesses that were to swear against me; I could not tell what it was they swore against me, for I could have no Copy of the Indictment, nor no way possible to make any Preparation to make my Defence as I ought to have done, and might have done by Law.

I had no Liberty to do any thing, as I am a dying Man. And as to what *Dugdale*, *Smith*, *Turberville*, and *Haynes*, swore against me, they did swear such Treason that nothing but a Mad-man would ever have trusted anybody with, and least of all to Papists, every one of them that had been concerned with Plots and Treasons among their own Party, and under the greatest Ties and Obligations of Damnation; and to be fainter if they kept it secret, and to be damned if they reveal it. If these Men will not keep Things private for their own Party, how could I trust them? I take God to Witness, and do freely acknowledge, I have sought my God with Tears several Times to inform me, if so be I had with any Word transgressed at any Time. I knew not of any Part of what they swore against me, till such Time as I heard it sworn against me at the Bar.

This is very hard, Gentlemen, but this is the Truth: and there be a great many other strange Reports that I have heard since I have been a Prisoner; that I should be a Means to convert the Countess of *Rochester*, by bringing one *Thomson*, a Priest, to her. Truly, all that I was concerned in, was some fifteen or sixteen Years ago. I lodg'd at Colonel *Vernon's*, that married the Lady *Brooks*, the Family were Papists; the *Brooks's* were Papists; and there was this *Thomson*, and I did suppose him a Priest, in the House, though I never saw him at Popish Service, or Worship, though I was there half a Year; but coming afterwards to my Lord *Rochester's* about some Business I had to do for him, and several other Persons of Quality; he sent for me one Afternoon from the Parsonage in *Adderbury* to his House, and his Lady and he stood together: He sent to me, and asked me, if my Horse were at Home; said he, I would have you carry this Letter to Mr. *Thomson*, if you are at Leisure this Afternoon: My Lord, I am at Leisure to serve you; so I took a Letter from his Hand, and his Lady's too; as I remember (he made an Offer that way) sealed with his own Seal, and I carried it to *Thomson*, and delivered it to him: And he told me, that he would wait upon my Lord, for it was for some Lands my Lord did offer, to raise Money for some Occasion: This is the Truth of that Scandal.

It is said, that I had a Priest several Years in my House, viz. *Sergeant*, that came over from *Holland* to discover. About some ten Years ago, that very same Man came to me, but was a Stranger to me, and he came to me by the Name of Doctor *Smith*, a Physician; and there was an Apothecary in the *Old-Bailey*, and a Linen-Draper within *Ludgate*, that came with him, they brought him thither, and took a Chamber, and he lay about half a Year, or three Quarters, at times, by the Name of Doctor *Smith*, and as a Physician; this is the Truth of that, and no otherwise. This is the Entertainment of *Sergeant*.

So the Occasion of my coming to *Oxford* I do say was voluntary; the Parliament-men last Parliament at *Westminster*, and several Lords, dined together the Day before they sat; the last Sessions of Parliament at *Westminster*, they sent for me to the *Sun-Tavern* behind the *Exchange*, and when I came, the Duke of *Monmouth*, and several Lords were together, and I believe above a hundred Parliament-men of the Commons: The Duke of

G g g

*Monmouth*



Monmouth called me to him, and told me, he had heard a good Report of me, that I was an honest Man, and one that may be trusted; and they did not know but their Enemies, the Papists, might have some Design to serve them as they did in King James's Time by Gun-Powder, or any other Way: And the Duke, with several Lords and Commons, did desire me to use my utmost Skill in searching all Places suspected by them; which I did perform: And from thence I had, as I think, the popular Name of *The Protestant Joiner*, because they had intrusted me, before any Man in England to do that Office.

This same Haynes, one of them that swore against me, had discovered to me, and several others, as to *Macnamarra* and his Brother, and this *Ivy*, who are now all of another Stamp, that the Parliament was to be destroyed at *Oxford*, and that there was a Design to murder my Lord *Shaftesbury*, by *Fitz-gerald* and his Party; and that they did endeavour to bring *Macnamarra* over to him, and said, then it would be well with him; and they would not be long before they had *Shaftesbury's* Life: And he made Depositions of this to Sir *George Treby*, as I heard afterwards, for I was not with him when it was sworn. I wish the Commons of *England* as well as I wish my own Heart; and I did not understand, but when I served the Parliament I served his Majesty too; and let them be miserable that make the Difference between them, for my Part, I never did. I came to *Oxford* with my Lord *Howard*, whom I look upon to be a very worthy honest Gentleman, my Lord *Clare*, my Lord *Paget*, and my Lord *Huntington*, and this Captain *Brown*, and Don *Lewes*, were in my Company, and came along with us, as they were my Lord *Howard's* Friends: *Brown* I have known, I believe, two or three Months; but *Lewes* I never saw before that Day; they said they came with my Lord *Howard*. I take God to witness, I never had one Six-pence, or any thing else to carry on any Design; and if it were to save my Life now, I cannot charge any Man in the World with any Design against the Government, as God is my Witness, or against his Majesty, or any other Person.

As for what Arms I had, and what Arms others had, they were for our own Defence, in case the Papists should make any Attempt upon us by way of Massacre, or any Invasion or Rebellion, that we should be ready to defend ourselves; God is my Witness, this is all I know. If this be a Plot, this was I in, but in no other; but never knew of any Numbers, or Times appointed for meeting; but we have said, one to another, that the Papists had a design against the Protestants, when we did meet, as I was a Man of a general Conversation; and in case they should rise, we were ready; but then they should begin the Attempt upon us: This was my Business, and this is the Business of every good Subject that loves the Laws of his Country and his King. For *England* can never hope to be happy under those Blood-thirsty Men, whose Religion is Blood and Murder; which I do with all my Soul, and did, ever since I knew what Religion was, abhor and detest, viz. the Church of *Rome*, as pernicious and destructive to human Societies, and all Government.

I beseech God that every Man of you may unite together as Protestants against this common Foe. Gentlemen, it is my Sense, and I do in that believe, I am as certainly murdered by the Hands of the Papists, as Sir *Edmundbury Godfrey* himself was, though the Thing is not seen. These Witnesses certainly are mercenary Men, and I beseech God Almighty to have Mercy upon their Souls, and forgive them; and either by his Judgments or Mercies reclaim them, that they shed no more innocent Blood: There is not a Man of them that I know of, that ever heard me say, or do, any bit of Treason in my Life. This is (the first, I may not say it is) but almost twentieth Sham-Plot that they have endeavoured to put upon the Nation, to delude the People, and put off their own damnable Plot. This is not the first, but I think, the sixteenth or seventeenth; I pray God that my Blood may be the last. I pray God defend every Man's Blood, and all Protestants in *England*, from the Hands of these bloody Papists, by whose Means I die this Death; and if they should go on in this Nature, I hope the good God will open every Man's Eyes to see it before he feels it. And, I beseech you, if you have any Love for your King, your Country, and the Protestants, unite together, if you are Protestants. I pray God those that deserve the Name, let them be called how they will, either Dissenters, or Church of *England* Men, that they may unite together like Men, like Christians, against the common Foe, who will spare neither the one Side, nor the other, but beat you one against another like two Pitchers; the last that stands, they will certainly destroy if they can. This is my Sense, and God is my Witness, I speak my Conscience. I do not know, Mr. *Sheriff*, whether there be any thing else I have to say, or no; we have a good God, and I beseech every Man that hears me this Day, (for we live in a sinful Age, good People, and it behoves every one of you, it cannot be long before all that look upon me in this Condition must lie down in the Dust, and, God knows, must come into an eternal State, either for Mercy or for Judgment.) I beseech you in the Name of God, he is a God of Mercy, and a God of Patience and Long-Suffering, that you would break off your Sins by Repentance, and serve a good God, who must be your Friend at last, or else you are lost to Eternity.

O Lord how ungrateful Wretches are we, that have a God of such infinite Mercy and Goodness, that affords us our Life, our Health, and a thousand Mercies every Day; and we, like ungrateful People, not deserving the Name of Men or Christians, live riotous Lives, in Debauchery and Swearing, in Malice, and the Lord knows how many Evils? I beseech God that I may be this Day a Means in the Hand of God, to bring some of their Souls over to him: I beseech you, remember what I say; indeed I do not know, I have been so strangely used since I have been a Prisoner, what to say, being brought from one Affliction to another, that my Body is worn out, and my Memory and Intellects have failed me much to what

they were. I cannot remember what I have to say more, but that the Lord Jesus Christ would bless my Country, and preserve it from Popery, and in Mercy bless his Majesty: Good God be merciful to him, make him an Instrument in thy Hand to defend his Protestant Subjects; Lord in Mercy defend him from his Enemies. Good God bless his People; Good Lord continue the Gospel of Jesus Christ, thy Gospel, in its Purity to us and our Posterity, as long as the Sun and Moon endure. O Lord, save all that call upon thee; be merciful to all thy Servants, all thy People that put their Trust in thee; good Lord deliver them from the Hands of their Enemies; good God, let their Lives, and Bodies and Souls, be all precious in thy Sight. O merciful God, put a Stop to these most wicked Conspiracies of thy Enemies, and the Nation's Enemies, the Papists. Let no more Protestant Blood be shed but this of mine, I beseech thee, O my God. O Lord look upon me, O Lord bless me, O good God receive me into thy blessed Presence, by Jesus Christ my alone Saviour and Redeemer, in whom I put my Trust alone for Salvation: It is thee, O God, that I trust in, thou righteous Judge of Heaven and Earth: all Popery, all Pardons, all Popes and Priests, all Dispensations I disown, and will not go out of the World with a Lie in my Mouth. From the Sincerity of my Heart I declare again, that what I have said to you is the very Sentiments of my Soul, as God shall have Mercy upon me, and to the best of my Knowledge.

I desire the Prayers of you, good People, while I am here; and once more I beseech you to think upon Eternity, every one of you that hear me this Day. The Lord turn your Hearts and Souls, if you have been wicked Livers; if you do live wicked Lives, the Lord in Mercy convert you, and shew you your Danger; for I as little thought to come to this as any Man that hears me this Day; and, I bless God, I have no more deserved it from the Hands of Men, than the Child that sucks at his Mother's Breast: I bless my God for it, and do say I have been a Sinner against my God, and he hath learnt me Grace ever since I have been a Prisoner. I bless my God for a Prison, I bless my God for Afflictions, I bless my God that ever I was restrained, for I never knew myself till he had taken me out of the World. Therefore you that have your Liberties, and Time, and precious Opportunities, be up and be doing, for God and for your Souls, every one of you.

To his Son. Where is my dear Child?

Mr. *Sheriff*. I made one Request to you, and you gave me an imperfect Answer: You said you were of the best reformed Church in the World, the Church of *England* according to the best Reformation in the World: I desire you, for the Satisfaction of the World, to declare what Church that is, whether Presbyterian, or Independent, or the Church of *England*, or what?

Coll. Good Mr. *Sheriff*, for your Satisfaction, for twenty Years and above I was under the Presbyterian Ministry, till his Majesty's Restoration; then I was conformable to the Church of *England* when that was restored, and so continued till such Time as I saw Persecution upon the dissenting People, and very undue Things done to their Meeting-places; then I went among them to know what kind of People those were. And I do take God to witness, since that Time I have used their Meetings, viz. the Presbyterians, others very seldom, and the Church of *England*. I did hear Dr. *Tillotson* not above three Weeks before I was taken. I heard the Church of *England* as frequently as I heard the Dissenters, and never had any Prejudice, God is my Witness, against either, but always desired heartily that they might unite, and be Lovers and Friends, and had no Prejudice against any Man; and truly I am afraid that it is not for the Nation's Good that there should be such Heart-burning between them: That some of the Church of *England* will preach that the Presbyterians are worse than the Papists. God doth know that what I say, I speak freely from my Heart, I have found many among them truly serving God, and so I have of all the rest that have come into my Company; Men without any manner of Design but to serve God, serve his Majesty, and keep their Liberties and Properties; Men that I am certain are not of vicious Lives; I found no Damners, or those kind of People among them, or at least few of them.

To his Son, kissing him several times with great Passion. Dear Child, farewell, the Lord have Mercy upon thee. Good People, let me have your Prayers to Almighty God to receive my Soul.

And then he prayed. And as soon as he had done, spake as followeth.

The Lord have Mercy upon my Enemies, and I beseech you, good People, whoever you are, and the whole World that I have offended, forgive me; whomever I have offended in Word or Deed, I ask every Man's Pardon; and forgive the World with all my Soul, all the Injuries I have received, and I beseech God Almighty, forgive those poor Wretches who have cast away their Souls, or at least endangered them, to ruin the Body of mine: I beseech God that they may have a Sight of their Sins, and that they may find Mercy at his Hands: Let my Blood speak the Justice of my Cause.

I have done: And God have Mercy upon you all.

To Mr. *Cashwait*. Pray, Sir, remember me to Dr. *Hall*, and Dr. *Rennall*, and thank them for all their Kindnesses to me; I thank you, Sir, for your Kindnesses: The Lord bless you all. Mr. *Sheriff*, God be with you all, good People.

The Executioner desired his Pardon, and he said, I do forgive you. The Lord have Mercy on my Soul. And so he was turned off, and the Sentence executed, but his Quarters were permitted to be buried.



(413)

**CVIII. The Trial of Slingsby Bethel, Esq; at the Bridge-House in Southwark, for an Assault and Battery on Robert Mason, at the Election of Members of Parliament for the Borough of Southwark, October 5, 1681. 33 Car. II.**

The Court being sat, the Jury were called, as follows :

## JURY MEN.

Edward Collingwood, Brazier,	John Morgan, Grocer,
Francis Waker, Comb-maker,	William Morrice,
Zebulon Newington, Chandler, alias	Francis Ferrey,
Salter,	Richard Frankling,
William Head, Woollen-Draper,	Thomas Wade, Butcher,
Humphrey Roberts,	Edw. Kemp, Ale-Draper.
John Ailyn, Baker,	

Being Sworn, the Indictment was read.

**T**HE Jurors for our Sovereign Lord the King, upon their Oath do present, That *Slingsby Bethel*, late of the Parish of St. Olave's, Southwark, within the Town and Borough aforesaid, in the County of Surrey, Esquire, on the twelfth Day of March, in the three and thirtieth Year of the King, with Force and Arms at the Parish aforesaid, and within the Town and Borough aforesaid, in the County aforesaid, in and upon one *Robert Mason*, at that Time one of the King's Watermen, in the Peace of God, and of our Lord the King, then and there standing, did Assault and make a Battery, and the said *Robert Mason*, then and there most grievously and dangerously did beat, wound, and evil entreat, so that his Life was greatly despaired of, and other Enormities that then and there he offered to, and brought on the said *Robert Mason*; and that the same *Slingsby Bethel*, then and there, (to wit) the same twelfth Day of March, in the thirty third Year aforesaid, in the Parish aforesaid, in the Town and Borough aforesaid, in the County aforesaid, in the Presence and Hearing of very many of the Subjects of our Sovereign Lord the King, then and there to the said *Robert Mason*, he spake, uttered, and with a loud Voice declared and published these provoking, threatening, and opprobrious Words, (to wit) *Sirrah, pointing at the said Robert Mason, I (meaning himself, Slingsby Bethel) will have your Coat (a certain Cloth Coat of a red Colour, with which the said Robert Mason was covered, and adorned with a certain Badge of our said Lord the King upon the said Coat) plucked off your Back, to the great Terror, Disturbance, and Trouble of divers of our Sovereign Lord's liege People and Subjects, being then and there present, to the evil Example of all others offending in the like Case, as also against the Peace, Crown, and Dignity, of our Sovereign Lord the King, &c.*

Mr. Peafely. **M**Y Lord, and you Gentlemen of the Jury, *Slingsby Bethel*, Esq; stands indicted, for that he, the said *Slingsby Bethel*, made an Assault and Battery on *Robert Mason*: As also for menacing and threatening Words; saying to him the said *Robert Mason*, *Sirrah, I will have your Coat plucked off your Back, to the great Terror and Damage of the said Robert Mason, &c.* to which Indictment he has pleaded, Not Guilty.

Mulley. My Lord, and you Gentlemen of the Jury, I am Council for the King, against *Slingsby Bethel*, Esq; who, upon the twelfth Day of March last, in the thirty third Year of the King, did assault *Robert Mason*, one of the King's Watermen, and did injuriously beat and strike the said *Robert Mason*, did give several opprobrious Words, saying, he would have his Coat plucked off his Back, &c. To which he pleadeth, Not Guilty.

Mr. Holt. My Lord, and you Gentlemen of the Jury, I am Council for the King, against *Slingsby Bethel*, Esq; You understand the Issue you are to try, it hath been opened; the Question is, Whether Mr. *Slingsby Bethel* be guilty of this Battery, and the Matter contained in the Indictment, and the aggravating Words therein, or no? The Occasion was, that in March last, there was an Election for two Burgesses to be chosen to serve in Parliament for this Borough; this *Robert Mason* was desired to come from *Lambeth*, to see whether any of that Parish came to poll, which had no Right so to do. The Competitors were, Sir *Richard How*, Captain *Rich. Slingsby Bethel*, and *Edward Smith*, Esqrs. Mr. *Slingsby Bethel* hewed, at his Entrance into the Borough, what Inclination and Temper he came with; for his Followers, and such as came with him, came with their God-damne's, and several execrable Oaths against those that voted against him; after the Election began, and the Poll demanded, truly, then Mr. *Bethel* acted his Part, and took Occasion to go off from the Place where he was, and strike several Persons that were acting against him, particularly this *Robert Mason*, finding him to be against him, took his Cane, and knocked him over the Pate, and afterwards knowing him to be the King's Waterman, said he deserved to have his Coat plucked over his ears: Were the Affront against him as a single Person, it were not of so bad Consequence; but we are to take Notice of the Solemnity of the Occasion of the Meeting: Now, consider the Occasion, it was for the choosing of Parliament-Men; and had it not been for the Prudence of the Waterman, in forbearing to strike again, God knows the Effects, and what an Uproar it might have occasioned: But he prudently refrained, and took his Course in a legal Way, and according to Law hath preferred this Indictment against Mr. *Slingsby Bethel*. Now though the said Mr. *Bethel* be so great a Man, and a Person of Value, lately Sheriff of the City of London; and he, *Robert Mason*, appearing to be but a poor Waterman, yet I don't question, he will find an English Jury to do him Right.

King's Council. Call Mr. *Robert Mason*, *Arthur Adams*, *Thomas Walbrooke*, *Griffith Meade*, *Tho. Smith*, *Alexander Dory*, . . . . *Lawrence*.

Mr. Holt. *Mason*, What can you say on the King's and your own Behalf, concerning this Matter?

*Robert Mason*. I was standing upon the Steps, by the Door in the Artillery-Ground, and Mr. *Bethel* came and gave me divers Blows on the ears, knocked me with his Cane, and followed me down beating of me,

and said, *Sirrah, I will have your Coat plucked over your Ears; and I answered, So you would my Master's too, if you could.*

Mr. Thompson. By whose Solicitation came you there?

*Mason*. I was desired to be there.

Thompson. What, did he strike you also with his Fist?—*Mason*. Yes.

Thompson. Where did he hurt you with all his Blows?

*Mason*. On the Breast.

Thompson. How many Blows?

*Mason*. He gave me twenty Blows at least, I can swear safely; but how many more, I know not.

Thompson. Did not you, before Mr. *Bethel* came there, interrupt the People's coming to poll, and what did Mr. *Bethel* say?

*Mason*. He asked what I did there, and bid me go down.

Justice Pys. Did Mr. *Bethel* single you out from the rest of the Company?

*Mason*. Yes, he did.

King's Council. Call *Adams*, *Adams*, what can you say? Did you see Mr. *Bethel* strike *Mason*, and what Words did he say?

*Adams*, first Witness. There was a Tumult at the Stairs, and they called to me, being Constable, and when I came, Mr. *Bethel* and *Mason* were together, and a great Company followed them; I said, Sirs, pray keep the Peace; and I saw Mr. *Bethel* give him two or three Shugs, and said, *Sirrah, I will have your Coat off your Back; and Mason answered, Ay, and so you would my Master's too, if you could.*

Holt. *Adams*, Tell the Court what you think would have been the Consequence if *Mason* had struck again.

*Adams*. It would have been of a sad Consequence.

Holt. What was Mr. *Bethel*'s Behaviour, when he entered into the Borough? Did you see him come into the Borough?

*Adams*. They came in and cry'd, No Abhorers, No Abhorers.

Thompson. Did you hear Mr. *Bethel* say so?—*Adams*. No.

Thompson. Did you hear him swear?—*Adams*. No.

Thompson. Who was it that swore?—Holt. He that rid first.

Thompson. *Mason* said, Mr. *Bethel* gave him twenty Blows; Did you see it?—*Adams*. I was not there all the while, I did not see it.

Third Witness. *Thomas Walbrooke*, What can you say to the Case in Hand?

*Walbrooke*. I stood by the Stairs when Mr. *Bethel* passed by; I saw Mr. *Bethel* thrust him down the Stairs, and I said, *Robert*, take Care what you do: Mr. *Bethel* said, *Sirrah, come down; Mason* said, *I will come when I see my own Time, I do Nobody any Hurt: Mr. Bethel answered, I command you to come down; and his Answer was, I will when I see my own Time.*

Thompson. Did you see any Blow given by Mr. *Bethel*?

*Walbrooke*. No, I saw none; I won't swear to any Blows, but I saw two or three Pushes in the Breast; he pushed him back.

Thompson. And how many Blows were given, ten, twenty, or how many?

*Walbrooke*. I will not answer any Thing concerning that.

Thompson. Upon the Oath you have taken (being, I think, you are an honest Man) had the Waterman this Coat on at that Time? Or had he not a Campaign Coat over it?

*Walbrooke*. He had that Coat, but I don't remember any other.

King's Council. Call *Griffith Meade*. Give an Account of what you can of this Matter.

*Griffith Meade*. I saw a great Number of People come to the Place, and saw Mr. *Bethel* give him a Push, and that was all.

Thompson. What Words did you hear?

*Meade*. No Words.

Thompson. How was this Man clothed? Was he clothed with this Coat, or had he a Campaign Coat over it?

*Meade*. I cannot tell.

Thompson. Upon the Oath you have taken, how many Blows did you see given, because they say twenty?

*Meade*. No Blows at all, but a little Push.

Call *Thomas Smith*. (He appeared.) What do you know?

*Smith*. As *Robert Mason* and myself stood together, Mr. *Bethel* came round the Burying-Place, and he brought a great Multitude of Persons with him, and bid *Mason* come down the Steps: *Mason* answered, *I will come down when I see my Time.* Mr. *Bethel* said, *If you will not come down, I will have your Coat plucked off your Back.* Afterwards many Words passed, which I cannot remember, and Mr. *Bethel* pushed him on the Breast.

Second Council. Mr. *Smith*, Pray give the Court an Account of the Behaviour of the Men that followed Mr. *Bethel*: Did you not see Mr. *Bethel* give *Robert Mason* a Push, when he was in the Artillery-Ground?

*Smith*. I saw none.

Holt. What do you think the Consequence had been, if *Mason* had struck again?

*Smith*. Had he given any Blows again, I do believe a hundred and a hundred had been slain.

Thompson. *Smith*, pray give an Account of the Behaviour of the Men that came with Mr. *Bethel*, and what Coat *Mason* wore, and whether he had not a Campaign Coat on it?

*Smith*. Sir, I know not that, but he had the same Coat then on his Back, which he has on now.

Thompson. Why, what made you think, if *Mason* had struck Mr. *Bethel*, that it would have made such a great Disturbance?

*Smith*. Because he was the King's Servant.

Call *Alexander Dory*. *Dory*, Give the Court an Account of the Matter in Question. Did you see Mr. *Bethel* give *Mason* any Blows?

*Dory*. Sir, Mr. *Bethel* gave him some Pushes in the Breast, and said, *He would have his Coat off his Back.*

Thompson.



*Thompson.* Had he the same Coat on as now he hath?

*Dory.* I saw the same, and no other.

*Mulloy.* Call *Lawrence.* He appeared. *Lawrence,* give the Court and Jury an Account of what you know of the Quarrel between Mr. *Bethel* and *Robert Mason.* Did you see Mr. *Bethel* give him any Blows? And give an Account of the Behaviour of Mr. *Bethel* and his Company, when they came into the Borough.

*Thompson.* This Indictment is for an Assault and Battery; if you can give an Account of that, do; but not of the Behaviour of those that came with Mr. *Bethel*; that is not the Matter at this Time.

*Holt.* I answer, Sir, it is not; but we ask the Question, to make out the Behaviour of Mr. *Bethel* and his Company, and shall leave it to the Jury, what Judgment to make of it.

*Lawrence.* I saw the Persons that came with Mr. *Bethel*, hectoring and swearing at a strange Rate, and the Persons which rid before, cry'd *Hollow, Hollow.*

*Thompson.* I appeal to Mr. *Holt*; What if *John an Nokes*, or *Tom a Styles*, swear and hector, &c. shall Mr. *Bethel* answer for that, in a Matter that falls out long afterwards, as this did?

*Lawrence.* I saw their Behaviour, as I have said; and when Mr. *Bethel* came to *Robert Mason*, he stood with his Hands behind him, Mr. *Bethel* bid him come down; he said, No, he would not: Then said Mr. *Bethel*, *I will pluck your Coat off your Back*; and *Mason* answered, *Ay, and so you would my Master's too, if you could.*

*Lord Mayor.* Did Mr. *Bethel* swear, when he came into the Borough?

*Lawrence.* No.

*Lord Mayor.* Who did swear?

*Lawrence.* He that rid first.

*Mr. Thompson.* May it please your Lordship, I am of Counsel for Mr. *Bethel* the Defendant, who has been, and stands indicted for making an Assault and Battery upon *Robert Mason*; and for speaking many menacing and threatening Words, as, *That he would pull his Coat over his Ears, &c.* and for giving several Blows; unto which we have pleaded, Not Guilty. They have produced several Witnesses, and *Robert Mason* himself, who is so thorough-fitch in the Case, that he swears so as no one can believe him; for his own Witnesses do not; for they do not swear, nor pretend to swear like him, being not able to stretch at that Rate; he is desperately mistaken, to speak the best of him.

For this *Mason* swears Mr. *Bethel* gave him twenty Blows at least, but how many more he cannot say: See how this will look, when we shall prove, by substantial and credible Men, that not one Blow was given, or push either. But suppose he were pushed, yet his Evidence agree not one with another; for some swear to one Push, some to more: But Mr. *Mason* swears to the full Number of twenty Blows at least, and that positively, but how many more, he doth not remember. But suppose it were so, yet the Matter is not so much, but what may be justified by the Occasion given; and what would be a good Plea in Law, in an Action, will be the same upon pleading Not Guilty in this Case.

May it please your Lordship, The Occasion of Mr. *Bethel's* coming here was this; being about the chusing of Parliament-Men for this Borough, the Competitors were, Sir *Richard How*, Mr. *Rich*, Mr. *Bethel*, and Mr. *Smith*; there was a House wherein they appointed to poll, call'd the Artillery-House: When they came to take the Poll at this Place, where there is a Pair of Stairs which leads to the Door, the Manner of taking the Poll was thus; first to fill the House, by that Door to the Stairs, and after they had voted, to put them out at the other Door; this being the Occasion of the Battery, (however aggravated) will, to all that know it, or shall take the Matter into Consideration, seem a very shameful Thing to ground an Indictment upon. But this *Mason*, a very officious Man, who had no right to poll, (as himself confesses) and who might have spared the Trouble (for any Authority he had) of coming there; and it might have been better he had stayed at Home, by what he has sworn. This Man and one *Sam. Sams*, a hectoring Carman, were set upon the Stairs; and their Business was not (as they now pretend) to take Notice who were fit to poll, but to understand who were for Mr. *Bethel* and Mr. *Smith*, and those they did abuse, and push them down the Steps; which Mr. *Bethel* being informed of, came out of the House, and spoke civilly to them, and said, *Friends, What have you to do here? If you have not a right to poll, come down from the Place:* Which *Mason* refusing, the Defendant took him gently by the Hand, and led him down the Steps, giving neither Blow nor Push; we shall call Witnesses to prove this.—Now, for a Gentleman that stood as one of the Competitors for a Parliament-Man, at that Time, in that Place, he might do this to a Person that had nothing to do there: Nay, they themselves say, there ought not to be any Interruption at an Election; and that the Interruption was from themselves, and that occasioned the mighty Battery they make so much of. We shall call our Witnesses, and make this Matter appear to be our Case; and then, though *Mason* hath spoken of twenty Blows, if believed, as there is but little Reason for it, it will be sufficiently justified by the Witnesses we shall produce, and the Evidence we shall give in this Matter.

Call Mr. *Nath. Travers* Constable, Mr. *Benjamin Tarrant*, Mr. *Geo. Hampton*, Mr. *Mark Clark*, Mr. *Thomas Weekes*, Mr. *Benjamin Gerrard.*

*Thompson.* Let us begin with Mr. *Travers.* Mr. *Travers*, What Account can you give of the Matter?

*Travers.* May it please your Lordship, I remember it as if it were but just now; I was called out of the House, to come to this Door, hearing the People were in a very great Disturbance; I came to this *Robert Mason*, and said, *What do you there, to make this Disturbance, have you a right to poll?* He answered, *It may be I may.* I told him, *If he would not be civil, I should take a Course to indict him.*

*Thompson.* And what was he doing?

*Travers.* He was throwing People from both Sides with his Elbows. In this Time, a Report being carried to Sheriff *Bethel*, of a Person's Leg broken, and a Man like to be killed, Sheriff *Bethel* came to the Steps, and took him just by the Arm, thus—[*Shewing the Manner*—]—and said, *Pray, Friend, what hast thou to do here, hast thou a right to Poll?* At first he said, *He had*; afterwards he said, *No.* Then said Sheriff *Bethel*, *Pray go about your Business.* Mr. *Bethel* gave no Blow, nor did so much as shew

any Passion, or angry Countenance; and said no more: But others said, *Mason* was a rude Person, and that he deserved to have his Coat plucked over his Ears.

*Thompson.* Did you not hear Mr. *Bethel* say so?

*Travers.* No, but it was said by some of the Company.

*Thompson.* I ask one Question more—*Mason* said he had twenty Blows, what say you to that?

*Travers.* He had not one, upon the Oath that I have taken.

*Thompson.* Had he this Coat on, or no?

*Travers.* Truly I know not, I cannot tell; but he had a Badge, whereby he discovered himself to be some Gentleman's Servant.

*Thompson.* Was *Sams* there?

*Holt.* Mr. *Thompson*, is that a fair Question?

*Thompson.* I did it purposely to try your Observation; you would call to what others did long before the Battery, I must not ask if one was there at the Time of the Battery.

*Holt.* Did you not see Mr. *Bethel* on the Artillery-Ground, was not *Mason* pushed there?

*Travers.* I tell you, Sir, there was not one Blow given.

*Holt.* Then you did not see the Quarrel on the Ground?

*Travers.* I tell you, there was no Quarrel on the Ground: I stood on the Steps when Sheriff *Bethel* came; and the Sheriff, when he was half Way on the Steps, seeing the Waterman's Posture he was in, said, *Friend, have you any Thing to do to Poll; if you have not, why do you make a Disturbance?* He answered, *It may be I have, and it may be not.* Pray, *Friend*, said Sheriff *Bethel*, *if you have not, come down*, I went from thence about the Ground, and did not see the least Blow given, or any Appearance of Passion.

*Thompson.* Before Mr. *Bethel* came, how did this Man behave himself, did he not shout, and behave himself rudely?

*Holt.* Let him speak of himself, let not Words be put into his Mouth.

*Thompson.* Had he a red Coat on?

*Travers.* I cannot say it.

*Thompson.* Mr. *Tarrant*, what can you say?

*Tarrant.* I was on the Ground when the Sheriff came, I was at some Distance; but upon the Oath I have taken, I saw Mr. *Bethel* and the Waterman coming together, but I saw no Blow, and I am sure there was not one Blow given.

*Mr. Weekes.* give an Account of what you know.

*Weekes.* My Lord, I saw Sheriff *Bethel* when he came into the Ground, and went up the Steps; I made haste after him, and was there all the while, and there was nothing like a Blow; but all he did was to this Purpose—*Pray, Friend, (said he) if you have no right to Poll, go your Way, What have you to do here?* And I followed after him into the Artillery-Ground, and there was nothing of a Blow, or any Thing like it.

*Thompson.* You were there all the while?

*Weekes.* Yes, I was.

*Thompson.* Yet *Mason* saith, there were twenty Blows given.

*Weekes.* Upon the Oath I have taken, there was none, nor any Thing like it.

*Holt.* Mr. *Weekes*, do you live in London, or do you live in the Borough?

*Weekes.* Sir, I live in London.

*Holt.* What is this Witness to the Purpose then?

*Thompson.* May not a Man live in London, and be a good Evidence here? Notwithstanding, call Mr. *Gerrard.*

*Mr. Gerrard*, what can you say?

*Gerrard.* I was in the Ground before Mr. *Bethel* came out of the Polling-House; and I saw this Waterman, and *Sam. Sams*, thrusting of People down, that seemed to be for Mr. *Bethel* and *Smith*, crying, *How and Rude.*

*Weekes.* My Lord, my Memory failed in this Point; but, upon the Oath I have taken, what that Gentleman swears, it is true.

*Thompson.* Pray, Sir, (as you seem to be a sober Man) were any Blows struck by Mr. *Bethel*?

*Gerrard.* I went with Sheriff *Bethel* there at that Time, and asked the Waterman what he had to do there? I cannot well tell what Answer he made; but Mr. Sheriff said, *If you have no right to Poll, pray go about your Business.* Upon the Oath I have taken, he did not strike one Blow, nor more than he doth now, standing in this Court before your Lordship.

*Lord Mayor.* Was there any pushing or thrusting by Mr. *Bethel*?

*Gerrard.* Upon my Oath, my Lord, not any.

*Thompson.* And you say you were there all the while, and saw no Disturbance given by Mr. *Bethel*?

*Gerrard.* I am sure there was not.

*Thompson.* Had he this Coat on, or no; or had he not a Campaign Coat on?

*Gerrard.* To the best of my Remembrance he had a Campaign Coat on, and I believe he had.

*Thompson.* Mr. *Hatfield*, pray give an Account of what you know of the Matter.

*Hatfield.* There were two Men which I saw in red Coats, which pushed down the People that came to poll for Mr. *Bethel*, before Mr. *Bethel* came, and had not Mr. *Bethel* come to appease the Tumult, I do believe there had been much Mischief done by them and *Sams*.

*Thompson.* Upon the Oath you have taken, were any Blows given?

*Hatfield.* No, Sir, there were none.

*Thompson.* Were there any Blows given by Mr. *Bethel*?

*Hatfield.* No, Sir, not one; for Mr. *Bethel* being informed of the civility of *Mason* and *Sams*, Mr. *Bethel* came civilly to them, and treated them to come down, and bid them be gone, and not make a Disturbance.

*Mulloy.* Call *Lawrence* again, to shew that *Mason* did not make a Disturbance.

*Lawrence.* I saw *Robert Mason*, and the Party with him, behave themselves very civil; and the Disturbance that was proceeded from the Party.

*Thompson.* This is the same Man we had but now, he is called to witnesses again; a pretty Way of multiplying Witnesses: I appeal to Mr. *Mason* himself, whether this be not the same Man you called once before?

*Thompson.* My Lord, and you Gentlemen of the Jury, I think the Case is plain, and needs no Arguments: I shall only take Notice how



these Men are (as they pretend) to keep the King's Peace. The Matter you see, in short, is, Mr. Bethel (who stood for a Parliament-Man of this Place, and at the same Time bore an eminent Character, as Sheriff of the City of London) upon Information given of the Disturbance made by this *Mason*, and of the Unfairness of their Proceedings, only came civilly, and took him by the Arm, persuading him to come away, and make no Disturbance. And this is the Truth of the Case, and the mighty Battery they pretend to. Now, suppose that when People are in such a Croud, and upon such an Occasion, there were some Pushes (as is the utmost here pretended) could this be a sufficient Matter to ground an Indictment upon? No, Gentlemen, no: This Indictment, and the Design of it, is to raise a Dust, and (if possible) to cast Reflections on Mr. Bethel; but 'tis more than they can do in Point of Law, by any Matter here proved, if *Mason's* Witnesses do swear true: Yet you see how *Mason* behaves himself, crying *How* and *Rich*, striking down all that came between *Sam. Sams* and him; so they broke the Peace, and raised the Disturbance themselves. And in that Case, any Man (and why not Mr. Bethel?) might have taken him, and carried him before a Magistrate, and have justified it. But now, for the Credit of the Thing: You see that none swears it but *Mason* himself; but even he swears to that Impossibility, so over-reaches the Matter, through the Excess of his Passion in Swearing, that no one can believe him; if he had sworn modestly, as the rest did, to two or three Pushes, it might have been credited; but to twenty Blows, no one can believe it; neither doth any one of his own Witnesses swear like him, or of so much as one Blow given: So there is not one Word *Mason* saith can be credited.

Then, my Lord, admit it to be so, yet you saw Mr. Bethel was not the Person that first began this Disturbance: Now, if the other Party had been indicted and tried (as indeed it had been much more fit they should) we could have proved much against them.

And as to the Fact, and Manner of what Mr. Bethel did, it was no more than coming in a civil Manner, asking whether he had a Right to poll; when he said no, he took him civilly by the Arm and led him down; and this is a justifiable Assault, being the Nature of the Thing required a Necessity of somewhat of Action in it. I appeal to you of the Jury, whether here be any Cause for this Indictment, or Colour of Reason for you to find it?

*Holt*. Gentlemen of the Jury, you have heard the Evidence on both Sides, and the Question is, Whether in your Consciences, you can disbelieve eight Witnesses, that swear positively to the Battery, and believe those Witnesses that did not see it? If you acquit Mr. Bethel, you must necessarily convict eight Persons of Perjury: But if you do not find for Mr. Bethel, the other Witnesses cannot be convicted of Perjury; for how can Men swear (though they were there all the Time) that they did not see? Possibly they might be very honest Men, and present at the Time, and yet not see Mr. Bethel strike, and so not swear to it: But our Witnesses swear very true; I hope you will be guided by Sense and Conscience, and not by Spectators Humours, and Apprehensions, that come here and hiss in a Court of Justice. Now, eight Witnesses swearing it, I do appeal to the Court, whether in Matters of this Nature, one Witness for the Affirmative, be not more valid than many of the Negative?

They take Notice of the Impossibility, and why, because they swear

(as they say) at an extravagant Rate, that Mr. Bethel give him twenty Blows.

Gentlemen, if Mr. Bethel will beat a Man extravagantly, it is not Extravagancy to swear it. Now, *Mason's* Evidence is confirmed by all the rest produced, and no Contradiction: If one swear to ten, and another to two, and another to three, is this inconsistent? No, Gentlemen, it is evident those Men swear cautiously and fearfully; for if otherwise, they could swear to as many as Twenty, as *Mason* hath done. Who is the best Judge, he that felt the Blows, or they that swear there was not one given? He that felt them, I am sure.

Gentlemen, it was in a Croud, 'tis possible they may not see all; yet their Evidence is a concurring Circumstance.

Next I come to the Point of Law, how a Man that is a Candidate at an Election, can beat any Man that stands in his Way; I do not understand that to be Law. If any Man had beaten Mr. Bethel, he might have beaten him again in his own Defence; but there was no such Thing, Mr. Bethel saw no Disturbance himself, but was informed of it, and so became too officious; though he was Sheriff of London, yet he was not an Officer there; for he was not a Constable there; and it was a Constable's Office, and he only could have seized him; and not a Constable neither, unless he had seen the King's Peace broken.

And as to what Mr. Thompson saith, that it is impossible that such an Election should be carried on without some Bustle. It's true, in a Croud, Men jostling one another, and by Accident strike another down, it's no Battery: But is it necessary for Mr. Bethel to thump a Man on the Breast? Is it necessary for Mr. Bethel to beat a Man with his Cane? Is it necessary for Mr. Bethel to give a Man twenty Blows? Is it necessary for Mr. Bethel to pluck a Man's Coat off his Back? Is it necessary to an Election? It is not necessary; and so being not necessary, is not by Law justifiable. Gentlemen, as Mr. Thompson saith, it is a Case of Example; I say so too; and it is fit Persons that will do such Things, should be made an Example.

Justice *Pys* afterwards summ'd up the Evidence, and told the Jury (as Mr. *Holt* the Counsellor for the King had before well observed) that they were to have Regard to the positive affirmative Evidence, *Mason* having sworn positively to several Blows that were struck by Mr. Bethel, and that eight Witnesses had sworn in the Affirmative, and that though there were seven Witnesses produced by Mr. Bethel, which were on the negative Part; yet they were to observe, that the Law did not allow of those Negative Evidences. But for that so many had sworn in the Affirmative, that they saw a Thing done, and as many swear that they saw it not; he could not tell what to say, but to leave it to the Jury, saying, that one Affirmative was better than forty Negative Oaths.

So the Jury went out, and in a very short Time were pleased to find the Indictment, and brought Mr. Bethel in Guilty.

Then Mr. Bethel's Council moved in Arrest of Judgment, for that no Indictment lay for the Words, and the Court for that Reason staid the Judgment, as to that Part of the Indictment, and gave Judgment only as to the Assault and Battery, and fined Mr. Bethel five Marks. Upon which, the Council for the King moved to have him taken into Custody, until he paid the Fine; which he presently paid, and so was discharged.

## CIX. Proceedings at the Old-Baily, upon the Bill of Indictment for High-Treason against Anthony Earl of Shaftesbury\*, November 24, 1681. 33 Car. II.

### The GRAND JURY.

Sir Samuel Barnardiston,	John Morrice,	John Flavell,
John Morden,	Edmund Harrison,	Michael Godfrey,
Thomas Papillon,	Joseph Wright,	Joseph Richardson,
John Dubois,	John Cox,	William Empson,
Charles Hearle,	Thomas Parker,	Andrew Kendrick,
Edward Rudge,	Leonard Robinson,	John Lane,
Humphrey Edwin,	Thomas Shepherd,	John Hall.

### The OATH.

YOU shall diligently enquire, and true Presentments make of all such Matters, Articles, and Things, as shall be given you in Charge, as of all other Matters and Things as shall come to your own Knowledge, touching this present Service; the King's Council, your Fellows and your own, you shall keep secret; you shall present no Person for Hatred or Malice; neither shall you leave any one unpresented, for Fear, Favour, or Affection, for Lucre or Gain, or any Hopes thereof; but in all Things you shall present the Truth, the whole Truth, and nothing but the Truth, to the best of your Knowledge.

So help you GOD.

L. C. J. *Pemberton*. Gentlemen of the Jury, we are all met here, in one of the most solemn Assemblies of this Nation; it is upon the Execution of Justice upon such as shall be found Offenders, and guilty of the Breach of the King's Laws.

This Commission by which we sit, and you are summoned, doth in its Nature extend to all Offences whatsoever, against the Laws of the Land, Treasons, Misprisions of Treasons, Felonies, and all other Crimes and Offences against the King and his Government, such as are vulgarly called *Pleas of the Crown*; they all fall under our Cognizance and your Enquiry in a general Manner. But I must tell you, there is a particular Occasion for this Commission at this Time. His Majesty having Information of some evil traitorous Designs against his Person and Government, has thought fit to direct a due Examination of them, and

that the Persons may be brought to condign Punishment who shall be found Guilty thereof. You must not therefore expect any general and formal Charge from me: Truly, I came hither this Morning, with an Apprehension that you had had your Directions given you before, by the Recorder; for it is our usual Way, not to come until the Juries are sworn in this Place, and their Directions given them; but since I find it otherwise, I take it to be my Duty to say something to you, but shall not go about now to make any such formal Charge, as in Commissions of this Nature is wont to be done; nor to give an Account of all Offences that fall under your Enquiry of a Grand Inquest, impannell'd by Virtue of such a Commission at large; nor must you expect I should acquaint you with all the Crimes that you may enquire of as such an Inquest.

I shall content myself so far, as on the sudden I can recollect my Thoughts, to acquaint you with the Nature of those Bills; with the Enquiry whereof, you shall at present, upon this Occasion, be troubled, and your Duty concerning this Enquiry. I hinted to you at first, that they are Matters of High-Treason, which is a Crime of the greatest and highest Nature of any Crime that can be committed against Man: Other Crimes, as Felonies, Riots, Trespasses, and Things of that Nature, they may occasion Disorders and Troubles in a State or a Kingdom; but I must tell you, Treason strikes at the Root and Life of all: It tends to destroy the very Government, both King and Subjects, and the Lives, Interest, and Liberties of all, and therefore has always been looked upon as a Crime of the most notorious Nature that can be whatsoever, and accordingly Punishments have been appointed for it of the highest and severest Extremity. There was at Common Law great Variety of Opinions concerning Treason, and there were many Disputes about it, what should be Treason, and what not; and therefore it was thought fit, by the Wisdom of our Ancestors, to have a Law to declare Treason; and by the Statute of the 25th of Edward III. there was a plain Declaration made of what was Treason, and what not: By that Law, *For any one to compass, imagine, or intend the Death of the King* (for I will give you no more of that Statute, nor concerning the Sense thereof, than may be for your Purpose now,) I say, by that Law, *to compass, imagine, or intend the Death of the King, and to declare it by Overt-Act, or to levy War against the King*, were declared (amongst other Things in



that Statute mentioned) to be High Treason: And this hath obtained for Law among us ever since; and by that standing Law, nothing is to be accounted Treason, but what is therein particularly declared so; but upon many emergent Occasions, there hath been several other Laws, as the Case hath required now and then, for to declare and bring other particular Crimes within the Compass of Treasons: So there was a Law made in Queen Elizabeth's Reign, for enacting several Crimes to be Treasons, during her Life; which was made upon the Occasion of the inveterate Malice of the Roman Catholics against her and her Government; and so there hath been in other Kings Reigns upon other Occasions.

Amongst the rest, it was thought fit, by the Parliament assembled here, in the 13th Year of this present King, to make a particular Law for the enacting and declaring several Crimes to be Treasons, during this King's Life; they had great Grounds, and too much Occasion for it, and so they express it in the Preamble of that Law. The Wounds which the then late Treasons had made, that had so far obtained in this Kingdom, were then still bleeding, ripe, and scarcely closed; many traitorous Positions, and many seditious Principles were spread, and had obtained and gained footing among the People of this Kingdom; and the Parliament had Reason to believe that where they had been so maliciously bent against the King and his Family, and had taken off his Father, and maintained so long and dangerous a War against him, almost to the utter Destruction and Extirpation of him, and all his good Subjects, and of his, and all our Interests, Properties and Liberties, and had almost destroyed a flourishing Kingdom: Here they had Reason, I say, to be careful, to prevent the like Mischief for the future; therefore, Gentlemen, they did think fit to make a new Law for this Purpose; and whereas the Law before was, that it should be Treason, to compass, imagine, or intend the Death of the King, so as it were declared by Overt-Act; now they thought it would be dangerous to stay till an Overt-Act should declare the Intention: For when they had seen such malicious and evil Designs against the King and supreme Authority; and that they had prevailed so far, as to murder one King and banish another; and had gone a great Way in the Destruction of the Government of this Kingdom, absolutely to root it quite out; they had reason then, as much as they could, to prevent the Designs before they should grow full ripe, and vent themselves in Overt-Acts; therefore, it was enacted by that Statute, made in the 13th Year of this King's Reign, "That if any one should compass, imagine, or intend the Death of the King, or his Destruction, or any bodily Harm that might tend to his Death, or Destruction, or any maiming or wounding his Person, any Restraint of his Liberty, or any Imprisonment of him; or if any should design or intend to levy any War against him, either within the Kingdom, or without; or should design, intend, endeavour, or procure any foreign Prince to invade these his Dominions, or any other of the King's Dominions, and should signify or declare this by any Writing, or by any Preaching or Printing, or by any advised, malicious Speaking, or Words, this shall be High Treason."

Now this hath altered the former Law greatly, especially in two Cases: First, as to levying of War; the Intention was not Treason before, unless it had taken Effect, and War had been actually levied: and then as to the designing and compassing the King's Death, that was not Treason, unless it was declared by an Overt-Act: and as to the imprisoning, or restraining of the Liberty of the King, they of themselves alone were not High Treason: But now by this Law these are made Treason,---by this Law, during his Majesty's Life; and the very designing of them, whether they take Effect, or not take Effect, though it be prevented (before any Overt-Act) by the timely Prudence of the King and his Officers---though it should be timely prevented, that there is no Hurt done, yet the very Design, if it be but uttered and spoken, and any ways signified by any Discourse: this (Gentleman) is made Treason by this Act; and this hath wrought very great Alteration in the Case of Treason now; formerly it was said, and said truly enough, that Words alone would not make Treason; but since this Act, Gentlemen, Words, if they import any malicious Design against the King's Life and Government, and traitorous Intention in the Party, such Words are Treason now within this Act: And this Act was made with great Prudence, and with great Care, to take off that undue Liberty that Men had taken to themselves; in those Times of Licentiousness, People had taken to themselves an undecent and undue Liberty to vent all their seditious and malicious Minds one to another, without any Restraint at all: Therefore now, Gentlemen, you must consider, that Words, if they signify or purport any traitorous Intention or Design in the Party, either against the King or his Government; either to restrain his Liberty, or imprison him, or to do him any bodily Hurt, or any Crime of that Nature; this is Treason within this Act of Parliament.

Look ye, Gentlemen, now as to the Indictments that shall be brought before you, you are to consider these Things: 1. Whether the Matter contained in them, and which you shall have in Evidence, be Matter of Treason within the former, or this Act of Parliament? And here, if you doubt of it, then you must advise with us that are commissioned by his Majesty, to hear and determine these Crimes; and in Matters of Law we shall direct you: And you are to enquire if there be two Witnesses that shall testify the Matters in Evidence to you; for without two Witnesses, no Man is to be impeached within these Laws; but if there be two Witnesses that shall testify to you Matters to make good the Indictments, then you have Ground to find the Indictments. But I must tell you, as to this Case of two Witnesses, it is not necessary that they should be two Witnesses to the same Words, or to Words spoken at one Time, or in the same Place; that is not necessary: if one be a Witness to Words that import any traitorous Design and Intention, spoken at one Time, and in one Place; and another testify other seditious and traitorous Words spoken at another Time, and in another Place; these two are two good Witnesses within this Statute, and so it hath been solemnly resolved by all the Judges of England, upon a solemn Occasion.

Look ye, Gentlemen, I must tell you, That that which is referred to you, is to consider, whether, upon what Evidence you shall have given

unto you, there be any Reason or Ground for the King to call these Persons to an Account; if there be probable Ground, it is as much as you are to enquire into: You are not to judge the Persons, but for the Honour of the King, and the Decency of the Matter, it is not thought fit by the Law, that Persons should be accused and indicted, where there is no Colour nor Ground for it; where there is no Kind of Suspicion of a Crime, nor Reason to believe that the Thing can be proved, it is not for the King's Honour to call Men to an Account in such Cases: Therefore you are to enquire, whether that that you hear be any Cause or Reason for the King to put the Party to answer it. You do not condemn, nor is there such a strict Enquiry to be made by you, as by others, that are sworn to try the Fact, or Issue: A probable Cause, or some Ground, that the King hath to call these Persons to answer for it, is enough, Gentlemen, for you to find a Bill, 'tis as much as is by Law required. Gentlemen, you must consider this, That as it is a Crime for to condemn innocent Persons, so it is a Crime as great to acquit the Guilty; and that God that requires one of them, requires both; so that you must be as strict in the one, as you would be in the other. And let me tell you, if any of you shall be refractory, and will not find any Bill, where there is a probable Ground for an Accusation, you do therein undertake to intercept Justice; and you thereby make yourselves Criminals and Guilty, and the Fault will lie at your Door. You must consider, Gentlemen, you are under a double Obligation here to do right; you are under the Obligation of Englishmen, as we are all Members of one great Body, of which the King is Head; and you are engaged, as Englishmen, to consider, That Crimes of this Nature ought not to go unpunished: Then you have an Oath of God upon you, you are here sworn to do according to what the Evidence is. Now therefore, if you have two Witnesses of Words that may import a treasonable Design or Intention in any of those Parties, against whom you shall have Indictments offered to you, you are bound both by the Law of Nature, as you are Members of this Body; and by the Law of God, as you have taken an Oath upon you, for to find those Bills.

Gentlemen, Compassion or Pity is not your Province, nor ours in this Case; there is no Room for that, in Enquiries of this Nature; that is reserved to an higher and superior Power, from which ours is derived: Therefore, Gentlemen, I must require you to consider such Evidence as shall be given you, and to be impartial, according to what you shall hear from the Witnesses, if you have Ground, upon what Evidence you shall have given to you, to believe that there is any Reason or Cause for the King to call the Persons named in such Indictments, as shall be tendered to you, to answer for what is objected against them therein, you are to find those Bills; that is all that I shall say to you; only pray God to direct you in your Enquiry, that Justice may take Place.

[Then a Bill of High Treason was offered against the Earl of Shaftesbury; and Sir Francis Withins moved, That the Evidence might be heard in Court.]

L. C. J. Gentlemen of the Jury, you hear it is desired by the King's Council (and that we cannot deny) that the Evidence may be publicly given, that it may not be hereafter in the Mouths of any ill-minded Persons abroad, to scatter any Mistakes or Untruths up and down; or to slander the King's Evidence, or to say any thing concerning them that is not true: Therefore, we cannot deny this Motion of the King's Council, but desire that you will take your Places, and hear the Evidence that shall be given you.

[The Jury then desired a Copy of their Oath, which the Court granted, and then they withdrew. After some little Time they returned, and then the Clerk called them by their Names.]

Foreman. My Lord Chief Justice, it is the Opinion of the Jury, that they ought to examine the Witnesses in private, and it hath been the constant Practice of our Ancestors and Predecessors to do it; and they insist upon it as their Right to examine in private, because they are bound to keep the King's Secrets, which they cannot do, if it be done in Court.

L. C. J. Look ye, Gentlemen of the Jury, it may very probably be, that some late Usage has brought you into this Error, that it is your Right, but it is not your Right in Truth: For I will tell you, I take the Reason of that Use for Grand Juries to examine the Witnesses privately and out of Court, to comply with the Conveniencies of the Court; for generally upon such Commissions as these are, the Business is much; and at Good Deliveries there are a great many Persons to be indicted and tried, and much other Work besides, of other Natures to be done: And if at such Times, we should examine all Businesses publicly in the Court, it would make the Business of these Commissions of a wonderful great Length and Cumbrance. Therefore the Judges, for the Conveniency of the Matter, have allowed, that Witnesses should go to the Jury, and they to examine them; not that there is any Matter of Right in it, for without Question, originally all Evidences were given in Court: The Jury are Officers and Ministers of the Court, by which they enquire, and Evidence sure was all given in Court formerly; and the Witnesses still are always sworn in Court, and never otherwise. And, Gentlemen, I must tell you, for your Advantage, as well as for the King's, that it may be sure, that you comply with your Evidence, that you do nothing clandestinely; therefore 'tis for your Advantage that this is done, and the King likewise desires it. Now I must tell you, that if the King requires it of us, and it is a Thing that is in its Nature indifferent, we ought to comply with the King's Desire to have it examined in Court; you shall have all the Liberty that you can have in private; what Question soever you will have asked, yourselves shall ask it, if you please, and we will not cramp you in Time, nor any thing of that Nature. Therefore, Gentlemen, there can be no kind of Reason why this Evidence should not be given in Court. What you say concerning keeping your Counsels, that is quite of another Nature, that is, your Debates, and those Things, there you shall be in private, for to consider of what you hear publicly. But certainly it is the best Way, both for the King, and for you, that there should, in a Case of this Nature, be an open and plain Examination of the Witnesses, that all the World may see what they say.

Foreman

Sir Rob. Sa



**Foreman.** My Lord, if your Lordship pleases, I must beg your Lordship's Pardon, if I mistake in any Thing, it is contrary to the Sense of what the Jury apprehend. First, they apprehend that the very Words of the Oath doth bind them, it says, *That they shall keep the Counsels, and their own Secrets*: Now, my Lord, there can be no Secret in publick; the very Intimation of that doth imply, that the Examination should be secret; besides, my Lord, I beg your Lordship's Pardon if we mistake, we do not understand any Thing of Law.

**Mr. Papillon.** Your Lordship is pleased to say, that it hath been the common Usage and Practice; sometimes, my Lord, we have heard, that that hath been the Law of England, that hath been the Custom of England: If it be the ancient Usage and Custom of England, that hath never been altered from Time to Time, and hath continued so, we desire your Lordship's Opinion upon that; as we would not do any Thing that may be prejudicial to the King, so we would not do the least that should be prejudicial to the Liberties of the People; if it be the ancient Custom of the Kingdom to examine in private, then there is something may be very prejudicial to the King in this publick Examination; for sometimes in examining Witnesses in private, there come to be discovered some Persons guilty of Treason, and Misprision of Treason, that were not known, nor thought on before. Then the Jury sends down to the Court, and gives them Intimation, and these Men are presently secured; whereas, my Lord, in case they be examined in open Court publickly, then presently there is Intimation given, and these Men are gone away. Another Thing that may be prejudicial to the King, is, that all the Evidences here, will be foreknown before they come to the main Trial upon Issue by the Petty-Jury; then if there be not a very great deal of Care, these Witnesses may be confronted by raising up Witnesses to prejudice them, as in some Cases it has been: Then besides, the Jury do apprehend, that in private they are more free to examine Things in particular, for the satisfying their own Consciences, and that without Favour or Affection; and we hope we shall do our Duty.

**L. C. J.** Look ye, Mr. Papillon, it is reasonable that we should give you our Advice in this Case: I must tell you, if you had considered of what I had said before, I thought I had obviated these Objections: First, as to what you do say that you are bound to conceal your Counsels, and the King's Secrets, that is very true; as to your Counsels, that is, your Debates, you are bound to conceal them: As to the King's Secrets, so long as he will have them kept secret, you are bound to keep them so too; but it doth not deprive the King of the Benefit of having it publick, if he have a Desire for it; you don't break your Oath, if the King will make it publick; you don't make it publick; 'tis the King does it. Then as to that that you do say, that you apprehend the common Usage of the Kingdom to be a Law; that is true, Mr. Papillon, in some Sense; a constant and uninterrupted Usage goes for a Law among us; but I thought I had told you before, that both of ancient and later Times there have been Examinations of the Witnesses in Court, in Cases of this Nature; and we are not without Precedents of it every Year, every Term, continually from Time to Time, Evidence is heard in Court by the Grand Jury; it is as usual a Thing with us, as any Thing, if it be desired, nothing more frequent, or more common: I never heard it denied, or stood upon by any Grand-Jury, in my Life, till of late here; you may be instructed with a thousand Precedents, for I am sure it is a common and ordinary Case, upon such Occasions, if desired, to hear the Evidence in Court.

Look ye, Gentlemen, as to that Care that you have of the King's Affairs, the King has Reason to take it well that you are so careful for them; and that you are so mindful of his Concerns, he hath a great deal of Reason to think well of you for it: And, Gentlemen, consider this, that his Majesty's Council have certainly considered of this Evidence, before they brought this to a publick Enquiry; or else it would be a hard Thing if they should come raw, and not know what the Witnesses can say; for though you are the Jury to hear the Witnesses, yet you must consider, that the King's Council have examined whether he hath Cause to accuse these Persons, or not; and, Gentlemen, they understand very well, that it will be no Prejudice to the King to have the Evidence heard openly in Court; or else the King would ne'er desire it.

**Foreman.** My Lord, the Gentlemen of the Jury desire that it may be recorded, that we insisted upon it as our Right; but if the Court overrule, we must submit to it.

**L. C. J.** Here are enough Persons to take Notice of it; to make Records of such Things, is not usual; it is not our Business here to record every Thing, that every Man will desire to be recorded: We can record nothing but what is in order to the Proceedings, but Notice enough is taken of it; you need not fear but that there will be Witnesses enough.

**L. C. J. North.** Gentlemen, I must say something to fortify what my Lord Chief Justice has said: If any of us had been of a different Opinion, we would have spoken it; the same Thing was stood upon, and discoursed on the last Sessions, and then all the Judges were of this Opinion, and in what all the Judges agree to, you should acquiesce. I must tell you from my own Experience; where the King will, he ought to have it kept secret: I have not known it done publickly in the orderly Course of Business; but I have often known where it hath been desired by those which prosecute for the King, that Evidence hath been given openly; and I never knew it denied: If any of my Brothers think otherwise, I desire they would speak; but, I tell you, as to my Experience, this is the Case.

**Mr. Sheriff P.** I desire the Witnesses may be kept out of the Court, and called one by one.

**L. C. J.** It is a Thing certainly, that the King's Council will not be afraid of doing; but Sheriffs do not use to move any Thing of this Nature in Court, and therefore 'tis not your Duty, Mr. Sheriff, to meddle with it.

**Sheriff P.** It was my Duty last Time, my Lord, and appointed.

**\* Mr. Att. Gen.** You were acquainted 'twas not your Duty last Time, and you appear against the King.

**Sir Rob. Sawyer.**

Then the Indictment was read.

**London ff.** **T**HE Jurors for our Sovereign Lord the King, upon their Oaths present, that Anthony Earl of Shaftesbury, late of the Parish of St. Martin's in the Fields, in the County of Middlesex, as a false Traitor against the most illustrious, and most excellent Prince, our Sovereign Lord Charles II. by the Grace of God, of England, Scotland, France, and Ireland, King, his natural Lord, the Fear of God in his Heart not having, nor weighing the Duty of his Allegiance; but being moved and seduced by the Instigation of the Devil, the cordial Love, and true, due, and natural Obedience, which true and faithful Subjects of our said Sovereign Lord the King, towards him our said Sovereign Lord the King, should, and of Right ought to bear, wholly withdrawing, and with all his Strength intending the Peace and common Tranquillity in this Kingdom of England, to disturb, and War and Rebellion against our said Sovereign Lord the King, to stir up and move, and the Government of our said Sovereign Lord the King, within this Kingdom of England, to subvert, and him our said Sovereign Lord the King, from the Title, Honour, and regal Name of the Imperial Crown of his Kingdom of England to depose and deprive, and him our said Sovereign Lord the King to Death and final Destruction to bring and put, the 18th Day of March, in the three and thirtieth Year of our Sovereign Lord Charles II. now King of England, and divers other Days and Time, as well before as afterwards, in the Parish of St. Mary le Bow, in the Ward of Cheap, London traiterously compassed, imagined, and intended the Death and final Destruction of our said Sovereign Lord the King, and the ancient Government of his Kingdom of England, to change, alter, and wholly to subvert, and him our said Sovereign Lord the King, from the Title, Honour, and kingly Name of his Imperial Crown of this Kingdom of England to depose and deprive, and War and Rebellion against our Sovereign Lord the King, to move and levy within this Kingdom of England; and his said most wicked Treasons, and traiterous Compasses, Imaginations and Purposes aforesaid, to fulfil and perfect, he the said Anthony Earl of Shaftesbury, as a false Traitor, with divers armed Men, Subjects of our said Sovereign Lord the King, then being, maliciously, traiterously and advisedly, did provide and prepare to be aiding to him the said Earl of Shaftesbury, to fulfil and perfect his Treasons aforesaid. And his said wicked Treasons, traiterous Compasses, Imaginations and Purposes, the sooner to fulfil and perfect, he the said Anthony Earl of Shaftesbury as a false Traitor, with one John Booth, and other Subjects of our said Lord the King, then and there traiterously assembled, met and consulted; and the same wicked Treasons, and traiterous Compasses, Imaginations and Purposes aforesaid, then and there to the said John Booth, and other Persons, to the Jury unknown, in the hearing of divers Liege Subjects of our Sovereign Lord the King, then and there present, openly, publickly, maliciously, traiterously and advisedly did say and declare, and to persuade and induce the said John Booth to be aiding and assisting in his said Treasons, Compasses, Imaginations, and Purposes, he the said Anthony Earl of Shaftesbury, as a false Traitor, maliciously, advisedly, and traiterously, the said 18th Day of March, in the three and thirtieth Year of the Reign of our said Sovereign Lord the King, at the Parish and Ward aforesaid, within the City of London aforesaid, falsely, advisedly, subtilly, maliciously and traiterously said, asserted and declared, that in a short Time the Parliament was to sit at Oxford, and that he the said Anthony Earl of Shaftesbury had inspected the Elections, and considered the Inclinations and Dispositions of the Generality of the Members of Parliament elected; and that he the said Anthony Earl of Shaftesbury was satisfied that the Parliament would insist upon three Matters, (to wit) The Bill of Exclusion against the Duke of York; the abolishing the Act of Parliament of the 35th of Queen Elizabeth, and the passing of a new Bill for uniting Protestant Dissenters; with divers other good and wholesome Bills. To which he the said Anthony Earl of Shaftesbury was certain that the King's Majesty would refuse to give his Royal Assent; and therefore he the said Anthony Earl of Shaftesbury did expect that there would be a Division between the King's Majesty and the Parliament; and that many noble Lords and worthy Members of the Lower House did concur in the same Opinion; and they were resolved to insist upon the passing of those Bills: And if the King's Majesty refused, that they (meaning him the said Anthony Earl of Shaftesbury, and the said noble Lords and worthy Members) and provided Strength to compel the King's Majesty to grant thereunto: And that for his Part, he the said Anthony Earl of Shaftesbury had provided stout Men to be commanded by Captain Wilkinson, (meaning one Henry Wilkinson, one of the Subjects of our said now Sovereign Lord the King); of which he the said Anthony Earl of Shaftesbury had agreed that the said John Booth should be one.

And further, the Jurors aforesaid upon their Oaths do say, that the aforesaid Anthony Earl of Shaftesbury, his said wicked Treasons, and traiterous Imaginations, to fulfil, perfect and bring to Effect afterwards: to wit, the said eighteenth Day of March, in the thirty-third Year of his said now Majesty's Reign, in the Parish and Ward aforesaid, within the City of London aforesaid, as a false Traitor in the presence and hearing of divers liege People of our said Sovereign Lord the King, then and there present, openly and publickly, falsely, maliciously, advisedly and traiterously said, asserted, published, and with a loud Voice declared, that our said now Lord the King was a Man of no Faith, and that there was no Trust in him; and that our said Lord the King deserved to be deposed, as well as Richard the Second, late King of England deserved.

And further, the Jurors aforesaid upon their Oaths do say, that the said Anthony Earl of Shaftesbury, his said wicked Treasons, and traiterous Imaginations aforesaid, to be fulfilled and perfected, and brought to effect the said 18th Day of March, in the three and thirtieth year of his said now Majesty's Reign, in the Parish and Ward aforesaid, in the City of London aforesaid, as a false Traitor, in the presence and hearing of divers liege Subjects of our said Lord the King then and there present, openly and publickly, falsely, maliciously, advisedly, and traiterously said, asserted, published, and with a loud Voice declared, that he the said Anthony Earl of Shaftesbury, could never desist, until he had brought this Kingdom of England into a Commonwealth without a King, and that the said Anthony Earl of Shaftesbury, and all those that him the said Anthony Earl of Shaftesbury would assist, (and he knew many that would assist him the said Anthony Earl of Shaftesbury) would make England a Commonwealth as Holland was: and that he the said Anthony Earl of Shaftesbury, and other Traitors unknown, would live as in Holland, and that he our said Lord the King, and all his Family, should be rooted out.

And further, the Jurors aforesaid do say, that the said Anthony Earl of Shaftesbury, his said wicked Treasons, and traiterous Imaginations aforesaid, to



be fulfilled, perfected, and brought to Effect afterwards, the said 18th Day of March, in the three and thirtieth Year of his said now Majesty's Reign, in the Parish and Ward aforesaid, in the City of London aforesaid, as a false Traitor, in the presence and hearing of divers liege Subjects of our said Sovereign Lord the King then and there present, openly, publicly, falsely, maliciously, advisedly, and traitorously said, asserted, published, and with a loud Voice declared, that our now Sovereign Lord the King was a Man of an unfaithful Heart, and not worthy to be trusted, and not fit to rule and govern, being false, unjust, and cruel to his People; and if he would not be governed by his People, that they (meaning him, the said Anthony Earl of Shaftesbury, and other Traitors to the furors unknown) our said Sovereign Lord the King would depose, against his Allegiance and Duty, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity, &c. and against the Form of the Statute in such Case made and provided, &c.

Sir Fr. Withens. Gentlemen of the Jury, This is an Indictment against the Earl of Shaftesbury; I shall not trouble you to open the Indictment, because the Evidence will be somewhat long, I shall only tell you which Way we shall go.—

L. C. J. North. I do not know whether you desire the Witnesses should be examined a-part, do you desire that, Gentlemen?

L. C. J. If you do desire it, Gentlemen, they shall, for Mr. Sheriff hath nothing to do with it; but if you do desire it, you shall have the Witnesses called one at a Time, and all the rest shall be put out of the Court.

Jury. My Lord, it is our Desire.

L. C. J. We did deny it to Mr. Sheriff, because we are to keep Men within their Duty. Here it is not his Duty to meddle with any Thing of this Nature.

Foreman. My Lord, we desire we may have a List of their Names, and that they may be put a-part, that they may not hear what one another say.

Sir Fr. Withens. My Lord, there is one Part I would open.

L. C. J. There is no need for it at all—You shall have their Names told you as they are called.

Mr. Harrison. My Lord, we pray we may have a List of their Names.

L. C. J. If you desire it, you may have it: but it will be no Advantage, for you will hear them named, and you may write them down as they come in.

Mr. Godfrey. We desire a List; for you told us, the King's Council had examined them, and knew who they were.

L. C. J. I'll tell you, the Court is to have their Names indorsed, for they don't bring Witnesses in *hugger-mugger*, and I suppose they are indorsed here.

L. C. J. North. It is want of Experience that makes you ask this; you are told, they are indorsed here.

L. C. J. Look you, Sir Samuel Barnardiston, you must have the Indictment itself out with you, and all their Names written upon the back of that Indictment; but that you should desire to have the Names of them in a Roll beforehand, I do not know, if there be any Reason that you can assign for it.

Foreman. One Thing more I have to say, That we may see the Warrant by which the Earl of Shaftesbury was committed, for there are some other Questions depend upon it.

L. C. J. That we cannot do, for the Lieutenant of the Tower hath that Warrant, which he keeps for his Indemnity; we cannot demand it from him upon any Terms: Any Thing that you do desire of us, let us know; what is reasonable, and within our Power, we will grant; and for other desires of your's, we tell the Reason why we cannot grant them.

Mr. Papillon. My Lord, if your Lordship pleases, I will only acquaint your Lordship, that the Gentlemen of the Jury do seem to be of Opinion, that your Lordship gives them leave to examine the Witnesses; and the Jury, because they would not put the Court to too much Trouble, do desire, that the Witnesses should come one after another, and make their Information, and then the Jury would withdraw, to consider what proper Questions to ask them, and come down again.

L. C. J. You shall do so, Gentlemen. Look you, we did, at the Request of the last Jury, use the same Method; after they had heard the Witnesses what they gave in Evidence, they came and desired leave to ask them some Questions, which we granted, and they were all called one by one, and they did examine them; you shall do so, Gentlemen.

Mr. Att. Gen. I was informed this Morning there were several Questions to be asked of several Witnesses to direct the Grand-Jury how to demean themselves.

L. C. J. Mr. Attorney, the Request is reasonable enough.

Mr. Harrison. We desire they may be examined one by one.

L. C. J. North. I suppose you don't stand upon it for these Witnesses, they are Clerks of the Council, that only prove a Paper which it seems was found in the Earl of Shaftesbury's House: If you will, they may go out, and be called in again.

Harrison. We humbly beg it.

Mr. Godfrey. I was Foreman of the Jury at Fitz-Harris's Trial, and it was complained he had hard Measure from some Irish Witnesses, and that it was severe that they should be examined in Troops: It hath troubled me since that I did not put them out and examine them a-part.

L. C. J. Look ye, Gentlemen, you that are Witnesses for the King, you must go all out, and come in as you are called, one by one.

[Which done, William Blathwait, Esq; was produced, and a Paper delivered in.]

Mr. Saunders to Mr. Blathwait. I pray, Sir, give an Account how you came by that Paper?

W. Blathwait. This Paper, Gentlemen, was put into my Custody by Mr. Gwyn, Clerk of the Council, who seized it among others in my Lord Shaftesbury's House: He gave me the Key of the Room where they were kept, and it hath been altogether in my Custody, except for a short Time that it was delivered to Mr. Secretary Jenkins, by whom it was re-delivered to me. Mr. Gwyn having seized Papers at my Lord Shaftesbury's House brought them to the Council-Office, and put them into one of the Rooms, and locked the Door, and delivered the Key to me. When I was ordered by the Committee of Examinations, I fetched up the Trunks and Papers, and

brought them into the Council Chamber, and the Trunks were opened in the Presence of some of the Lords of the Council, and in the Presence of Mr. Wilson, who was appointed to attend there on the behalf of my Lord Shaftesbury, and he was always present when the Papers were taken out of the Trunks and Bags: This was one Paper, and was taken out upon the 6th of July in the Presence of Mr. Wilson, who took particular Notice of this Paper, as may appear by his own Hand. The Trunk was sealed, it was a great Trunk, and it was opened in the Presence of Mr. Samuel Wilson and Mr. Starkey, who were both appointed by my Lord of Shaftesbury.

L. C. J. Was this Paper found in one of those Trunks or Boxes that was delivered to you by Mr. Gwyn?

Mr. Blathwait. This Paper was taken out of a Velvet-Bag which Mr. Gwyn had put into the great Trunk, which Trunk was sealed and opened in the Presence of Mr. Wilson and Mr. Starkey.

Sir Fr. Withens. Did you find that Paper in the Trunk?

Mr. Blathwait. I took this and others out of the Velvet Bag, which was in the great Trunk.

L. C. J. Call Mr. Gwyn to give an Account where he found these Papers. Look you, Gentlemen of the Jury, you hear what his Evidence is, would you ask him any Thing while he is here.

[Then Mr. Gwyn coming in.]

L. C. J. Where had you the Trunk you delivered to Mr. Blathwait?

Gwyn. My Lord, on the second of July, by a Warrant from the Secretary, I was commanded to go to my Lord Shaftesbury's House to search his Papers, I did there meet with a great many Papers, and I took a Note how I had parted them, and into what Parcels I had put the Papers; there were several Sorts of them in a great Hair Trunk, and there was a Velvet Bag in which I put some Papers that were loose in my Lord's Closet above Stairs. My Lord Shaftesbury as soon as I came, gave me the Keys, and told me where his Closets were, and said he would seal them up with his own Seal: I staid for it, but he sent me word by a Gentleman that I might put my own Seal if I pleased: I did put my Seal upon the Trunk, but afterwards being sent another Way, I delivered it to this Gentleman Mr. Blathwait: Whether any of the Papers were taken out afterwards I cannot tell.

L. C. J. Mr. Gwyn, that your Evidence may be the better understood, tell me; were all the Papers that were in that Velvet Bag in my Lord Shaftesbury's Closet?

Mr. Gwyn. In my Lord Shaftesbury's Closet above Stairs.

L. C. J. This you swear; when you delivered it to Mr. Blathwait, all the Papers were in that Bag; was there nothing in that Bag, but what you took in my Lord Shaftesbury's Closet?

Mr. Gwyn. Nothing, my Lord.

L. C. J. Look you, Gentlemen, you do observe that this Paper was put into the Bag by Mr. Gwyn, and Mr. Blathwait swears he found it in the Bag, and delivered it to Mr. Secretary Jenkins; therefore if you please Mr. Secretary Jenkins, you shall be sworn whether that Paper was delivered to you by Mr. Blathwait, because we would clear it as we go, whether that be the Paper was delivered to Mr. Secretary Jenkins by Mr. Blathwait: I pray, Sir, was that the Paper that Mr. Blathwait did deliver into your Hands?

Mr. Sec. Jenkins. My Lord, this is the Paper, this Paper was delivered into my Hands by Mr. Blathwait in the Council Chamber. I cannot say that this Numerical Paper was taken out of the Velvet Bag; but there were a great many Papers taken out of it, and I having the Honour to be at the Examination of the Papers; this was ordered to be put (and was put) into my Hands, with nine Papers more.

L. C. J. Was it out of your Hands?

Mr. Sec. Jenkins. It was out of my Hands; for upon Monday last I took out the nine Papers intrusted with me, and this tenth out of my Desk, and caused my Servant to mark them by Numbers. Then I sealed up these Papers and sent them to Mr. Graham. Mr. Graham brought them back again to me without any Alteration whatsoever; then I put this tenth Paper into the Hands of Mr. Blathwait again. All the while it was in my Hands, it was under Lock and Key, and none of my Servants saw it, but the Time it was numbered; and no Manner of Alteration was made in this, or any other of the nine Papers.

L. C. J. Now it appears this was the Paper taken in my Lord Shaftesbury's Closet.

Then this Paper was read as followeth.

WE the Knights, &c. finding to the Grief of our Hearts, the Popish Priests and Jesuits, with the Papists and their Adherents and Abettors have for several Years last past pursued a most pernicious and hellish Plot, to root out the true Protestant Religion as a pestilent Herefy, to take away the Life of our gracious King, to subvert our Laws and Liberties, and to set up arbitrary Power and Popery.

And it being notorious that they have been highly encouraged by the Countenance and Protection given and procured for them by J. D. of Y. and by their Expectations of his succeeding to the Crown, and that through crafty Popish Councils his Designs have so far prevailed, that he hath created many and great Dependents upon him by his bestowing Offices and Preferments both in Church and State.

It appearing also to us, that by his Influence mercenary Forces have been levied and kept on foot for his secret Designs contrary to our Laws; the Officers thereof having been named and appointed by him, to the apparent Hazard of his Majesty's Person, our Religion and Government, and the Danger had not been timely foreseen by several Parliaments, and part of those Forces with great Difficulty, caused by them to be disbanded at the Kingdom's great Expence: And it being evident, that notwithstanding all the continual Endeavours of the Parliament to deliver his Majesty from the Councils, and out of the Power of the said D. yet his Interest in the Ministry of State and others have been so prevalent, that Parliaments have been unreasonably prorogued and dissolved when they have been in hot pursuit of the popish Conspiracy, and ill Ministers of State their Assistants.

And that the said D. in order to reduce all into his own Power hath procured the Garrisons, the Army and Ammunition, and all the Power



of the Seas and Soldiery, and Lands belonging to these three Kingdoms to be put into the Hands of his Party and their Adherents, even in Opposition to the Advice and Order of the last Parliament.

And as we considering with heavy Hearts how greatly the Strength, Reputation, and Treasure of the Kingdom both at Sea and Land is waisted and consumed, and lost by the intricate expensive management of these wicked destructive Designs; and finding the same Counsels after exemplary Justice upon some of the Conspirators, to be still pursued with the utmost devilish Malice, and Desire of Revenge; whereby his Majesty is in continual Hazard of being murdered to make way for the said D.'s Advancement to the Crown, and the whole Kingdom in such Case is destitute of all Security of their Religion, Laws, Estates and Liberty, sad Experience in the Case, Queen Mary having proved the wisest Laws to be of little Force to keep out Popery and Tyranny under a Popish Prince.

We have therefore endeavoured, in a parliamentary Way, by a Bill for the Purpose, to bar and exclude the said Duke from the Succession to the Crown, and to banish him for ever out of these Kingdoms of England and Ireland. But the first Means of the King and Kingdom's Safety being utterly rejected, and we left almost in Despair of obtaining any real and effectual Security, and knowing ourselves to be intrusted to advise and act for the Preservation of his Majesty and the Kingdom, and being persuaded in our Consciences that the Dangers aforesaid are so eminent and pressing, that there ought to be no Delay of the best Means that are in our Power to secure the Kingdom against them, We have thought fit to propose to all true Protestants an Union amongst themselves, by solemn and sacred Promise of mutual Defence and Assistance in the Preservation of the true Protestant Religion, his Majesty's Person and Royal State, and our Laws, Liberties, and Properties, and we hold it our bounden Duty to join-ourselves for the same Intent in a Declaration of our united Affections and Resolutions in the Form ensuing.

**I A. B.** do in the Presence of God solemnly promise, vow, and protest to maintain and defend to the utmost of my Power, with my Person and Estate, the true Protestant Religion, against Popery and all Popish Superstition, Idolatry, or Innovation, and all those who do or shall endeavour to spread or advance it within this Kingdom.

I will also, as far as in me lies, maintain and defend his Majesty's Royal Person and Estate; as also the Power and Privilege of Parliaments, the lawful Rights and Liberties of the Subject against all Inroachments and Usurpation of arbitrary Power whatsoever, and endeavour entirely to disband all such mercenary Forces as we have Reason to believe were raised to advance it, and are still kept up in and about the City of London, to the great Amazement and Terror of all the good People of the Land.

Moreover **J. D.** of **Y.** having publicly professed and owned the Popish Religion, and notoriously given Life and Birth to the damnable hellish Plots of the Papists against his Majesty's Person, the Protestant Religion, and the Government of this Kingdom; I will never consent that the said **J. D.** of **Y.** or any other, who is or hath been a Papist or any ways adhered to the Papists in their wicked Designs, be admitted to the Succession of the Crown of England; but by all lawful Means, and by Force of Arms, if need to require, according to my Abilities, will oppose him, and endeavour to subdue, expel, and destroy him if he come into England, or the Dominions thereof, and seek by Force to set up his pretended Title, and all such as shall adhere unto him, or raise any War, Tumult or Sedition for him, or by his Command, as publick Enemies of our Laws, Religion and Country.

To this End we and every one of us whose Hands are here underwritten, do most willingly bind ourselves and every one of us unto the other jointly and severally, in the Bond of one firm and loyal Society or Association, and do promise and vow before God, that with our joint and particular Forces we will oppose and pursue unto Destruction all such as upon any Title whatsoever shall oppose the just and righteous Ends of this Association, and maintain, protect, and defend all such as shall enter into it in the just Performance of the true Intent and Meaning of it. And lest this just and pious Work should be any Ways obstructed or hindered for want of Discipline and Conduct, or any evil-minded Persons under Pretence of raising Forces for the Service of this Association, should attempt or commit Disorders; we will follow such Orders as we shall from Time to Time receive from this present Parliament, whilst it shall be sitting, or the major Part of the Members of both Houses subscribing this Association, when it shall be prorogued or dissolved; and obey such Officers as shall by them be set over us in the several Counties, Cities, and Boroughs until the next Meeting of this or another Parliament; and will then shew the same Obedience and Submission unto it, and those who shall be of it.

Neither will we for any Respect of Persons or Causes, or for Fear, or Reward, separate ourselves from this Association, or fail in the Prosecution thereof during our Lives, upon Pain of being by the rest of us prosecuted, and suppressed as perjured Persons, and publick Enemies to God, the King, and our Native Country.

To which Pains and Punishments we do voluntarily submit ourselves, and every one of us without benefit of any Colour or Pretence to excuse us.

In Witness of all which Premises to be inviolably kept, we do to this Writing put our Hands and Seals, and shall be most ready to accept and admit any other hereafter into this Society and Association.

**Sir Fran. Withens.** This Paper is very plausibly penned in the beginning, and goes a great way so, but in the last Clause but one, there they come to perfect levying War; for they do positively say, they will obey such Officers as either the Parliament or the major Part of them, or after the Parliament is dissolved, the major Part of those that shall subscribe this Paper shall appoint; they will obey all such Officers.

**Foreman.** Pray, what Date is this Paper of?

**Sir Fran. Withens.** It was after the Bill for the Exclusion of the Duke of York, for it says, that way failing, they would do it by Force.

**Foreman.** There is no Hand to it at all?

**Sir Fran. Withens.** No, none at all. One thing I had forgot, that they

Vol. III.

would join to destroy the mercenary Forces about London, which is downright levying of War against the King and his Guards.

**Mr. Saunders.** The Design of it is pretended to oppose Popery and arbitrary Power, and destroy the Papists; but that doth not seem so much in it's self: But when you have heard the Evidence you will hear who were the Papists that were to be destroyed by this Army.

**John Booth.**

**Jury.** He has stood in the Face of the Court all this while.

**L. C. J.** When did Mr. Booth come down?

**Jury.** He was here before we went up, my Lord, and hath been here ever since.

**L. C. J.** Look ye, Gentlemen, they tell you he was carried away, and came down but now.

**Mr. Booth.** No, my Lord, I came down but now.

**Mr. Shepherd.** My Lord, we desire a List of their Names, that we might know who is here, and who is not.

**Mr. Godfrey.** This Man hath been here all this while, and all the others may be here for aught that I know.

**Sir Fran. Withens.** In the first Place give an Account what Discourse you have had with my Lord Shaftesbury.

**L. C. J.** Speak out, that the Jury may hear you.

**Mr. Booth.** I will speak as loud as I can. In the Month of January, about the middle of January last, I was introduced into my Lord Shaftesbury's Acquaintance by one Captain Henry Wilkinson. I say, I was introduced into my Lord Shaftesbury's Acquaintance by one Captain Henry Wilkinson. This Captain Wilkinson is a Yorkshire Gentleman, he has known me above twenty Years, and he and I have had familiar Conversation a long while; so waiting upon my Lord Shaftesbury, our first Business that we went about was, Captain Wilkinson did pretend to receive a Commission from my Lord Shaftesbury, and some others of the Lords Proprietors of the Palatinate of Carolina to be their Deputy Governor; and he told me the Prospect of that Journey was like to be very hopeful, and that his Interest was good, and that he could procure me a Commission, and such a Number of Acres for Quality and Quantity as I did desire: And he said he did not design to go over immediately in his own Person, but he would send his eldest Son, and his youngest Son, and if he went, he would return again as Occasion should serve. I consented to him in all this, and we discoursed it divers times together, and we went to my Lord Shaftesbury on purpose to receive Commissions in order to this Purpose. The first time I went there was the Earl of Craven, Sir Peter Colleton, and one Archdell a Quaker; I thought him a Quaker because he kept his Hat on, when the rest of the Lords stood bare in Civility to him. We discoursed the Thing about Carolina. After this, and before, Captain Wilkinson and I had several Discourses about the Juncture of Affairs in these Times, though I knew him to be an old Royalist, and one that served his Majesty and his late Father very much in the Wars; yet being under great Disappointments of Preferments at Court, and missing the Reward he expected from the King, his Heart was turned another Way, and he had repented himself of those Services he had done for the King, and was become a Man of another Opinion; and there was some Inducements upon me that I was inclined to the same Opinion: So he expressed himself to my Lord, and so from one Thing to another we went on in Discourse, and related the several Parliaments, and the proroguing them, and the Disappointments of the People, and the Fear of Popery and arbitrary Power: And this was not done once, nor twice, nor ten times; for I cannot enumerate them, for we kept a continual Club, and conversed together familiarly near three quarters of a Year. After this first Acquaintance with my Lord Shaftesbury at his House, I did frequently go with Captain Wilkinson, and between Christmas and March four or five times: And I observed this, that when we came to my Lord Shaftesbury's they were cautious in our Accession: In the first Place it was to be known by some of the Servants, who he was in Company with: And in the second Place the Names were sent up, who they were that were to speak with him: Sometimes we had an Alehouse at the Bell in the same Street: (I forget the Name of the Street) we staid at the Alehouse till we had a fit Time, Captain Wilkinson had Acquaintance with his Porter and his Gentleman of his Chamber: And so we often discoursed. And from the Concerns of Carolina we fell to Matters more publick concerning the State. I remember he would use to inveigh sharply against the Times, and look upon himself as not so valued nor so respected, nor in those Places and Dignities as he expected he should be, and seemed to be discontented, and he did fear that Popery would be introduced, and arbitrary Power: And when Parliament-men were to be elected, there came every Week News, bringing Particulars of such Boroughs and Counties as had made particular Elections for Members for Parliament; whether Knights, Citizens, or Burgesses: And he would often consider that Parliament that was to sit at Oxford, what they were as to their Inclinations and Dispositions: And he said, they would insist upon the same Things the other Parliaments before had done. Particularly he said the Parliament would never grant the King any Assistance of Money, nor satisfy him in those things that he desired, unless he gave the People first Satisfaction in those Things that they insisted on before, and he believed would insist upon after; and particularly the Bill of excluding the Duke of York from the Crown: Another was the abolishing the Statute of the 25th of Elizabeth: And the third was giving his Royal Assent for the Passing a new Bill, whereby all Dissenting Protestants, Nonconformists, or what you will term them, should be freed from those Penalties and Ecclesiastick Punishments that they are subject to by the present established Law: And he said, if these and some other wholesome Laws and Bills were passed by the Royal Assent of the King, he believed that when the People had received this Security and Satisfaction, that they would be very willing to grant the King such Accommodations of Money by Way of Assentment, or so, as his necessary Occasions should also require: But without this he believed, there would be a Breach between the King and the Parliament, and that they had ordered the Parliament should meet at Oxford, and not at this Metropolis at London, where they might go on without Fear of being overawed: That this was an Intention to awe the Parliament. But he said, himself and divers noble Lords, and Members of the House of Commons had considered themselves and their own Safety, and that they



judged it dangerous to go to Oxford, where they were sure the Guards, the Retinue of the Court, and the Assistance of the Scholars (which usually incline to the Crown) might so over-awe the Parliament, that they might not so freely proceed in a Way for the publick Good as they intended; and therefore he and others had considered with themselves, that it were fit for them to have Guards, and send them thither; and to this Purpose he had established a Matter of fifty Men, Persons of Quality, that he believed would have Men along with them; and he intrusted Captain Henry Wilkinson with the Command of these Men, and they were to come to Oxford at such a Time, and if there were any Breach between the King and the Parliament, or any Violence offered to any of these Members by the Guards, or Retinue of the Court, that then these Men, with others that other Lords had provided, should repel his Force, by greater Force, and should purge the Guards of all the Papists and Tories, and such as were against the Protestant Religion, and the established Laws of the Land; and likewise these Men should be ready to assist himself, and those other Persons in his Confederacy, to purge from the King those evil Counsellors which were about him; particularly there were named, the Earl of Worcester, my Lord Clarendon, my Lord Halifax, my Lord Feversham, and Mr. Hyde, now Lord Viscount Hyde: And these Persons were looked upon to be dangerous, and gave the King evil Advice, and made him continue so very deaf to what the Parliament urged him to; and therefore they said they would not only purge the Guards, and repel that Force by a greater Force, but also take those Lords by Violence from the King, and bring the King to London, to the chief Metropolitan City, where those Things should be established, which they designed for their Safety in these two Respects, for the preserving the Protestant Religion, and likewise for the keeping and defending us safe from arbitrary Power and Government. Upon this Captain Wilkinson did desire me that I would be one of those under his Command: This I did consent to. And he requested me further, that I would provide for myself Horse and Arms; and likewise Arms for my Man, and he would provide me a Horse for my Man. I did accordingly provide Arms for myself, and a good Stone-Horse for myself, and Arms for my Man before the Parliament did sit at Oxford. I think the 23d of March, I do not punctually remember the Day, and when the Parliament was set, we enquired and heard how things went on, and found that it was as my Lord Shaftesbury had predicted, that the Parliament did insist upon those very Things that he told they would do, but never believed or imagined they would be so soon dissolved. Upon Thursday before the Parliament was dissolved, Captain Wilkinson told me, he expected that very Week to have a Summons to go up to Oxford with those Men that were lifted with him; but then Saturday's News came of the Dissolution of the Parliament, and therefore it took no further Effect. The whole Matter, the main Design was this, That my Lord Shaftesbury should have so many Men to attend him there for the Security of his Person, and likewise to repel the Force of the King's Guards, or any other Persons that followed the King; and also to remove from him those five Lords, and bring the King back to London, to establish those Laws that I have mentioned.

Sir Fra. Withens. Pray what Time did you discover this?

Mr. Booth. About six Weeks ago.

Sir Fra. Withens. Had you any Discourse with the Earl of Shaftesbury after Captain Wilkinson spoke with you, or before the Sitting of the Parliament?

Mr. Booth. I said before, that the first Motion of these fifty Men that were to be my Lord Shaftesbury's Guard came from Captain Wilkinson; but after this, when I went with Captain Wilkinson to my Lord Shaftesbury, the same Thing was discoursed there. The last Time I was with my Lord Shaftesbury, was about a Week before he went to Oxford, about ten Days before the Parliament sat, or a Week, and then I heard the same Discourse from my Lord Shaftesbury's own Mouth.

Sir Fra. Withens. Had you any other Discourse with my Lord Shaftesbury?

Mr. Booth. I say, I made three or four Visits between Christmas and March, and we had discourse every Time particularly about the King's Person, and if the King did refuse these Motions, that then these Men were to be taken from him, and he repelled with a greater Force, and be brought to it by Force.

Sir Fra. Withens. Did you ever make any Solicitation to any to make this Discovery?

Mr. Booth. Thus far I did, and I will tell you the whole Matter in that Point; there was one Walter Banes, an Acquaintance of mine, and I found that he had, at Wilkinson's Request, engaged himself in some Business that one Brownrig, an Attorney in Yorkshire, had writ to him about, concerning some Men that were to swear against my Lord Shaftesbury. I asked Mr. Banes what Men these were? He said, he thought they were Irishmen. I said, I don't know what Conversation in that Nature my Lord Shaftesbury might have with Irishmen, for I know none of them; but I am satisfied that he had Conversation tending to these Ends that you speak of with some Englishmen, and that I know. This Mr. Banes did take particular Notice of, and he was very frequently upon me to tell him what the Matter was, and I gave him some Intimation of it. Truly 'twas very much upon my Spirit, and I could not tell whether I was able to carry it through or not, or had better to let it alone as it was in Silence: But discoursing still more with him, and at the Result of that Discourse we had by Degrees, I did give him some Intimation of it. And after that, upon second Thoughts, I took a Resolution to discover it: And when I did discover it, I do here in the Presence of God declare, that no Mortal did know any thing of what I had to say, in Reference to the King; nor did I make any more Applications in the World, but took Pen, Ink, and Paper, and writ it down, and sealed it under a Cover, and sent it to the Council.

Sir Fra. Withens. Gentlemen of the Jury, would you ask him any Questions?

Mr. Papillon. The Jury told your Lordship before, that after all had had been examined they would consider what Questions.

L. C. J. Where would you have these Witnesses that have been examined to stand?

Mr. Papillon. We leave to the Sheriffs to appoint a Place for them.

L. C. J. To keep them a-part 'tis utterly impossible, for we must have as many Rooms then as there are Witnesses.

Jury. Let one Man keep with them.

L. C. J. Empty that Place where they were the last Time, and let them stand there.

[Edward Turberville.]

Sir Fra. Withens. Mr. Turberville, have you had any Discourse with my Lord Shaftesbury?

Turberville. Yes, several Times. In February last, I am not positive in the Time, but about the Beginning of the Month, I waited upon my Lord Shaftesbury about some Moneys. I waited upon him to have his Advice how I might come by it, and to gain my Lord Shaftesbury's Letter in my Behalf to the President of the Council to stand my Friend, and he said, there was little Good to be had from the King, as long as his Guards were about him; for, were it not for his Guards, we would quickly go down to Whitehall, and obtain what Terms we thought fit. Said I, my Lord, I suppose his Guards can't defend him from the whole Kingdom. His Lordship said, that the Rabble were all of that Side, especially the People about Wapping, and Aldersgate-Street; and the rich Men of the City would vote for Elections; but they could not expect they should stand by them in Case there should be any Disturbance, for they valued their Riches more than their Cause. And at Oxford I heard my Lord say again, he wondered the People of England should stickle so much about Religion, and that if he were to choose a Religion, he would have one that should comply with what was apt to carry on their Cause.

Mr. Saunders. Had you any other Discourse with him at any other Time?

Mr. Turberville. I told you all that is material that I can say to it.

[John Smith.]

Mr. Smith. My Lord, I only beg a Word or two from your Lordship, of some Reflections cast upon me.

L. C. J. Go to your Evidence.

Mr. Smith. My Lord, this is something to my Evidence.

L. C. J. You may take another Time for that.

Mr. Smith. My Lord, it hath been reported about in Coffee-Houses and Taverns, that I should swear there was a general Design against his Majesty; and that I swore it before the King and Secretary of State; and that I also swore it at the Trial of Mr. Colledge and Mr. Rowse: I take it upon my Oath I never swore any such Thing, neither can I swear there was a general Design by the City, or the Parliament against the King.

L. C. J. Speak what Discourse you have had with my Lord Shaftesbury.

Mr. Smith. My Lord, I suppose it is past all Doubt, that I have been very often with my Lord Shaftesbury; and I have often in his Discourse observed, that he spake very irreverently and slightly of the King; sometimes saying he was a weak Man, and sometimes saying he was an inconstant Man; a Man of no firm or settled Resolution; and a Man that was easily led by the Nose, as his Father was before him, by a Popish Queen, which was the Ruin of his Father: This was both in publick and in private. I have also observed sometimes in his Discourse, something that he mentioned of the Earl of Essex; and that the King should declare, that the Earl of Shaftesbury was not satisfied to be an ill Man himself, but got over the Earl of Essex too: This the Earl of Shaftesbury declared publicly in his own House. Another Story was of the Rebellion of Scotland, that the King should say, that the Earl of Shaftesbury was the chief Promoter of that Rebellion; and when this was told my Lord Shaftesbury, that he should send Word back again to the King, "I am glad (says he) that the King sees not his own Danger, nor what he runs himself into: And pray tell him, that, if I were to raise a Rebellion, I could raise an otherguess Rebellion than the Rebellion was in Scotland." But now, as to the particular Points I am to charge him with: I remember, my Lord, that my Lord Shaftesbury sent for me one Time, and that by one Manly; sometimes they call him Major Manly, sometimes Captain Manly; and this Man found me at Mr. Bethel's Club in Newgate-Street, at the Queen's-Arms; and there he told me my Lord Shaftesbury would speak with me that Night. I immediately left the Club, and went to my Lord Shaftesbury's; and I was introduced into the Dining-Room, where there were two Gentlemen in Discourse with my Lord; and as soon as he saw me, he asked me how I did: I told him I was very well, and came in Obedience to his Lordship's Command to wait upon him; for Major Manly told me your Lordship had a Mind to speak with me: He said he had. Soon afterward, these two Gentlemen went away. Upon this my Lord turns about, Mr. Smith, said he, Mr. Hetherington was with me this Morning, and told me he was afraid that the Irish Witnesses would go over to the Court Party, and retract what they had said formerly. My Lord, says I, I know no Person can better with more Ease hinder than your Lordship, by procuring some small Allowance for them; for they complain much of Poverty. Says he, Matthew Hetherington has the Charge of them, and hath a special Care of them, and I believe they don't want. My Lord, says I, I know nothing of that he knows what Provision he hath made for them. This is the Thing said my Lord, that I would have you do; they stand in great Awe of you, and you must persuade them from going nigh that Rogue Fitz-Gerald, that great Villain, that is pampered up, and maintained by the King and the Court-Party, to stifle the Plot in Ireland. My Lord, says I, do you think the King would be at such vast Charges for to bring over Witnesses, and at last maintain Men to stifle this Plot, for that is the Way to stifle the Plot in England too, as well as that? Says he, what is this frequent Dissolutions and Prorogations of Parliament for, but to stifle the Plot, and to hinder the Lords in the Tower to come to a Trial? This is a strange Thing, my Lord, said I, when he gave Dr. Oates, Mr. Bedloe, and Mr. Dugdale such large Allowances to prosecute this Plot. Says my Lord, that nothing, that may hold for a Year or two, he may take it off when he will; but the chief Means are put by, whereby we might find out the Design of this Plot; and if Mr. Dugdale and Dr. Oates be knocked on the Head, then where is this Plot? then there will come an Act of Oblivion for them, and all things will be well as they were before. My Lord, said I, this is very strange to me. I can give you Instance of it, says he, when I was in the Tower, I told some I saw Popery coming in, and that it was hard

Mr. Saunders heard conc  
Mr. Hetherington told me about the Death, Mr. and I desire sure he would of Danby.



prevent it. I am sorry to hear it, said I, but what would you have me do with these *Irish* Witnesses? Says he, persuade them not to go near *Whitehall*; nor this *Fitz-gerald*. And, said he, one Thing more I would have you mind, Mr. *Smith*, that if the King were not as well satisfied with the coming in of Popery as ever the Duke of *York* was, do you think the Duke of *York* would be so much concerned in the bring-in of Popery as he is? I am sorry for it, my Lord, if it be so. After this I parted with my Lord *Shaftesbury*, with full Instructions from him to those *Irish* Witnesses. I met Mr. *Hetherington* the next Morning, and I told him that I was with my Lord *Shaftesbury*: Says he, I know your Business, and would have you meet us at the *Sun Tavern* in the Afternoon. My Lord, I went according the Time appointed, and met him at the *Sun Tavern* between six, or seven, or eight of the Clock, as near as I can remember. When I came to them I began to open those great and horrid Crimes that I heard Mr. *Fitz-gerald* accused of, that he was a Man came to discover a Plot, and disowned it here, and retracted all he had said. I told them what a Crime this was. In short, my Lord, they promised never to go near the Man. I parted that Night and came to my Lodging, and the next Morning Mr. *Hetherington* and one Mr. *Bernard Dennis* came to my Lodging and told me, that this *Bernard Dennis* was ready to give in Information against *Fitz-gerald*, that he had tampered with him to forswear all he had sworn before, I went presently with Mr. *Hetherington* and Mr. *Dennis* to my Lord Mayor, who was then Sir *Patience Ward*; after we had told the Business to Sir *Patience Ward*, Sir *Patience* asked this *Dennis* if there were any other Persons present. Yes, says he, there was. Says Sir *Patience*, you are upon your Oath, if you know not the Nature of an Oath, I will tell you. The Information was drawn up; the Copy of this Information I carried to my Lord *Shaftesbury* and shewed it him, he read it, and was very well pleased with it, and said, Mr. *Smith*, don't you see the Villiany of that Man and that factious Party, and that the King runs the same Steps as his Father did before him, how can any Thing of this Nature be done, without the King and the Court pampered him up? My Lord, said I, I think now the Thing is clear. Ay, says he, these are the very same Steps that his Father followed when he was led by his Popish Queen, and the poor Man doth not see his Danger. I parted from my Lord, and came and gave an Account of this very Discourse to the Club in *Newgate-street*, and they were glad of it, and I told what my Lord *Shaftesbury* said, that the King would never be quiet till he came to his Father's End, he followed the same Steps. Another Thing that I have observed particularly before the Parliament went to *Oxford*; I went to see him, and we fell into some Discourse, and my Lord said there was great Preparations made, and a great many gathered together upon the Road between *London* and *Oxford*. My Lord, said I, what is the meaning of that? Any Body may see, says he, that is only to terrify the Parliament to comply with the King's Desire, which I am sure the Parliament never will, for we are as resolute now as ever; and more resolute, for we see clearly what the King aims at, and that is to bring in Popery: Which I told several Years ago, and when I was last in the *Tower*; but, says he, we have this Advantage of him, if he offer any Violence to us, (for we expect it) that we have the Nation for us, and we may lawfully oppose him, and he will meet with a very strong Opposition; for all that come out of the Country, shall be well horsed and well armed, and so we shall be all; and here is the City which now has a Question in Debate among them, whether they shall bear the Charge of their own Members or no, but they are willing to do it, and send so many Men to wait on them, and if we oppose the King, as we may do, for it hath been done in former Times, the whole Nation is to stand by us, and as I said when I was in the *Tower*, I would die, before I would ever bring in Popery or any Thing of that Nature.

*Jury*. Repeat that again.

*Smith*. He said, that the King, if he offered any Violence at *Oxford* to the Parliament, he would meet with a strong Opposition, and that the Gentlemen that came out of the Country were well provided with Horse, Arms, and Men, to oppose him, and that they might lawfully do it if the King offered any Violence to them whilst they sat, and that the Nation stood by them, and that they did represent the Nation, and that for his Part he and all his Friends would do it to the utmost of their Power, and, as old as he was, he would be one that would oppose it to his Power. My Lord, said I, we can expect nothing but Confusion from this Parliament, in this Nature, for then we shall be involved in another Civil War, nothing else can put an end to our Miseries, or make this Nation a settled Nation, but a Civil War. Then my Lord, said I, by this Means we shall make an end of Monarchy, or else enslave the Nation to Popery for ever. No doubt of one, says he, but we are sure of one, for the Nation is of our Side, and the City you know how they are, and where-ever they strike, I am sure the Nation will, and this I'll stand and die by. This is the Substance of what I have to say against my Lord *Shaftesbury*, and upon the Oath I have taken, I am sure I have not added a Word. One Word more I have to say, 'tis reported I have been hired and suborned, I do admire why this City of *London*, where there are as worthy Men, and as great Lovers of the King and Government as any in the World, should say any such Thing; I was never suborned by them, nor never took a Farthing of their Money, nor never took a Farthing of the King in my Life.

*L. C. J.* Who supposes it?

*Mr. Smith*. 'Tis in Print, my Lord, 'twas in the Book that came out last Night; it is supposed, my Lord, for it is in print.

*L. C. J.* I had reason to expect that there was no such Objection.

*Brian Haines*.

*Mr. Saunders*. Give your Knowledge of what Discourse you have heard concerning my Lord *Shaftesbury*.

*Mr. Haines*. Sir, I have heard him vilify the King very often, and he told me about the Narrative that I made about Sir *Edmundbury Godfrey's* Death, Mr. *Ivy* and I went to him one Day and he spoke to me of it, and I desired him not to expose my Person to the King's Anger, for I was sure he would never grant a Pardon to any Man that impeached the Earl of *Danby*. Says he, do not fear, if he doth not grant you a Pardon, he

makes himself the Author of the Plot; and, says he, the Earl of *Effingham*, my Lord *Maxfield* and I, we do all resolve, if you put it in Writing, we will go to the King, and beg a Pardon of his Majesty for you, and if he doth not grant it, we will raise the whole Kingdom against him; for, says he, he must not expect to live peaceably in his Throne, if he doth not grant it. For he makes himself Author of the Plot.

My Lord, said I, he hath dissolved so many Parliaments for the sake of the Earl of *Danby*, and prorogued so many Parliaments, therefore he will never grant me this Pardon. Says he, do not fear, 'tis the best Pretence we can have in the World, and if you will but put it in Writing, and let me read it, that I may give my Opinion of it, the Work is done; and if he doth not do it, we are prepared to raise Arms against him. I was with him another Time after I made this Narrative, and he told me the two Mr. *Godfreys* were with the King at *Windor*, and begged a Pardon of his Majesty for me, but the King would not grant it, but if he be an honest Man, let him lie at my Mercy, let him come in and declare what he knows. Said I, I would not have your Lordship expose my Cause in these Days. This is the best Time for it in the World, says he, if he doth not do it, he can't expect to be long King of *England*. Pray, my Lord, said I, what shall I do in the mean Time? I will go beyond Sea, said I. No, says he, don't leave the Kingdom, he dares as well be hanged as meddle with you. I desired him a second Time not to expose me to the King's Fury, and I prayed him to help me to a little Money to go beyond Sea, for I was sure I could not be safe in *England*. Says he, have a Care of yourself; but, says he, he dares as well be hanged as meddle with you. Then I was in close Conference with him one Day, and I gave him so exact an Account of all Transactions from King *Charles* the First's Reign, the Commencement or coming to the Crown, to this very Day, that he was mightily satisfied; finding by me that I was a Traveller, he was mightily pleased, and free with me. Pray, my Lord, what Model do you take, or intend to do? Says he, Do you not think but there are Families in *England* that have as great Pretences to the Crown as the King? Says he, there is the Duke of *Bucks*, in the Right of his Mother, she was descended from *Edward*, one of the *Edwards*, and in her Right he claims the Barony of *Refs*, he hath as great a Right to the Crown of *England*, as ever any *Stuart* of them all.

*Jury*. Speak that again.

*Mr. Haines*. I was in Conference with my Lord *Shaftesbury* one Day, and I gave him an exact Account of all Transactions, and I asked what they did intend to do with the Government, if they pulled the King down. Says he, do you think there are no Families in *England*, that have as much Pretence to the Crown as any of the *Stuarts*? I know none, my Lord. Says he, there is the Duke of *Bucks*, that is descended of the Family of the *Plantagenets*; he named some of the *Edwards*, and in her Right he should have the Barony of *Refs*, and in her Right he has as good a Title to the Crown of *England* as ever any *Stuart* had.

*John Macnamarra* sworn.

*Sir Fr. Withens*. Pray give an Account to the Jury of what Discourse you had with my Lord *Shaftesbury*.

*John Macnamarra*. My Lord, I was with my Lord *Shaftesbury* a little before he went to *Oxford*, before the Parliament sat there, and my Lord told me at that Time, that he would take Care, together with those that were with him at *Oxford*, for the Witnesses that were concerned in the Popish Plot.

*Mr. Harrison*. Speak out, pray, Sir.

*John Macnamarra*. My Lord told me he would take Care, with those that were with him, for the Witnesses that were concerned in the Popish Plot; after my Lord went to *Oxford*, I writ him a Letter, giving his Lordship to understand, that whereas his Lordship was pleased to promise, that he would take Care of the Witnesses, that he would be pleased to take Care of me, as well as the rest of the Witnesses; after my Lord came home from *Oxford*, I went to him, to see what was done. His Lordship was pleased to express himself and say that the King was popishly affected and did adhere to Popery, and that he took the same Methods that his Father before him took, which brought his Father's Head to the Block, and we will also bring his thither; and told me also, that he told some Persons of Quality that this would fall out five Years before; at the same Time my Lord told me, that there was a Collection of Money made, and that the Meeting was at the *Sun Tavern*, and that there came a *Tory* Lord in to hinder their Proceedings, but says he, we do remove to *Ironmonger-Lane*, and says he, you shall hear further in a Fortnight. I came to my Lord a Fortnight afterwards, and his Lordship was pleased to tell me, that there was Provision made for the Witnesses, and that it was in the Hand of one Mr. *Rouse*, that was Servant to Sir *Thomas Player*; there was one Mr. *Ivy*, and I think my Brother was by too, when his Lordship spoke these Words: He said that the King was a Faithless Man, that there was no Credit to be given to him, and that the Ducheſs of *Mazarine* was his Cabinet Council, who was the first of Womankind. This is all that I have to say, my Lord.

*Sir Fr. Withens*. Do you remember nothing at any other Time?

*John Macnamarra*. No.

*Sir Fr. Withens*. Did you hear any Thing about deposing the King?

*John Macnamarra*. Yes, he did at the same Time say, the King deserved to be deposed as much as ever King *Richard* the Second did.

*Dennis Macnamarra*.

*Mr. Saunders*. Tell these Gentlemen whether you have had any Discourse with the Earl of *Shaftesbury*.

*Dennis Macnamarra*. He said, my Lord, that the King was a Man that ought not to be believed, and there was no Belief in him, and that he ought to be deposed as well as King *Richard* the Second, and that the Ducheſs of *Mazarine* was one of his Cabinet Council, and that he did nothing but by her Advice.

*Sir Fr. Withens*. Begin again.

*L. C. J.* Raise your Voice a little, for the Jury don't hear you.

*Dennis Macnamarra*. That the King is a Man that ought not to be be-



believed, that there was no Belief in him, and that he ought to be deposed as well as King Richard the Second, and that the Duchess of Mazarine was his Cabinet Council, and that he did nothing but by her Consent.

L. C. J. Who was with you at that Time?

Dennis Macnamarra. There was Mr. Ivy and my Brother at his own House.

L. C. J. When was this?

Dennis Macnamarra. 'Twas at the latter end of March or the beginning of April.

Sir Fra. Withens. You say Mr. Ivy was by at the same Time?

Dennis Macnamarra. Yes.

Sir Fra. Withens. Call Mr. Ivy.

Jury. What Place was it in?

Dennis Macnamarra. In his own House.

Edward Ivy sworn.

Mr. Ivy. My Lord, soon after the Parliament was dissolved at Oxford, I was at my Lord Shaftesbury's House, where he was speaking against the King, and said, that he was an unjust Man, and unfit to reign, and that he was a Papist in his Heart, and would introduce Popery.

Jury. Say that again.

Mr. Ivy. I tell you I was at my Lord Shaftesbury's House, where he was then speaking against the King, saying, that he was altogether unjust, and not fit to reign, and he wondered he did not take Example by his Father before him, and did really believe that he was a Papist in his Heart, and intended to introduce Popery. I was sometimes after with him, and I told him one Haines had told me he had something to discover about the Death of Sir Edmundbury Godfrey, and several other Things, and my Lord desired to see him, and I brought Mr. Haines to his House, and he desired him that what he had to say he would put in Writing, and he should have a Pardon, and that if the King did deny it, as he dares not deny it, but if he does, we will rise upon him and force him.

Sir Fr. Withens. Had you any other Discourse at other Times?

Mr. Ivy. Yes, I had other Discourse, but not to this Purpose.

Sir Fr. Withens. Was you frequently with him?

Mr. Ivy. I was frequently with him; he desired at the Time I was with him to bid Colledge to come to him, and I went and came again to Haines with Instructions how to proceed, and I took his Examination of him, and carried it to my Lord, and he desired it might be explained what he meant by the tall black Man; and, says he, if he does mean the King, he must explain himself, and speak of the King, or of the Duke of York, or the rest; and if he does, we will take care of him as long as he lives; but unless he does, we will do nothing for him: And I was with him with my Lord Shaftesbury, and my Lord Shaftesbury did exclaim against the King.

Sir Fr. Withens. What Words did he speak?

Mr. Ivy. He said he was altogether an unjust Man, and not fit to reign, and that he believed he was a Papist in his Heart, and designed to introduce Popery, and therefore they designed to depose him, and set up another in his stead.

Sir Fr. Withens. Do you remember any Discourse of Richard the Second at that Time?

Mr. Ivy. No, Sir, I do not remember any thing of it.

Bernard Dennis sworn.

Sir Fra. Withens. Pray tell the Jury what Discourse you had with the Earl of Shaftesbury at any Time, and what it was.

B. Dennis. My Lord I came upon a Design to make clear the Plot in general, as far as I have travelled, as in Ireland, France, Spain, Maryland, Virginia and England, and upon that Account I was brought before a Justice of the Peace in Westminster, November last, this Time Twelvemonth, and examined before Justice Warcup, a Justice of the Peace, and from thence to the Committee of the House of Commons, of whom Colonel Birch (I believe he is here) was Chairman, and gave in my Evidence, and being called upon at the Trial of the Earl of Stafford, I was commended, as I suppose to the Earl of Shaftesbury, and upon the Account he sent me word of it, by William Hetherington, who was then very intimate with the Earl of Shaftesbury, to my Knowledge; and William Hetherington came to me several Times, and he precisely was my Maintainer at that Time, that is, to find me whatever I wanted, and provide me my Lodging, and carry me to some Place where Accommodation might be more better for me. Upon this Account one Time the Earl of Shaftesbury sent to me desiring that I would wait upon him at his own House. I came to him, and there in the Gallery of his own House, walking very slowly, he told me what I gave in of the Plot in general was very good and sufficient, but as to the Queen and the Duke of York, that I should speak more home and positive against them; at least, that I might be a Corroboration to others in what they swore against them. This was all at that present Time, that the Earl of Shaftesbury spake to me, and he desired me to go home to his Lodgings. With that I went home, and within a Month, it may be, or thereabouts, he sent for me again, by the same William Hetherington, and William Hetherington told me, that the Earl of Shaftesbury would speak with me. So I came and waited upon his Lordship at his own House, and says he, Mr. Dennis, I understand that you are a Clergyman. Yes, my Lord, said I. And, says he, I would advise you to take a black Gown, and I will prefer you to a Benefice, till such Time as this Business is over; and, says he, at the End of this Business I will not fail to prefer you to a better, and in the mean Time I would advise you to take a black Gown; and this was a little as I remember, after the Parliament was dissolved at Oxford; and he sent a Gentleman out of his own House along with me, to a Doctor of Divinity living hard by Lincoln's-Inn-Fields, Dr. Burnet by Name, as I remember, and the Gentleman acquainted the Doctor what I was, and about what Occasion I came there; so the Doctor indeed discoursed with me very familiarly, and rendered Thanks to the Earl for recommending me into his conversation rather than another's. What Discourse we had then was nothing to the Matter, it was about Matters of Conscience and Religion. But Mr. Colledge, that was the Joiner here in Town, and executed afterwards, being familiar with me, brought me to one Mr. Ferguson a Minister, as I suppose of the Presbyterian Form, for he goes in their Garb as

near as I can tell, and Mr. Ferguson at our first Meeting was in Richard's Coffee-House, in an upper Room one Pair of Stairs, and in some Company; and Colledge going to him brought him aside, and spake to him concerning me, and he came to me apart, and discoursed with me: From whence he brought me to a Bookseller's Shop, and bought for me the Articles of the Church of England, and in all these Discourses there was a Hand, as Colledge told me, of the Earl of Shaftesbury, who did procure him, and sent to Dr. Burnet to bring me that Way. I do not deny neither, that I had an Inclination before I left Ireland, and when I was in Spain, and when I was in France, for to become a Protestant, according to the Laws and Rules of the Church of England. The Force of what I have to say is this, The Earl of Shaftesbury one Day after all these Things were past, and after the Parliament were dissolved at Oxford, discoursing with me in his own House, Major Manly being in the same Room then, who lives beyond Tower-Hill, he asked me what was the present Occasion I came to him there? And it was pretty early in the Morning, and the Earl had a Barber to trim him in his Room. I told him my Occasion was then, that I was something low in Money, that I did a little want Money at that Time, and did not know to whom to speak for any Thing but his Lordship, and said, I came to tell you so. Well, said he, Mr. Dennis, I have appointed Mr. Rowse, John Rowse, whom you know, for to give you and maintain you in Money; go to him especially once a Week, and he will give you Money, and said he, Mr. Dennis, what is the Number of your Name in the Country, as near as you can tell, how many are you? My Lord, said I, to tell you exactly what Number they be of, I cannot at present, but within a little time I may tell you. I believe really there may be upon the Matter three or four hundred able Men of my name, in the County where I was born. Says the Earl of Shaftesbury, Mr. Dennis, I would very willingly have you to advise those of your Name, and those of your Friends for to be in Readiness, whenever Occasion shall serve, and to stand by, if Occasion should be, for to assist the Commonwealth of England; for we do really intend to have England under a Commonwealth and no Crown; and, says he, we intend to live as we see Holland does; that is, to have a Commonwealth and to have no supreme Head, particular Man, says he, or King, nor owe Obedience to a Crown; and, says he, we will extirpate the King, and all his Family as near as we can; and Mr. Dennis, says he, I do admire that your Nation should be such Fools as they are, for it is very certain that King James, Queen Elizabeth, King Charles the First, says he, and the King that now is, does wrong you to very Destruction; and, says he, if you had been under a Commonwealth, the Commonwealth would take more Pity of your Nation, and the Gentry of your Nation, than any of them do now, in this Time wherein the King governs, and upon this I do count the Irish Fools. This is all that I can say.

L. C. J. The King's Council declare they will call no more Witnesses, for they think they have called enough already, and there are several of them that do swear Words that are treasonable in themselves, if you do desire to ask any of the Witnesses any Thing, you shall have them all called one by one.

Foreman. My Lord, we will walk up again, and consider what Questions to ask, and come again presently.

Mr. Papillon. It seems they will call no more Witnesses than these.

L. C. J. Not against the Earl of Shaftesbury, being you are charged only with that.

Mr. Papillon. It is so my Lord, but we pray we may be satisfied about the Statute upon which the Indictment is grounded, and that we may hear it read before we go up, because your Lordship speaks of two different Statutes, the 25th of Edward, and you mention the Statute of the 13th of this King; your Lordship in your Discourse to the Jury mentioned them both, we pray your Lordship to acquaint us upon what Statute it is grounded, whether upon both or one of them.

L. C. J. Look ye, Gentlemen, this is grounded upon the Statute of this King, though there is enough to find an Indictment of Treason upon the Statute of the 25th of Edward the Third. That which is Treason within the Statute of the 25th of Edward the Third, is Treason within this Statute, so this is the more copious Statute; for as I told you before, this Statute has enlarged that of Edward the Third in a great many Particulars; and therefore, look ye, Gentlemen, always consider this, when one Statute contains the Matter of another, and enlarges it, the Indictment is always upon the last Statute, that being the more copious Statute: But you are to consider both.

L. C. J. North. The Indictment is *Contra formam Statuti*, and it being *Contra formam Statuti*, it may be understood, *Statutorum* or *Statuti*, so that all Statutes that may be the Foundation of this Indictment you may go upon.

Jury. We desire to know whether any of these Witnesses stand indicted, or no?

L. C. J. Look you, Gentlemen, don't talk of this, but consider with yourselves, an Examination of Proofs concerning the Credibility of the Witnesses is not properly before you at this Time; for I must tell you, and inform you as to that, you are not to examine properly here concerning the Credibility of the Witnesses, that is not to be proved or controverted here before you, that is Matter upon a Trial by the Petty Jury, for there the King will be heard for to defend the Credit of his Witnesses, if there be any Thing that can be objected against them; it is proper for the Prisoner to do that, you are only to see whether the Statute be satisfied, in having Matter that is treasonable, and having it witnessed by two Men, by two Witnesses, who are intended *prima facie* credible, unless you of your own Knowledge know the contrary; for otherwise, you must consider what a Disadvantage this would be in such Cases, if the Credibility of the Witnesses should be examined before the Grand Jury, where the King is not present, nor in a Possibility of defending the Credit of his Witnesses; nor is the Prisoner or the Party indicted present; that is a proper Objection when he comes upon his Trial; for all Men are intended credible, till there are Objections against them, and till their Credits come to be examined one Side and the other.

Mr. Papillon. My Lord, if your Lordship thinks good, I will beg this of your Lordship's Pardon, whether your Lordship doth not think

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Foreman  
Vol. III



that we are within the Compass of our own Understanding and Consciences to give our Judgment?

*L. C. J.* Your own Understanding and Consciences, yes; but look ye, Gentlemen—

*Mr. Papillon.* If we are not left to consider the Credibility of the Witnesses, we cannot satisfy our Consciences.

*L. C. J.* Look ye, Gentlemen, you are to go according to the Evidence of the Witnesses; you are to consider of the Case according to the things alledged and proved, unless you know any thing yourselves: But if any of you know any thing of your own Knowledge, that you ought to take into Consideration, no doubt of it.

*Jury.* Very well, my Lord.

*L. C. J.* The Grand Jury are to hear nothing, but the Evidence against the Prisoner; therefore for you to enter into Proofs, or expect any here, concerning the Credit of the Witnesses, it is impossible for you to do Justice at that Rate.

*The Jury withdrew, and the Court adjourned till Three o'Clock.*

*L. C. J.* Let the Witnesses be brought in one by one.

*Foreman.* We will first ask a Question of *Mr. Gwyn.*

*Mr. Gwyn.*

*Foreman.* Who put up the Papers?

*Mr. Gwyn.* I put up the Papers myself.

*Foreman.* Who went in with you?

*Mr. Gwyn.* None but my Lord's Servants, I think, were there: But I put up the Papers myself.

*Foreman.* Pray, Sir, whose Hand-writing is that Paper of?

*Mr. Gwyn.* Indeed, Sir, I cannot tell.

*Foreman.* How did it come into my Lord *Shaftesbury's* Closet?

*Mr. Gwyn.* My Lord, this is a strange Question. Indeed, Sir, I can't tell; all the Papers that I found in that Closet I put into that Bag.

*L. C. J.* To satisfy the Jury, was the Paper in the Closet before you came there?

*Mr. Gwyn.* My Lord, it was certainly there, for there I found it. I don't know the particular Paper, but all the Papers in that Bag were there.

*L. C. J.* From whom had you the Key?

*Mr. Gwyn.* From my Lord *Shaftesbury.*

*Foreman.* Don't you know, Sir, there was a Discourse in the Parliament of an Association?

*Mr. Gwyn.* Sir, I was not of the last Parliament. Sir, I know nothing of it.

*Foreman.* You have not heard then, that there was such a Thing in Parliament concerning an Association?

*Mr. Gwyn.* I have heard of an Association talk'd of.

*Foreman.* *Mr. Secretary,* I would ask you some Questions: If you did not know of a Debate in Parliament of an Association?

*Mr. Secretary.* I was not present at the Debate; but there was a Talk in Town of an Association.

*Foreman.* Did not you hear of it in Parliament?

*Mr. Secretary.* Indeed there was an Answer to a Message from the House of Commons that had something in it that did strongly imply an Association; but this particular Association I do not remember to have heard propos'd.

*Foreman.* Don't you remember in the House of Commons, Sir, it was read upon Occasion of that Bill?

*Mr. Secretary.* I heard such a Thing spoke of; but at the Reading of it I was not present, to the best of my Remembrance.

*Foreman.* What Date, Sir, was the Warrant for my Lord *Shaftesbury's* Commitment?

*Mr. Secretary.* I refer myself to the Warrant, for that I don't know the Date.

*L. C. J.* *Mr. Secretary,* you must speak about the Time that it was.

*Mr. Secretary.* I was the Man that had the Honour to sign that Warrant by which the Serjeant at Arms did apprehend my Lord *Shaftesbury*, but what Day of the Month I do not remember; and therefore I refer myself, if you please, to the Warrant, and to the Serjeant at Arms.

*Foreman.* What Month was it?—*Mr. Secretary.* Sir?

*Foreman.* About what Month?—*Mr. Secretary.* July.

*Foreman.* The Beginning of July?

*Mr. Secretary.* Sir, I do not remember the Day precisely; for I did not foresee that Question would be asked me; but I refer myself to the Warrant, and that is beyond all Doubt.

*Foreman.* I suppose all these Witnesses that are examined, were examined before the Committee?

*Mr. Secretary.* Sir, they were examined, and I was present at the Examination.

*Foreman.* All of them?

*Mr. Secretary.* I don't know whether all of them; but I am sure I was at the Examination of several of them.

*Foreman.* How many, Sir?—*Mr. Secretary.* I can't tell truly how many.

*Foreman.* Call *Mr. Booth.*

*Officer.* He is not here, the Tipstaff has him somewhere.

*Foreman.* Is that Witness a Prisoner?—*L. C. J.* *Booth* is a Prisoner.

*Foreman.* Then call *Mr. Turberville.*

*Mr. Papillon.* Is *Mr. Turberville* there?

*Officer.* Here is *Mr. Booth* come now.

*Mr. Godfrey.* Put *Turberville* out again.

*Foreman.* *Mr. Booth,* you told me of a Discourse that passed between the Lord *Shaftesbury* and yourself, we desire to know where it was, and when?

*Mr. Booth.* It was in *Thanet-House*, Sir, where he lived, about a Week or ten Days before the Parliament sat at *Oxford.*

*Foreman.* The precise Time?—*Mr. Booth.* I cannot be more precise.

*Foreman.* Who introduced you?

*Mr. Booth.* I think one *Mr. Wilson* led me into the Chamber.

*Foreman.* Who was present when the Discourse was?

*Mr. Booth.* None but he and I, Sir.

*L. C. J.* If we have these Noises, we will have every one of you put out of Court.

*Mr. Att. Gen. Richardson, Richardson,* Pray turn them all out; they are brought in on purpose.

*Mr. Booth.* It was not the first, second, nor third Time that I had waited upon the Lord of *Shaftesbury.*

*Foreman.* In what Room was it that my Lord spake those Words to you?

*Mr. Booth.* It was in the Room he usually sits in, on the Left-Hand as we came out of the Long-Gallery, I think we passed through a Room before it, wainscotted about, as I remember, and hung: I have been in that Room with him four or five Times, I am sure.

*Foreman.* After this Discourse with you, how long was it before you spake of it to any body else?

*Mr. Booth.* Truly I think I did not publish this Discourse that my Lord and I had, from the Time it was, till within this seven or eight Weeks.

*Foreman.* You were never examined before then as a Witness?

*Mr. Booth.* No, Sir, I never was, nor no body will pretend it, I suppose.

*Foreman.* To whom, Sir, did you give your first Information?

*Mr. Booth.* Sir, I sent my first Information in Writing to the Lords in the Council.

*Foreman.* By whose Hand?—*Mr. Booth.* By the Hand of *Walter Banes.*

*Foreman.* You had several Discourses with him; had you easy Admittance, or was it with Difficulty you came into his Company?

*Mr. Booth.* I was admitted by the Influence of Captain *Wilkinson* at first, and ever after went with him, and had easy Admittance and Familiarity with him.

*Foreman.* Was he with you every Time?

*Mr. Booth.* No, not every Time; he was not this Time with me.

*Foreman.* Did he talk to this Purpose every Time?

*Mr. Booth.* Something to this Purpose he did talk every Time, but not so fully; for I was first acquainted with this Business of *Oxford* by Captain *Wilkinson*, and I had a great Desire to understand it from my Lord's own Mouth, because I would be satisfied in my Lord's Interest as well as his Conduct.

*Foreman.* Pray, Sir, what Education have you had?

*Mr. Booth.* I have had the Education of a Gentleman, an Academical Education.

*Foreman.* Were you ever in Orders?—*Mr. Booth.* Yes.

*Foreman.* Do you own yourself to be in Orders still?

*Mr. Booth.* How do you mean to be in Orders? I tell you I was in Orders; but I am not now benefited.

*Foreman.* Do you officiate as a Minister?—*Mr. Booth.* No.

*Foreman.* Were you ever an Attorney's Clerk?—*Mr. Booth.* Never.

*Foreman.* Or a Justice's Clerk?

*Mr. Booth.* Never, nor to no Mortal.

*Foreman.* Were you ever indicted for any Felony?—*Mr. Booth.* No.

*L. C. J.* That is a Question not to be asked by any Jurymen of any Witness whatsoever: No Man is bound to discover any thing of that Nature, that is criminal, concerning himself.

*Foreman.* If it be pardoned, my Lord, he may.

*L. C. J.* Pardoned or not pardoned, he is not bound to accuse himself, nor to fix a Scandal on himself.

*Mr. Booth.* No, my Lord, *Nemo tenetur seipsum prodere.*

*L. C. J.* Sir, we must not suffer such Questions; I will tell you the Reason: It is proper for a Prisoner that stands upon his Justification to object it, but then the Prisoner must prove it: It lies upon him to prove it.

*Mr. Papillon.* *Mr. Booth,* you told us of fifty Men that were lifted under Captain *Wilkinson*, do you know any more of them?

*Mr. Booth.* I never directly conversed with any other.

*Mr. Papillon.* Did you know any more of them?

*Mr. Booth.* No, not directly I did not, but only by Captain *Wilkinson's* Information.

*Mr. Papillon.* How many Stories was that Room where you talked with my Lord?

*Mr. Booth.* One Pair of Stairs, as I remember.

*Mr. Godfrey.* Was it the Right-Hand as you came in?

*Mr. Booth.* I think so.

*Mr. Godfrey.* Was it the Right-Hand or the Left?

*Mr. Booth.* I went into the Long Gallery first, and staid there about a Quarter, or Half an Hour; and I remember very well I looked upon some Maps that were there, to divert myself, a while; and when I was called in, went out of the Gallery on the Left-Hand, and went through another Room before I came into my Lord's Room.

*Foreman.* Did you never hear my Lord speak Treason in any House but his own?

*Mr. Booth.* I never had Occasion to hear this Discourse from my Lord, but in his own House: I never waited upon him in any other House.

*Foreman.* Was you never desired to be a Witness against my Lord *Shaftesbury*?

*Mr. Booth.* Not till I intimated something of it.

*Foreman.* Who was that to?

*Mr. Booth.* That was to *Mr. Banes*; I told you before so.

*Foreman.* And what then?

*Mr. Booth.* When he told me of this Business with the *Yorkshire* Attorney, *Brownrig*, I did say again, I did not know what my Lord had done, as to any thing of *Irishmen*, but I was sure there was something as to *Englishmen*, as to that Purpose.

*Foreman.* Did he propose any Reward, or any thing of that Nature?

*Mr. Booth.* Not a Farthing; for I think he had no Commission to do it.

*Foreman.* Are you acquainted with one *Callaghan* and *Downing*, two *Irishmen*?—*Mr. Booth.* No.

*Mr. Godfrey.* Were you never in their Company?

*Mr. Booth.* Not that I know of.

*Mr. Godfrey.* Did you ever hear their Names?

*Mr. Booth.* I don't know that I have.

*Foreman.* Were you in their Company lately?

*Mr. Booth.* Not as I know of. I do not remember either their Names, or their Persons, nor do I know them from other Men.

*Foreman.* Do you know one *Mr. Shelden*?—*Mr. Booth.* No.

*Foreman.* Do you know one *Mr. Marriot*?

*Mr. Booth.* No, Sir: I have heard of one *Marriot* that did belong to my Lord Duke of *Norfolk.*

*Foreman.* When were you in his Company?

*Mr. Booth.* Never that I know of.

*Foreman.* Has no body discoufured you from him?

*Mr. Booth.* No, no Body.

*Foreman.* Did you never hear of any Witnesses he sent to his Tenants?

*Mr. Booth.* I have heard from *Banes* about *Brownrig*, about *Irish* Witnesses.

K k k

Mr.



Mr. Godfrey. Did you never hear of any Irish Witnesses sent down by Mr. Marriot to the Isle of Ely?

L. C. J. We gave you all the Liberty in the World, hoping you would ask pertinent Questions, but these are Trifles. I did not expect that any wise Men would have asked these Questions. Mr. Godfrey, was it to the Purpose, whether Mr. Marriot sent any Irish Witnesses to his Tenant; or no? What is that to this Business?

Foreman. My Lord, I have it under the Hand of the Clerk of the Council.

Mr. Booth. Pray, Sir, did any inform you that I had any Correspondence with this Man?

L. C. J. Nay, Sir, you must ask no Questions.

Mr. Godfrey. Mr. Booth, do you go under no other Name but Booth?

Mr. Booth. No, nor never did in my Life.

Mr. Booth. My Lord, I cannot go in Safety here for the Tumult.

L. C. J. Let Officers secure him: Mr. Sheriff, look to him, that the Man be secure and safe; I will require him at your Hands else.

Mr. Sheriff Pilkinton. What should I do?

L. C. J. Send your Officers to protect him, as becomes you, that he may be secured from the Rabble here.

Mr. Turberville.

Foreman. Mr. Turberville, when you had this Discourse with my Lord Shaftesbury, who was present with you?

Mr. Turberville. One of his Servants; truly I cannot tell his Name.

Foreman. No Body else?

Mr. Turberville. I know the Name of none of his Servants, but Mr. Sheppard; I cannot remember any Body else.

Foreman. Did he carry you up to my Lord?

Mr. Turberville. It was he, I think, told me I might go in: I was in the Dining-Room.

Foreman. What Time was this?—Mr. Turberville. In the Morning.

Foreman. What Time was it when you had this Discourse with my Lord Shaftesbury?—Mr. Turberville. It was in February.

Foreman. What Time in February?

Mr. Turberville. About the Beginning; I cannot tell exactly to a Day.

Foreman. How long was this before you communicated this to any Body?

Mr. Turberville. It was about the 4th of July.

Foreman. Then you concealed it from February to July: Who did you communicate it to first of all?

Mr. Turberville. The first Deposition I gave was to Mr. Secretary.

Foreman. Which Secretary?—Mr. Turberville. Secretary Jenkins.

Foreman. Pray, what Room was it you had this Discourse in?

Mr. Turberville. Sir, it was the Room at the upper End of the Dining-Room; I think they call it the Dining-Room; at the upper End of the Room, and turns on the Left-Hand, where he lay.

Foreman. Did you meet with no Body about the Beginning of July, after my Lord's Commitment, and tell them, when you were challenged and told you were to be a Witness against him, as you were alive you knew no such Thing?

Mr. Att. Gen. My Lord, this is not to be allowed: This is private Instructions which the Jury are not to take.

Foreman. No, Sir, it is not private Instructions. Did you not speak such Words to William Herbert?

L. C. J. Have you had any Information concerning this to Mr. Herbert?

Foreman. My Lord, I have, a long Time ago. My Lord, such a Person did tell me so and so, and set down the Day; and he then said he was very angry with him for it.

L. C. J. Look ye, Gentlemen, what Discourse you take up at Random in every Coffee-House, is that fit to be brought in when Treason is in Question against the King's Life? Are these Coffee-House Discourses, do you think, Ground enough for you to caval at Persons, because you have heard this Discourse in a Coffee-House?

Foreman. My Lord, I never was in a Coffee-House in my Life with Mr. Herbert; but he declared this to me some Months ago.

L. C. J. And you think this is Ground enough for you against him?

Mr. Papillon. My Lord, we only ask this Question, Whether he hath not contradicted this, or said the contrary to any Body else?

Mr. Turberville. I do not remember that ever I spake one Word to Mr. Herbert in my Life; and I can give you one Reason: For I was discarded by all People of my Lord's Interest at that Time? And if I had given under my Hand that I had known nothing against him, I believe I might have been in their Favour as much as before.

Mr. Papillon. Were not you one that petitioned to the Common-Council in London?—Mr. Turberville. I did, Sir.

Mr. Papillon. And did not you declare then, that you were tempted to witness against your Conscience?

Mr. Turberville. I believe I never read the Petition: It was drawn by the Order of Mr. Colledge, by a Man that lives about Guildhall; by a Scrivener about Guildhall; and I signed that Petition, but never read it, nor knew what was in it.

L. C. J. Mr. Richardson, any you Officers; watch by those Men that make a Noise, and bring me in one to make an Example.

Mr. Turberville. My Lord, I go in Danger of my Life, for the People threaten to stone me to Death, and I cannot go safe to my Lodging.

Mr. Papillon. What was your Design in signing that Petition? What did you look for?

Mr. Turberville. The Design was, that the City should take Care of us.

Mr. Papillon. Were you in a poor Condition?

Mr. Turberville. Truly I was not very poor, though I was not over full of Money.

Mr. Papillon. It is a strange Thing that you should petition for Relief, if you were not in Want.

Mr. Turberville. We were told by some Members of the House of Commons, that there was a Vote in the House of Commons ready to pass, that the City should advance Money for the Support of the Witnesses, and that if we would petition that they would answer the Design of the Parliament.

Mr. Papillon. What Members were they?

Mr. Turberville. It was a Member of the House of Commons that told me so, I will assure you; two of them.

Mr. Papillon. Did never any Body move you, or desire you to be a Witness in this Case against my Lord Shaftesbury?

Mr. Turberville. No Body in my Life. When I came to speak the Truth of what I knew, I did it voluntarily.

Mr. Papillon. You did it voluntarily?

Mr. Turberville. I did, I will assure you.

Mr. Papillon. Do you know any thing more than what you have said here?—Mr. Turberville. No, not one Tittle.

Mr. Papillon. Mr. Turberville, I desire to be satisfied in one Thing, whether my Lord Shaftesbury was committed before or after your Information?

Mr. Turberville. Truly, Sir, I cannot tell positively, as to that Point; but I believe it was before; I cannot tell.

Mr. Papillon. Did you hear my Lord speak these Words in any other Room or Place?—Mr. Turberville. No, indeed, I did not.

Mr. Papillon. It was about the fourth of July, you say, your Depositions were taken?

Mr. Turberville. About that Time; I suppose the 4th of July—I hope your Lordship will take Care that we be not knocked on the Head.

L. C. J. That we give in Charge to Mr. Sheriff; and see you do take Care of the King's Witnesses at your Peril. It is a Reflection, not only upon the Government of the City to suffer these Disorders, but upon the whole Kingdom; therefore, Mr. Sheriff, look the Witnesses come by no Hurt.

Mr. John Smith.

Mr. Papillon. Mr. Smith, the Jury ask you a Question, whether or no you did not use to go by the Name of Barry?

Mr. Smith. Sir, what Names I have gone by is not pertinent to this Purpose; I tell you I have gone by several Names, as all Popish Priests do.

Mr. Papillon. Did you never go by the Name of Barry?

Mr. Smith. It may be I might; I have gone by several Names, as all Popish Priests do.

L. C. J. Did you ever go by the Name of Barry?

Mr. Smith. I did, my Lord; it is usual for Popish Priests so to do.

Mr. Papillon. What Religion are you of, Mr. Smith?

Mr. Smith. I am a Protestant, Sir.

Mr. Papillon. How long have you been a Protestant?

Mr. Smith. Many Years.

Mr. Papillon. When were you first converted?

Mr. Smith. First converted?

Mr. Papillon. Ay, to the Protestant Religion: You say you have been one many Years?

Mr. Smith. I have been a Protestant, and was perverted to the Popish Religion, and afterwards became a Protestant again.

L. C. J. Bring in one of those Men that make the Noise. Cannot you bring in one of them?

Mr. Papillon. When did you receive the Sacrament?

Mr. Smith. I believe not above three Months ago, as the Rector of Bow Church will inform you: I have it under the Church-Wardens Hands in other Places in London.

Mr. Papillon. Have you been desired to be a Witness, or did you do it voluntarily?

Mr. Smith. Never desired, I declare it; I did it voluntarily myself.

Mr. Papillon. When did you give in your Evidence first?

Mr. Smith. Truly I cannot exactly tell when I gave it in; I did not keep an Account of it.

Mr. Papillon. What Month?—Mr. Smith. I cannot tell.

Mr. Papillon. Was it before my Lord was committed, or after?

Mr. Smith. I believe it might be a little after. Whether it was before or after, I cannot exactly tell.

Mr. Papillon. To whom did you give your Information?

Mr. Smith. My Lord, they commanded the People to stone us to Death.

L. C. J. Who did?

Mr. Smith. Several Persons: And when we were at the Tavern, Dr. Oates's Man came out and gave the Rabble a Bottle of Wine, and bid them knock us down.

L. C. J. Do you know what the Man's Name is?

Dr. Oates. I know nothing of it, my Lord.

L. C. J. What is your Man's Name?

Dr. Oates. I keep half a Dozen Men, my Lord.

L. C. J. I hope you keep no Men to affront the King's Witnesses?

Dr. Oates. No, my Lord, it is a Mistake, I know nothing of it; we went thither to refresh ourselves.

Mr. Papillon. Mr. Smith, who did you give your Information to?

Mr. Smith. What Information?

Mr. Papillon. The first Information.

Mr. Smith. My Lord, am I to answer to these Questions?

L. C. J. Aye, answer them; tell them.

Mr. Smith. My Lord, the Information I gave in to Secretary Jenkins, but I gave Notice long before of what I intended to do to other Persons.

Mr. Papillon. When did you hear these Words; speak to the Time exactly?

Mr. Smith. Which Words do you ask?

Mr. Papillon. Those you mentioned even now.

Mr. Smith. Sir, if you please, I know you take all in Short-Hand; you ask me what Words, I will tell you; for if I do not express myself in the same Words as before, you will take Hold of me.

L. C. J. I will tell you this; this may be an ill Question, for he told you, he had discoursed my Lord Shaftesbury at a great many Times, and that at some Times he said these Words, at other Times other Words, and for you to catch him upon a Question, it doth not shew a fair Inclination.

Mr. Papillon. My Lord, under your Lordship's Favour, we only desire to discover the Truth, we are not for Catches.

L. C. J. Ask him then, which of the Words you would have him declare the Time of, and he will tell you?

Mr. Papillon. Let him speak his own Words, it was about the Time when Hetherington went thither.

Mr. Smith. Truly, I will answer that as punctually as I can; the Month or Day I cannot well tell, but the Person that came from me was Major Manly; and he came to Bethel's Club; what Time that was, I cannot say; but if you please to inform yourselves of those Gentlemen that I named, I believe



I believe they will tell you Mr. Babel was there present, and knew very well I went to my Lord Shaftesbury that Night, and returned to the Club again.

Mr. Godfrey. Was it in the Evening or the Morning?

Mr. Smith. Mr. Godfrey, Clubs are usually at Night, I suppose; you know that was.

Mr. Papillon. Where did you see my Lord Shaftesbury?

Mr. Smith. It was in his Dining-Room.

Mr. Papillon. Did you hear these Words in any other Place, or at any other Time, or any treasonable Words against the King?

L. C. J. Look you, Gentlemen, he told you of several other Words at several other Times.

Mr. Papillon. But he said all at his House, my Lord.

L. C. J. Ay, but at several Times.

Mr. Smith. I know, Mr. Attorney, what the Gentleman would be at very well.

L. C. J. Answer them whether you did hear him speak any Words that you conceive treasonable at any other Time?

Mr. Smith. I did not, indeed.

Mr. Papillon. In another Place?

Mr. Smith. I do say I did not.

Mr. Papillon. Did you petition to the Common Council?

Mr. Smith. No, Sir, I never did.

Mr. Papillon. Are you an Englishman or an Irishman?

Mr. Smith. That's no Matter, no more than if I were a Frenchman or a Dutchman.

L. C. J. Give them an Account whether you are an Englishman or an Irishman?

Mr. Smith. My Lord, I beg your Lordship's Pardon for that; if I were an Irishman, whether thereupon my Evidence would be prejudiced.

L. C. J. Look you, Mr. Smith, I do hope the Gentlemen of the Jury have more Discretion among them all, than to think that an Irishman is not a good Witness, I hope they are not such Persons.

Mr. Smith. My Lord, if you please; whilst I was in the City amongst them, I never petitioned to the City: I never had a Farthing from them, nor ever spake to any for it: I never had any Occasion for it; but if I had, it is probable I have enough in England, and other Places, without being beholden to your Common-Council.

L. C. J. Will you ask him any more Questions?—Jury. No, no.

Mr. Papillon. Is Mr. Smith gone? I would ask him one Word: We would fain know what Allowance you have, or what you receive, if you have any Allowance from any Body?

Mr. Smith. From whom?

Mr. Papillon. Nay, I know not from whom: I ask whether you have any from any Body?

L. C. J. Look ye, Gentlemen, is that a Question that is pertinent? I wonder you will go to such Questions: We allowed you to ask Questions yourselves, because we look upon you as Men of Reason.

Mr. Papillon. My Lord I do not know but it may be a proper Question to ask him, if he have any Allowance from any Man upon this Account?

L. C. J. Upon what Account?

Mr. Papillon. Upon this Account: If he says he has none, 'tis an Answer.

L. C. J. Do you intend your Question, whether he is bribed to give Evidence? If you mean so speak plain.

Mr. Papillon. We ask if he have any Allowance?

Mr. Smith. You don't ask me how the 6 or 700*l.* was made up.

L. C. J. You that are upon your Oaths should have a Care what you do.  
Bryan Haynes.

Mr. Papillon. Mr. Haynes, when did you give in your Information upon this Matter?

Mr. Haynes. Against the Earl of Shaftesbury, Sir?—Mr. Papillon. Ay.

Mr. Haynes. The Day that I was taken by the Messenger.

Mr. Papillon. That was before my Lord was committed, was it not?

Mr. Haynes. Yes, Sir, it was before my Lord was committed.

Mr. Papillon. Did you ever make any other Information to a Justice of the Peace?

Mr. Haynes. Not of my Lord of Shaftesbury.

Mr. Papillon. Nor touching this Matter?

Mr. Haynes. No, not any information upon Oath: I may have discoursed with a Justice of the Peace.

Mr. Papillon. Did not you give in an Information of a Design against the Earl of Shaftesbury?

Mr. Haynes. To none but Secretary Jenkins.

Mr. Papillon. You understand the Question; whether you did give no Information of a Design against my Lord Shaftesbury to some Justice of the Peace?

Mr. Haynes. No, no, to none but Mr. Secretary Jenkins.

L. C. J. You do not observe his Question: Did you ever give to any Justice any Information of a Design against my Lord Shaftesbury?

Mr. Haynes. Yes, my Lord, I did, to Sir George Treby; I made Affidavit before him.

Mr. Papillon. When was that?

Mr. Haynes. I think it was in March last.

Mr. Papillon. What was that Design against my Lord Shaftesbury?

Mr. Haynes. The Design was what Mr. Fitz-gerald told me; he told me he gave under his Hand to the King, that the Earl of Shaftesbury did resolve to set the Crown upon his own Head, or otherwise to turn the Kingdom into a Commonwealth.

Mr. Papillon. Fitz-gerald told you this, and so you made Affidavit of it?

Mr. Haynes. Yes, before Sir George Treby.

Mr. Papillon. What Time?

Mr. Haynes. It was before the Parliament met at Oxford.

Mr. Papillon. So you say the Words were: When were the Words spoken that you mentioned?

Mr. Haynes. The Words against my Lord?

Mr. Papillon. Ay.

Mr. Haynes. He spake them to me a little before I made Affidavit: I cannot tell positively the Time?

Mr. Papillon. That was before his Commitment.

Mr. Haynes. Yes, yes, my Lord was committed in June last; this Affidavit was made in March last, before the Recorder of London.

L. C. J. North. When you ask him about the Information of the Design against my Lord Shaftesbury, he says that was in March last; and when you ask him about the Evidence he gives now, that was the same Day he was apprehended by the Messenger.

Mr. Papillon. About June you say it was, that you say you gave in the Information against my Lord Shaftesbury?

Mr. Haynes. The Information I made against the Lord Shaftesbury was in June last, the 28th, as I take it, of June last.

Mr. Papillon. Where was it you had this Discourse?

Mr. Haynes. I had several Conferences with my Lord.

Mr. Papillon. Did he every Time say the same?

Mr. Haynes. The last Time I spake with him was in Ironmonger-Lane: For Mr. Whitaker told me he would speak with me, and he would fain have me explain myself what I did mean by the tall Man I mentioned in the Narrative; and I went to the House, and they told me he was there, and I sent up a Note, and he desired me to come up; but I sent Word I did not care to come up, because I would not be known; and so he sent me Word to meet him after Dinner; and when I came, my Name is Haynes, my Lord, said I; and I led his Lordship by the Hand and went in there. I had, I believe, a whole Hour's Discourse with him: And pray, my Lord, said I, among other Questions, What Religion is the King of? Truly, says he, Mr. Haynes, he hath no more Religion than an Horse; for, faith he, they say, Sir, he was inclined to Popery when he came first to England; says he, he had a Tincture of Popery, and was much inclined that way; but since he was degenerated from all the Principles of Christianity, for he is just like a perfect Beast.

Mr. Papillon. This, you say, was in Ironmonger-Lane.

Mr. Haynes. Ay, Sir, at a Pastry-Cook's Shop.

Mr. Papillon. What Time was it?

Mr. Haynes. After Dinner in the Afternoon.

Mr. Papillon. In June, or when?

Mr. Haynes. I cannot tell what Time positively; it was about the Time of the Trial of Fitz-Harris.

Mr. Papillon. Was it the same Time he spake about the Duke of Buckingham?

Mr. Haynes. No, no.

Mr. Papillon. When was that?

Mr. Haynes. That was when I was with him at his own House, and desired him not to expose me.

Mr. Papillon. What Time?

Mr. Haynes. I cannot tell, Sir, for I never thought I should be called to an Account for it, and I cannot keep an Almanack in my Head; and I desired them not to expose me to the King's Fury, for I heard the King was displeased with me. No, says he, you are mistaken, this is the best Opportunity we can have; and if he will not give you a Pardon, we will raise the whole Kingdom against him in Arms; and then he makes himself the Master and Author of the Plot, and consequently he must expect to be ruined, unless he grant you a Pardon.

Mr. Papillon. Did you ever hear any other Words than what you have now testified?

Mr. Haynes. Yes, Sir, for I discoursed with him in Ironmonger-Lane a great while, and told him, that our only and best way to have our Ends of the King, was to raise a Rebellion in Ireland, and that I had Relations and Friends, and could get discontented Persons enough, and his Lordship would do the Work here.

Mr. Papillon. What, did you propound a Rebellion in Ireland?

Mr. Haynes. I offered to go beyond Sea, and that now was the best Time to raise a Rebellion in Ireland; and he said that was not the best way, for they had other Means to take, and so the Discourse was waved.

Mr. Papillon. And is that all?

Mr. Haynes. That is all I remember now.

Mr. Papillon. Do you know of any other Place or Time?

Mr. Haynes. I was with him at his House.

Mr. Papillon. Were you ever a Witness for my Lady Wyndham, or against her?

Mr. Haynes. No, Sir; but she arrested me, because I said I lay with her.  
John Macnamarra.

Mr. Papillon. Mr. Macnamarra, when was it you had this Discourse with my Lord Shaftesbury, what is the Time, as near as you remember?

Mr. Mac. In March and April last, Sir.

Mr. Papillon. Twice then, do you speak of?

Mr. Mac. Yes, Sir.

Mr. Papillon. Which is that that was in April?

Mr. Mac. That was the last; the last Discourse was in April.

Mr. Papillon. To what Purpose was that?

Mr. Mac. My Lord said that the King deserved to be deposed as much as King Richard the Second did.

Mr. Papillon. In April you say?—Mr. Mac. In April.

Mr. Papillon. When did you give Information of this?

Mr. Mac. I cannot exactly tell, Sir.

Mr. Papillon. Repeat what you said.

Mr. Mac. That the King deserved to be deposed as much as King Richard the Second, and that he took the Ducheys of Mazarine's Advice in every Particular, which was the worst of Womankind.

Mr. Papillon. What Time in April was this?

Mr. Mac. It was in the beginning of April.

Mr. Papillon. Where?—Mr. Mac. In his own House.

Mr. Papillon. Who was present?

Mr. Mac. There was Mr. Ivy by.

Mr. Papillon. When did you make Information of this?

Mr. Mac. I cannot tell, it was a good while ago.

Mr. Papillon. Was it before his Commitment?

Mr. Mac. Yes, Sir, it was.

Mr. Papillon. To whom did you give Information?

Mr. Mac. To the Secretary of State, Sir.

Mr. Papillon. Which of them?

Mr. Mac. Mr. Secretary Jenkins, Sir.

Mr. Papillon. Did not you petition the Common-Council, Sir, for Relief?

Mr. Mac. Yes, Sir, I signed a Petition that was drawn up, but I did not see it till it was brought to me to sign.

Mr. Papillon.



Mr. Papillon. Did you read it?

Mac. No, I never read it neither.

Mr. Papillon. Nor don't know what is in it?

Mr. Mac. No, nor don't know the Contents of it.

Mr. Papillon. My Lord, in that Petition they say, they were tempted to swear against their Consciences, and that some of the Witnesses had made Shipwreck of their Consciences; we ask them now, and they say, they do not know what was in the Petition: If we should ask them who tempted them, and who those Witnesses were, that made Shipwreck of their Consciences; it would signify nothing; for since they do not know what was in the Petition, it is in vain to ask them any more.

Mr. Mac. For my Part, my Lord, I never saw it till it was brought to me to be signed, and do not know the Contents of it: But I heard Mr. Collidge, that was executed at Oxford, was concerned in promoting the Petition, by my Lord Shaftesbury's Advice.

Dennis Macnamarra.

Mr. Papillon. Dennis Macnamarra, tells us how you were introduced to my Lord Shaftesbury when you had this Discourse?

D. Mac. By my Brother, Sir.

Mr. Papillon. What, he that was here last?

D. Mac. Yes, Sir.

Mr. Papillon. He introduced you?—D. Mac. Yes, Sir.

Mr. Papillon. When was it?

D. Mac. It was in March last; the latter End of March, or beginning of April.

Mr. Papillon. Cannot you tell which of the Months?

D. Mac. No, I cannot be positive in it.

Mr. Papillon. Who was by?

D. Mac. There was Mr. Ivy.

Mr. Papillon. No Body but Mr. Ivy?

D. Mac. No Body but Mr. Ivy and my Brother.

Mr. Papillon. Where was it?

D. Mac. It was in his own Dining-Room.

Mr. Papillon. Were none of his Servants in the Room?

D. Mac. Not that I know of.

Mr. Papillon. Are you sure none of his Servants were there?

D. Mac. Not that I know of.

Mr. Papillon. Did you hear any Thing else at any other Time?

D. Mac. No.

Mr. Papillon. Nor in any other Place?—D. Mac. No.

Mr. Papillon. When did you give in this Information?

D. Mac. I gave it in a good while ago; Sir, I cannot be positive.

Mr. Papillon. Was it before my Lord was committed?

D. Mac. Yes a great while.

Mr. Papillon. To whom did you give it?

D. Mac. I gave it to the Secretary of State.

Jury. Cannot you remember how long it was before?

D. Mac. No, I cannot at the present.

Mr. Papillon. Which of the Secretaries?

D. Mac. Secretary Jenkins.

Mr. Papillon. My Lord, I only propose, whether we may not ask whether he have not a Pardon? For it would be Satisfaction to us, for some Reason.

L. C. J. North. Look you here Gentlemen, when the Prisoner makes Exceptions to the Witnesses, then it is proper, but here are no Exceptions to the Witnesses.

Mr. Papillon. My Lord, we make no Exceptions, but we must satisfy our Consciences, my Lord, that we must do, and that is very much, as we find the Credibility of the Witnesses.

L. C. J. North. Gentlemen, what do you mean that he should have a Pardon for?

Mr. Papillon. For Crimes.

L. C. J. North. You must not ask him to accuse himself.

Mr. Papillon. If he hath a Pardon he is in statu quo: Suppose, my Lord, some of them have been guilty of poisoning, some of Felony, some of robbing on the Highway, we do but ask them if they be pardoned?

L. C. J. North. A Man must not be impeached but where he may answer for it.

Mr. Papillon. My Lord, if you do not give us Leave, we must forbear then.

L. C. J. North. I do not think it proper to ask.

Edward Ivy.

Mr. Papillon. The Discourse that you had with my Lord Shaftesbury, when was it, at what Time?

Mr. Ivy. It was a little after the sitting of the Parliament at Oxford.

Mr. Papillon. Was it more Times than one?

Mr. Ivy. Yes, Sir, several Times.

Mr. Papillon. All the same Discourse?

Mr. Ivy. No, not the same Discourse.

Mr. Papillon. The Words that you spoke of, when was that?

Mr. Ivy. That was after the sitting of the Parliament at Oxford.

Mr. Papillon. About what Time was it?

Mr. Ivy. It was about the latter End of March or beginning of April.

Mr. Papillon. When did you make Information of this?

Mr. Ivy. I cannot be positive in that neither.

Mr. Papillon. Before my Lord's Commitment or after?

Mr. Ivy. A while before.

Mr. Papillon. To whom did you give it?

Mr. Ivy. To the Secretary of State.

Foreman. Who was present when my Lord Shaftesbury spake those Words?

Mr. Ivy. Both the Macnamarra's, as I remember.

Foreman. Who else?

Mr. Ivy. Truly, I do not remember any else privy to our Discourse; neither am I certain, that both the Macnamarra's were there; one of them was there I am sure of it.

Foreman. What was the Reason you concealed this Information so long? Had you no Inducement to make it at that Time? How came you to do it then and not before? What was the Reason? You say it was the latter End of April and May; my Lord was not committed for a good while after; here was two Months Time?

Mr. Ivy. I am not certain how long a Time it was before, but I made it as soon as I could.

Foreman. I ask you whether you know any thing either of Words or treasonable Actions, or any thing of my Lord Shaftesbury, spoken or acted at any other Time or Place?

Mr. Ivy. No, I have declared what I know as to the Particulars.

Bernard Dennis.

Mr. Papillon. Mr. Dennis, in the Morning you told me something about the Discourse you had with my Lord of Shaftesbury, tell me when it was?

Mr. Dennis. It was in April, four or five Days after the Parliament was dissolved at Oxford.

Mr. Papillon. In the beginning?

Mr. Dennis. In March, after the Parliament was dissolved at Oxford.

Mr. Papillon. It was in March, and where?

Mr. Dennis. In his own House, here in this Town, four or five Days after the Parliament was dissolved at Oxford, immediately after he came home, I do not think he was at home three Days before.

Mr. Papillon. Who was present with you then?

Mr. Dennis. There was in the Room Mr. Sheppard, his Gentleman.

Mr. Papillon. Who else?

Mr. Dennis. Some of his Servants, his Pages I suppose, but whether they did hear this or no, I cannot tell.

Mr. Papillon. Did my Lord whisper it, or speak out?

Mr. Dennis. My Lord is not a Man of an high Voice, but of moderate Voice.

Mr. Papillon. Did he whisper it in your Ear?

Mr. Dennis. No, I was just by him.

Mr. Papillon. Who was in the Room besides?

Mr. Dennis. No Body, only his Servants.

Mr. Papillon. When did you make this Information?

Mr. Dennis. I made it in the Month of June.

Mr. Papillon. In the Month of June?

Mr. Dennis. Yes, Sir.

Mr. Papillon. Before my Lord was committed, or after?

Mr. Dennis. Before.

Mr. Papillon. Who did you make it to?

Mr. Dennis. I made my Information to the Secretary of State.

Mr. Papillon. Which of them?—Mr. Dennis. Secretary Jenkins.

Mr. Papillon. Why did you conceal it so long?

Mr. Dennis. Because I was in the City so long.

Mr. Papillon. Did you ever go about to muster your 400 Men you had in Ireland, I ask you whether you did or no?

Mr. Dennis. Upon my Word I did advise some of them to be ready.

Mr. Papillon. And did you provide them with Arms?

Mr. Dennis. Not I, Sir, I was not able to do it.

Mr. Papillon. What Religion are you of?

Mr. Dennis. I am a Protestant.

Mr. Papillon. How long have you been a Protestant?

Mr. Dennis. I have been a Protestant since February last. And this I must confess, that when I was in Spain and France, my Resolution was to be a Protestant.

Mr. Godfrey. Mr. Dennis, pray who was in the Room when you were there?

Mr. Dennis. The Earl of Shaftesbury, Sir.

Mr. Godfrey. Who else?—Mr. Dennis. Mr. Sheppard.

Mr. Godfrey. Who else?—Mr. Dennis. I cannot name them.

L. C. J. Mr. Godfrey, when another Man asks a Question, you should consider what is said, and not ask the same Question over and over again.

Mr. Papillon. In what Place in his House?

Mr. Dennis. In his own Chamber, in the great Chamber, I do not know whether you call it the Hall or the Parlour.

Mr. Papillon. Was it above Stairs?

Mr. Dennis. Yes, it was above Stairs, my Lord does not use to speak with any below Stairs.

Mr. Papillon. Is this all that you know? Have you heard my Lord say any treasonable Words in any other Place, or at any other Time?

Mr. Dennis. In the long Gallery in his own House at another Time?

Mr. Papillon. Why did not you say so before?

Mr. Dennis. I did say so before. In the long Gallery he told me he would have a Commonwealth in England, and extirpate the Crown of England and the King of England.

Mr. Papillon. Is that all? Speak all your Knowledge.

Mr. Dennis. He said, we should all Irishmen conform ourselves to a Commonwealth, and by that we should get our Estates again.

Mr. Papillon. I ask you if this is all you have to say?

L. C. J. Do you remember any more?

Mr. Papillon. More than you said in the Morning?

Mr. Dennis. He said he would extirpate the King, and make England a Commonwealth, and that we were Fools and silly Folks that did not comply ourselves to their factious Party, and that we should get our Estates, and that he would get me a black Gown and a Benefice in the mean Time; and when all Things were done, he would prefer me to a better, and not only myself, but all that were of my Name, and would stick to me.

Mr. Papillon. Is this all?—Mr. Dennis. This is all.

Mr. Papillon. Then you have nothing more?

Mr. Dennis. I never spake to him but in his own House.

Mr. Papillon. All your Kindred are Papists, are not they?

Mr. Dennis. No, Sir, I cannot say so, but most of them are.

L. C. J. North. Who can say that? That Question no Body can answer.

L. C. J. Look ye, Gentlemen, now you have asked these Questions, you had best go and consider what Evidence is delivered, and weigh well those Things that have been said to you; and you must consider your Duty; you are to enquire here, whether it be fitting for the King to call my Lord Shaftesbury to question upon this Account of treasonable Words.

Mr. Papillon. My Lord, we desire, before we go, that either the Law may be read, or we may have the Statute-Book up with us.

L. C. J. The Statute-Book was never denied, but you shall have the Law read here: First the Statute of the 25th of Edward the Third, and then this last Statute.

L. C. J. North. I would say one Thing because I observed that formerly you asked the Question, whether the Parliament did not debate about Association.



Association? Whether it related to that Paper or no, I am not certain; I hope you will consider that Paper well; for my Part, I must needs say for myself, I heard of it, but I never heard it read before, and never heard the Contents of it; but it seems to me to shew what those Officers were to do, for the Ends of this Association; and one of those Ends, as I remember (Gentlemen, I refer you to the Paper, and hope you will consider it, you are Men of Understanding) I thought that one of those Ends was to destroy the mercenary Forces in and about the Cities of London and Westminster, and that the Government was to be by the major Part of the Members of Parliament in the Sitting of Parliament, not with the King, but the major Part of the Members of Parliament. Gentlemen, I may mistake, for I profess I speak only out of Memory; but it seems to me to be of great Consequence, and there is great Matter to be presumed upon it, it being found under Lock and Key in his Study: But I suppose my Lord

Shaftesbury may give an Account of it, but there is great Presumption upon it; it doth not import to be an Association by Act of Parliament.

Mr. Att. Gen. When the Parliament was prorogued or dissolved, then the major Part of the Members in each County engage themselves to follow their Command and obey their Order.

L. C. J. North. Gentlemen, I hope you will consider your Oaths, and give all Things their due Weight.

L. C. J. Will you have the Statute Read?

Jury. We will read it above.

The Jury withdrew to consider the Evidence, and returned the Bill Ignoramus: Upon which the People fell a hollowing and shouting.

Mr. Att. Gen. My Lord, let it be recorded this Hollowing and Hooping in a Court of Justice.

CX. The Trial of the Earl of Argyle\*, in Scotland, for Treason, November, &c. 1681.

33 Car. II.

EDENBURGH.

Sederunt tertio die Novembris, 1681.

His Royal Highness, &c.

Atol Præses,	Ancrum,	Dalziel,
Montrose,	Airley,	President of Session,
Argyle,	Balcarras,	Treasurer Deputy,
Winton,	Lorn,	Register,
Linlithgow,	Livingston,	Advocate,
Perth,	Bishop of Edinburgh,	Justice Clerk,
Strathmore,	Elphinston,	Collintoun,
Roxburgh,	Ross,	Lundie.

THIS Day the Earl of Argyle having first openly declared his Sense, as you have it hereafter set down in his Explication, took the Test as a Privy-Counsellor; and after he was called to, and had taken his Place, the Council's Explication having been read and debated, was put to the Vote, and passed, the Earl not voting thereto.

Edinburgh, the 3d Day of November, 1681.

The Privy-Council's Explication of the Test.

FORasmuch as some have entertained Jealousies and Prejudices against the Oath and Test appointed to be taken by all Persons in publick Trust, Civil, Ecclesiastical, or Military, in this Kingdom, by the Sixth Act of his Majesty's third Parliament; as if thereby they were to swear to every Proposition, or Clause of the Confession of Faith therein mentioned; or that Invasion were made by it upon the intrinsick spiritual Power of the Church, or Power of the Keys, or as if the Present Episcopall Government of this National Church, by Law established, were thereby exposed to the Hazard of Alteration or Subversion: All which are far from the Intention or Design of the Parliament's imposing this Oath, and from the genuine Sense and Meaning thereof: Therefore his Royal Highness, his Majesty's High Commissioner, and Lords of the Privy-Council, do allow, authorize, and empower the Archbishops and Bishops to administer this Oath and Test to the Ministers, in their respective Diocesses, in this express Sense: (1.) That though the Confession of Faith, ratified in Parliament 1567, was framed in the Infancy of Reformation, and deserves it's due Praise, yet by the Test we do not swear to every Proposition, or Clause therein contained, but only to the true Protestant Religion, founded on the Word of God, contained in that Confession as it is opposed to Popery and Fanaticism. (2.) That the Test, or any Clause therein contained, no Invasion or Encroachment is made intended upon the intrinsick spiritual Power of the Church, or Power of the Keys, as it was exercised by the Apostles, and the most pure and primitive Church in the first three Centuries after Christ, and which is still reserved entirely to the Church. (3.) That the Oath and Test is without any Prejudice to the Episcopall Government of this national Church, which is declared by the first Act of the said Session of his Majesty's first Parliament, to be most agreeable to the Word of God, and most suitable to Monarchy, and which upon all Occasions his Majesty hath declared he will inviolably and unalterably preserve. And appoint the Archbishops and Bishops to require the Ministers in their respective Diocesses, with their first Conveniency, to obey the Law in swearing and subscribing the aforesaid Oath and Test with Certification, that the Refusers shall be esteemed Persons affected to the Protestant Religion, and to his Majesty's Government; and that the Punishment appointed by the foresaid sixth Act of his Majesty's third Parliament, shall be impartially and without Delay inflicted upon them. By me.

PET. MENZEIS.

Sederunt quarto die Novembris, 1681.

His Royal Highness, &c.

Montrose Præses,	Winton,	Linlithgow,
Perth,	Strathmore,	Roxburgh,
Ancrum,	Airley,	Balcarras,
Livingston,	Bishop of Edinburgh,	Elphinston,
President of Session,	Treasurer Deputy,	Register.
Advocate,	Lundie,	

THIS Day the Earl of Argyle being about to take the Test, as a Commissioner of the Treasury, and having upon Command produced a Paper bearing the Sense in which he took the Test, the preceding Day, and in which he would take the same, as a Commissioner of the Treasury; upon Consideration thereof, it was resolved, that he cannot sit in Council, not having taken the Test in the Sense and Meaning of the Act of Parliament, and therefore was removed.

The Earl of Argyle's Explication of the Test when he took it.

I Have considered the Test, and I am very desirous to give Obedience as far as I can. I am confident the Parliament never intended to impose contradictory Oaths; therefore I think no Man can explain it but for himself. Accordingly I take it, as far as it is consistent with itself, and the Protestant Religion. And I do declare, that I mean not to bind up myself in my Station, and in a lawful way, to wish and endeavour any Alteration I think to the Advantage of Church or State, nor repugnant to the Protestant Religion and my Loyalty. And this I understand as a Part of my Oath.

But the Earl finding, as hath been narrated, this his Explication, though accepted and approved by his Highness and Council the Day before, to be this Day carped and offended at, and Advantages thereupon sought and designed against him, did immediately draw up the following Explication of his Explication; and for his own Vindication, did first communicate it to some privately, and thereafter intended to have offered it at his Trial for clearing of his Defences.

The Explanation of his Explication.

I Have delayed hitherto to take the Oath appointed by the Parliament to be taken, betwixt and the first of January next; but now being required, near two Months sooner, to take it, this Day peremptorily, or to refuse, I have considered the Test, and have seen several Objections moved against it, especially by many of the Orthodox Clergy, notwithstanding whereof, I have endeavoured to satisfy myself with a just Explanation, which I here offer, that I may both satisfy my Conscience and obey your Highness, and your Lordships Commands in taking the Test, though the Act of Parliament do not simply command the thing, but only under a Certification, which I could easily submit if it were with your Highness's Favour, and might be without Offence, but I love not to be singular; and I am very desirous to give Obedience in this and every thing as far as I can; and that which clears me is, that I am confident whatever any Man may think or say, to the Prejudice of this Oath; the Parliament never intended to impose contradictory Oaths; and because their Sense (they being the Framers and Imposers) is the true Sense, and that this Test enjoined is of no private Interpretation, nor are the King's Statutes to be interpreted but as they bear, and to the Intent they are made, therefore I think no Man, that is, no private Person, can explain it for another, to amuse or trouble him with (it may be) mistaken Glosses. But every Man, as he is to take it, so is to explain it for himself, and to endeavour to understand it, (notwithstanding all these Exceptions) in the Parliaments, which is its true and genuine Sense. I take it therefore, notwithstanding any Scruple made by any, as far as it is consistent with itself and the Protestant Religion, which is wholly in the Parliament's Sense, and their true Meaning; which [being present] I am sure was owned by all to be the Securing of the Protestant Religion, founded on the Word of God, and contained in the Confession of Faith recorded J. 6. p. 1. c. 4. and, not out of Scruple, as if any thing in the Test did import the contrary, but to clear myself from all Cavils; as if thereby I were bound up further than the true Meaning of the Oath. I do declare, that by that part of the Test, that there lies no Obligation on me, &c. I mean not to bind up myself, in my Station, and in a lawful way, still disclaiming all unlawful Endeavours, to wish, and endeavour any Alteration, I think, according to my Conscience, to the Advantage of Church or State, not repugnant to the Protestant Religion, and my Loyalty, and by my Loyalty, I understand no other thing than the Words plainly bear, to wit the Duty and Allegiance of all loyal Subjects; and this Explication I understand as a Part not of the Test, or Act of Parliament, but as a qualifying Part of my Oath that I am to swear; and with it I am willing to take the Test, if your Royal Highness and your Lordships allow me, or otherwise, in Submission to your Highness, and the Council's Pleasure, I am content to be held as a Refuser at present.

The Council's Letter to his Majesty, concerning their having committed the Earl of Argyle.

May it please your Sacred Majesty,

THE last Parliament having made so many and so advantageous Acts, for securing the Protestant Religion, the Imperial Crown of this Kingdom, and your Majesty's sacred Person, (whom God Almighty long preserve) and having, for the last, and as the best Way for securing all these, appointed a Test to be taken by all who should be entrusted with the Government; which bears expressly that the same should be taken in the plain and genuine Sense and Meaning of the Words; We were very careful not to suffer any to take the said Oath or Test with their own Glosses or Explications:



But the Earl of Argyle having, after some Delays, come to Council, to take the said Oath, as a Privy Councillor, spoke some Things which were not then heard, nor adverted to, and when his Lordship at his next Offering to take it in Council, as one of Commissioners of your Majesty's Treasury, was commanded to take it simply, he refused to do so, but gave in a Paper, shewing the only Sense in which he would take it; which Paper we all considered, as that which had in it gross and scandalous Reflections upon that excellent Act of Parliament; making it to contain Things contradictory and inconsistent, and thereby depraving your Majesty's Laws, misrepresenting your Parliament, and teaching your Subjects to evacuate and disappoint all Laws and Securities that can be enacted for the Preservation of the Government; suitable to which, his Lordship declares in that Paper, That he means not to bind up himself from making any Alterations he shall think fit for the Advantage of Church or State; and which Paper he desires may be looked upon as a Part of his Oath, as if he were the Legislator, and able to add a Part to the Act of Parliament. Upon serious Perusal of which Paper, we found ourselves obliged to send the said Earl to the Castle of Edinburgh, and to transmit the Paper to your Majesty, being expressly obliged to both these by your Majesty's express Laws. And we have commanded your Majesty's Advocate to raise a Pursuit against the said Earl, for being Author, and having given in the said Paper: And for the further Prosecution of all relating to this Affair, we expect your Majesty's Commands, which shall be most humbly and faithfully obeyed, by

Edinburgh, Nov. 8.  
1681.

Your Majesty's most humble,  
Most faithful, and most obedient  
Subjects and Servants

Sic Subscribitur,

Glencairne,	Jo. Edinburgen,
Winton,	Rosi,
Linlithgow,	Geo. Gordoun,
Perth,	Ch. Maitland,
Roxburgh,	G. Mckenzie,
Ancrum,	Ja. Foulis,
Airlie,	J. Drummond.
Levingston,	

Nov. 15, 1681.

*The King's Answer to the Council's Letter.*

C. R.

**M**OST dear, &c. having in one of your Letters directed unto us, of the 8th Instant, received a particular Account of the Earl of Argyle's refusing to take the Test simply, and of your Proceedings against him, upon the Occasion of his giving in a Paper, shewing the only Sense in which he will take it, which had in it gross and scandalous Reflections upon that excellent late Act of our Parliament there, by which the said Test was enjoined to be taken: We have now thought fit to let you know, that as we do hereby approve these your Proceedings, particularly your sending the said Earl to our Castle of Edinburgh; and your commanding our Advocate to raise a Pursuit against him, for being Author of, and having given in the said Paper; so we do also authorize you to do all Things that may concern the further Prosecution of all relating to this Affair. Nevertheless, it is our Express Will and Pleasure, that before any Sentence shall be pronounced against him, at the Conclusion of the Process, you send us a particular Account of what he shall be found guilty of, to the End that, after our being fully informed thereof, we may signify our further Pleasure in this Matter. For doing whereof, &c.

But as notwithstanding the Council's demanding, by their Letter, his Majesty's Allowance for prosecuting the Earl, they, before any Return, caused his Majesty's Advocate exhibit an Indictment against him, upon the Points of slandering and depraving, as hath been already remarked, so after having received his Majesty's Answer, the Design grows, and they thought fit to order a new Indictment containing, beside the former Points, the Crimes of Treason and Perjury, which accordingly was exhibit, and is here subjoined, the Difference betwixt the two Indictments being only in the Particulars above-noted.

*A Copy of the Indictment against the Earl of Argyle.*

Archibald Earl of Argyle,

**Y**OU are indicted and accused, that albeit by the Common-Law of all well-govern'd Nations, and by the Municipal-Law and Acts of Parliament of this Kingdom; and particularly, by the 21st, and by the 43d Act, Par. 2. James I. and by the 83d Act, Par. 6. James V. and the 134th Act, Par. 8. James VI. and the 205th Act, Par. 14. James VI. All Leasing-makers and Tellers of them, are punishable with Tinsel of Life and Goods; like as by the 107th Act, Par. 7. James I. it is statuted, that no Man interpret the King's Statutes otherwise than the Statute bears, and to the Intent and Effect that they were made for, and as the Makers of them understood; and who so does in the contrary to be punished at the King's Will: And by the 10th Act, Par. 10. James VI. it is statuted, that none of his Majesty's Subjects, presume or take upon him publicly to declare, or privately to speak or write any Purpose of Reproach or Slander of his Majesty's Person, Estate, or Government, or to deprave his Laws, or Acts of Parliament, or misconstrue his Proceedings, whereby any Mistaking may be moved betwixt his Highness, his Nobility, and loving Subjects, in Time coming, under Pain of Death; certifying them that does in the contrary, they shall be reputed as seditious and wicked Instruments, Enemies to his Highness, and to the Commonwealth of this Realm, and the said Pain of Death shall be executed against them with all Rigour, to the Example of others: And by the second Act, Sess. 2. Par. 1. Char. II. it is statuted, that whosoever shall by writing, libelling, remonstrating, express, publish, or declare any Words or Sentences, to stir up the People to the Dislike of his Majesty's Prerogative and Supremacy, in Causes Ecclesiastick, or of the Government of the Church by Archbishops and Bishops, as it is now settled by Law, is under the

Pain of being declared incapable to exercise any Office civil, ecclesiastick, or military, within this Kingdom, in any Time coming. Like as by the fundamental Laws of this Nation, by the 130th Act, Par. 8. James VI. it is decared, that none of his Majesty's Subjects presume to impune the Dignity or Authority of the three Estates, or to procure Innovation or Diminution of their Power and Authority, under the Pain of Treason. And that it is much more Treason in any of his Majesty's Subjects, to presume to alter Laws already made, or to make new Laws, or to add any Part to any Law, by their own Authority, that being to assume the Legislative Power to themselves, with his Majesty's highest, and most incommunicable Prerogative. Yet true it is, that albeit his Sacred Majesty did not only bestow on you the said Archibald Earl of Argyle those vast Lands, Jurisdctions and Superiorities justly forfeited to his Majesty by the Crimes of your deceased Father; preferring your Family to those who had served his Majesty against it, in the late Rebellion, but also pardoned and remitted to you the Crimes of leasing, making and misconstruing his Majesty's and his Parliament's Proceedings against the very Laws above-written, whereof you were found guilty, and condemned to die therefore, by the High Court of Parliament, the 25th of August, 1662. and raised you to the Title and Dignity of an Earl, and being a Member of all his Majesty's Judicatures. Notwithstanding of all these, and many other Favours, you the said Archibald Earl of Argyle, being put by the Lords of his Majesty's Privy-Council to take the Test, appointed by the Act of the last Parliament to be taken by all Persons in publick Trust, you, instead of taking the said Test, and swearing the same in the plain genuine Sense and Meaning of the Words, without any Equivocation, Mental Reservation, or Evasion whatsoever, you did declare against, and defame the said Act; and having, to the End you might corrupt others by your pernicious Sense, drawn the same in a Libel, of which Libel you dispersed and gave abroad Copies, whereby ill Impressions were given of the King and Parliament's Proceedings at a Time especially when his Majesty's Subjects were expecting what Submission should be given to the said Test; and being desired the next Day to take the same, as one of the Commissioners of his Majesty's Treasury, you did give in to the Lords of his Majesty's Privy-Council, and owned twice, in plain Judgment before them, the said defamatory Libel against the said Test and Act of Parliament; declaring that you had considered the said Test, and was desirous to give Obedience as far as you could: whereby you clearly insinuated, that you was not able to give full Obedience: In the second Article of which Libel you declare, that you were confident the Parliament never intended to impose contradictory Oaths; thereby to abuse the People with a Belief, that the Parliament had been so impious as really and actually to have imposed contradictory Oaths; and so ridiculous, as to have made an Act of Parliament (which should be most deliberate of all human Actions) quite contrary to their own Intentions: After which you subscribed, contrary to the Nature of all Oaths, and to the Acts of Parliament above-cited, that every Man must explain it for himself, and take it in his own Sense; by which not only that excellent Law, and the Oath therein specified, which is intended to be a Fence to the Government both of Church and State, but all other Oaths and Laws shall be rendered altogether useless to the Government. If every Man take the Oaths imposed by Law in his own Sense, then the Oath imposed is to no Purpose; for the Legislator cannot be sure that the Oath imposed by him will bind the Takers according to the Design and Intent for which he appointed it; and the Legislative Power is taken from the Imposers, and settled in the Taker of the Oath; and so he is allowed to be the Legislator, which is not only an open and violent depraving of his Majesty's Laws and Acts of Parliament, but is likewise a settling of the Legislative Power on private Subjects, who are to take such Oaths. In the third Article of that Paper you declare, that you take the Test in so far only as it is consistent with itself, and the Protestant Religion; by which you maliciously intimate to the People, that the said Oath is inconsistent with itself and with the Protestant Religion, which is not only a downright depraving of the said Act of Parliament, but is likewise a misconstruing of his Majesty's and the Parliament's Proceedings, and misrepresenting them to the People in the highest Degree, and in the tenderest Points they can be concerned; and implying, that the King and the Parliament have done Things inconsistent with the Protestant Religion, for securing of which, that Test was particularly intended. In the fourth Article you do expressly declare, that you mean not by taking the said Test, to bind up yourself from wishing and endeavouring any Alteration in a lawful Way that you shall think fit, for advancing of Church and State; whereby also it was designed by the said Act of Parliament and Oath, that no Man should make any Alteration in the Government of Church and State, as it is now established; and that it is the Duty of all good Subjects, in humble and quiet Manner, to obey the present Government: Yet you not only declare yourself, but by your Example you invite others to think themselves loosed from that Obligation; and that it is free for them to make any Alteration in either, as they shall think fit, concluding your whole Paper with these Words (and this I understand as a Part of my Oath); which is a treasonable Invasion upon the Royal Legislative Power, as if it were lawful for you to make to yourself an Act of Parliament; since he who can make any Part of an Act may make the whole, the Power and Authority in both being the same. Of the which Crimes above-mentioned, you the said Archibald Earl of Argyle are Actor, Art and Part; which being found by the Affize, you ought to be punished with the Pains of Death, Forfeiture and Escheat of Lands and Goods, to the Terror of others who commit the like hereafter.

*An Abstract of the several Acts of Parliament upon which the Indictment against the Earl of Argyle was grounded.*

Concerning Raisers of Rumors betwixt the King and his People. Chap. 1 Statutes of K. Rob. I.

**I**T is defended and forbidden, That no Man be a Conspirator or Inventor of Narrations or Rumors, by the which Occasion of Discord may arise betwixt the King and his People. And if any such Man shall be found



and attainted thereof, incontinent he shall be taken and put in Prison, and there shall be surely kept up, ay and while the King declare his Will anent him.

*Act 43. Par. 2. King James I. March 11, 1424. Leafing-makers for fault Life and Goods.*

*Item,* It is ordained by the King and whole Parliament, That all Leafing-makers, and Tellers of them, which may engender Discord betwixt the King and his People, where-ever they may be gotten, shall be challenged by them that Power has, and tyne Life and Goods to the King.

*Act 83. Par. 6. James V. Dec. 10, 1530. Of Leafing-makers.*

*Item,* Touching the Article of Leafing-makers to the King's Grace, of his Barons, great Men and Leiges, and for Punishment to be put to them therefore, the King's Grace, with Advice of his three Estates, ratifies and approves the Acts and Statutes made thereupon before, and ordains the same to be put in Execution in all Points; and also statutes and ordains, That if any manner of Person makes any evil Information of his Highness to his Barons and Leiges, that they shall be punished in such Manner, and by the same Punishment as they that make Leafings to his Grace of his Lords, Barons, and Leiges.

*Act 134. Par. 8. James VI. May 22, 1584. Anent Slanderers of the King, his Progenitors, Estate and Realm.*

Forasmuch as it is understood to our Sovereign Lord, and his three Estates assembled in this present Parliament, what great Harm and Inconveniency has fallen in this Realm, chiefly since the beginning of the civil Troubles occurred in the Time of his Highness's minority, through the wicked and licentious, publick and private Speeches, and untrue Calumnies of divers of his Subjects, to the Disdain, Contempt, and Reproach of his Majesty, his Council and Proceedings, and to the Dishonour and Prejudice of his Highness, his Parents, Progenitors and Estate, stirring up his Highness's Subjects thereby to Misliking, Sedition, Unquietness, and to cast off their due Obedience to his Majesty; to their Evident Peril, Tinsel and Destruction: His Highness continuing always in Love and Clemency toward all his good Subjects, and most willing to seek the Safety and Preservation of them all, which wilfully, needlessly, and upon plain Malice, after his Highness's Mercy and Pardon oft-times afore granted, has procured themselves, by their treasonable Deeds, to be cut off, as corrupt Members of this Commonwealth. Therefore it is statute, and ordained by our Sovereign Lord, and his three Estates in this present Parliament, that none of his Subjects, of whatsoever Function, Degree, or Quality, in Time coming, shall presume, or take upon Hand, privately or publicly, in Sermons, Declamations, and familiar Conferences, to utter any false, slanderous, or untrue Speeches, to the Disdain, Reproach and Contempt of his Majesty, his Council and Proceedings, or to the Dishonour, Hurt, or Prejudice of his Highness, his Parents and Progenitors, or to meddle in the Affairs of his Highness, and his Estate present, by-gone, and in time coming, under the Pains contained in the Acts of Parliament anent Makers and Tellers of Leafings, certifying them that shall be tried, Contraveners thereof, or that hear such slanderous Speeches, and Reports not the same with Diligence, the said Pain shall be executed against them with all Rigour, in Example of others.

*Act 205. Par. 14. King James VI. June 8, 1594. anent Leafing-makers, and Authors of Slanders.*

OUR Sovereign Lord, with Advice of his Estates, in this present Parliament, ratifies, approves, and for his Highness and Successors, perpetually confirms the Act made by his noble Progenitors, King James the First, of worthy Memory, against Leafing-makers, the Act made by King James the Second, entituled, *Against Leafing-makers and Tellers of them*; the Act made by King James the Fifth, entituled, *of Leafing-makers*; and the Act made by his Highness's self, with Advice of his Estates in Parliament, upon the 22d Day of May, 1584. entituled, *For the Punishment of the Authors of Slanders and untrue Calumnies against the King's Majesty, his Council and Proceedings, to the Dishonour and Prejudice of his Highness, his Parents, Progenitors, Crown and Estate*; as also the Act made in his Highness's Parliament holden at Linlithgow upon the 10th of Dec. 1585, entituled, *Against the Authors of slanderous Speeches or Writs*; and statutes and ordains all the said Acts to be published of new, and to be put in Execution in Time coming, with this Addition, that whoever hears the said Leafings, Calumnies, or slanderous Speeches or Writs to be made, and apprehends not the Authors thereof, if it lies in his Power, and reveals not the same to his Highness, or one of his Privy-Council, or to the Sheriff, Steward, or Bailiff of the Shire, Stewards in Regality or Royalty, or to the Provost, or any of the Bailiffs within Burgh, by whom the same may come to the Knowledge of his Highness, or his said Privy-Council, where through the said Leafing-makers and Authors of slanderous Speeches may be called, tried, and punished according to the said Acts: The Hearer, and not Apprehender, [if it lie in his Power] and Concealer, and not Revealer of the said Leafing-makers, and Authors of the said slanderous Speeches or Writs, shall incur the like Pain and Punishment as the principal Offender.

*Act 107. Par. 7. King James I. March 1, 1427. That none interpret the King's Statutes wrongously.*

*Item,* The King, by Deliverance of Council, by manner of Statute, forbids, That no Man interpret his Statutes otherwise than the Statutes bear, and to the Intent and Effect that they were made for, and as the Maker of them understood; And whofo does the contrary, shall be punished at the King's Will.

*Act 10. Par. 10. King James VI. Dec. 10, 1585. Authors of slanderous Speeches or Writs should be punished to the Death.*

It is statute and ordained by our Sovereign Lord and three Estates, That all his Highness's Subjects content themselves in Quietness and dutiful Obedience to his Highness and his Authority; and that none of them presume, or take upon Hand publicly to declaim, or privately to speak any Purpose of Reproach or Slander of his Majesty's Person, Estate or Government; or misconstrue his Proceedings, whereby any Misliking

may be proved betwixt his Highness and his Nobility, and loving Subjects in time coming, under the Pain of Death; certifying them that do in the contrary, they shall be reputed as seditious and wicked Instruments, Enemies to his Highness and the Commonwealth of this Realm: And the said Pain of Death shall be executed upon them with all Rigour, in Example of others.

*Act for Preservation of his Majesty's Person, Authority and Government, May 1662.*

—And further, It is by his Majesty and Estates of Parliament declared, statute and enacted, That if any Person or Persons shall, by writing, printing, praying, preaching, libelling, remonstrating, or by any malicious or advised speaking, express, publish, or declare any Words or Sentences, to stir up the People to the Hatred or Dislike of his Majesty's Royal Prerogative and Supremacy, in Causes Ecclesiastical, or of the Government of the Church by Archbishops and Bishops, as it is now settled by Law—That every such Person or Persons so offending, and being legally convicted thereof, are hereby declared incapable to enjoy or exercise any Place or Employment, civil, ecclesiastick, or military, within this Church and Kingdom, and shall be liable to such further Pains as are due by the Law in such Cases.

*Act 130. Par. 8. James VI. May 22, 1584. Anent the Authority of the three Estates of Parliament.*

THE King's Majesty considering the Honour and the Authority of his Supreme Court of Parliament, continued past all Memory of Man, unto their Days, as constitute upon the free Votes of the three Estates of this ancient Kingdom, by whom the same, under God, has ever been upholden, rebellious and traitorous Subjects punished, the good and faithful preserved and maintained, and the Laws and Acts of Parliament (by which all Men are governed) made and established. And finding the Power, Dignity, and Authority of the said Court of Parliament, of late Years called in some Doubt, at least, some curiously travelling to have introduced some Innovation thereant; his Majesty's firm Will and Mind always being, as it is yet, That the Honour, Authority, and Dignity of his said three Estates shall stand and continue in their own Integrity, according to the ancient and laudable Custom by-gone, without any Alteration or Diminution: Therefore it is statute and ordained by your said Sovereign Lord, and his said three Estates in this present Parliament, That none of his Leiges or Subjects presume, or take upon hand to impugne the Dignity and Authority of the said three Estates, or to seek or procure the Innovation or Diminution of the Power and Authority of the same three Estates, or any of them, in Time coming, under the Pain of Treason.

*The Earl of Argyle's first Petition for Advocates, or Council to be allowed him.*

To his Royal Highness, his Majesty's High Commissioner, and to the Right Honourable the Lords of his Majesty's Privy-Council.

*The humble Petition of Archibald Earl of Argyle,*

*Sheweth,*

THAT your Petitioner being criminally indicted before the Lords Commissioners of Justiciary, at the Instance of his Majesty's Advocate, for Crimes of an high Nature. And whereas in this Case no Advocate will readily plead for the Petitioner, unless they have your Royal Highness, and Lordships Special License and Warrant to that Effect, which is usual in the like Cases.

*It is therefore humbly desired, that your Royal Highness and Lordships would give special Order and Warrant to Sir George Lockhart, his ordinary Advocate, to consult and plead for him in the aforesaid criminal Process, without incurring any Hazard upon that Account:*

And your Petitioner shall ever pray.

Edinburgh, November 22, 1681.

*The Council's Answer to the Earl of Argyle's first Petition, and his having Advocates allowed him.*

HIS Royal Highness, his Majesty's High Commissioner, and Lords of Privy-Council do refuse the Desire of the above-written Bill, but allow any Lawyers the Petitioner shall employ, to consult and plead for him in the Process of Treason, and other Crimes, to be pursued against him at the Instance of his Majesty's Advocate.

*Extr. By me,*

WILL. PATERSON.

*The Earl of Argyle's second Petition for Council to be allowed him.*

To his Royal Highness, his Majesty's High Commissioner, and to the Right Honourable the Lords of his Majesty's Privy-Council.

*The humble Petition of Archibald Earl of Argyle.*

*Sheweth,*

THAT you Petitioner having given in a former Petition, humbly representing, That he being criminally indicted before the Lords Commissioners of Justiciary, at the Instance of his Majesty's Advocate, for Crimes of an high Nature: And therefore desired that your Royal Highness, and Lordships, would give special Warrant to Sir George Lockhart, to consult and plead for him: Whereupon your Royal Highness and Lordships did allow the Petitioner to make Use of such Advocates as he should think fit to call. Accordingly your Petitioner has desired Sir George Lockhart to consult and plead for him, he hath as yet refused your Petitioner. And by the 11th Parliament of King James the VI. Cap. 38. as it is the undeniable Privilege of all Subjects, accused for any Crimes, to have Liberty to provide themselves of Advocates, to defend their Lives, Honour, and Lands, against whatsoever Accusation; so the same Privilege is not only by Parliament 11 King James the VI. Cap. 90. farther asserted and confirmed, but also it is declared, that in case the Advocates refuse, the Judges are to compel them, lest the Party accused



accused should be prejudiced: And this being an Affair of great Importance to your Petitioner, and Sir George Lockhart having been not only still his ordinary Advocate, but also by his constant Converse with him is best known to your Petitioner's Principles; and of whose eminent Abilities and Fidelity, your Petitioner (as many others have) hath had special Proof all along in his Concerns, and hath such singular Confidence in him, that he is most necessary to your Petitioner at this Occasion.

*May it therefore please your Royal Highness and Lordships to interpose your Authority, by giving a special Order and Warrant to the said Sir George Lockhart, to consult and plead for him in the said criminal Process, conform to the Tenor of the said Acts of Parliament, and constant known Practice in the like Cases, which was never refused to any Subject of the meanest Quality, even to the greatest Criminals. And your Royal Highness's and Lordships Answer is humbly craved.*

Edinburgh, November 24. 1681.

*The Council's Answer to the Earl of Argyle's second Petition.*

**H**IS Royal Highness, his Majesty's High-Commissioner, and Lords of Privy-Council, having considered the foresaid Petition, do adhere to their former Order, allowing Advocates to appear for the Petitioner in the Process aforesaid,

Extr. By me,  
WILL. PATERSON.

*The Earl of Argyle's Letter of Attorney, constituting Alexander Dunbar his Procurator, for requiring Sir George Lockhart to plead for him*

**W**E Archibald Earl of Argyle do hereby substitute, constitute and ordain Alexander Dunbar, our Servitor, to be our Procurator, to pass and require Sir George Lockhart, Advocate, to consult and plead for us in the criminal Process intended against us, at the Instance of his Majesty's Advocate; and to compare with us, before the Lords Commissioners of Justiciary, upon the 12th of December next, conform to an Act of Council, dated the 22d of November instant, allowing any Lawyers that we should employ, to consult and plead for us in the said Process, and to another Act of Council of the 24th of November instant, relative to the former, and conform to the Acts of Parliament. In Witness whereof we have subscribed these Presents, at Edinburgh-Caste, Nov. 26, 1681. before these Witnesses, Duncan Campbell, Servitor to James Glen, Stationer in Edinburgh, and John Thom, Merchant in the said Burg.

Duncan Campbell, } Witnesses.  
John Thom, }

ARGYLE.

An Instrument whereby the Earl of Argyle required Sir George Lockhart to appear and plead for him.

*Apud Edenburgum vigesimo sexto die Mensis Novembris, Anno Domini millesimo sexcentesimo octuagesimo primo, & Anno Regni Car. II. Regis trigesimo tertio.*

**T**HE which Day, in Presence of me Notary-Publick, and Witnesses under-subscribed, compared personally Alexander Dunbar, Servitor to a noble Earl, Archibald Earl of Argyle, as Procurator, and in Name of the said Earl, conform to a Procurator subscribed by the said Earl at the Castle of Edinburgh, upon the 21st Day of November, 1681. making and constituting the said Alexander Dunbar his Procurator, to the Effect under-written; and passed to the personal Presence of Sir George Lockhart, Advocate, in his own Lodging in Edinburgh, having and holding in his Hands an Act of his Majesty's Privy-Council, of the Date of the 22d of November, 1681, instant, proceeding upon a Petition given in by the said Earl of Argyle to the said Lords, shewing, that he being criminally indicted before the Lords Commissioners of Justiciary, at the Instance of his Majesty's Advocate, for Crimes of an high Nature; and whereas in that Case no Advocates would readily plead for the said Earl, unless they had his Royal Highness's and their Lordships special License and Warrant to that Effect, which is usual in the like Cases: And by the said Petition humbly supplicated, that his Highness and the Council would give special Order and Command to the said Sir George Lockhart, the said Earl's ordinary Advocate, to consult and plead for him in the foresaid criminal Process, without incurring any Hazard upon that Account. His Royal Highness, and Lords of the said Privy-Council, did refuse the Desire of the said Petition, but allowed any Lawyers the Petitioner should employ, to consult and plead for him in the Process of Treason, and other Crimes to be pursued against him, at the Instance of his Majesty's Advocate. And also the said Alexander Dunbar having and holding in his Hands another Act of the said Lords of Privy-Council, of the 24th of the said Month, relative to, and narrating the foresaid first Act, and proceeding upon another Supplication given in by the said Earl, to the said Lords, craving, that his Royal Highness and the said Lords would interpose their Authority, by giving a positive and special Order and Warrant to the said Sir George Lockhart, to consult and plead with him in the aforesaid criminal Process, conform to the Tenor of the Acts of Parliament mentioned and particularized in the said Petition, and frequent and known Practice in the like Cases, which was never refused to any Subjects of the meanest Quality. His Royal Highness, and Lords of Privy-Council, having considered the aforesaid Petition, did, by the said Act, adhere to their former Order, allowing Advocates to appear for the said Earl in the Process aforesaid, as the said Acts bear; and produced the said Acts Procuratory aforesaid to the said Sir George Lockhart, who took the same in his Hands, and read them over successive; and after reading thereof, the said Alexander Dunbar Procurator, and in Name and Behalf aforesaid, solemnly required the said Sir George Lockhart as the said noble Earl's ordinary Advocate, and as a Lawyer and Advocate, upon the said Earl's reasonable Expence, to consult and advise the said Earl's said Process at any Time and Place the said Sir George should appoint to meet thereupon, conform to the foresaid two Acts of Council, and

Acts of Parliament therein mentioned, appointing Advocates to consult in such Matters: which the said Sir George Lockhart altogether refused: Whereupon the said Alexander Dunbar, as Procurator, and in Name aforesaid, asked and took the Instruments, one or more, in the Hands of me Notary-Publick under-subscribed. And these Things were done within the said Sir George Lockhart's Lodging, on the South Side of the Street of Edinburgh, in the Lane Mercat, within the Dining-Room of the said Lodging, betwixt four and five Hours in the Afternoon, Day, Month, Year, Place, and of his Majesty's Reign, respective aforesaid, before Robert Dixone, and John Leshy, Servitors to John Campbell, Writer to his Majesty's Signet, and Dowgall Mac Alester, Messenger in Edinburgh, with divers others, called and required to the Premises.

*Ita esse Ego Johannes Broun, Notarius Publicus, in Premissis requisitus, Atestor Testantibus his meis signo & subscriptione manualibus solitis & consuetis.*

BROUN.

Robert Dickson,  
Dowgall Mac Alester, } Witnesses.  
John Leshy. }

Wednesday, the 12th of December, the Day of Compareance assigned to the Earl being now come, he was brought by a Guard of Soldiers from the Castle to the Place appointed for the Trial, and the Justice Court being met and fenced, the Earl, now Marquis of Queensbury, then Justice-General, the Lords Nairn, Collingtown, Forret, Newton and Kirkcubright, the Lords of Justiciary sitting in Judgment, and the other Formalities also performed, the Indictment above set down was read, and the Earl spoke as follows.

*The Earl of Argyle's Speech to the Lord Justice General, and the Lords of the Justiciary, after he had been arraigned, and his Indictment read.*

*My Lord Justice General, &c.*

I Look upon it as an undeniable Privilege of the meanest Subject to explain his own Words in the most benign Sense: And even when Persons are under an ill Character, the Misconstruction of Words in themselves not ill, can only reach a Presumption or Aggravation but not any more.

But it is strange to alledge, as well as, I hope, impossible, to make any that know me believe, that I could intend any thing but what was honest and honourable, suitable to the Principles of my Religion and Loyalty, though I did not explain myself at all.

My Lord, I pray you be not offended that I take up a little of your Time, to tell you, I have from my Youth made it my Business to serve his Majesty faithfully, and have constantly, to my Power, appeared in his Service; especially in all Times of Difficulty, and have never joined, nor complied with any Interest or Party, contrary to his Majesty's Authority, and have all along served him in his own way, without a Frown from his Majesty these thirty Years.

As soon as I passed the Schools and Colleges, I went to travel to France and Italy, and was abroad 1647, 1648, and till the end of 1649.

My first Appearance in the World was to serve his Majesty as Colonel of his Foot-Guards. And though at that time all the Commissioners were given by the then Parliament, yet I would not serve without a Commission from his Majesty, which I have still the Honour to have by me.

After the Misfortune of Worcester, I continued in Arms for his Majesty's Service; when Scotland was over-run with Usurpers; and was alone with some of my Friends in Arms in the Year 1652. and did then keep up some Appearance of Opposition to them: And General Major Dean coming to Argyleshire, and planting several Garrisons, he no sooner went away but we fell upon the Garrisons he had left, and in one Day took two of them, and cut off a considerable Part of a third, and carried away in all about three hundred Prisoners: And in the End of that Year, I sent Captain Shaw to his Majesty, with my humble Opinion, how the War might be carried on; who returned to me with Instructions and Orders which I have yet lying by me.

After which, I joined with those his Majesty did commissionate, and stood out till the last, that the Earl of Middleton, his Majesty's Lieutenant-General, gave me Orders to capitulate, which I did without any other Engagements to the Rebels but allowing Persons to give Bail for my living peaceable: And did at my capitulating relieve several Prisoners by Exchange, whereof my Lord Granard, out of the Castle of Edinburgh, was one.

It is notary known, that I was forefaulted by the Usurpers, who were so jealous of me, that, contrary to their Faith, within eight Months after my Capitulation, upon Pretence I kepted Horses above the Value they seized on me, and kepted me in one Prison after another, till his Majesty's happy Restoration, and this only because I would not engage not to serve his Majesty, though there was no Oath required.

I do with all Gratitude acknowledge his Majesty's Goodness, Bounty and Royal Favours to me, when I was pursued before the Parliament in the Year 1662. His Majesty was graciously pleased not to send me here in any opprobrious Way, but upon a bare verbal Paroll. Upon which I came down Post, and presented myself a Fortnight before the Day. Notwithstanding whereof I was immediately clapt up in the Castle, but having satisfied his Majesty at that Time of my entire Loyalty, I did not offer to plead by Advocates. And his Majesty was not only pleased to pardon my Life, and to restore me to a Title and Fortune, but to put me in Trust in his Service, in the most eminent Judicatories of this Kingdom, and to heap Favours upon me, far beyond whatever I did or can deserve: Though I hope his Majesty hath always found me faithful and thankful, and ready to bestow all I have, or can have, for his Service: And I hope never had had nor ever shall have Ground to repent any Favour he hath done me. And if I were now really guilty of the Crimes libelled, I should think myself a great Villain.

The next Occasion I had to shew my particular Zeal to his Majesty's Service was in Anno 1666, when the Infurrection was made that was reported



at *Pentland-Hills*. At the very first, the intercourse betwixt this Place and me was stopt, so that I had neither Intelligence nor Orders from the Council, nor from the General; but upon a Letter from the now Archbishop of *St. Andrews*, telling me there was a Rebellion like to be in the three Kingdoms, and bidding me beware of *Ireland* and *Kintyre*, I brought together about two thousand Men: I seized all the Gentlemen in *Kintyre* that had not taken the Declaration, though I found them peaceable. And I sent a Gentleman to General *Dalziel*, to receive his Orders, who came to him just as they were going to the Action at *Pentland*, and was with him in it; and I kept my Men together till his Return. And when I met with considerable Trouble from my Neighbours, rebelliously in Arms, and had Commissions both on publick and private Accounts, have I not carried dutifully to his Majesty, and done what was commanded with a just Moderation, which I can prove under the Hands of my Enemies, and by many infallible Demonstrations?

Pardon me a few Words: Did I not in this present Parliament shew my Readiness to serve his Majesty and Royal Family, in asserting vigorously the lineal legal Succession of the Crown, and had a Care to have it expressed in the Commissions of the Shires and Burghs I had Interest in? Was I not for offering proper Supplies to his Majesty and his Successor? And did I not concur to bind the Landlords for their Tenants, although I was mainly concerned? And have I not always kept my Tenants in Obedience to his Majesty?

I say all this, not to arrogate any thing for doing what was my Honour and Duty to his Majesty; but if after all this, upon no other Ground but Words that were spoken in absolute Innocence, and without the least Design, except for clearing my own Conscience, and that are not capable of the ill Sense wrested from them by the Libel, I should be further troubled, what Assurance can any of the greatest Quality, Trust, or Innocency have, that they are secure? especially considering, that so many Scruples have been started, as all know, not only by many of the Orthodox Clergy, but by whole Presbyteries, Synods, and some Bishops, which were thought so considerable, that an eminent Bishop took the Pains to write a Treatise, that was read over in Council, and allowed to be printed, and a Copy given to me, which contains all the Expressions I am charged for, and many more that may be stretched to a worse Sense.

Have I not shewed my Zeal to all the Ends of the Test? How then can it be imagined that I have any sinister Design in any thing that I have said? If I had done any thing contrary to it all the Course of my Life, which I hope shall not be found, yet one Act might pretend to be excused by a Habit. But nothing being questioned but the sense of Words misconstrued to the greatest Height, and stretched to imaginary Insinuations, quite contrary to my Scope and Design, and so far contrary, not only to my Sense, but my Principles, Interest, and Duty, that I hope my Lord Advocate will think he hath gone too far on in this Process, and say plainly what he knows to be Truth by his Acquaintance with me, both in publick and private, viz. That I am neither Papist nor Fanatick, but truly loyal in my Principles and Practices.

The hearing of this Libel would trouble me beyond most of the Sufferings of my Life if my Innocence did not support me, and the Hopes of being vindicated of this and other Calumnies before this publick and noble Auditory.

I leave my Defences to these Gentlemen that plead for me, they know my Innocence, and how groundless that Libel is.

I shall only say, as my Life hath most of it been spent in serving and suffering for his Majesty; so, whatever be the Event of this Process, I resolve, while I breathe, to be loyal and faithful to his Majesty. And whether I live publicly or in Obscurity, my Head, my Heart, nor my Hand, shall never be wanting where I can be useful to his Majesty's Service. And while I live, and when I die, I shall pray, that God Almighty would bless his Majesty with a long, happy, and prosperous Reign; and that the lineal legal Successors of the Crown may continue Monarchs of all his Majesty's Dominions, and be Defenders of the true Primitive, Christian, Apostolick, Catholick, Protestant Religion, while Sun and Moon endure.

God save the King.

The King's own Letter to this Nobleman, when he was Lord Lorn.

Cologne, Dec. 1654.

My Lord Lorn,

I AM very glad to hear from Middleton, what Affection and Zeal you show to my Service, how constantly you adhere to him in all his Distresses, and what good Service you have performed upon the Rebels. I assure you, you shall find me very just, and kind to you in rewarding what you have done and suffered for me; and I hope you will have more Credit and Power with those of your Kindred, and Dependants upon your Family, to engage them with you for me, than any body else can have to seduce them against me; and I shall look upon all those who shall refuse to follow you as unworthy of any Protection hereafter from me, which you will let them know. This honest Bearer, M——, will inform you of my Condition and Purposes, to whom you will give Credit; and he will tell you, that I am very much

Your affectionate Friend,

C. R.

General Middleton's Order to the Earl of Argyle, who was then Lord Lorn, for capitulating with the English, wherein he largely expresseth his Worth and Loyalty.

John Middleton, Lieutenant-General, next and immediately under his Majesty, and Commander in Chief of all the Forces raised, and to be raised, within the Kingdom of Scotland.

BEING the Lord Lorn hath given so singular Proofs of clear and perfect Loyalty to the King's Majesty, and of pure and constant Affection to the Good of his Majesty's Affairs, as never hitherto to have any ways complied with the Enemy, and to have been principally instru-

mental in the enlivening of this late War, and one of the chief and first Movers in it, and hath readily, chearfully, and gallantly engaged, and resolutely and constantly continued active in it, notwithstanding the many powerful Dissuasions, Discouragements, and Oppositions he hath met withal from divers Hands, and hath, in the carrying on of the Service, shewn such signal Fidelity, Integrity, Generosity, Prudence, Courage, and Conduct, and such high Virtue, Industry, and Ability, as are suitable to the Dignity of his noble Family, and the Trust his Majesty reposed in him; and hath not only stood out against all Temptations and Enticements, but hath most nobly crossed and repelled Designs and Attempts of deserting the Service, and persisted loyally and firmly in it to the very last, through excessive Toil and many Difficulties, misregarding all personal Inconveniences, and chusing the Loss of Friends, Fortune, and all private Concernments, and to endure the utmost Extremities rather than to swerve in the least from his Duty, or taint his Reputation with the meanest Shadow of Disloyalty and Dishonour. I do, therefore, hereby testify and declare, that I am perfectly satisfied with his whole Deportments, in relation to the Enemy, and this late War; and do highly approve them, as being not only above all I can express of their Worth, but almost beyond all Parallel. And I do withal hereby both allow, and most earnestly desire, and wish him, to lose no Time in taking such Course for his Safety and Preservation by Treaty and Agreement, or Capitulation, as he shall judge most fit and expedient for the Good of his Person, Family, and Estate, since inevitable and invincible Necessity hath forced us to lay aside this War. And I can now no other Way express my Respects to him, nor contribute my Endeavour to do him Honour and Service. In Testimony whereof I have signed and sealed these Presents at *Dunveagave*, the last Day of *March*, 1655.

John Middleton.

Another Letter from the Earl of Middleton, to the same Purpose.

Paris, April 17, 1655.

My noble Lord,

I AM hopeful, that the Bearer of this Letter will be found one who has been a most faithful Servant to your Lordship, and my kind Friend, and a Sharer in my Troubles. Indeed I have been strengthened by him to support and overcome many Difficulties. He will acquaint you with what hath past, which truly was strange to both of us, but your own Re-encounters will lessen them. My Lord, I shall be faithful in giving you that Character which your worth and Merit may justly challenge. I profess it is, next to the Ruin of the Service, one of my chiefest Regrets that I could not possibly wait upon you before my going from Scotland, that I might have settled a Way of Correspondence with you, and that your Lordship might have understood me better than yet you do; I should have been plain in every thing, and indeed have made your Lordship my Confessor: And I am hopeful the Bearer will say somewhat for me, and I doubt not but your Lordship will trust him. If it shall please God to bring me safe from beyond Sea, your Lordship shall hear from me by a sure Hand. Sir *Ro. M.* will tell you a Way of corresponding. So that I shall say no more at present, but that I am, without Possibility of Change,

My noble Lord,

Your Lordship's most faithful,

and most humble Servant,

John Middleton.

A Letter from the Earl of Glencairn, testifying his Esteem for this Noble Person, and the Sense he had of his Loyalty to the King, when few had the Courage to own him.

My Lord,

LEST it may be my Misfortune, in all these great Revolutions, to be misrepresented to your Lordship, as a Person unworthy of your favourable Opinion (an Artifice very frequent in these Times) I did take Occasion to call for a Friend and Servant of yours, the Laird of *Spanie*, on whose Discretion I did adventure to lay forth my Heart's Desire, to obviate in the Bud any of these Misunderstandings. Your Lordship's true Worth and Zeal to your Country's Happiness being so well known to me, and confirmed by our late Suffering-Acquaintance: And now finding how much it may conduce to these great Ends, we all wish that a perfect Unity may be amongst all good and honest-hearted Scotchmen, though there be few more insignificant than myself: Yet my Zeal for those Ends obliges me to say, that if your Lordship's Health and Affairs could have permitted you to have been at *Edinburgh* in these late Times, you would have seen a great Inclination and Desire, amongst all here, of a perfect Unity, and of a mutual Respect to your Person, as of chief Eminence and Worth. And I here shall set it under my Hand, to witness against all my Informers, that none did with more Passion, nor shall with more continued Zeal, witness themselves to be true Honourers of you, than he who desires infinitely to be esteemed,

My Lord,

Your most humble Servant,

GLENCAIRN.

What I cannot well write, I hope this discreet Gentleman will tell you, in my Name: And I shall only beg leave to say, that I am your most noble Lady's humble Servant.

After the reading of which Order and Letters, which yet the Court refused to record, the Earl's Advocate, or Council, Sir *George Lockhart* said in his Defence as follows.

Sir *George Lockhart's Argument and Plea for the Earl of Argyle.*

SIR *George Lockhart* for the Earl of *Argyle*, alledgeth, That the Libel is not relevant, and whereupon he ought to be put to the Knowledge of an Inquest. For,

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It



It is alledged in the general, That all criminal Libels, whereupon any Person's Life, Estate and Reputation, can be drawn in Question, should be founded upon clear, positive and exprefs Acts of Parliament, and the Matter of Fact which is libelled, to be the contravention of those Laws, should be plain, clear, and direct Contraventions of the same, and not argued by Way of Implications and Inferences. Whereas in this Case, neither the Acts of Parliament founded upon, and libelled, can be in the least the Foundation of this Libel: Nor is the Explication which is pretended to be made by the Pannel, at the Time of the taking of his Oath (if considered) any Contravention of those Laws; which being premised, and the Pannel denying the Libel, as to the whole Articles and Points therein-contained, it is alledged in special:

That the Libel, in so far as it is founded upon the 21st Chap. Stat. 1. Robert I. and upon 83d Act, Par. 6. James V. the 43d Act, Par. 2. James I. and upon the 83d Act, Par. 10. James V. and upon 84th Act, Par. 8. James VI. and upon the 10th Act, Par. 10. James VI. and upon the 2d Act, Par. 1. Sec. 2. of his Sacred Majesty; and inferring thereupon, that the Pannel, by the pretended Explication given in by him to the Lords of his Majesty's Privy-Council, as the Sense of the Oath he had taken, doth commit the Crime of Leasing-making, and depraving his Majesty's Laws: The Inference and Subsumption is most unwarrantable, and the Pannel, though any such thing were acknowledged and proved, can never be found guilty of contravening these Acts of Parliament. In respect it is evident, upon perusal and Consideration of these Acts of Parliament, that they only concern the Case of Leasing-making tending to Sedition, and to beget Discord betwixt his Majesty and his Subjects, and the Dislike of his Majesty's Government, and the Reproach of the same. And the said Laws and Acts of Parliament were never understood or libelled upon, in any other Sense. And all the former Acts of Parliament, which relate to the Crime of Leasing-making in general Terms, and under the Qualification foresaid, as tending to beget Discord betwixt his Majesty and his Subjects, are explained and fully declared, as to what is the true Meaning and Import thereof, by the 134th Act, Par. 8. James VI. which relates to the same Crime of Leasing-making, and which is expressly described in these Terms, to be wicked and licentious, publick and private Speeches, and untrue Calumnies to the Disdain and Contempt of his Majesty's Council and Proceedings, and to the Dishonour and Prejudice of his Highness and his Estate, stirring up his Highness's Subjects to Mifliking and Sedition, and Unquietness, which being the true Sense and Import of the Acts of Parliament made against Leasing-makers, there is nothing can be inferred from the Pannel's alledged Explication, which can be wrested or construed to be a Contravention of these Laws: In respect,

I. It is known by the whole Tenor of his Life, and graciously acknowledged by his Sacred Majesty, by a Letter under his Royal Hand, that the Pannel did ever most zealously, vigorously, and faithfully promote and carry on his Majesty's Service and Interest, even in the worst and most difficult Times: Which is also acknowledged by a Pass under the Earl of Middleton's Hand, who had then a special Commission from his Majesty, for carrying on his Majesty's Service in this Kingdom, as Lieutenant-General under his Majesty; and by a Letter under the Earl's Hand, of the Date, both which do contain high Expressions of the Pannel's Loyalty, and of the great Services he had performed for his Majesty's Interest. And his Majesty, as being conscious thereof, and perfectly knowing the Pannel's Loyalty, and his Zeal and Faithfulness for his Service, did think fit to entrust the Pannel in Offices and Capacities of the greatest Trust of the Kingdom. And it is a just and rational Presumption, which all Law makes and infers, that the Words and Expressions of Persons, who by the Tenor and Course of their Lives have expressed their Duty and Loyalty to his Majesty's Interest, are ever to be interpreted, and understood *in meliorem partem*. And by way of Implication and inference, to conclude and infer Crimes from the same, which the Ufer of such Words and Expressions never meant nor designed, is both unreasonable and unjust.

II. As the foresaid Acts of Parliament made against Leasing-makers, and Depravers of his Majesty's Laws, only proceed in the Terms foresaid, where the Words and Speeches are plain, tending to beget Discord between the King and his Subjects, and to the Reproach and Dislike of his Government, and when the same are spoke and vented in a subdulous, pernicious, and fraudulent Manner: So they never were, nor can be understood to proceed in the Case of a Person offering in the Presence of a publick Judicature (whereof he had the Honour to be a Member) his sincere and plain Meaning and Apprehension of what he conceived to be the true Sense of the Act of Parliament imposing and enjoining the Test: There being nothing more opposite to the Act of Parliament made against Leasing-making, and venting and spreading abroad the same upon Seditious Designs, than the foresaid Plain and open Declaration of his Sense and Apprehension, what was the Meaning of the said Act of Parliament. And it is of no Import to infer any Crime, and much less of any of the Crimes libelled, albeit the Pannel had erred and mistaken in his Apprehension of the Act of Parliament. And it were a strange Extension of the Act of Parliament made against Leasing-makers, requiring the Qualifications foresaid and the Acts against depraving his Majesty's Laws, to make the Pannel, or any other Person guilty upon the Mistakes and Misapprehensions of the Sense of the Laws, wherein Men may mistake and differ very much, and even eminent Lawyers and Judges. So that the Acts of Parliament against Leasing-making, and depraving his Majesty's Laws, can only be understood in the exprefs Terms and Qualifications foresaid. Like as it neither is libelled, nor can be proven, that the Pannel, before he was called and required by the Lords of his Majesty's Privy-Council to take the Oath, did ever, by Word or Practice, use any reproachful Speeches of the said Act of Parliament, or of his Majesty's Government; but being required to take the Oath, he did humbly, with all Submission, declare what he apprehended to be the Sense of the Act of Parliament, enjoining the Test, and in what Sense he had Freedom to take the same.

III. The Act of Parliament enjoining the Test does not enjoin the same to be taken by all Persons whatsoever, but only prescribes it as a Qualification, without which Persons could not assume or continue to act in publick Trust: Which being an Oath to be taken by so solemn an Invocation of the Name of Almighty God, it is not only allowable by the Laws and Customs of all Nations, and the Opinion of all Divines, and Casuists, Popish or Protestant, but also commended, that where a Party has any Scrupulosity, or Unclearness in his Conscience, as to the Matter of the Oath, that he should exhibit and declare the Sense and Meaning in which he is willing and able to take the Oath. And it is not at all material, whether the Scruples of a Man's Conscience, in the Matter of an Oath, be in themselves just or groundless, it being a certain Maxim, both in Law and Divinity, that *Conscientia etiam erronea ligat*: And therefore though the Pannel had thought fit, for the clearing and Exoneration of his own Conscience, in a Matter of the highest Concern as to his Peace and Repose, to have expressed and declared the exprefs Sense in which he could take the Oath, whether the said Sense was consistent with the Act of Parliament, or not, yet it does not in the least import any Matter of Reproach or Reflection upon the Justice or Prudence of the Parliament in imposing the said Oath: But allenarly does evince the Weakness and Scrupulosity of a Man's Conscience, who neither did, nor ought to have taken the Oath but with an Explanation that would have saved his Conscience to his Apprehension. Otherwise he had grossly sinned before God, even though it was *Conscientia errans*. And this is allowed and prescribed by all Protestant Divines, as indispensably necessary, and was never thought to import any Crime, and is also commended even by Popish Casuists themselves, who though they allow, in some Cases, of Mental Reservations and Equivocations, yet the exprefs Declaration of the Sense of the Party is allowed and commended, as much more ingenuous: And *tutius Remedium Conscientiæ ne illaqueetur*, as appears by *Bellarmino de Juramento*, and upon the same Title *de Interpretatione Juramenti*; and *Lessius*, that famous Casuist, *de Justitia & Jur. Dubitatione* 8, 9. *utrum si quis salvo animo aliquid Juramento promittat obligetur, & quale peccatum hoc sit*. And which is the general Opinion of all Casuists, and all Divines, as may appear by *Amesius*, in his Treatise *de Conscientia*, *Sanderfon de Juramento, Prelectione secunda*. And such an exprefs Declaration of the Sense and Meaning of any Party when required to take an Oath, for no other End but for the clearing and Exoneration of his own Conscience, was never in the Opinion of any Lawyer, or any Divine, construed to be the Crime of Leasing-making, or of defamatory Libels, or depraving of publick Laws, or reproaching or misconstruing of the Government: But on the contrary, by the universal Suffrage of all Protestant Divines, there is expressly required, in Cases of a scrupulous Conscience, an Abhorrence and Detestation of all reserved Senses, and of all *Amphibologies* and Equivocations, which are in themselves unlawful and reprobate, upon that unanswerable Reason, that *Juramentum* being the highest Act of Devotion and Religion, *in eo requiritur maxima simplicitas*; and that a Party is obliged, who has any Scruples of Conscience, publickly and openly to clear and declare the same.

IV. Albeit it is not controverted, but that a Legislator, imposing an Oath, or any publick Authority, before whom the Oath is taken, may, after hearing of the Sense and Explication which a Person is willing to put upon it, either reject or accept of the same, if it be conceived not to be consistent with the genuine Sense of the Oath: Yet though it were rejected, it was never heard of, or pretended, that the Offering of a Sense does import a Crime, but that notwithstanding thereof, *Habetur pro Rasantante*, and as if he had not taken the Oath, and to be liable to the Certification of Law, as if he had been a Refuser.

V. The Pannel having publickly and openly declared the Sense in which he was free to take the Oath, it is offered to be proved, that he was allowed, and did accordingly proceed to the taking the Oath, and did thereafter take his Place, and sit and vote, during that *Sederunt* of Privy-Council. So as the pretended Sense and Explication, which he did then emit and give, can import no Crime against him.

VI. It is also offered to be proved, That before the Pannel was required to take the Oath, or did appear before his Royal Highness, and Lords of the Privy-Council, to take the same, there were a great many Papers spread abroad from Persons, and Ministers of the Orthodox Clergy; and, as the Pannel is informed, some thereof presented to the Bishops of the Church, in the name of Synods and Presbyteries, which did, in downright Terms, charge the Test and Oath with alledged Contradictions and inconsistencies. And for Satisfaction whereof, some of the learned and Reverend Bishops of the Church did write a learned and satisfying Answer, called, *A Vindication of the Test, for clearing the Scruples, Difficulties and Mistakes that were objected against it*. And which Vindication and Answer was exhibited, and read before the Lords of his Majesty's Privy-Council, and allowed to be printed: And from which the Pannel argues,

1. That it neither is, nor can be pretended in this Libel, that the alledged Explication, wherein he did take the Oath, does propose the Scruples of his Conscience in these Terms, which were proposed by the Authors of these Objections, which do flatly and positively assert, that the Oath and Test do contain Matters of Inconsistency and Contradiction; whereas all that is pretended in this Libel, with the most abominable Violence that can be put upon the Words, is arguing Implications and Inferences; which neither the Words are capable to bear, nor the Sincerity of the Earl's Intention and Design, nor the Course of his by-past Life can possibly admit of. And yet none of the Persons who were Authors of such Papers, were ever judged or reputed criminal or guilty, and to be prosecuted for the odious and infamous Crimes libelled, *Treason, Leasing-making, Perjury*, and the like.

2. The Pannel does also argue from the said Matter of Fact, that the alledged Explication libelled can neither in his Intention and Design, nor in the Words, infer or import any Crime against him, because, before his being required, or appearing to take the Oath, there were spread abroad such Scruples and Objections, by some of the Orthodox Clergy.

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and others; so that the Earl can never in any Sense be construed in his Explication wherein he took the Oath, to have done it *animo infamandi*, and to declaim against the Government: For the Scruples and Objections that were spread abroad by others, were a fair and rational Occasion why the Earl in any Sense or Explication which he offered might have said, that he was confident the Parliament never intended to impose contradictory Oaths; and this is so far from importing the Insinuations and Inference made by the Libel, that thereby the Parliament were so impious as to impose contradictory Oaths, as on the contrary, considering the Circumstances fore-mentioned, that there were Papers spread abroad, insinuating, that there were Inconsistencies and Contradictions contained therein; the said Expression was an high Vindication of the Honour and Justice of the Parliament, against the Calumnies and Misrepresentations which were cast upon it, and was also a just Rise for the Pannel, for the clearing and Exoneration of his own Conscience, in the various Senses and Apprehensions which he found were going abroad as to the said *Test*, humbly to offer his Sense, in which he was clear and satisfied to take the Oath.

VII. To the Libel, in so far as it is founded upon the Act of Parliament, viz. Act. 130. Par. 8. James VI. declaring, That none should presume to impugn the Dignity or Authority of the three Estates of Parliament, or procure any Invasion or Diminution thereof, under the Pain of Treason; as also, in so far as it is pretended in the Libel, That the Pannel, by offering the Sense and Explication libelled, has assumed the Legislative Power, which is incommunicable, and has made a Law, or Part of a Law.

It is answered, The Libel is most groundless and irrelevant, and against which the Act of Parliament is opposed, which is so plain and evident upon the reading thereof, that it neither is nor can be subject to the least Cavillation: And the plain Meaning whereof is nothing else but to impugn the Authority of Parliaments, as if the King and Parliament had not a Legislative Power, or were not the highest Representative of the Kingdom; or that any of the three Estates were not essentially requisite to constitute the Parliament. And besides there is nothing more certain, than that the Occasion of the said Act, it's being made was in relation to the Bishops and Clergy: And there is nothing in the pretended Explanation, that can be wrested to import the least Contravention of the said Act, or to be an impugning of the three Estates of Parliament, or a seeking any Innovation therein. And it is admired, with what Shadow of Reason it can be pretended, that the Pannel has assumed a Legislative Power, or made a Part of a Law, seeing all that is contained in the alledged Explication libelled, is only a Declaration of the Earl's Sense in which he was satisfied to take the Oath, and so respected none but himself, and for the clearing of his own Conscience, which justly indeed the Word of God calls a Law to himself, without any inroaching upon the Legislative Power. And where was it ever debated, but that a Man in the taking of an Oath, if as to his Apprehensions he thought any thing in it deserved to be cleared, might declare the same, or that his exhibiting, at the Time of the taking of the Oath, his Sense and Explication wherein he did take it, was ever reputed or pretended to be the assuming of a Legislative Power, it being the universal Practice of all Nations to allow this Liberty; and which Sense may be either rejected or accepted, as the Legislator shall think fit, importing no more but a Party's private Sense, for the Exoneration of his own Conscience? And as to that Member of the Libel founded upon Act 19. Par. 3. Queen Mary, it contains nothing but a Declaration of the Pain of Perjury, and there is nothing in the Explication libelled, which can in the least be inferred as a Contravention of the said Act, in respect if it should be proved, that the Pannel, at the Time of the taking of the Oath, did take it in the Words of the said Explication, as his Sense of the Oath, it is clear that the Sense being declared at the Time of taking the Oath, and allowed as the Sense wherein it was taken, the Pannel can only be understood to have taken it in that Sense. And although public Authority may consider whether the Sense given by the Pannel does satisfy the Law or not, yet that can import no more, though it was found not to satisfy, but to hold the Pannel as a Refuser of the Oath: But it is absolutely impossible to infer the Crimes of Perjury upon it, being, as is pretended by the Libel, the Pannel did only take it with the Declaration of the Sense and Explication libelled.

VIII. As the Explication libelled does not at all import all, or any of the Crimes contained in the said Libel, so by the common Principles of all Law, where a Person does emit Words for the clearing and Exoneration of his own Conscience, although there were any Ambiguity, or Unclearness, or Involvedness in the Tenor or Import of the Expressions or Words, yet they are ever to be interpreted, *Interpretatione benigna & favorabili, according to the general Principles of Law and Reason*. And it never was, nor can be refused to any Person to interpret and put a congruous Sense upon his own Words, especially the Pannel being a Person of eminent Quality, and who hath given great Demonstration, and undeniable Evidences of his fixt and unalterable Loyalty to his Majesty's Interest and Service, and at the Time of emitting the said Explication, was invested and entrusted in public Capacities. And it is a just and rational Interpretation and Caution which *Sanderfon*, that judicious and eminent Casuist gives *Prælect. 2.* That *dicta & facta principum, parentum, rectorum*, are ever to be looked upon as *benigna Interpretationis*, and that *Dubia sunt interpretanda meliorem partem*. And there is nothing in the Explication libelled, which without Detortion and Violence, and in the true Sense and Design of the Pannel, is not capable of this benign Interpretation and Construction, especially respect being had to the Circumstances wherein it was emitted and given, after a great many Objections, Scruples, and alledged Inconsistencies, were owned, vented, and spread abroad, which was a rise to the Earl for using the Expressions contained in the pretended Declaration libelled.

IX. These Words whereby it is pretended the Pannel declares, *he was ready to give Obedience as far as he could*, first, do not in the least import, that the Parliament had imposed any Oath which was in itself unlawful: But only the Pannel's Scrupulosity and Unclearness in Matter of Conscience, and it is hoped it cannot be a Crime, because all Men cannot go the same length. And if any such Thing were argued, it might be argued ten

Times more strongly from a simple refusing of the Oath, as if any Thing were enjoined which were so hard that it is not possible to comply with it: And yet such Implications are most irrational and inconsequential, and neither in the Case of a simple and absolute refusing of the Oath, nor in the Case of an Explication of the Party's Sense wherein he is willing to take the Oath, is there any Impeachment of the Justice and Prudence of the Legislator, who imposeth this Oath, but singly a Declaration of the Scrupulosity and Weakness of the Party, why he cannot take the Oath in other Terms: And such Explications have been allowed by the Laws and Customs of all Nations, and are advised by all Divines, of whatsoever Principles, for the Solace and Security of a Man's Conscience.

II. As to that Point of the Explication libelled, *That I am confident the Parliament never intended to impose contradictory Oaths*; it respects the former Answer, which, considering the plain and downright Objections which were spread abroad, and made against the Oath, as containing Inconsistencies and Contradictions, was an high Vindication of the Justice and Prudence of the Parliament.

III. As to these Words, *And therefore I think no Body can explain it but himself*. The plain and clear Meaning is nothing else but that the Oath being imposed by Act of Parliament it was of no private Interpretation: And that therefore every Man who was to take it, behoved to take it in that Sense which he apprehended to be the genuine Sense of the Parliament. And it is impossible, without impugning common Sense, that any Man could take it in any other Sense, it being as impossible to see with another Man's Eyes as to see with his private Reason. And a Man's own private Sense and Apprehension of the genuine Sense, was the only proper Way wherein any Man could rationally take the Oath.

And as to these Words, *That he takes it as far as it is consistent with himself and the Protestant Religion*. The Pannel neither intended nor expressed more, but that he did take it as a true Protestant, and he hopes all Men have taken it as such.

And as to that Clause wherein the Pannel is made to declare, *That he does not bind up himself in his Station, in a lawful Way, to wish and endeavour any Alteration he thinks to the Advantage of Church or State, not repugnant to the Protestant Religion and his Loyalty*.

It is answered, there is nothing in this Expression that can import the least Crime, or give the least Umbrage for any Mistake. For,

1. It is most certain, it is impossible to elicit any such thing from the Oath, but that it was the Intention of the Parliament, that Persons, notwithstanding of the Oath, might concur in their Stations, and in a lawful Way, in any Law to the Advantage of Church and State. And no rational Man ever did, or can take the Oath in other Terms, that being contrary to his Allegiance and Duty to his Sacred Majesty and Prince.

2. There is nothing in the said Expression which does in the least Point at any Alteration in the Fundamentals of Government, either in Church or State; but, on the contrary, by the plain and clear Words and Meaning, rather for it's Perpetuity, Stability and Security. The Expression being cautioned to the utmost Scrupulosity as that it was to be done in a lawful Manner; that it was to be to the Advantage of Church or State; that it was to be consistent with the Protestant Religion, and with his Loyalty, which was no other but the Duty and Loyalty of all faithful Subjects; and which he has signally and eminently expressed upon all Occasions. So that how such an Expression can be drawn to import all or any of the Crimes libelled, passeth all natural Understanding.

And as to the last Words, *And this I understand as a Part of my Oath*, which is libelled to be a treasonable Invasion, and assuming of the Legislative Power. It is answered, it is most unwarrantable; and a Party's declaring the Sense and Meaning in which he was free to take an Oath, does not at all respect or invade the Legislative Power, of which the Pannel never entertained a Thought, but has an absolute Abhorrence and Detestation of such Practices. But the plain and clear Meaning is, that the Sense and Explication was a Part of his Oath, and not of the Law imposing the Oath, these being as distant as the two Poles: And which Sense was taken off the Earl's Hands, and he accordingly was allowed to take his Place at the Council-Board, and therefore repeats the former general Defences.

And to convince the Lords of Justiciary, that there is nothing in the pretended Explication libelled which can be drawn to import any Crime, even of the lowest Size and Degree, and that there is no Expression therein contained that can be detorted and wrested to import the same, is evident from that learned Vindication published and spread abroad by an eminent Bishop, and which was read in the Face of the Privy Council, and does contain Expressions of the same Nature, and to the same Import contained in the pretended Explication libelled, as the Ground of this Indictment libelled against the Pannel. And it is positively offered to be proven that these Terms were given in, and read, and allowed to be printed, and (without taking Notice of the whole Tenor of the said Vindication, which the Lords of Justiciary are humbly desired to peruse, and consider, and compare the same with the Explication libelled) the same acknowledged, that Scruples had been raised and spread abroad against the Oath; and also acknowledged, that there were Expressions therein that were dark and obscure; and likewise takes Notice, that the Confession ratified, Par. 1. James VI. to which the Oath relates, was hastily made, and takes Notice of that Authority that made it, and acknowledges in plain Terms, that the Oath does not hinder any regular Endeavour to regulate or better the established Government; but only prohibits irregular Endeavours and Attempts to invert the Substance or Body of the Government; and does likewise explain the Act of Parliament anent his Majesty's Supremacy, that it does not reach the Alteration of the external Government of the Church. And the Pannel and his Proctors are far from insinuating in the least, that there is any Thing in the said Vindication but what is consistent with the exemplary Loyalty, Piety, and Learning, of the Writer of the same. And though others perhaps may differ in their private Opinion, as to this Interpretation of the Act of Parliament anent the King's Supremacy, yet it were most absurd and irrational to pretend, that whether the Mistake were upon the Interpretation of the Writer, or the Sense of others, as to that Point, that such Mistakes or Misapprehension



hensions, upon either Hand, should import or infer against them the Crimes of Leasing-making, or depraving his Majesty's Laws: For if such Foundations were laid, Judges and Lawyers had a dangerous Employment, there being nothing more ordinary than to fall into Differences and Mistakes, of the Sense and Meaning of the Laws and Acts of Parliament. But such Crimes cannot be inferred, but with and under the Qualifications abovementioned, of malicious and perverse Designs, joined with licentious, wicked and reproachful Speeches spread abroad, to move Sedition and Dislike of the Government. And the said Laws were never otherwise interpreted, nor extended in any Case. And therefore the Explication libelled, neither as taken complexly, nor in the several Expressions thereof, nor in the Design of the Ingiver of the same, can in Law import against him all or any of the Crimes libelled.

In like Manner the Pannel conjoins with the Grounds abovementioned, the Proclamation issued forth by his Majesty's Privy-Council, which acknowledges and proceeds upon a Narrative, that Scruples and Jealousies were raised and spread abroad against the Act of Parliament enjoining the Test. For clearing and Satisfaction whereof, the said Proclamation was issued forth, and is since approved by his Sacred Majesty.

*The King's Advocate's Argument and Plea against the Earl of Argyle.*

**H**IS Majesty's Advocate, for the Foundation of his Debate, does represent, that his Majesty, to secure the Government from the rebellious Principles of the last Age, and the unjust Pretences made use of in this, from Popery, and other Jealousies; as also to secure the Protestant Religion, and the Crown, called a Parliament; and that the great Security resolved on by the Parliament was this excellent Test, in which, that the old juggling Principles of the Covenant might not be renewed, wherein they still swore to serve the King in their own Way, the Parliament did positively ordain, that this Oath should be taken in the plain genuine Meaning of the Words, without any Evasion whatsoever. Notwithstanding whereof, the Earl of Argyle, by this Paper, does invent a new Way, whereby no Man is at all bound to it. For how can any Person be bound, if every Man will only obey it as far as he can, and as far as he conceives it consistent with the Protestant Religion, and with itself, and reserve to himself notwithstanding thereof, to make any Alteration that he thinks consistent with his Loyalty? And therefore his Majesty's Advocate desires to know, to what the Earl of Argyle, or any Man else, can be bound by this Test? What the Magistrate can expect, or what Way he can punish his Perjury? For if he be bound no farther than he himself can obey, or so far as this Oath is consistent with the Protestant Religion or itself, *quomodo constat*, to whom or what is he bound? And who can determine that? Or against what Alteration is the Government secured, since he is Judge of his own Alteration? So that that Oath, that was to be taken without any Evasion, is evaded in every single Word or Letter; and the Government as insecure as before the Act was made, because the Taker is no farther bound than he pleases. From which it cannot be denied, but his Interpretation destroys not only this Act, but all Government, since it takes away the Security of all Government, and makes every Man's Conscience, under which Name there goes ordinarily in this Age Humour and Interest, to be the Rule of the Taker's Obedience. Nor can it be conceived to what Purpose Laws, but especially Oaths, needed to be made, if this were allowed; or how this cannot fall under the 107th Act, Par. 7. James VI. whereby it is statuted, *That no Man interpret the Statutes otherwise than the Maker understood*. For what can be more contrary to the taking of them in the Maker's Sense, than that every Man should obey as far as he can, and be allowed to take them in a general Sense, so far as they are consistent with themselves, and the Protestant Religion, without condescending wherein they do not agree with the Protestant Religion? And that they are not bound not to make any Alteration which they think good for the States? For all these make the Rule of Obedience in the Taker, whereas the positive Law makes it to be in the Maker. Or how could they be punished for Perjury after this Oath? For when he were quarrelled for making Alterations against this Oath, and so to be perjured; he might easily answer, that he took this Oath only so far as it was consistent with the Protestant Religion, and with a *Salvo*, that he might make any Alteration that he thought consistent with his Loyalty. And as to these Points, upon which he were to be quarrelled, he might say, he did not think them to be inconsistent with his Loyalty, think we what we pleased, and so needed not be perjured, except he pleased to decide against himself: For in these Generals he reserves to himself to be still Judge. And this were indeed a fine Security for any Government. And by the same Rule that it loses this Oath, it shews a Way of losing all Oaths and Obedience: And consequently strikes at the Root of all Laws, as well as this: Whereas to shun all this, not only this excellent Statute 107, has secured all the rest, but this is common Reason: And in the Opinion of all Divines, as well as Lawyers in all Nations, *Verba juramenti intelliguntur secundum mentem & Intentionem ejus, cui fit juramentum*. Which is set down, as the Grand Position, by *Saunderson*, (whom they cite) Page 137, and is founded upon that Mother-Law, *Leg. 10. cui interrogatus f. f. de interrogationibus in Jure faciendis*; and without which no Man can have Sense of Government in his Head, or practise it in any Nation. Whereas on the other Hand there is no Danger to any tender Conscience, since there was no Force upon the Earl to take the Oath, but he took it for his own Advantage, and might have abstained.

1. It is inferred from the above-written Matter of Fact, that the Earl is clearly guilty of Contravention of the 10th Act, Par. 10. James VI. whereby the Lieges are commanded not to write any purpose of Reproach of his Majesty's Government, or misconstrue his Proceedings, whereby any Misliking may be raised betwixt his Highness, his Nobility, or his People. And who can read this Paper, without seeing the King and the Parliament reproached openly in it? For who can hear, that the Oath is only taken as far as it is consistent with itself and the Protestant Religion, but must necessarily conclude, that in several Things it is inconsistent with itself, and the Protestant Religion? For if it were not inconsistent with

itself, and the Protestant Religion, why this Clause at all, but it might have been simply taken? For the only Reason of hindering it to be taken simply, was because of the Inconsistency. Ergo there behoved necessarily to be an Inconsistency. And if there be any Inconsistency with the Protestant Religion, or any Contradiction in the Oath itself, can there be any Thing a greater Reproach on the Parliament, or a greater Ground of Mislike to the People? And whereas it is pretended, that all Laws and Subsumptions should be clear, and these are only Inferences: It is answered, that there are some Things which the Law can only forbid in general: And there are many Inferences which are as strong and natural, and reproach as soon, or sooner, than the plainest Defamations in the World do: For what is openly said of Reproach to the King, does not wound him so much as many seditious Insinuations have done in this Age and the last: So that whatever was the Earl's Design (albeit it is always conceived to be unkind to the Act, against which himself debated in Parliament) yet certainly the Law in such Cases is only to consider what Effect this may have amongst the People: And therefore the Acts of Parliament that were to guard against the misconstruing of his Majesty's Government, do not only speak of what was designed, but where a Disliking may be caused; and so judgeth *ab effectu*: And consequentially to the same emergent Reason, it makes all Things tending to the raising of Dislike to be punishable by the Act 60. Parl. 6. Queen Mary; and the 9th Act Parl. 20. James VI. So that the Law designed to deter all Men by these indefinite and comprehensive Expressions: And both in this and all the Laws of Leasing-making, the Judges are to consider what falls under these general and comprehensive Words; nor could the Law be more special here, since the Makers of Reproach and Slander are so various that they could not be bound up or express in any Law: But as it evidently appears, that no Man can hear the Words express, if he believe this Paper, but he must think, the Parliament has made a very ridiculous Oath, inconsistent with itself and the Protestant Religion, the Words allowing no other Sense, and having that natural Tendency; even as if a Man would say, I love such a Man only in so far as he is an honest Man, he behoved certainly to conclude that the Man was not every Way honest; so if your Lordships will take Measures by other Parliaments, or your Predecessors, ye will clearly see, that they thought less than this a defaming of the Government, and misconstruing his Majesty's Proceedings. For in *Balmorino's* Case the Justices find an humble Supplication made to the King himself to fall under these Acts now cited. Albeit, as that was a Supplication, so it contained the greatest Expressions of Loyalty, and Offers of Life and Fortune that could be express; yet because it insinuates darkly, that the King in the preceding Parliament had not favoured the Protestant Religion, and they were sorry he should have taken Notes with his own Hands of what they said, which seems to be most innocent, yet he was found guilty upon those same very Acts. And the Parliament 1661 found his Lordship himself guilty of Leasing-making, though he had only written a Letter to a private Friend, which requires no great Care nor Observation (but this Paper, which was to be a Part of his own Oath, does) because after he had spoken of the Parliament in the first Part of this Letter, he thereafter added, *that the King would know their Tricks*: Which Words might be much more applicable to the private Persons therein designed, than that the Words now insisted on can be capable of any such Interpretation. And if either Interpretations, upon Pretence of exonerating of Conscience, or otherwise be allowed, a Man may easily defame as much as he pleases: And have we not seen the King most defamed by Covenants entered into upon Pretence to make him great and glorious by Remonstrances made to take away his Brother and best Friend, upon Pretence of preserving the Protestant Religion, and his sacred Person? And did not all who rebelled against him in the last Age declare, that they thought themselves bound in Duty to obey him, but still as far as that could consist with their Respect to the Protestant Religion, and the Laws and Liberties, which made all the rest ineffectual? And whereas it is pretended, that by these Words *I take the same in as far as it is consistent with itself and the Protestant Religion*, nothing more is meant, but that he takes it as a true Protestant: His Majesty's Advocate appeals to your Lordships, and all the Hearers, if upon hearing this Expression they should take it in this Sense, and not rather think that there is an Inconsistency. For if that were possible to be the sense, what need he say at all, *as far as it is consistent with itself*? Nor had the other Part, *as far as it is consistent with the Protestant Religion*, been necessary. For it is either consistent with the Protestant Religion, or otherwise they were Enemies to the Protestant Religion, that made it. Nor are any Lawyers or others in Danger, by pleading or writing: For these are very different from, and may be very easily pleaded without defaming a Law, and an Oath, when they go to take it. But if any Lawyer should say, in pleading or writing, that the Test was inconsistent, which is all one, that it were not to be taken by any Man, but so far as it was consistent with itself, and the Protestant Religion, no doubt that would be a Crime even in pleading, though pleading has a greater Allowance than deliberate swearing has. And as there is nothing wherein there is not some Inconvenience, so the Inconvenience of defaming the Government is much greater than that of any private Man's Hazard, who needs not err except he please.

Whereas it is pretended, that before the Earl gave in this Explication, there were other Explications spread abroad, and Answers read to them in Council: and that the Council itself gave an Explication. It is answered, that if this Paper be Leasing-making, or misconstruing his Majesty's Proceedings, and treasonable, as is contended, then a thousand of the like Offences cannot excuse it. And when the King accused Nobles, Ministers, and others, in the Year 1661, for going on in the Rebellions of that Age, first with the Covenanters, and then with the Usurpers, it was found no Defence, that the Nation was overgrown with Crimes, and that they were thought to be Duties in those Days, yea, that were to invite Men to offend in Multitudes. And albeit sometimes those who follow the Examples of Multitudes may thereby pretend this as an Excuse to many, yet this was never a formal Defence against Guilt, nor was ever the chief of the Offenders favourable on that Head. And it is presumed, that the Earl of Argyle would rather be followed by others than that he would follow any Example. But his Majesty's Advocate



absolutely decline to debate a Point that may defame a constant and standing Act of Parliament, by leaving upon Record a Memory of it's being opposed. Nor were this relevant, except it could be said, the Council had allowed such Explications which reflected upon the King and the Government: For the writing an Answer is no Allowance, but a condemning: Nor can the Council allow any more than they can remit: And though it may justly be denied that the Council heard even the Earl's own Explanation, yet the hearing or allowing him to sit is no relevant Plea, because they might very justly have taken a Time to consider how far it was fit to accede upon that Head. And it is both just and fit for the Council to take Time; and by express Act of Parliament the Negligence of the King's Officers does not bind them. For if this were allowed, leading Men in the Council might commit what Crimes they pleased in the Council, which certainly the King may quarrel many Years after. And though all the Council had allowed him that Day, any one Officer of State might have quarrelled it the next Day. As to the Opinion of Bellarmine, Sanderfon, and others, it is ever contended, that the Principles of the Covenant agree very well with those of the Jesuits, and both do still allow Equivocations and Evasions: But no solid orthodox Divine ever allowed, that a Man who was to swear without any Evasion, should swear so as he is bound to nothing, as it is contended the Earl is not, for the Reasons represented. And as they still recommend, that when Men are not clear they might abstain, as the Earl might have done in this Case, so they still conclude, that Men should tell in clear Terms, what the Sense is by which they are bound to the State: Whereas the Earl here tells only in the general, and in most ambiguous Terms, that he takes it as far as he can obey, and as far as it is consistent with the Protestant Religion, and that he takes it in his own Sense, and that he is not bound by it from making Alterations, but as far as he thinks it for the Advantage of Church or State: Which Sense is a thousand times more doubtful than the *Test*, and as in Effect nothing but what the Taker pleases himself.

As to the Treason founded on, his Majesty's Advocate founds it first upon the fundamental and common Laws of this and all Nations, whereby it is Treason for any Man to make any Alteration he shall think for the Advantage of Church or State: Which he hopes is a Principle cannot be denied in the general. And whereas it is pretended, that this cannot be understood of mean Alterations, and of Alterations to be made in a lawful Way: It is answered, that as the Thing itself is Treason, so this Treason is not taken off by any of these Qualifications; because he declares, he will wish and endeavour any Alteration he thinks fit: And any Alteration comprehends all Alterations that he thinks fit: *nam propositio indefinita equipollet universali*. And the Word *any* is general in its own Nature, and is in plain Terms reserving to himself to make Alterations, both great and small. And the Restriction is not, all Alterations that the King shall think fit, or are consistent with the Laws and Acts of Parliament: but he is still to be Judge of this, and his Loyalty is to be the Standard. Nor did the Covenanters in the last Age, nor do these who are daily executed, decline that they are bound to obey the King simply, but only that they are bound to obey him no otherwise than as far as his Commands are consistent with the Law of God, of Nature, and of this Kingdom, and with the Covenant: And their Treason lies in this. And when it is asked them, who shall be Judge in this, they still make themselves Judges. And the Reason of all Treason being, that the Government is not secure, it is desired to be known, what way the Government can be secured after this Paper, since the Earl is still Judge how far he is obliged, and what is his Loyalty. And if this had been sufficient, the Covenant had been a very excellent Paper: For they are there bound to endeavour, in their several Stations, to defend the King's Person: But when the King challenged them, how they came to make War against him? their great excuse was, that they were themselves still Judges as to that. And for illustrating this Power, the Lords of Justiciary are desired to consider, *quid juris*, if the Earl, or any Man else should have reserved to himself in this Oath a Liberty to rise in Arms, or to oppose the lineal Succession, though he had added in a lawful manner: For the Thing being in itself unlawful, it is but sham, and *Protestatio contraria facto*. And if these be unlawful, notwithstanding of such Additions, so much more must this general Reservation, of making any Alterations, likewise be unlawful, notwithstanding of these Additions: For he that reserves the general Power of making any Alteration, does, *a fortiori*, reserve Power to make any Alteration, though never so fundamental. For all Particulars are included in the general; and whatever may be said against the Particulars, may much more strongly be said against the General.

2. The 130th Act, Par. 8. James VI is expressly founded on, because nothing can be a greater Diminution of the Power of the Parliament, than to introduce a Way or Mean whereby all their Acts and Oaths shall be made insignificant and ineffectual, as this Paper does make them, for the Reasons represented. Nor are any of the Estates of Parliament secure at this Rate, but that they who reserved a general Power to make all Alterations, may, under that General, come to alter any of them.

3. What can be a greater impugning of the Dignity and Authority of Parliaments, than to say, that the Parliament has made Acts for the Security of the Kingdom, which are in themselves ridiculous, inconsistent with themselves and the Protestant Religion?

And as to what is answered against invading the King's Prerogative, the Legislative Power in Parliaments, in adding a Part to an Oath or Test, is not relevantly inferred, since the Sense of these Words, and this understood as a Part of my Oath, is not to be understood as if any thing were to be added to the Law, but only to the Oath, and to be an Interpretation of the Oath. It is replied, that after this no Man needs to add anything to the Oath in Parliament. But when he comes to take the Test, do the Parliament what they please, he will add his own Part. Nor is this Part to be looked upon as a Sense: For if this were the Sense before the Paper, he needed not understand it as a Part of it, for it wanted not a Part. And in general, as every Man may add his own Part, so the Government can be secure of no Part. But your Lordships of Justiciary are desired to consider, how dangerous it would be in this Kingdom, and how it would found in any other Kingdom, that Men should be allowed to

reserve to themselves Liberty to make any Alteration they thought fit in Church or State, as to the Legality of which, they were themselves to be Judges: And how far, from Degree to Degree, this at last may come to absolute Anarchy, and how scandalous a thing, as well as unsecure, this new Way may look in an Age wherein we are too much tracing the Steps of our rebellious Progenitors in the last, whose great Defection and Error was, that they thought themselves, and not the King, the Authors of Reformation in Church and State. And no Man ever was barred by that, that the Way he was upon was not a lawful Way: For if it be allowed to every Man to take his own Way, every Man will think his own Way to be the lawful Way.

As to the Perjury, it is founded on this, first, That Perjury may be committed, not only by breaking an Oath, but even in the swearing of it, viz. to swear it with such Evasions as make the Oath ineffectual: For which Sanderfon is cited, Pag. 138. *Alterum Perjurii genus est novo aliquo excogitato Commento Juramenti vim declinare, aut eludere, & Jurans tenetur sub pœna Perjurii implere Secundum Intentionem deferentis*; both which are here. For the Earl being bound by the very Oath, to swear in the genuine Meaning, without any Evasion, he has sworn so as he has evaded every Word, there being not one Word to which it can be said particularly he is bound, as is said. And it is undeniable, that he has not sworn in the Sense of the Makers of the Law, but in his own Sense, which is Perjury, as is said. And consequentially, whatever Sense may be allowed in ambiguous Cases, yet there can be none where the Paper clearly bears Generals: And where he declares, that he takes it in his own Sense, his Majesty's Advocate declares, he will not burden himself, that Copies were dispersed, though it is certain, since the very Paper itself by the giving in is chargeable with all that is above charged upon it.

Sir John Dalrymple's Defence and Plea for the Earl of Argyle, by Way of Reply upon the King's Advocate.

SIR John Dalrymple replies for the Pannel, That since the solid Grounds of Law adduced in the Defences have received no particular Answers, in Relation to the common Consent of all Casuists, viz. That a Party who takes an Oath is bound in Conscience to clear and propose the Terms and Sense in which he does understand the Oath: Nor in Relation to the several Grounds adduced concerning the legal and rational Interpretation of dubious Clauses. And since these have received no Answers, the Grounds are not to be repeated: But the Proctors for the Pannel do farther insist on these Defences.

1. 'Tis not alledged, that any Explanation was given in by the Pannel to any Person, or any Copy spread, before the Pannel did take the Test in Council: So that it cannot be pretended, that the many Scruples that have been moved concerning the Test, did arise from the Pannel's Explanation: But on the contrary, all the Objections that are answered, and obviated in the Pannel's Explication, were not only privately muttered, or were the Thoughts of single or illiterate Persons, but they were the Difficulties proposed by Synods and Presbyteries, long before the Pannel came from home, or was required to take the Test: So that the general Terms of the Acts of Parliament founded upon in the Libel are not applicable to this Case: For as these Laws, in relation to leading-makers, are only relative to atrocious wilful Insinuations, or Misconstructions of his Majesty's Person or Government, or the open depraving of his Laws, so the restrictive Clause, *whereby Sedition or Misconstructions may be moved, raised, or engendered betwixt his Majesty and his Leiges*, cannot be applied to this Case, where all these Apprehensions and Scruples were on Foot, and agitated long before the Pannel's Explanation.

As it cannot be pretended, that any new Dust was raised by the Pannel's Explanation, so it is positively offered to be proved, that there is not one Word contained in this Explanation, but that either these individual Words, or much worse, had been publicly proposed, and *verbatim* read in Council, without the least Discouragement, or the least Objection made by any Member of the Council. And where a Writing, *ex proposito* read in so high a Court, was universally agreed upon, without the Alteration of a Syllable, how can it be pretended, that any Person thereafter using the said individual Terms in any Explanation, and far easier Terms, that they shall incur the high and infamous Crimes libelled? And the Question is not here, whether the Council was a proper Judicature to have proposed, or imposed a Sense, or allowed any Explanation of the Test to be published; but that is impossible that a Sense they allowed, or being publicly read before them, and which the King's Advocate did not controul, that this should import Treason, or any Crime: And though the Pannel's Advocate will not pursue or follow the Reply that has been made to this Point, yet certainly no Man of sober Sense will think that it is fit to insinuate, that so high a Judicature might have authorized or acquiesced in such Explanations as the Leiges thereafter should be entrapped to have used.

If the Pannel had officiously or ultroneously offered a Sense or Explanation of his Majesty's Laws, which the Laws themselves could not have born, it might justly have been alledged, that he was *extra ordinem*, and meddling in a Matter he was not concerned in, but where the Act of Council did enjoin, and he was required and cited to that Effect, it could neither be construed as Ostentation, or to move or encourage Scruples, or Resistance, but it was absolutely necessary, either for to have refused the Test, or else to have declared what he thought to be the true and genuine Meaning of it. And there being so many Objections publicly moved and known, his Explanation was nothing else but to clear, that he did not look upon these Scruples and Objections, moved by others, as well founded and rational in themselves; and therefore he was able to take the Test in that Sense the Council had heard or allowed. And it is not controverted, that the Sense of the Legislator is the genuine Sense both of Laws and Oaths: And if a Person were only interpreting the Meaning of either a Law or an Oath imposed, he should deprave and misconstrue the Law and Oath, if he rendered it wittingly and willingly in Terms inconsistent with the Meaning of the Imposer: But there is a great Difference be-



twixt taking of Oaths, and interpreting Oaths; for when a Man comes to take an Oath, except his particular Sense did agree with the genuine Meaning of the Imposer, he cannot take that Oath, though he may very well interpret and declare what is the Sense of the Legislator, which he may know, and yet perhaps not be able to take the Oath.

And therefore when there is any Doubtfulness in an Oath, and a Party is bound to take it, if then he gives in an Explication of the Sense which he in his private Judgment doth apprehend to be the genuine Meaning, if that private Sense be disconform to the Legislator's Sense in the Oath, then the Imposer of the Oath, or he that has Power to offer it to the Party, if he consider the Party's Sense disconform, he ought to reject the Oath, as not fulfilling the Intent of the Law imposing it.

But it is impossible to state that as a Crime, that a Party should neither believe what is proposed in the Oath, nor be able to take it; and he can run no farther Hazard, but the Penalty imposed upon the Refuser. And therefore in all Oaths there must be a Concourse both of the Sense imposed by Authority, and of the private Sense, Judgment, or Conscience of the Party. And therefore if a Party should take an Oath in the Sense proposed by Authority contrary to his own Sense, he were perjured: Hereby it is evident that the Sense of Authority is not sufficient, without the Acquiescence and Consent of the private Person. And therefore it is very strange, why that Part of the Pannel's Explanation should be challenged, that he takes it in his own Sense, the *posterior* Words making it as plain as the Light, that that Sense of his own is not what he pleases to make of the Oath, for it bears expressly, that no body can explain it but for himself, and reconcile it as it is genuine, and agrees in it's own Sense: So that there must be a Reconciliation betwixt his own Sense and the genuine Sense, which upon all Hands is acknowledged to be the Sense of Authority. And if the Pannel had been of these lax and debauched Principles, that he might have evaded the Meaning and Energy of the Oath, by imposing upon it what Sense he pleased, certainly he would have contented himself in the general Refuge of Equivocation, or Mental Reservation, and he would never have exposed his Sense to the World, in which he took this Oath, whereby he became absolutely fixed and determined to the Oath, in that particular Sense, and so had no Latitude of shuffling off the Energy or Obligation of the Oath: And it is likewise acknowledged, that the Cases alledged in the Reply are true, *viz.* That the Person is guilty of Perjury, *si aliquo novo Commento* he would elude his Oath, or who doth not fulfil the Oath in the Sense of the Imposer. But that does not concern this Case: For in the forefaid Citation, a Person, after he has taken an Oath, finding out some new Conceit to elude it, he is perjured: But in this Case, the Pannel did at and before his taking the *Test*, declare the Terms in which he understood it; so that this was not *novo aliquo Commento* to elude it. And the other Case, where a Party takes it in the Sense of Authority, but has some subterfuge, or concealed Explanation, it is acknowledged to be Perjury. But in this Case there was no concealed Explanation; but it was publicly exprest, and an Explanation given, which the Pannel designed, and understood as the Meaning of Authority, and had Ground to believe he was not mistaken, since upon that Explanation he was received and allowed to sit and vote in Council.

And as to that Part of the Reply, that explains the Treason, there can be no Treason in the Pannel's Case, because the express Act of Parliament founded upon, doth relate only to the Constitution of the Parliament: And I am sure his Majesty's Advocate cannot subsume in these Terms: And therefore in the Reply he recurs to the general Grounds of the Law, that the usurping of his Majesty's Authority, in making a Part of the Law, and to make Alterations in general, and without the King, are high and treasonable Words or Designs, and such as the Party pleases, and such Designs as have been practised in the late Times. And that even the Adjection of fair and safe Words, as in the Covenant, does not secure from treasonable Designs; and that it was so found in *Balmerino's* Case, though it bear a fair Narrative of an humble Supplication.

It is replied, that the Usurpation of making of Laws is undoubtedly treasonable, but no such Thing can be pretended or subsumed in this Case: For albeit the Pannel declares his Explanation to be a Part of his Oath, yet he never meant to impose it as a Part of the Law, or that this Explanation should be a Thing distinct, or a separate Part even of his Oath, for his Explanation being *exegetick* of the several Parts of the Oath, it is no distinct Thing from the Oath, but declared to be a Part of the Oath *de natura rei*. And it was never pretended, that he that alledged any thing to be *de natura rei*, did say, that that was distinct and separate, which were a Contradiction. And therefore the Argument is retorted, the Pannel having declared, this Explanation was, *de natura rei*, implied in the Oath, he necessarily made this Explanation no Addition or Extension of the Oath. So that for all this Explanation, the Oath is neither broader nor longer than it was.

And as to these Words, *I do not mean to bind up myself in my Station, and in a lawful Way, to wish and endeavour any Alteration I think to the Advantage of Church or State, not repugnant to the Protestant Religion, and my Loyalty*. It is a strange thing how this Clause can be drawn in Question, as treasonable, when it may with better Reason be alledged, that there is no good Subject but is bound to say it. And albeit the Words *to endeavour in my Station*, be Words contained in the Covenant, yet that is no Reason why two Words in the Covenant may not be made use of in another very good and loyal Sense. And there is no Man that shall have the Honour either to be entrusted by his Majesty in his Council, or any other Judicature, or to be a Member of Parliament, but he is bound by his Loyalty to say the same thing. And there was never a Clause more cautiously exprest; for the Words run, *to endeavour any Alteration I shall think to the Advantage of Church and State*. And though that was sufficient, yet the Clause is so cautiously conceived, that it contains another Restriction, *not repugnant to Religion and his Loyalty*. So that except it could be alledged, that a Man by lawful Means, to the Advantage of Church and State, consistent with his Religion and Loyalty, could make treasonable Alterations, and Invasions upon the Government and Monarchy, which are the highest Contradictions imaginable, there can be nothing

against the Pannel. And albeit the Clause, *any Alterations*, might, without the Restrictions and Qualifications forefaid, be generally extended, yet the preceding Words of *lawful Way*, and the rational Interpretation of the Emission of Words, especially before a solemn Judicatory, leaves no Place or Shadow to doubt, that these Alterations were no fundamental or treasonable Alterations, but such as the Frailty of human Affairs and Constitutions, and Vicissitude of Things and Circumstances, do constantly require in the most exact Constitutions under Heaven. And the Clause does not so much as import, that there is a present Necessity of Alteration, but it was a necessary and rational Prospect, that albeit at present all things under Heaven had been done to secure the Religion and Government, yet there might occur Cases that would require new Helps, Alterations, and Remedies. And it is not pretended in this Case for the Pannel, that he desires to alleviate, or take off Words truly treasonable, or having an ill Design, by the mixing of fair and safe, dutiful and submissive Expressions, which indeed are Protestations *contrafacta*. For there is nothing in his Explanation, that either in his Design, or in the Words themselves, being rationally and naturally interpreted, can infer the Crimes libelled, or any of them. And the Pannel's known Principles and known Practices, do not only clear that Loyalty that he has professed before the Lords of Justiciary, and instructed by unquestionable Documents, but they put him far from the Suspicion of these damnable Principles related in the Reply, of which the whole Tract of his Life hath been an entire Evidence of his Abhorrency and Detestation. And in the last Place, it is thought strange, why that should be represented as an Affront or Disgrace to the Government, that the Parliament imposed a *Test* which the Pannel is not able to take simply. And it is not pretended, that he hath defamed, written or spoken against the *Test* itself, or for the Inconvenience of it; but only that he hath not been able to see the good Ground upon which it may be simply taken. And this were to condemn him for want of Sight or Sense, when the Law hath punished no Man for not taking the *Test*, but only turned him out of the Government. And it is as strange an Inference, that because the Pannel declares, he believes the Parliament meant no Contradiction and would take the *Test*, in as far as it is consistent, that therefore he said, the Parliament imposed Contradictions: Which is so far from a rational Induction, that the Contradiction of these Subsumptions, in all Congruity of Language and Sense, is necessarily true. And therefore the last Part of that Clause, *in so far as it is consistent*, is a Consequence inferred upon the former, *viz.* I believe the Parliament designed to impose no Contradictions: *Ergo*, I take the *Test* as consistent, and in so far as it must be consistent, if the Parliament did not impose Contradictions, as certainly they have not; and to convince the World, that in this Sense this Explanation is receivable it was proposed in Council, and allowed, and therefore without the highest Reflection it cannot now be quarrelled.

*Sir George Lockhart's second Plea for the Earl of Argyle, by way of Reply upon the King's Advocate.*

**S**IR George Lockhart duplies, That the Defender repeats and opposes his former Defences, which are no ways elided, nor satisfied by the Reply made by his Majesty's Advocate. And although it be easy for the King's Advocate, out of his Zeal, to pretend and argue Crimes of the highest Nature upon Inferences and Consequences, neither consistent with the Pannel's Design, nor with his Words and Expressions; yet there cannot be a more dangerous Foundation laid, for the Security and Interest of the Government, and the Security and Protection of the Subjects, than that Crimes should be inferred but from clear, evident, and express Laws, and plain, palpable Contravention of these Laws: It being both against the Laws of God and Man, that a Man should be made an Offender for a Word, and especially for Expressions which, according to Sense and Reason, and considering the Time and Place where they were spoken by the Pannel, *viz.* as a Member of his Majesty's Privy Council, and in Presence of his Royal Highness and the Members of Council, and when required to take the *Test*, were safe and innocent: And it were against all Law and Reason, to suppose that the Pannel either did, or designed to do any thing which may, or did import the Crimes libelled against him. And whereas it is pretended, that the Oath required and imposed by Act of Parliament was for the Security of the Government; and that the Pannel, by his Explication, does evade the Oath, by taking it only so far as it is consistent with the Protestant Religion, and his own Loyalty, whereof he was Judge. It is answered, that the Pretence is unwarrantable, and the Security of his Majesty's Government is not at all endangered (as God forbid it should) though the Pannel, and a thousand more had simply refused the *Test*, or had taken it in a Sense which does not satisfy the Law; it being competent to publick Authority to consider, whether the Pannel's Oath, in the Terms of the Explication wherein he did take it, does satisfy the Act of Parliament or not; and if not, there can be no rational Consequence inferred thereupon, but that he is holden as a Refuser of the Oath, and liable to the Certification of the Act of Parliament, of not assuming and continuing in any publick Trust: And no more was intended or designed by the Act of Parliament itself, than strictly to make the oath in the true and genuine Sense and Meaning of the Parliament, an indispensable Qualification of Persons admitted to publick Trust: So that it is not at all material to dispute, whether the Pannel's Explication can be looked upon as a full Satisfaction of the Act, which whether it should or not, it can import no Crime against him, it not being consistent with Sense and Reason, that a Person who absolutely refused the *Test*, upon the Scrupulosity of his Conscience, albeit he be incapable of publick Trust, should be, notwithstanding, looked upon as guilty of no Crime: And yet another who was willing to go a great Length, albeit he did demur and scruple as to the full Length, that he should be reputed criminal and guilty of a Crime.

II. The Pannel repeats, and conjoins with this the Grounds above-mentioned contained in his Defences, *viz.* That neither the Crimes libelled, nor any other Crime, were ever pretended or made use of against any others, who did not abroad Objections of an high Nature, which yet were so favourably considered upon, as to be construed only to proceed from Scrupulosity of Conscience.



science, as also the Satisfaction endeavoured, is in such Terms, and by such Condescensions, as do take in and justify the whole Terms of the Explication libelled.

It is of great Moment, and whereof the Lords of Justiciary are desired to take special Notice, both for clearing the absolute Innocence of the Pannel's Meaning and Intention, and to take off all possible Misconstruction that can be wrested or detorted from the Tenor and Expressions of the libelled Explication, that the Pannel was put to, and required to take the Oath, before the Lords of his Majesty's Privy-Council did pass and publish their Proclamation explaining the Oath, and declaring the genuine Sense and Meaning thereof, namely, that it did not tie to the whole Articles of the *Confession of Faith*, ratified by Act of Parliament, *James VI.* and which, as to several Articles thereof, had occasioned the Scruples and Difficulties, and alledged Inconsistency and Contradiction betwixt the last Part of the Oath and the said *Confession*, and betwixt some of these Articles, and the Current of the Protestant Doctrine, received and contained in the *Synagma* of the Protestant Confessions. And therefore if the Pannel at that Time did think fit, for the clearing and Exoneration of his own Conscience, to use the Expressions in the Explication libelled, and yet with so much Duty and Confidence of the Parliament's Justice, as to their Meaning and Intention, that the Parliament never intended to impose contradictory Oaths; and that he did take it so far as it was consistent with itself, and the Protestant Religion, not knowing then, whether the whole *Confession* was to be reputed a Part of the Oath, and doubting thereanent; and which the Lords of his Majesty's Privy-Council and his sacred Majesty by his Approbation since, have thought a Difficulty of so great Moment, as it was fit to clear the same by a publick Proclamation; how now is it possible, that any Judicatory under Heaven, which proceeds upon the solid Grounds of Law and Reason, and who (it cannot be doubted) will have a just Regard to the intrinsic Principles of Justice, and to all Men's Security, that they can now believe all, or any of the Crimes libelled, should be in the least inferred from all, or any of the Expressions contained in the said Explication? But that on the contrary it was a warrantable Allowance, and Christian Practice, condemned by the Law and Custom of no Nation, that having Scruples in the Matter of an Oath which should be taken in Truth, Judgment, and Righteousness, and upon full Deliberation, and with a full Assurance and Sincerity of Mind, that he did plainly, openly, and clearly declare the Sense in which he was willing to take it; and if Authority did allow it as the genuine Sense of the Oath, the Pannel to be holden as a Taker of the Oath: And if upon farther Consideration, Authority think not, that *habetur pro Recusante*, and a Refuser of the Oath, but no Ways to be looked upon as a Criminal or guilty Person.

And the Pannel repeats and conjoins with this Point of the Reply, that Point in his Defence whereby he positively offers to prove, 1. That his Explication, and the Sense wherein he took the Oath, was heard, and publicly given and received in Council, and the Pannel thereafter allowed to take his Place, and sit and vote in that *Sederunt*.

2. The Pannel also offers positively to prove, That the Tenor and Terms of his Sense and Explication wherein he did take the Oath, is contained in that solid, learned, and pious Vindication, written by the Bishop of *Edinburgh*, in answer to the Objections and alledged Inconsistencies and Contradictions in the Oath, and which Vindication was publickly read in Council, and so far approved, that it was allowed to be printed and published, and was accordingly dispersed and spread abroad. And it is not of the least Import, that the Proclamation of the Lords of Privy-Council, although it does only allow the same to be taken by the Clergy, yet at the same Time they expressly declare the genuine Sense and Meaning of the Parliament not to comprehend the whole Articles of the *Confession*, which was not cleared before the Pannel's taking his Oath.

And whereas it is pretended, That the Acts of Parliament libelled upon, against Leasing-makers, Depravers of his Majesty's Laws, do obtain and take place, where-ever there are any Words or Expressions that have a Tendency in themselves, or by a natural Consequence, and rational Inferences, to reflect upon the Government, or misconstrue his Majesty's Proceedings; and that the Explication libelled is such, and that it was found so in the Case of *Balmerino*, albeit it was drawn up by way of humble Petition and Address to his Majesty, and with great Protestations and Expressions of Loyalty. It is answered, the Acts of Parliament libelled upon are opposed, and the 43d *Act. Par. 8. James VI.* and the other Acts, making the depraving of his Majesty's Laws to be Crimes, do expressly require, that Speeches so judged be perverse and licentious Speeches, *ex natura sua probrosa* and reproachful, and spoke *animo defamandi*, and which could not receive any other rational Construction, which cannot in the least be applied to, or subsumed upon the Words, or Explication given in by the Pannel. And Law and Reason never infers or presumes a Crime, where the Thing is capable of a fair and rational Construction, and where it was done *palam* and publickly, and in Presence of his Majesty's High Commissioner, and Lords of his Majesty's Privy-Council, whereof the Pannel had the Honour to be a Member, Persons committing and designing to commit Crimes making use of Times and Places, and Companies of another Nature, on whom their Suggestions and Insinuations may prevail. But it is a Violence to the common Reason of Mankind, to pretend, that a Person of the Pannel's Quality, having the Honour to serve his Majesty in most eminent Capacities, and devoted to his Majesty's Interest and Service, beyond the strictest Ties of Duty and Allegiance, by the transcendent Favours he had received, that the Pannel in those Circumstances, and in Presence of his Royal Highness and Lords of Privy-Council, should design to declaim, and *de facto*, declaim against and blame his Majesty's Government: To suppose this is absolutely contradictory to the common Principles and Practices of Law, and common Topics of Reason.

And as to *Balmerino's* Case, it is answered, that the Lords of Justiciary are humbly desired to call for and peruse the said Petition and Books of Journal, which was certainly a defamatory Libel of his Majesty's Father, blessed Memory, and of the States of Parliament in the highest Degree, and expressly, that there was nothing designed but an Innovation of

the Protestant Religion, and the Subversion and over-turning the Liberties and Privileges of the Parliament, and the Constitutions of the Articles, and other Things of that Kind, which made certainly of itself a most villainous and execrable Libel, containing the highest Crimes of *Treason* and *Perduellion*, and was not capable of any good Sense or Interpretation, but was absolutely pernicious and destructive: So that it is in vain to pretend, that the said Libel did contain Prefaces and Protestations of Loyalty, which no Law regards, even in *simplici injuria & maledicto*, though committed by a private Person, *cum præfatione salvo honore*, or the like, and which were certainly ridiculous to sustain in a Libel concerning Crimes of Treason.

And whereas it is pretended, that though others were guilty of these Crimes, it does not excuse the Earl: And that the Lords of Privy-Council cannot remit Crimes; and the Negligence of the King's Officers cannot prejudice his Interest. It is answered, The Pannel is very confident, that neither the Lords of his Majesty's Privy-Council, consisting of Persons of eminent Loyalty and Judgment, nor his Majesty's Officers, were capable of any such Escape as is pretended: And if the Tenor of the Pannel's Explication did in the least import the high and infamous Crimes libelled, as beyond all peradventure it does not, it were strange, how the same being contained in the forefaid Vindication, and the whole Clauses thereof justified, that this should have been looked on as no Crime, and allowed to be published. And the Pannel neither does, nor needs to make farther Use thereof, but to convince all disinterested Persons, that his Explication can import no Crime.

And whereas it is pretended, That the Crime of Treason is inferred from the fundamental Laws of the Kingdom, and from that Clause of the Pannel's Explication, whereby he declares, he is *not bound up by any Thing in this Oath not to endeavour any Alteration in a lawful Way*: Which being an indefinite Proposition, is equipollent to an universal, and is upon the Matter coincident with a Clause which was rebellious in its Consequences, contained in the solemn League and Covenant. It is answered, that it is strange, how such a plain and innocent Clause, whereby, beyond all Question, he does express no more than was naturally imported in the Oath itself, whether express or not, should be made a Foundation to import the Crime of Treason, which no Lawyer ever allowed, except where it was founded upon express Law & *Luce Meridiana Clarior*: And indeed if such Stretches and Inferences can make Men guilty of Treason, no Man can be secure. And the Words in the Pannel's Declaration are plain and clear (yet *non sunt cavillanda*) and import no more, but that, in his Station, and in a lawful Way, and consistent with the Protestant Religion and his Loyalty, he might endeavour any Alteration to the Advantage of Church and State. And was there ever any loyal or rational Subject, that does, or can doubt, that this is the natural import of the Oath? And indeed it were a strange Oath, if it were capable of another Sense, and being designed for the Security of the Government, should bind up Men's Hands to concur for its Advantage. And how was it possible, that the Pannel, or any other in the Capacity of a Privy-Councillor, or a Member of the Parliament, would have satisfied his Duty and Allegiance in other Terms? And whereas it is pretended, That there was the like Case in the pretended League and Covenant, it is answered, the Assertion is evidently a Mistake; and though it were, the Argument is altogether inconsequential: For that League and Covenant was treasonable in itself, as being a Combination entered into without his Majesty's Authority, and was treasonable in the Glosses that were put upon it, and was imposed by absolute Violence on the Subjects of this Kingdom, and how can the Pannel be in the least supposed to have had any Respect to the said League and Covenant, when he had so often taken the Declaration, disowning and renouncing it, as an unlawful and sinful Oath, and concurred in the many excellent Laws and Acts of Parliament made by his Majesty, condemning the same as seditious and treasonable? And whereas it is pretended, that the Pannel is guilty of Perjury, having taken the Oath in another Sense than was consistent with the genuine Sense of the Parliament, and that by the Authority cited, he doth *commento cludere Juramentum*, which ought always to be taken in the Sense of him that imposeth the Oath: It is answered, the Pretence is most groundless, and Perjury never was, nor can be inferred, but by the Commission, or Omission of something directly contrary to the Oath. And although it is true, that where an Oath is taken, without any Declaration of the express Sense of the Persons who take it, it obliges *sub pœna Perjurii*, in the Sense, not of the Taker, but of the Imposer of the Oath, because expressing no Sense, Law and Reason presumes there is a full Acquiescence in the Sense and Meaning of the Imposer of the Oath: And then if an Oath be not so taken, he that takes it is guilty of Perjury. Yet there was never Lawyer nor Divine, Popish or Protestant, but agree in this, that whatever be the Tenor of the Oath, if before the taking thereof, the Party in express Terms does publickly and openly declare the Sense in which he takes it, it is impossible it can infer the Crime of Perjury against him in any other Sense, this not being *Commentum excogitatum*, after the taking of the Oath. And if this were not so, how is it possible, in Sense and Reason, that ever any Explication or Sense could solve the Scruples of a Man's Conscience? For it might be always pretended, that notwithstanding of the express Sense wherein he took it, he should be guilty of Perjury from another Sense. And that this is the irrefragable Opinion of all Divines, of whatever Persuasion, is not only clear from the Authority above-mentioned, even those who allow of reserved Senses, but more especially by the universal Suffrage of all Protestant Divines, who though they do abominate all Thoughts of Subterfuges or Evasions, after taking of the Oath, yet they do always allow and advise, for the Safety and Security of a doubting and scrupulous Conscience, that they should express and declare, before the taking of the Oath, the true Sense and Meaning wherein they have Freedom to take it; and for which *Sanderfon de Juramento* is cited. *Prelect. 6. Sect. 10. Page 75.* where his Words are, *sane ut inter Jurandum omnia recte fiant, expedit ut de verborum sensu inter omnes partes quarum interest liquido constet, quod veteribus dictum, liquido Jurare.* And an Oath being one of the highest Acts of Devotion, containing *Cultum Patriæ*, there is nothing more consonant to the Nature



Nature of all Oaths, and to that Candour, Ingenuity, and Christian Simplicity, which all Law and Religion requires in such Cases.

*The King's Advocate's third Plea against the Earl of Argyle.*

**H**IS Majesty's Advocate conceives he has nothing to answer, as to Depraving, Leasing-making, and Misinterpreting, &c. save that this Oath was only designed to exclude Recusants; and consequently the Pannel may thereby be debarred from his Offices, but not made guilty of a Crime. To which he triplies, 1. If ever the Earl had simply refused, that had been true; but that did not all excuse from defaming the Law, for a Defamer is not punished for refusing, but for defaming.

2. If he had simply refused, the Government had been in no more Hazard; but if Men will both retain their Places, and yet take the same in such Words as secure not the Government, it were strange to think, that the Design of the Law being to secure against Men's possessing who will not obey, that yet it should allow them Possession who do not obey. Nor is the Refuser here in a better Case than the Earl, and others, who offered to obey, because it is the defaming the Law, as ridiculous and inconsistent with that Protestant Religion, and Leasing-making betwixt the King, the Nobility, and the People, the misconstruing, and misrepresenting, as hath been formerly urged, that puts the Earl in a worse Condition. And all those Arguments might be as well urged for any who had uncontrovertedly contravened these Acts, as for the Pannel.

Whereas it is pretended, That the King emitted a Proclamation to satisfy Dissenters; it is answered, That the Proclamation was designed for none who had been Members of Parliament, and so should have known the Sense; but it was designed for meer Ignorants, not for such as had defamed the Law, which is still here charged upon the Pannel.

As to the Article of Treason, it is conceived, That it is unanswerably founded upon the Common-Law, discharging all Men to make Alteration of the Government. As to which there needs no express Statute, that being the very Essence of Government, and needing no Laws. Like as it falls positively under all the Laws that discharge the assuming the Royal or Legislative Power; for to alter the Government is inseparably united to the Crown. Like as the Subsumption is as clear, the express Words not bearing, That the Earl reserves to himself a Power to propose to his Majesty any Alterations, or to concur to serve his Majesty in making Alterations; but owning in most general and arbitrary Terms, to wish and endeavour any Alteration he should think fit for the Advantage of Church or State, and not determining any Thing that could bind him otherwise than according to his own Pleasure: For the Word [lawful] is still subjected to himself, and has subjoined to it, *as he should think fit*, which governs the whole Proposition; and in that Sense, and as the Words are here set down, the greatest Rebel in Scotland will subscribe that Explanation: For there is no Man but will restrict himself to a lawful Obedience, providing he be Judge of the Lawfulness. And seeing all Oaths proposed for the Security of Government require a certain depending upon the Legislature, and not upon the Taker, it is impossible that that End could be attained by any Qualification, how special soever, which is made to depend absolutely upon the Taker, and not upon the Legislator. And we have often seen, how little Security there is in those specious Words, the very Covenant itself having not only the very Words above-repeated, but attesting all the World to be Witnesses to their Loyalty and Sincerity. And as to the former Instances, viz. rising in Arms, or opposing the lawful Successor, there is no Covenant in Scotland, but will say, he will do neither, but in a lawful Way, and in his Station, and in a Way consistent with his Loyalty, for a Man were mad to say otherwise: But yet when they come to explain this, they will only do it as they think fit, and will be Judges themselves; and then will tell us, that defensive Arms are lawful, and that no Popish Successor should succeed, nor no Successor, unless he subscribe the Covenant. And whereas it is pretended, that no Clause in the Test does exclude a Man from making Alterations; it is answered, that the Alterations which the Test allows are none at all but in Subordination to Authority. And as to the two Points above-mentioned, it excludes all Alterations as to these Points. And as to the making fundamental Alterations, this Reservation allows to make any Alteration, and consequently fundamental Alterations; to preclude which Libertinism, this excellent Law was invented.

Whereas it is pretended, that the Pannel designs not to add any Thing as a Part of the Law, but as a Part of his Oath, it is duplied, since the Oath is a Part of the Law, whoever adds to the Oath, adds to the Law.

Whereas it is pretended, that the Crime of Perjury cannot be inferred here, because all Divines allow, that the Taker of an Oath is still allowed to declare in what Sense he takes the Oath; and that this is clear from *Sanderfon*, Page 175. It is triplied, that where there are two dubious Senses, Lawyers and Divines allow, that the Taker should clear himself, which of the two he should take; which is very just, because to which soever of the two he determines himself, the Legislator in that Case is sure of him. But here it is not pretended, that there are two Senses; nor does the Pannel declare in which of the two he takes it, or in what clear Sense at all he takes it, which is indeed *liquido furare*. But here the Pannel neither condescends, what particular Clause of the Test is unclear; nor after he has condescended upon the Articles, does he condescend upon the Sense, but in general mysterious Words, where he can neither be followed nor found out, he only takes it in so far as it is consistent with itself and the Protestant Religion, reserving the squaring all by his own Loyalty, as he did in the beginning declare, that he took it in his own Sense; by which general Sense, neither is the Government secure of any Thing it does enjoin, nor could he be punished if he transgressed. Nor can it be doubted, but Perjury may be inferred by any equivocal or evading Sense, *inter Jurandum*, as well as by breaking an Oath afterwards: Which is very clear from *Sanderfon*, Pag. 138. The Words whereof are, *alterum Perjurii genus est inter Jurandum detorquere verba*; and which is farther

clear by the 28th Page; but above all, from the Principles of Reason, and the Necessity of Commerce and Government: For if Men may admit such Glosses, even whilst they swear, as may make the Oath useless, what Way will either Government or Commerce be maintained? And he deceives as much that deceives in swearing *salvis verbis*, as he who after he has sworn, does break the Oath, nay and more too, because the Breaking may come from Forgetfulness, or other Accidents: But the evading by general Clauses, which bind no Man, does from the first Instance originally make all Oaths useless and dangerous, and that this Interpretation eludes the Oath absolutely is very clear from what hath been formerly debated. For it may be argued, that the Earl broke the Oath in so far as the first Day he swears the Oath, which bears to be without any Evasion (and must be so, notwithstanding of whatever he could say:) and the next Day he gives in this Evasion, which is a downright Violation of that Oath, and inconsistent with it. Nor was this Oath forced, but voluntarily emitted, to keep his own Places. And it was the greater Crime that it was done in the Council, because that was to make it the more publick, and consequently the more to misrepresent the Government.

After this Debate, which, according to the Custom of the Court, was *verbatim* dictated by the Advocates of either Side, and written by the Clerk, and so took up much Time, and the Court having sat at least twelve Hours without Intermission, it adjourned till the next Day, being *Tuesday* the 13th of December, at two of the Clock in the Afternoon: And then the Earl being again brought to the Bar, the following *Interloquutor* (that is Judgment and Sentence) of the *Lords of Justiciary*, on the foregoing Debate, was read, and pronounced in open Court.

Edinburgh, December 12. 1681.

*The Interloquutor of the Lords of Justiciary.*

**T**HE Lords, Justice-General, and Commissioners of the Justiciary, having considered the Libel and Debate, they sustain the Defence proposed for the Earl of Argyle, the Pannel, in relation to the Perjury libelled, viz. *That he emitted this Explanation at, or before his taking the Test, first before his Royal Highness, his Majesty's High Commissioner, and the Lords of his Majesty's Privy-Council, relevant, to elude that Article of the Libel.*

The Lords sustain the Libel, as being founded upon the Common-Law, and Explication libelled, and upon *Act 130. Parl. 8. James VI.* to infer the Pain of Treason.

They likewise sustain the Libel, as founded upon the 10th *Act, Parl. 10. James VI.* to infer the Pain of Death, and likewise sustain that Part of the Libel anent *Leasing-making*, and *Leasing-telling*, to infer the particular Pains mentioned in the several Acts libelled.

And repel the whole other Defences, Duplies, and Quadruplies, and remits the Libel, with the Defences anent the Perjury, to the Knowledge of an Assize.

Thereafter the Assize, that is the Jury, being constitute and sworn, viz.

List of the Assizers.

Marquis Montrose,	E. Roxburgh, P. C.	Lord Bruntisland,
E. of Middleton,	E. Dumfries.	Laird of Gosford,
E. of Airlie.	E. Linlithgow, P. C.	Laird of Claverhouse,
E. of Perth, P. C.	Lord of Lindors,	Laird of Balmalcolm,
E. of Dulhoufie.	Lord Sinclair,	Laird of Park Gordon.

**H**IS Majesty's Advocate adduced four Witnesses to prove the Points of the Indictment, remitted to the Knowledge of the Assize, viz. *John Drummond of Lundie*, then Governor of the Castle of Edinburgh, now Treasurer-depute, Sir *William Paterson*, and Mr. *Patrick Menzies*, Clerks of the Privy-Council, and *H. Stevenson*, their under Clerk; who deposed, *That on the 4th of November, the Earl did give in an unsubscriber Explanation of the Test, which he refused to sign; one of the Witnesses also adding, that he heard him make the same Explanation the Day before in Council, and that it was there accepted.*

Then his Majesty's Advocate asked, if the Earl would make Use of his Exculpation for eliding the Perjury libelled, to wit, that he had emitted the same Explanation, before taking the Test, in Presence of his Royal Highness and the Council. To which the Earl answered, that, seeing they had sustained the Libel, as to the *alleged Treason*, he would not trouble them about the Perjury: Especially the Matter of Fact, referred by the *Interloquutor* to his Probation, being of itself so clear and notour.

Upon this Silence, the Advocate, taking Instruments, Protests, for an Assize of Error, in Case the Assizers should assai or acquit. Whereupon the Assize removing was inclosed: And, after some Time, returned their Verdict, which was read in open Court of this Tenour.

The Verdict of the Assize.

**T**HE Assize having elected and chosen the Marquis of Montrose to be their Chancellor, they all in one Voice find the Earl of Argyle Guilty, and culpable of the Crimes of Treason, Leasing-making, and Leasing-telling, and find, by Plurality of Votes, the said Earl Innocent and not Guilty of Perjury.

And then the Court again adjourned: And the Privy-Council wrote the following Letter to his Majesty.

Halyrudhouse, December 14, 1681.

*The Council's Letter to the King, desiring Leave to pronounce Sentence against the Earl of Argyle.*

May it please your Sacred Majesty,

**I**N Obedience to your Majesty's Letter, dated the 15th of November last, we ordered your Majesty's Advocate to insist in the Process, raised at your Instance, against the Earl of Argyle: And having allowed him a long Time for his Appearance, and any Advocates he pleased



to employ, and Letters of Exculpation, for his Defence: He, after full Debate, and clear Probation, was found guilty of Treason, Leasing-making betwixt your Majesty, your Parliament, and your People, and the reproaching of your Laws and Acts of Parliament. But because of your Majesty's Letter, ordaining us to send your Majesty a particular Account of what he should be found guilty of, before the pronouncing of any Sentence against him, we thought it our Duty to send your Majesty this Account of our and your Justices Proceedings therein; and to signify to your Majesty, with all Submission, that it is usual and most fit for your Majesty's Service and the Advantage of the Crown, that a Sentence be pronounced, upon the Verdict of the Assize, without which the Process will be still imperfect. After which, your Majesty may, as you in your Royal Prudence and Clemency shall think fit, ordain all farther Execution to be fisted, during your Majesty's Pleasure: Which shall be dutifully obey'd by

Your Majesty's most humble,

most faithful, and most obedient,

Subjects and Servants,

Sic Subscribitur,

Alex. St. And.

Aibol,

Douglas,

Montrose,

Glencairn,

Wintoun,

Linlithgow,

Perth,

Roxburgh,

Dumfries,

Strathmore,

Airlie,

Ancrum,

Livingston,

Jo. Edinburgs,

Elphinstoun,

Dalziel,

Geo. Gordon,

Ch. Maitland,

G. Mekenzie,

Ge. Mekenzie,

Ramsay,

J. Drummond.

The King's Answer to the Council's Letter.

C. R.

18 Decemb. 1681.

**M**OST dearly, &c. having this Day received your Letter of the 14th Instant, giving an Account that our Advocate having been ordered by you to insist in that Process raised at our Instance against the Earl of Argyle, he was, after full Debate and clear Probation, found guilty of Treason, and Leasing-making, betwixt us, our Parliament, and our People, and the reproaching our Laws and Acts of Parliament: We have now thought fit, notwithstanding of what was ordered by us in our Letter to you of the 15th of November last, hereby to authorize you to grant a Warrant to our Justice General, and the remanent Judges of our Justice Court, for proceeding to pronounce a Sentence, upon the Verdict of the Jury, against the said Earl; nevertheless it is our express Pleasure, and we do hereby require you, to take Care, that all Execution of the Sentence be stopped, until we shall think fit to declare our further Pleasure in this Affair: For doing whereof, &c.

Which Answer being read in Council on the Thursday, and the Court of Justiciary, according to it's last Adjournment, being to meet upon the Friday, after a little Hesitation in Council, whether the Court of Justiciary could proceed to the Sentence of Forfeiture against the Earl, he being absent, it was resolved in the Affirmative; and what were the Grounds urged, either of Hesitation or Resolution, I cannot precisely say, there being nothing on Record that I can learn. But that you may have a full and satisfying Account, I shall briefly tell you what was ordinarily discoursed, a Part whereof I also find in a Petition given in by the Countess of Argyle to the Lords of Justiciary, before pronouncing Sentence, but without any Answer or Effect. It was commonly said, that by the Old Law, and Custom, the Court of Justiciary could no more in the Case of Treason than of any other Crime proceed further against a Person not appearing, and absent, than to declare him Out-Law and Fugitive: And that, albeit it be singular, in the Case of Treason, that the Trial may go on, even to a final Sentence, though the Party be absent, yet such Trials were only proper to, and always reserved for Parliaments: And that so it had been constantly observed until after the Rebellion in the Year 1666: but there being several Persons notoriously engaged in that Rebellion, who had escaped, and thereby withdrawn themselves from Justice, it was thought, that the Want of a Parliament, for the Time, ought not to afford them any Immunity; and therefore it was resolved by the Council, with Advice of the Lords of Session, that the Court of Justiciary should summon, and proceed to Trial, and Sentence, against these Absents, whether they appeared or not, and so it was done: Only because the Thing was new and indeed an Innovation of the old Custom, to make all sure, in the first Parliament held thereafter, in the Year 1669, it was thought fit to confirm these Proceedings of the Justiciary, in that Point, and also to make a perpetual Statute, that, in Case of open Rebellion, and rising in Arms against the King and Government, the Treason, in all Time coming, might, by an Order from his Majesty's Council, be tried, and the Actors proceeded against by the Lords of Justiciary, even to final Sentence, whether the Traitors appeared or not. This being then the present Law and Custom, it is apparent in the first Place, that the Earl's Case, not being that of an open Rebellion, and rising in Arms, is not at all comprehended in the Act of Parliament, so that it is without Question that, if in the Beginning he had not entered himself Prisoner, but absented himself, the Lords of Justiciary could not have gone further, than, upon a

Citation, to have declared him fugitive. But others said, that the Earl having both entered himself Prisoner, and appeared, and after Debate having been found guilty, before he made his Escape, the Case was much altered. And whether the Court could, notwithstanding of the Earl's intervening Escape, yet go on to Sentence was still debatable; for it was alledged for the Affirmative, that seeing the Earl had twice appeared, and that, after Debate, the Court had given Judgment; and the Assize returned their Verdict, so that nothing remained but the pronouncing of Sentence, it was absurd to think that it should be in the Power of the Party, thus accused, and found guilty, by his Escape to frustrate Justice, and withdraw himself from the Punishment he deserved. But on the other Hand it was pleaded for the Earl; that first, it was a fundamental Rule, that until once the Cause were concluded, no Sentence could be pronounced: Next that it was a sure Maxim in Law, that in criminal Actions there neither is nor can be any other Conclusion of the Cause than the Party's Presence and Silence; so that, after all that had past, the Earl had still Freedom to add what he thought fit, in his own Defence, before pronouncing Sentence, and therefore the Lords of Justiciary could no more proceed to Sentence against him being escaped, than if he had been absent from the Beginning, the Cause being in both Cases equally not concluded, and the Principle of Law uniformly the same, viz. that in Criminals (except in Cases excepted) no final Sentence can be given in Absence: for, as the Law, in Case of Absence from the Beginning, doth hold that just Temper as neither to suffer the contumacious to go altogether unpunished, nor, on the other Hand, finally to condemn a Party unheard. And therefore doth only declare him fugitive, and there stops: So in the Case of an Escape, before Sentence, where it cannot be said the Party was fully heard, and the Cause concluded, the Law doth not distinguish; nor can the Parity of Reason be refused. Admitting then that the Cause was so far advanced, against the Earl, that he was found Guilty; yet, 1. This is but a declaring of what the Law doth as plainly presume against the Party absent from the Beginning, and consequently, of itself, can operate no further. 2dly, The finding of a Party Guilty is no Conclusion of the Cause. And, 3dly, As it was never seen nor heard that a Party was condemned in Absence (except in excepted Cases) whereof the Earl's is none, so he having escaped and the Cause remaining thereby unconcluded, the general Rule did still hold, and no Sentence could be given against him.

It was also remembered, that the Diets and Days of the Justice Court are peremptory; and that in that Case, even in Civil far more in Criminal Courts and Causes, a Citation to hear Sentence is constantly required: Which induced some to think, that at least the Earl should have been lawfully cited to hear Sentence before it could be pronounced. But it is like this Course, as confessing a Difficulty, and occasioning too long a Delay, was therefore not made use of. However, upon the whole, it was the general Opinion, that seeing the denouncing the Earl Fugitive would have wrought much more in Law than all that was commonly said, at first, to be designed against him: And that his Case did appear every way so favourable, that impartial Men still wondered how it came to be at all questioned, it had been better to have fisted the Process, with his Escape, and taken the ordinary Course of Law, without making any more Stretches.

But, as I have told you, when the Friday came, the Lords of Justiciary, without any Respect, or Answer given to the Petition above-mentioned, given in by the Countess of Argyle to the Court for a Stop, pronounced Sentence, first in the Court, and then caused publish the same, with all Solemnity, at the Mercat Cross of Edinburgh.

**F**OR as much as it is found by an Assize that Archibald Earl of Argyle is guilty and culpable of the Crimes of Treason, Leasing-making, and Leasing-telling, for which he was detained within the Castle of Edinburgh, out of which he has now since the said Verdict made his Escape: Therefore the Lords Commissioners of Justiciary discern and adjudge the said Archibald Earl of Argyle to be execute to the Death, detained as a Traitor, and to underlye the Pains of Treason, and other Punishments appointed by the Laws of this Kingdom, when he shall be apprehended, at such a Time and Place, and in such Manner as his Majesty in his Royal Pleasure shall think fit to declare and appoint: And his Name, Memory, and Honours, to be extinct: And his Arms to be riven forth, and delete out of the Books of Arms, swa that his Posterity may never have Place nor be able hereafter to bruick or joyse any Honour, Offices, Titles, or Dignities, within this Realm in Time coming and to have forfeited, amitted, and tint, all and sundry his Lands, Tenements, Annual-Rents, Offices, Titles, Dignities, Tacks, Steedings, Rowmes, Possessions, Goods, and Geere whatsoever pertaining to him, to our Sovereign Lord, to remain perpetually with his Highness in Property. Which was pronounced for Doom—23 December 1681.

After the reading and publishing whereof, the Earl's Coat of Arms, by Order of the Court, was also torn and ranvered, both in the Court and at the Mercat-Cross: Albeit some thought that this was rather a Part of the Execution, which his Majesty's Letter discharges, than a necessary Solemnity, in the Publication; and the Advocate himself, says, p. 61. of his printed Criminals, that it should only be practised in the Crime of Perduellion but not in other Treasons.

He was afterwards retaken upon his Invasion of Scotland, 1 Jac. II. and without any further Trial was executed by virtue of the above-mentioned Sentence\*.

CXI. The Trial of George Borosky alias Boratzi, Christopher Vratz, and John Stern, and Charles-John Count Coningsmark, at the Old-Baily, for the Murder of Thomas Thynn, Esq; February 28, 1681. 34 Car. II.

**T**HERE having been an Indictment found at Hick's Hall by the Grand-Jury for the County of Middlesex against Charles-George Borosky, Christopher Vratz, and John Stern, for murdering Thomas Thynn, Esq; and against Charles-John Count Coningsmark, as accessory before the Fact, the said Persons being in Newgate, were brought to the Bar to be arraigned and tried: And they being Foreigners, an Interpreter was sworn to acquaint them, in a Language they understood, what they were accused of.

O o o

Clerk



Clerk of the Crown. Charles Borofky, hold up thy Hand. (Which he did.) Christopher Vratz, hold up thy Hand. (Which he did.) John Stern, hold up thy Hand. (Which he did.) Charles-John Coningsmark, hold up thy Hand. (Which he did.)

You stand indicted in the County of Middlesex by the Names of Charles-George Borofky, late of the Parish of St. Martin's in the Fields, in the County of Middlesex, Labourer; otherwise called George Boratzki, of the same Parish and County, Labourer; Christopher Vratz of the same Parish and County, Gentleman; John Stern of the same Parish and County, Gentleman; and Charles-John Coningsmark, of the same Parish and County, Esq; otherwise called John Coningsmark, of the same Parish and County, Esquire: For that you the said Charles-George Borofky alias Boratzki, Christopher Vratz, and John Stern, not having God before your Eyes, but being moved and seduced by the Instigation of the Devil, upon the twelfth Day of February, in the thirty fourth Year of the Reign of our Sovereign Lord King Charles the Second, with Force and Arms in the Parish of St. Martin's in the Fields in the County of Middlesex aforesaid, in and upon Thomas Thynn, Esquire; in the Peace of God, and our said Sovereign Lord the King, then and there being, feloniously, wilfully, and of your Malice aforethought, did make an Assault. And that thou the said George Borofky alias Boratzki, a certain Blunderbuss of the Value of five Shillings, the said Blunderbuss being then charged with Gunpowder, and four Leaden Bullets; which said Blunderbuss thou the said George Borofky alias Boratzki in both thy Hands so as aforesaid, loaden to and against the said Thomas Thynn then and there hadst and heldest. And that thou the aforesaid George Borofky alias Boratzki, knowing the Blunderbuss aforesaid, to be so as aforesaid, charged with Gunpowder and Leaden Bullets, to and against the said Thomas Thynn then and there, with Force of Arms, feloniously, wilfully and of thy Malice aforethought, didst discharge and shoot off. And that thou the said George Borofky alias Boratzki, with the said Leaden Bullets shot and sent out of the Blunderbuss aforesaid, by the Violence and Force of the Gunpowder aforesaid: And by thee the said George Borofky alias Boratzki so as aforesaid discharged and shot off, the said Thomas Thynn in and upon the right-side of the Body of the said Thomas Thynn, near the short Ribs of the right-side of the Body of the said Thomas Thynn, then and there feloniously, wilfully, and of thy Malice aforethought didst strike and wound; giving unto him the said Thomas Thynn then and there with the Leaden Bullets aforesaid, so as aforesaid shot and sent out of the Blunderbuss aforesaid by Force and Violence of the Gunpowder aforesaid, by thee the said George Borofky alias Boratzki, so as aforesaid discharged and sent out, in and upon the right side of the Body of him the said Thomas Thynn, near the short Ribs, on the right-side of him the said Thomas Thynn four mortal Wounds, every one of them of the Breadth of one Inch, and of the Depth of six Inches; of which said mortal Wounds, he the said Thomas Thynn from the said twelfth Day of February in the thirty fourth Year aforesaid, unto the thirteenth Day of the same Month of February, at the Parish of St. Martin's in the Fields aforesaid, did languish and lived languishing: On which said thirteenth Day of February, in the thirty fourth Year aforesaid, he the said Thomas Thynn at the Parish of St. Martin's in the Fields aforesaid, of the mortal Wounds so as aforesaid given, died. And that you the said Christopher Vratz and John Stern, then, that is to say at the Time of the Felony and Murder aforesaid, by the said George Borofky alias Boratzki; so as aforesaid feloniously, wilfully, and of your Malice aforethought, done and committed, then and there feloniously, wilfully, and of your Malice aforethought, by Force and Arms were present, aiding, comforting, abetting, assisting and maintaining the said George Borofky alias Boratzki, the Felony and Murder aforesaid feloniously, wilfully, and of his Malice aforethought, to do and commit. And so you the said George Borofky alias Boratzki, Christopher Vratz and John Stern, the said Thomas Thynn in Manner and Form aforesaid, feloniously, wilfully, and of your Malice aforethought didst kill and murder, against the Peace of our Sovereign Lord the King, his Crown and Dignity. And that thou the said Charles-John Coningsmark before the Felony and Murder aforesaid, by the said George Borofky alias Boratzki, Christopher Vratz and John Stern in Manner and Form aforesaid, feloniously, wilfully, and of their Malice aforethought, done and committed, to wit, the said twelfth Day of February, in the thirty fourth Year aforesaid, at the Parish of St. Martin's in the Fields aforesaid, them the said George Borofky alias Boratzki, Christopher Vratz and John Stern the Felony and Murder aforesaid, in Manner and Form aforesaid feloniously, to do and commit, feloniously, wilfully, and of thy Malice aforethought, didst stir up, counsel, persuade and procure, against the Peace of our Sovereign Lord the King, his Crown and Dignity.

Sir Francis Pemberton. L. C. J. Why you must read this to them now in their Language, or else they can't understand it.

L. C. J. North. You that are the Interpreter, tell them that you are going to interpret the Indictment to them by Degrees.

Mr. Vandore. Yes, my Lord, I will.

L. C. J. Don't read all the Circumstantial, but only the Substance of the Indictment.

Then the Clerk of the Crown went near the Bar, and dictated to the Interpreter deliberately, who interpreted it to the Prisoners.

L. C. J. Well, you have told them the Substance of it, that they are indicted for killing Mr. Thynn.—Mr. Vandore, Yes.

L. C. J. Well, what says the first Man?

Cl. of Cr. I asked him if he be Guilty of the Murder whereof he stands indicted, and he says he is Not Guilty.

L. C. J. Does he say so?—Mr. Vandore. Yes, he says he is Not Guilty.

L. C. J. Why now tell him the Formality, that he must put himself upon the Jury here.

[Then Sir Nathanael Johnson was sworn Interpreter.]

L. C. J. Ask him this Question. Tell him he is accused of the Murder of Mr. Thomas Thynn; ask him if he be Guilty or Not Guilty.

Mr. Vandore. He says he is Not Guilty, my Lord. I asked him just now.

L. C. J. Then Sir Nathanael Johnson, if you can make him to understand it, tell him, that our Manner of Trial here is by Twelve-Men, and that is by putting himself upon the Country, and therefore ask him, how

he will be tried. Tell him that the Method is by saying, By God and the Country.

Sir N. Johnson. My Lord, he is a very dull kind of Man; he knows not how to answer, nor what to say; nor won't say any thing; that is the Truth of it.

L. C. J. Ask him if he be willing to be tried after the Manner of the English.

Sir N. Johnson. Yes, he says he is willing to be tried according to the Fashion of the English.

L. C. J. North. He hath pleaded Not Guilty, and the other follows of course.

L. C. J. Ask the other, the Captain, the same thing.

Sir N. Johnson. He desires a French Interpreter, for he speaks French.

L. C. J. Surely here are enough People that understand French, but ask him if he does not understand English.

Sir N. Johnson. He can understand some, he says.

L. C. J. Then ask him, whether he be Guilty, or Not.

Sir N. Johnson. He says he is Not Guilty, my Lord.

L. C. J. Now ask Mr. Stern, but first ask the Captain how he will be tried.

Sir N. Johnson. He says he will be tried by God, and half his own Country, and half English.

L. C. J. He shall have his Request.

Sir N. Johnson. He desires one thing further.

L. C. J. Look you, Sir Nathanael Johnson, you must tell him this; he shall be tried by half Foreigners and half English; that is it, I suppose, he desires.

Sir N. Johnson. My Lord, he desires that there may be none of the Jury that are any thing a Kindred or Relation to Mr. Thomas Thynn, nor any particular Friend of his, and he is satisfied.

L. C. J. No, there shall not, we will take Care of that. Now ask Mr. Stern then the like Question.

Sir N. Johnson. My Lord, he says he is Not Guilty.

L. C. J. Ask him too, how he will be tried; whether by a Jury?

Sir N. Johnson. He says, he's content to be tried as the others are, by half Strangers and half English.

L. C. J. Now then ask my Lord Coningsmark what he says.

Mr. Thynn. He speaks English, my Lord.

L. C. J. But not well enough, may be, to understand the whole.

L. C. J. North. Sir Nathanael, what does he say?

Sir N. Johnson. My Lord, he says it is a Concern of his Life, and therefore he desires he may have not only one Interpreter, but others: He desires he may have two or three, that they may make no Mistake.

L. C. J. Very well.

Sir N. Johnson. He says that I understand the Dutch Language; but his Life and Honour are concerned, and therefore he would have three or four.

L. C. J. Who would he have?

Sir N. Johnson. Sir Thomas Thynn said they had one that was brought by them.

Mr. Thynn. That is Vandore, who is sworn already.

L. C. J. Look you, Sir Nathanael, tell my Lord, if he pleases, he shall have a French Interpreter; for I know he speaketh that Language very well.

Sir N. Johnson. My Lord, he says, that High-Dutch is his natural Language, and he can express himself best in that.

[Then one Vanbaring was called for by the Count, but did not appear.]

L. Ch. Bar. Sir N. Johnson, you must ask the Count whether he be Guilty of the Indictment, as accessory before the Fact.

Sir N. Johnson. I have asked, my Lord, and Not Guilty he answers.

Cl. of the Cr. How will you be tried?

Sir N. Johnson. He says he will be tried by God and half his own Country, or half Foreigners and half English; and he desires they may be Persons of some Quality, as they use to treat Persons of his Quality, and Strangers.

L. C. J. There shall be such Strangers, tell him. You have Merchants of good Account, I suppose, upon this Pannel?

Under-Sheriff. Yes, my Lord, they are all such.

Sir N. Johnson. He desires he may be tried distinctly from the others.

L. C. J. That cannot be: But look you, Sir, Pray tell my Lord this, that though the Evidence must be given, and the Jury must be charged all together, yet in this Case we will distinguish his Case to the Jury, if there be Occasion.

L. C. Bar. And his Evidence will come distinct.

Mr. Vandore. My Lord, he asks this Question of your Lordship and this Honourable Court, if it be agreeable, and according to the Justice of this Nation, that my Lord may be allowed two or three Days Delay, because he is to prepare himself and Witnesses for his Trial.

Sir N. Johnson. My Lord, he says this; his Witnesses are not prepared, and he not having had Time to recollect himself, so as to fit himself for his Defence, therefore he begs the Favour of the Court, that he may have a Day or two's Time to recollect himself. He says he is to answer Circumstances with Circumstances, my Lord; he says he has some Witnesses as to Circumstances that are very material to answer such Circumstances as are brought against him; he does not understand the Law, my Lord, nor has had no Time to have any Counsel to inform himself.

L. C. J. You must tell him this, that which he is charged with is Matter of Fact, that none can instruct him in but himself; Counsel can do him no good in such a Case as this.

Sir N. Johnson. My Lord, he says, the Matters that are objected against him are only Circumstances, my Lord, and they require an Answer, which he can do by other Circumstances, and he desires Time to recollect himself, two or three Days Respite; he desires, if it were but a little Time, a Day or two.

Mr. Thynn. My Lord, our Witnesses are all ready, and the Counsel instructed, and wait here to go on.

L. C. J. North. Look you; pray will you tell him, when the Trial is once begun, the Jury can neither eat nor drink till they have given their Verdict; that is the Law, and we can't change the Law, therefore we cannot allow him the Time he desires. He knows what he is accused of, and has known it a good while, and has had Time to recollect himself and prepare himself.

Sir N. Johnson. My Lord, he says, the Jury are not yet together, he charged with him, and therefore till the Jury are charged, he thinks he may have Time, if your Lordship please to allow it.

L. C. J.



L. C. J. Look you, you must tell him, that he is to understand that here is but one Indictment against the Principals and himself, and we cannot try this by Piece-Meals; we cannot try the Principals now, and my Lord Coningsmark another Time.

Sir N. Johnson. If it must be so, he says, he must throw himself upon your Lordship; he hopes he shall have nothing but what is just and fair, and he hopes your Lordship will be of Counsel to him, as the Fashion of this Country is; if any Thing arises of Matter of Law, he desires he may have the Advantage of it: And if he can't have a Day or two, he says the Innocency of his Case will protect him. Count Coningsmark knowing how Innocent he is, won't stick for a Day or two, but he will be ready to be tried as your Lordship shall think fit; he has Innocence on his Side, and that will protect him.

L. C. J. Let my Lord know, that we will be careful in examining all Things that concern him.

Sir N. Johnson. He says he does not fear it, my Lord, having to do with such honourable Persons, nor doubt it at all.

L. C. J. Then swear a Jury. But look you my Lord Coningsmark, consider this; as the Gentlemen of the Jury come to be sworn, if you do dislike any of them, you may except against them.

Sir N. Johnson. My Lord, he says, being altogether a Stranger here in England, and not knowing any of the Persons, he begs the Favour of the Bench that he may have the Names of those that are returned of the Jury, and a little Time to consider of it.

L. C. J. That we cannot do: All we can do for you is, we will take as much Care as we can, that you may have indifferent Persons, and Persons of Quality.

L. C. J. North. Pray tell him, the Law gives him the Privilege of a peremptory Challenge.

Sir N. Johnson. He says, my Lord, he does not know who they are, but they may be Persons that are touched, and may have something of Evil-Will or Spleen against him. His Father served against the King of Denmark, and against the Poles and the Papists, and his Father was a Protestant, and served the Protestant Cause.

L. C. J. What Countrymen are they, Mr. Sheriff?

Under-Sheriff. They are French and Dutch most of them, I do not believe there is ever a Dane amongst them.

L. C. J. We will call all Frenchmen, if he had rather have them than Dutch.

Sir N. Johnson. He would very gladly have them all High-Dutch; if not, that he may have some.

L. C. J. I thought he had excepted against the Dutch.

Sir N. Johnson. No, against the Danes; for his Father in the Wars burnt their Towns.

L. C. J. Examine them, as they come to the Book, if there be any of the Roman Catholick Religion, and don't let any such be sworn.

Mr. Sheriff Pilkington. There is none such amongst them, I dare say.

L. C. J. Sir N. Johnson, tell my Lord, he shall have no Roman Catholicks at all.

Sir N. Johnson. He thanks your Lordship. He desires he may have the Pannel to look upon, and he hopes that is an easy Favour.

L. C. J. Let him have the Pannel, if it will do him any good. He is a Stranger, satisfy him in what we can.

[Which was delivered to him, and he looked it over.]

L. C. J. Tell him, as the Jury is called, he shall have every one of the Outlandishmen and Englishmen brought before him.

Sir N. Johnson. My Lord, he thanks you for this Favour.

L. C. B. Sir N. Johnson, tell the Count, they call first an Englishman, then a Foreigner, and they shall be brought to view.

L. C. J. Pray, have you told the other Persons, that their Time to Challenge is before the Jury is sworn?—Sir N. Johnson. The Polanders say he can challenge none, because knows none.

L. C. J. What say the rest?—Mr. Vandore. They say they know no Body, and can except against no Body.

Cl. of Cr. Call Sir Will. Roberts. [Who appearing, stood up.]

L. C. J. My Lord Coningsmark, there is the Foreman.

Sir N. Johnson. He has nothing to say against him.

L. C. J. Then hold him a Book, and swear him. [Which was done.]

Cl. of Cr. Call Mr. Downing.

Interpret. He says he is no Foreigner.

L. C. J. Then he must not be sworn.

Cl. of Cr. Moses Charas. [Who appeared.]

Interpret. He has nothing to say against him. But he himself says, he does not speak English, but he desires to speak French.

Cl. of Cr. Then tell him in French, he must lay his Hand on the Book and be sworn, and harken to his Oath.

Sir Fr. Winnington. We challenge him for the King.

L. C. J. For what Cause?

Sir Fr. Winnington. My Lord, we take it that we need not shew any Cause, unless there be any Want of the Number in the Pannel.

L. C. J. Then we must do him right, and tell him what Advantage the Law gives him. Tell my Lord, you that understand English, that this Gentleman is challenged for the King; and if the King shew any good Cause for it, he must not be sworn, else he must. And the Way for him to cause the King's Counsel to shew their Cause, (if he desire it) is to challenge all the rest.

Mr. Williams. We waive our Challenge: for the Reason why we challenged him was, because he did not understand English, which will be no Reason at all. [Then he was sworn.]

Cl. of Cr. Sir Henry Ingoldby.

Sir N. Johnson. He challenges him, my Lord.

Cl. of Cr. Sir William Gullston.

Sir N. Johnson. He excepts against him, my Lord.

L. C. J. Does he challenge him in respect of what I said to him about the Outlandish Gentlemen, that the King is to shew Cause? Or how does he challenge him?

Interpret. My Lord, he says he hears he is a Friend to Mr. Thynn.

L. C. J. Well, let him be passed by then.

Cl. of Cr. Sir John Musters. [Who did not appear.]

Sir N. Johnson. He says, my Lord, he only desires indifferent Persons:

Cl. of Cr. Henry Herbert, Esq;—Sir N. Johnson. He challenges him:

Cl. of Cr. Richard Paget, Esq;—Sir N. Johnson. He desires to see him:

L. C. J. Let him be brought into the Middle, that he may look upon the Prisoners.

Interpret. He has nothing to say against him. [Then he was sworn.]

Cl. of Cr. James Buigone.—Interpret. He excepts against him.

Cl. of Cr. Claudius Derolee.—Interpret. He excepts against him too:

Cl. of Cr. Charles Beelow.—Interpret. He says he looks like a Man, and he does not except against him. [And he was sworn.]

Cl. of Cr. Ralph Bucknall, Esq;—Interpret. He challenges him.

Cl. of Cr. Thomas Earlsby, Esq;—Interpret. He challenges him too.

L. C. J. Look you, Sir Nath. Johnson, pray tell him he can challenge but twenty.

Sir N. Johnson. He says very well; he will not do any more. He desires the Favour, that those that he challenges may not come near those that are sworn.

L. C. J. Well, it shall be so; we will take Care of it:

Cl. of Cr. Richard Gowre, Esq;

Sir N. Johnson. He excepts against him.

Cl. of Cr. George Hocknall, Esq;

Interpret. He challenges him. [But then the Count looking in his Paper, retracted the Challenge, and he was sworn.]

Cl. of Cr. Peter Vandenberg.

Interpret. He says nothing to him. [Then he was sworn.]

Cl. of Cr. Walter Moyle, Esq;

Interpret. He does not challenge him. [He was sworn.]

Cl. of Cr. Christopher Ripkey.

Interpret. He does not challenge him. [He was sworn.]

Cl. of Cr. Thomas Henflow, Esq;

Interpret. He does not except against him. [Then he was sworn.]

Cl. of Cr. Lewis Doncarr.—Interpret. He challenges him.

Cl. of Cr. Peter Lecane. [He did not appear.]

David Collivaux.

Interpret. He challenges him, because he knew Mr. Thynn, they say:

Cl. of Cr. Andrew Lodderley.—Interpret. He challenges him.

Cl. of Cr. James Burk.—Interpret. He challenges him.

Cl. of Cr. Daniel Griggion.

Interpret. He does not challenge him. [So he was sworn.]

Cl. of Cr. Robert Jordan, Esq;—Interpret. He challenges him.

Cl. of Cr. Lucy Knightley, Esq;—Interpret. He challenges him.

Cl. of Cr. John Haynes, Esq;

Interpret. He does not except against him. [He was sworn.]

Cl. of Cr. Lewis le Count.—Interpret. He challenges him.

Cl. of Cr. John Belliew.—Interpret. He challenges him.

Cl. of Cr. James Frontein.

Mr. Williams. We challenge him for the King:

Cl. of Cr. John Massey.—Interpret. He challenges him.

Cl. of Cr. Andrew Primow.—Interpret. He challenges him.

Cl. of Cr. Nicholas Beufor.—Interpret. He challenges him. He says they are all Walloons, and therefore he challenges them.

L. C. J. Why does he except against Walloons?

Interpret. Because they have always served against the Swedes.

Cl. of Cr. John Lebar.

Interpret. He does not except against him. [And so he was sworn.]

Cl. of Cr. Cryer, reckon these, &c.

Sir Will. Roberts, Bart.

Moses Charas, Gent.

Richard Pagett, Esq;

Charles Beelow, Gent.

Geo. Hocknall, Esq;

Pet. Vandenberg, Gent.

Walter Moyle, Esq;

Chr. Ripkey, Gent.

Tho. Henflow, Esq;

Dan. Griggion, Gent.

John Haynes, Esq; and

John Lebar, Gent.

Then Proclamation for Information and Prosecution was made: And a Chair was set for the Count, at his Request.

Cl. of Cr. G Entlemen, Look upon the Prisoners, you that are sworn, and hearken to their Cause, they stand indicted *prout* in the Indictment, *mutatis mutandis*—against the Peace of our Sovereign Lord the King, his Crown and Dignity. Upon this Indictment they have been arraigned, and thereunto have severally pleaded, *Not Guilty*: And for their Trial, have put themselves upon God and their Country; which Country you are. Your Charge is to enquire, whether they, or any of them are Guilty of the Offences whereof they stand indicted, or Not Guilty. And if you find them, or any of them Guilty, you are to find what Goods or Chattels, Lands or Tenements they had at the Time of the Felony and Murder committed, or at any Time since. If you find them or any of them Guilty, you are to enquire, whether they or any of them fled for it: If you find that they, or any of them fled for it, you are to enquire of their Goods and Chattels, as if you had found them Guilty; if you find them or any of them Not Guilty, nor that they did fly for it, you are to say so, and no more, and hear your Evidence. But if you acquit any one of the Principals—

L. C. J. That is a Mistake, it must be all the Principals.

Cl. of Cr. If you acquit the Principals, you are not to enquire of Charles-John Coningsmark as Accessary before.

Mr. Keene. May it please your Lordship, and you Gentlemen that are sworn of this Jury, George Borosky alias Boratzi, Christopher Vratz, and John Stern, the Prisoners at the Bar, stand here indicted; for that they not having the Fear of God before their Eyes, but being moved and seduced by the Instigation of the Devil, the 12th Day of February, in the 34th Year of the Reign of this King, feloniously and voluntarily, and of their Malice afore-

\* Most certainly they might, and it is frequently done, although there be but one Indictment, as in the Case of the Regicides and many other Cases; but it was more for the Interest of the Count to try him then, though he was not aware of it himself.

thought



thought, did make an Assault upon *Thomas Thynn*, Esq; at the Parish of *St. Martin's in the Fields* in this County; and that the said *George Borofky* having in his Hands a Blunderbuss, which he knew to be charged with four Leaden Bullets, did discharge it at *Mr. Thynn*, and gave him four mortal Wounds, of which Wounds he languished till the 13th Day of *February*, and then died: And that they the said *Christopher Vratz* and *John Stern* were there present, aiding, assisting and abetting him to commit the said Felony and Murder; and so that they the said *George Borofky*, *Christopher Vratz*, and *John Stern*, did of their Malice aforethought, in Manner aforeaid, murder the said *Thomas Thynn*. And *Charles-John Coningsmark*, the other Prisoner at the Bar, stands indicted, for that he before the Felony and Murder aforeaid, so done and committed, to wit, the 12th Day of *February* aforeaid, did of his Malice aforethought, move, incite, counsel, persuade, and procure the said *Borofky*, *Vratz*, and *Stern*, to do that Murder, against the Peace of the King, his Crown and Dignity. To this Indictment they have severally pleaded *Not Guilty*; and you are to enquire, whether they are Guilty, as they are charged, or no.

*Sir Francis Withens*. My Lord and Gentlemen, I am of Counsel in this Case for the King, against the Prisoners at the Bar. There are three of them indicted as Principals in this Murder, the fourth as Accessary before. In this Case that is now before you, Gentlemen, I cannot choose but take Notice unto you, that a Murder of this nature has never been heard of to be perpetrated upon *English Ground*, both in respect of the Person murdered, and in respect of the Circumstances of the Fact. For the Person murdered, was a Gentleman of that Quality and Estate, that he hath left but few Equals behind him. That this Man being in his Coach, should be way-layed, surprized, and murdered, and this Murder committed in the midst of our Streets, is that which works Amazement in all *English Hearts*. And our only Comfort upon this sad Occasion is, that there is not one Native of this Country found amongst all those that are accused to be Instruments in this barbarous Fact.

I did observe to you, Gentlemen, before, that there are three named to be Principals; *Borofky*, whom for Distinction sake, I shall call by the Name of the *Polander*, *Vratz*, who is called the Captain, and *Stern*, who is called the Lieutenant. *Borofky* the *Polander*, we say, was the Man that discharged this Blunderbuss against this worthy Gentleman that was slain; but though he was the only Man that discharged it, yet if we can satisfy you that *Vratz* and *Stern* were with him at the same Time, aiding and assisting him when he gave the Blow, they are as much Principals as he that shot off the Gun. It will be natural to open to you what is said against this Captain *Vratz*, he is a *Swede* by Birth, and did formerly belong to *Count Coningsmark*; he was a Retainer to him. Afterwards, I think in the War he was made a Captain. This Gentleman had been formerly in *England*, but at the last Time he came, which was three Weeks, or thereabouts, before the Murder was committed, his Lodging was in *King-Street* at *Westminster*. This Captain *Vratz*, we shall prove, did often discourse that he had a Quarrel with *Mr. Thynn*, that several Times before this Murder was actually done, he ordered his Servant to way-lay his Coach; and upon that very fatal Day, the 12th of *February*, when this unhappy Accident fell out, having Information that *Mr. Thynn* was gone out in his Coach, immediately he puts on his Boots, gives Order to his Servant to bring his Clothes to him at such a Place, because he should remove his Lodging, he said, that Night, that he should bring his Clothes to the *Black-Bull Inn* in *Holborn*, and bring his Horse thither too. When he went from his Lodging, the *Polander* went along with him, and they came to the *Black-Bull* in *Holborn*, where they met with *Stern*. We shall shew you, that these three Gentlemen being thus armed, one with a Blunderbuss, the second with Pistols, and the other very well provided, rid out about six of the Clock, the Murder being committed about seven or eight. At their going out, they enquired which was their Way to *Temple-Bar*; they were seen to ride through the *Strand* to *St. James's*, the Fact was done in the *Pall-Mall*, and we shall shew you the Way of it was thus; *Mr. Thynn* passing through the Street to go home in his Coach, three Persons came riding up to the Coach Side, and while the one stopped the Horses, immediately the Blunderbuss was discharged into the Coach against *Mr. Thynn*, and gave him those Wounds, of which the next Morning he died, Presently these three Men ran away, but one of them let fall a Pistol upon the Place, which I shall observe as a material Circumstance against these Persons, because we shall prove whose the Blunderbuss was. These Things being done, this Murder committed, and they gone away, it began to work in People's Thoughts, and Circumstances began to come out, that this Blunderbuss should be ordered to be brought by Captain *Vratz*, who had discoursed with many Persons about the Quarrel he had with *Mr. Thynn*, and given Order to his Servant to way-lay his Coach; and these Persons being rid out at that Time, there was a great Suspicion that they did it. Great Care there was taken, and great Means used, as no doubt there would be, to apprehend the Malefactors; and by great Providence it was found out at last, that this Captain *Vratz*, according to his Word, had altered his Lodging, and was got to a Doctor's House, that lived, I think, in *Leicester-Fields*. Being there surprized, and coming upon his Examination, he did not deny but he was there one of the three that was at the Place when and where *Mr. Thynn* was murdered, but he pretended, he did intend to fight him in a Duel, and kill him fairly, as he called it. But, Gentlemen, I must observe this to you, in my small Time of Experience of the World, I never knew a Man go to fight a Duel, and carry out with him a Second with a Blunderbuss. 'Tis not possible he should go with such a Design as he would insinuate, but rather with an Intention of Murder. For the *Polander*, he came into *England* but the Friday before, and so we shall prove to you that which will stick hard upon the Count. Upon Friday, he being landed, he enquires for the young Count's Tutor, which was at an Academy of one *Monfieur Faubert's*; and there he enquires for the Count's Secretary; he lay there, I think, that Night, and upon Saturday he was conveyed to the Count's Lodgings. There also he was lodged for one Night. The Count was pleased to bespeak him a very good Sword, and a Coat for him, that he might be well armed, and there he lay on Saturday Night, as I said, the Night before the Murder was committed. Upon

Sunday, Gentlemen, there being a Message sent to this Doctor, where *Vratz* lay, the Night following that the Count would speak with the Doctor, the Doctor came, and the Doctor and the *Polander* went away to Captain *Vratz's* Lodging, and from thence to *Holborn*, to the *Black-Bull*, and the Captain was carried in as much Secrecy as he could, for he was carried in a Sedan; and I think we shall be able to prove, by the Persons that carried him, that this was the Man. For the other Gentleman, *Stern*, the Lieutenant, as they call him, he was an ancient Acquaintance of Captain *Vratz's*, had known him long ago in *England*, and complained to him, that Lodgings might be very dear; but the Captain told him, he had a Design; and if he would assist him as a brave Fellow, would maintain him, and he should not want Money to bear all his Charges. But we shall prove that this was the third Person that rid out with the *Polander*, and the Captain in this Garb that I told you of, this Night that the Fact was done. And indeed, Gentlemen, upon their Examination, they have every one confessed the Fact; even the *Polander* confessed that he did shoot off the Blunderbuss; and *Vratz* confessed that he was there, and the Lieutenant *Stern*; so that if there had been no more Evidence, it would have been sufficient to maintain the Issue, and in our Circumstances, it is more perhaps than could be expected. This, Gentlemen, is the principal Sum of the Evidence, that will be given against the three Principals. For the fourth, Gentlemen, *Count Coningsmark*, he is a Person of great Quality, and I am extraordinary sorry to find the Evidence so strong against him, as my Brief imports; I wish his Innocence were greater, and our Evidence less; for he is a Person of too great Quality, one would hope, to be concerned in a Thing of this Nature; but that he was the main Abettor and Procurer of this barbarous Business, we shall prove upon these Grounds: First, That he had a Design upon *Mr. Thynn's* Life; for, Gentlemen, coming into *England* about three Weeks before this Matter was transacted, first he lies in Disguise, and lives private, and removes his Lodging from Place to Place frequently; that he sent a Person to enquire of the *Swedish* Resident, whether, or no, if he should kill *Mr. Thynn* in a Duel, he could by the Laws of *England* afterwards marry the Lady *Ogle*? So that *Mr. Thynn's* Death was in Prospect from the beginning. Gentlemen, we shall prove to you, as I did in some Measure open before, that the Count himself was pleased to give express Order, that the *Polander* should have a good Sword bought him; that before he came into *England*, he was very much troubled, by reason of the stormy Weather, for fear he should be cast away; that he lodged him in his own Lodging the Night before this Act was perpetrated; and that Captain *Vratz* was the Morning before, and immediately after, with the Count. Another thing, Gentlemen, that I had almost forgot: The Count was willing to be instructed in the Laws of *England*, and enquired, Whether a Man might lawfully ride out upon a Sunday? And being told, That after Sermon he might; he was very well satisfied; and the Day he enquired of it, was the Day that the Murder was committed. After the Thing was done, *Count Coningsmark*, the next Morning, pretended he was to go to *Windsor*, and leaves his Lodging; but instead of going to *Windsor*, (being still in his Disguise) he goes to *Rotherhithe*, by the Water-side, and there, I think, he continues two or three Days in a black Peruke, (and that is Disguise enough for such a Gentleman) and afterwards he goes to *Graveyard*, but, I think, he was upon the Water some Time, before he thought it convenient to land; and there he was surprized in this Disguise. And when he was surprized and taken, he shewed himself to be in great Disorder; but being charged with the Fact, acknowledged nothing of the Matter. But how it should come to pass, that he should lie so long disguised, upon no Pretence that can be known, and afterwards to pretend that he had a Business to effect, and then he was to go into *France*, that will lie upon him to answer. But these are the inducing Evidences that we give to you; his keeping the *Polander* in his House, his disguising of himself, and his enquiring, Whether if he killed *Mr. Thynn*, he might not marry my Lady *Ogle*? His flight the next Day, and pretending to go to *Windsor*, when he went quite the other Way, and all in a Disguise; and these Persons not having any Appearance, or any Reason whatsoever, for any particular Quarrel to *Mr. Thynn*, but the Count having some Dispute to him, upon the Terms that the Witnesses will tell you of by and by, and being related to the Count, we must leave it to you to judge, whether these Gentlemen did it singly and purely upon their own Heads, or whether they were not set upon it by the Count.

*Sir Fra. Winn*. My Lord, I shall not trouble you with repeating of our Evidence, but we will begin and call our Witnesses, directly to prove the Murder done by these Gentlemen; we will prove the Fact downright upon them, and then we shall afterwards come to the Count.

*Mr. Williams*. My Lord, first we will direct Evidence to the Principals, and then to the Accessary. Call *William Cole* and *William Ellers*.

*L. C. J.* Swear some Person to interpret the Evidence that shall be given: I do it for the sake of the Aliens that are of the Jury; for some of them understand no *English*, and they will not know what to make of the Evidence, if they do not repeat it to them in their own Language.

Then Vandore and Wright were sworn for the King.

*Sir N. Johnson*. My Lord desires that the Doctor and the Taylor that are in Prison may be sent for, to be here, for they are Witnesses for him.

*Sir Fra. Winn*. We desire they may be here too, for they are Witnesses for the King, and I believe they are here, my Lord.

*Sir N. Johnson*. *Mr. Vandore* does not speak French.

*Sir Will. Roberts*. *Mr. Craven* speaks Dutch and French very well.

*Mr. Craven* was sworn.

*Sir N. Johnson*. The Count desires the Favour of Pen and Ink.

*L. C. J.* Let the Count have Pen and Ink.

*Mr. Williams*. Call *William Cole* and *William Ellers*.

(Who appeared, and were sworn.)

Which is *William Cole*? Set him up. Acquaint my Lord and the Jury how *Mr. Thynn* was assaulted, and the Manner of it.



*Cole.* My Lord, my Master was coming up St. James's-street from the Countess of Northumberland's.

*Sir Fra. Winn.* Name your Master.

*Mr. Williams.* Who was your Master?

*Cole.* Mr. Thynn. And I had a Flambeau in my Hand, and was going before the Coach, and coming along, at the lower End of St. Alban's-street, I heard the Blunderbuss go off; so upon that I turned my Face back, and saw a great Smoke, and heard my Master cry out he was murdered: And I see three Horsemen riding away on the right-side of the Coach, and I pursued after them, and cried out, Murder: I ran to the upper End of the Hay-market, till I was quite spent, and was able to go no further; and turning back again, my Master was got into the House, and I understood he was wounded: That is all I know.

*Mr. Williams.* You say you heard a Blunderbuss go off, and turning back, you saw three Men riding away from the Coach?—*Cole.* Yes.

*Mr. Williams.* Look upon the Prisoners at the Bar: Can you say all of them, or any of them were the Men?

*Cole.* No, I cannot; I did not see their Faces, but I saw the Horse of one of them was a little Bay Horse.

*Mr. Williams.* But do you take any of them Men to be one of the three?

*Cole.* I did not see any of their Faces.

*Sir Fra. Winn.* What Time of Night was it?

*Cole.* A Quarter after Eight.

*Sir Fra. Winn.* Pray what Day of the Week?—*Cole.* Sunday.

*Sir Fra. Winn.* What Day of the Month?

*Cole.* The 11th or 12th of February.

*Sir Fra. Winn.* Then, where is William Ellers? Pray do you tell the Court and Jury how Mr. Thynn was wounded, and by whom, and what you know of it.

*Ellers.* My Lord, I came with my Master from St. James's-street, from my Lady Northumberland's, and as I came at St. Alban's-street, there came three Men riding by the right-side of the Coach, and as they rid, one of them turned about, and bid me stop, you Dog; and just as I looked about, the Fire was let into the Coach upon my Master, and the Men ran away as fast as they could.

*Sir Fra. Winn.* How many were there of them?

*Ellers.* There were three.

*Sir Fra. Winn.* Were those Men at the Bar, or any of them the Persons?

*Ellers.* I cannot tell.

*Sir Fra. Winn.* What were the Words they said when the Coach was stopped? Hold, hold, or stop, you Dog?

*Mr. Williams.* What Condition was your Master in then? Was he shot then?—*Ellers.* Yes.

*Mr. Williams.* We will give you some Evidence now out of their Examinations.

*L. C. J.* You had best give some Evidence of his Wounds.

*Mr. Williams.* Yes, we will. Call Mr. Hobbs the Surgeon.

*L. C. J.* Look you, Mr. Craven, you hear what these Witnesses say, tell it to the Gentlemen of the Jury that are Outlandish Men, That these Witnesses swear, there were three Men did do this Thing; the one of them stopped the Coach, and the other shot into it, but it was at that Time of Night, they could not know their Faces, and they all rid away.

*Mr. Craven.* My Lord, if you please, the Witnesses may speak by Degrees, and between every Witness I will give the Jury an Account.

*L. C. J.* Well, it shall be so; but they say no more than what I tell you, That three Men did do this.

*Then he interpreted it to the Jury.*

*L. C. J.* What says that Gentleman to you?

*Mr. Craven.* He says he hears that three Men did do it, but he says, he does not hear that they knew any of them.

*Then Mr. Hobbs was sworn.*

*Mr. Williams.* Had you the searching of Mr. Thynn's Body after it was hurt?—*Mr. Hobbs.* Yes.

*Mr. Williams.* How did you find him?

*Mr. Hobbs.* I was with him, Sir, that Night he was wounded, and I found him shot with four Bullets, which entered into his Body and tore his Guts, and wounded his Liver and his Stomach, and his Gall, and wounded his great Guts, and his small Guts, and broke one of the Ribs, and wounded the great Bone below.

*Sir Fra. Winn.* What Time came you to him?

*Mr. Hobbs.* About nine or ten of the Clock.

*Sir Fra. Winn.* Did he die of those Wounds?

*Mr. Hobbs.* Yes he did die of those Wounds.

*Mr. Williams.* Did you apprehend them all mortal, or any, or which of them?

*Mr. Hobbs.* I believe there was never a Wound but it might prove mortal.

*Sir Fra. Winn.* Now tell us what Day of the Week, and what Day of the Month it was.

*Mr. Hobbs.* It was Sunday Night, the 12th of February, I think.

*L. C. J.* What did you observe of the Bullets; was there any thing done to them more than ordinary?

*Mr. Hobbs.* I could not see any thing, I have them here, my Lord.

*L. Chief Baron.* Were they Iron or Lead?

*Then Mr. Hobbs delivered them into Court.*

*Mr. Hobbs.* Two of them, the little ones, may be Iron; for one of them went through a thick Bone, and yet there was no Impression on it.

*L. C. J.* And this that has the Impression, you think might be done against the Bones.—*Mr. Hobbs.* Yes.

*L. C. J.* Was this left ragged on purpose to do the more Mischief?

*Mr. Hobbs.* Which, my Lord?

*L. C. J.* This that is left at the End here. Would this be more mortal than another Bullet, or harder to heal?

*Mr. Hobbs.* No, but as they take up a greater Space in flying.

*L. C. J.* Would not the Raggedness hinder the Healing?

*Mr. Hobbs.* No, only bruise the Flesh, which bruised Flesh must come away before it can be healed. All Bullets wound by bruising of the Flesh.

\* These Examinations are inserted at the End of this Trial, the Chief Justice, out of Favour to Count Coningsmark, not permitting them to be read in Court, as he thought to have done; for the Examinations are indeed no Evidence against any but the Examinant, yet are they not to be suppressed because naming others, but ought nevertheless to be read, though with the aforesaid Caution to be given to the Jury, otherwise the most material Evidence might be quite neglected, since all Confessions must be taken entire, or not at all.

*L. C. J.* Well, these were the four Bullets that were found in Mr. Thynn's Body?

*Mr. Hobbs.* I verily believe they are. Dr. Lower had them out of my Hands for a Day or two, but I believe them to be the same.

*L. C. J.* Was there any lodged in the Stomach?

*Mr. Hobbs.* Yes, one of the little ones.

*L. C. J.* Had they broke the great Bone?

*Mr. Hobbs.* Yes, the great Bone in the Bottom of the Belly.

*L. C. J.* Two of them?

*Mr. Hobbs.* A great one and a little one; two of them passed through that Bone, and lodged in the Back-bone.

*L. C. J.* Was any of them gone through the Body?

*Mr. Hobbs.* One of them lay between the Ribs and the Skin.

*L. C. J.* None were got quite through then?—*Mr. Hobbs.* None.

*Sir Fra. Winn.* Call the Coroner, Mr. White.

*L. C. J.* Tell the Jury, Mr. Craven, what this Witness has said.

*[Then he interpreted it.]*

*L. C. J.* What says that Gentleman?

*Mr. Craven.* He says 'tis very well, he understands part of it.

*L. C. J.* Do the rest of them understand it?

*Sir N. Johnson.* He told it in French to the others.

*L. C. J.* Let Mr. Hobbs have the Bullets again when the Jury have seen them.

*Then Mr. White was sworn.*

*Sir Fra. Winn.* Now we will ask the Coroner a Question or two. Pray will you acquaint my Lord, what you know of this Murder of Mr. Thynn.

*Mr. White.* On the thirteenth of February, in the Afternoon, I sat upon the Body of Thomas Thynn, Esq; and I found he had four Holes on his right-side, behind his short-ribs, and they seemed to be like Holes made with Bullets. And I gave Order to open the Body.

*L. C. J.* And there the Bullets were found?

*Mr. White.* There the Surgeon found them.

*L. C. J.* Were you by?

*Mr. White.* I was at the taking them out.

*L. C. J.* 'Tis fit that the Polander should have one to interpret what is said against him.

*Mr. Williams.* Captain Vratz, you hear what is said, and understand it.

*Interpreter.* He says he does understand it.

*Mr. Williams.* Pray tell the Polander what is said. That is, the two first Witnesses say, Three Persons assaulted the Coach, and one shot into the Coach, and by that Means Mr. Thynn was killed, by the Shot out of the Blunderbuss: And the Surgeon does say, that these four Bullets were found in his Body.

*[Then it was interpreted to the Polander.]*

*Interpreter.* He says, my Lord, he cannot tell how many Bullets were in, he did not charge it himself, but he fired it, he says.

*Sir Fra. Winn.* He confesses he fired then.

*Sir W. Roberts.* My Lord, the Jury desire to know if the Pole can tell who did charge it?—*L. C. J.* North. Ask him who charged it.

*Interpreter.* He can tell, my Lord, he says.

*L. C. J.* It will not be very material that, for his Evidence can charge no Body but himself.

*Sir Fra. Winn.* Now, my Lord, if you please, we will call those Persons, the Justices of the Peace that examined these Men upon their Apprehension, for the Murder of Mr. Thynn. Call Mr. Bridgman and Sir John Reresby.

*[Who were sworn standing upon the Bench.]*

*Interpreter.* My Lord, he says the Blunderbuss was given him by the Captain.

*Sir Fra. Winn.* Mr. Bridgman, were you by at the taking of the Examination of these Persons?

*Mr. Bridgman.* Yes, I was. And these were the Examinations that were taken.

*Sir Fra. Winn.* Were you by all the while?

*Mr. Bridgman.* Sir John Reresby and I did take these Examinations\*. And I will read them if you please.

*L. C. J.* As to that, let it alone, if you please. Mr. Bridgman, when the Polander was examined concerning this Murder, what did he say?

*Mr. Bridgman.* He owned it, to the best of my Remembrance; but I refer to the Examination if I mistake.

*L. C. J.* Look upon it to refresh your Memory, Sir, and then tell us.

*Mr. Williams.* Look first what the Polander said, and then we will go on to the others.

*Sir Fra. Winn.* Now, Sir, will you please to acquaint my Lord and the Jury what he or any of them confessed of the Fact.

*L. C. J.* What the Polander confessed first.

*Mr. Bridgman.* The Polander, upon his Examination before Sir John Reresby and me, did own that he came into England at the Desire of Count Coningsmark.

*L. C. J.* Speak only as to himself; for it is Evidence only against himself.

*Sir Fra. Winn.* My Lord, his Confession is entire, and we can't separate it.

*L. C. J.* But we must direct what is just and fitting. His Evidence can charge no body but himself; and that is the Reason I would not have his Examination read; for it cannot be read but only against himself.

*Mr. Bridgman.* Upon his Examination he confessed, that he was present when the Captain stopped the Coach; that he fired the Musquetoon by the Captain's Order; and that before he did it, the Captain bid him, as soon as ever he had stopped the Coach to fire.

*Sir Fra. Winn.* Did he confess he did fire?

*Mr. Bridgman.* Yes, he did.

*L. C. J.* North. As he does now.

*L. C. J.* Look you, now do you tell the Polander, that the Evidence against him is, That he did fire this Musquetoon, or Blunderbuss, or what ayow will call it.—*Interpreter.* He does confess it.

*L. C. J.* Tell him what I say, that this Evidence is given against him: That he did formerly acknowledge he discharged the Blunderbuss into the Coach, when Captain Vratz stopped the Coach.



*Interpreter.* Yes, my Lord, he says 'tis true, he fired according to his Order.

*Sir Fra. Winn.* Pray, Sir, consider what was confessed by the Captain.

*Mr. Bridgman.* He confessed he had a Design to fight with Mr. Thynn, and Mr. Thynn having several times refused to fight with him, he resolved to oblige him to fight by Force, and therefore he had taken these Persons along with him; that if he should fail in his Revenge, or after the thing done he should be pursued, he might make his Escape. He confessed he was there, and stopped the Coach, but the *Polonian* fired by Mistake; for he did not bid him fire, but only in case he should be hindered from Fighting or making his Escape.

*L. C. J.* He confessed he came to fight Mr. Thynn?

*Mr. Bridgman.* Yes, he did so.

*L. C. J.* And that he stopped the Coach? *Mr. Bridgman.* Yes.

*Sir Fra. Winn.* You said after the thing was done, what was that thing?

*Mr. Bridgman.* After he had fought, in case he should be stopped in his Escape, he bid the *Polander* fire.

*Sir Fra. Winn.* Did he confess any thing of the Delivery of the Gun to him?

*Mr. Bridgman.* He confessed the *Polander* had the Gun, but he said nothing from whom he had it.

*L. C. J.* Now Captain *Vratz*, you hear what is said against you by this Gentleman; that you owned you came thither with a Design to fight Mr. Thynn, and force him to fight if he should not be willing; and you brought these Men with you to carry you off, in case you should kill him; that you did stop the Coach, and you said you did not give him Order to fire, unless he refused to fight you.

*Mr. Bridgman.* No, unless he could not make his Escape.

*L. C. J.* Now what say you to this?

*Sir N. Johnson.* He desires to understand it.

*L. C. J.* Why then speak it to him, you that are the Interpreter?

[Then Mr. Craven interpreted it to him in French.]

*L. C. J.* Now speak aloud, and tell us what he says.

*Mr. Craven.* He says 'tis very true, that he was there, and had that Gentleman and the *Polander* along with him as his Servants, Mr. Thynn being a Gentleman that had always a great many Servants about him. And he says, my Lord, that he had received an Affront from Mr. Thynn; upon that, he challenged him, and sent Letters out of *Holland* to desire him to give Satisfaction by Fighting, but could have no Satisfaction; and therefore because in *England* Duels were forbid, he thought to make a Rencounter of it, and took these Gentlemen along with him, that if so be Mr. Thynn's Servants should assault him, or knock him on the Head, or hinder him from escaping, that they might get him off.

*Sir Fra. Winn.* I beg one Favour of you, Sir, that you would ask him one Question, and that is, What the Affront was that Mr. Thynn gave him?

*L. C. J.* That he apprehends he gave him?

[The Interpreter asked him.]

*Mr. Craven.* My Lord, he says, That at *Richmond* he heard he spoke and gave out very ill Language of Count *Coningsmark*, who was his Friend, and a Man he had many Obligations to, and so of himself too, and he would never acquaint Count *Coningsmark* with it, but would have Satisfaction, and take the Quarrel upon himself, being a Gentleman; he says, that he heard that he called him *Hector*, and gave such ill Language as was never to be suffered.

*Sir N. Johnson.* And the Fashion in *Germany* is, if they won't fight, to shoot them.

*Sir Fra. Winn.* How can you tell that, Sir? the Interpreter that asked the Question says no such thing.

*L. C. J.* Pray will you ask him this, Whether ever he saw Mr. Thynn, and how many Times?

*Mr. Craven.* He says he has seen him several Times in the Playhouse, and riding in his Coach; he did not see him at *Richmond*, for if he had, he would not have put it up so long.

*Mr. Williams.* I believe he never spoke to him in his Life.

*L. C. J.* Ask him that Question, whether he ever spoke to him?

*Mr. Craven.* He says he had no Friend to send to Mr. Thynn, and he could not speak with Mr. Thynn himself; for Mr. Thynn might think that he was not a Gentleman good enough to fight with him.

*L. C. J.* Ask him this, about what Time he saw him at the Play-house?

*Mr. Craven.* He says he does not remember exactly the Time when he did see him at the Play-house.

*L. C. J.* Ask him whether this Affront that he pretends, was given him since he last came over, or when he was in *England* before?

*Mr. Craven.* He says 'tis eight Months ago since he received the Affront.

*L. C. J.* That was before he went out of *England*?

*Mr. Craven.* Yes, it was before.

*Sir Fra. Winn.* He says he writ to Mr. Thynn out of *Holland*; we desire to know by whom he sent his Challenge?

*L. C. J.* Ask him if he sent a Challenge to Mr. Thynn, and by whom?

*Mr. Craven.* He says he could send no less than a Gentleman; and he had never a Gentleman to send by, and so he sent his Letter by the Post.

*Mr. Williams.* Mr. Bridgman, now we would ask you concerning Mr. Stern, the third Man.

*Mr. Bridgman.* Let me have the Examination, and I will look upon it and tell you.

*Mr. Williams.* Pray, do Sir, tell us what he said?

*Mr. Bridgman.* Upon his Examination he confessed, that the Captain told him, he had a Quarrel with a Gentleman, and that if he would assist him in it, he would make his Fortune. And that the Captain gave him Money to buy the Blunderbuss.

*Sir Fra. Winn.* Stern did confess that, did he? *Mr. Bridgman.* Yes.

*L. C. J.* Did he confess he was at the Fact?

*Mr. Bridgman.* Yes, he confessed he was at the Fact; and he said, when he came beyond *Charing-Cross*, he was about ten Yards before, and he heard the Captain say, Stop, to the Coach, upon which he turned about, and presently saw the Shot made, and he saw the other Persons ride away, and he made away after them: And the Captain further told him, that he would give two or three, or four hundred Crowns, to find a Man that would kill Mr. Thynn.

*Sir Fra. Winn.* What did he speak about stabbing, or about an Italian?

*Mr. Bridgman.* He said that the Captain desired him to get an Italian that would stab a Man, and that he would get two *Poniards* for that Purpose; and that it was before the *Polonian* came over.

*L. C. J.* This is no Evidence against the Captain; but pray will you tell Stern the Lieutenant what it is that Mr. Bridgman does testify against him; that he acknowledged thus and thus before him. And pray speak it again, Mr. Bridgman.

*Mr. Bridgman.* The Captain told that Gentleman, that he had a Quarrel with a Gentleman, with whom he was resolved to fight; that he wanted a good Servant, and if he would assist him, he would make his Fortune; that he gave him Money to buy the Musquetoon, and owned he was there; that he went out with the Captain and *Polander* on Horseback, about five or six o'Clock on Sunday; that they went towards *Charing-Cross*, and when they were gone beyond *Charing-Cross* into the *Pail-Mall*, he heard the Captain say to the Coachman, Stop; and turning immediately, he saw the Shot go off; and that they riding away, he followed them: And that before the *Polander* came over, the Captain desired him to get an Italian to stab a Man.

[Then that was interpreted to Stern.]

*Mr. Craven.* My Lord, he denies that he spoke any thing of four hundred Pounds, or about the Italian.

*L. C. J.* Tell him it is testified, that he confessed he was at the Shooting of this Gentleman.

*Mr. Craven.* He says he was there, and being about ten Yards off, he heard one say, Hold to the Coach, but he cannot say it was the Captain.

*Sir Fra. Winn.* But was he there?—*Mr. Craven.* Yes, he says he was.

*Sir Fra. Winn.* Who caused him to be there?

*L. C. J.* Ask him upon what Occasion he was there?

*Mr. Craven.* He says the Captain entreated him to be there to be his Second, to fight with a Gentleman, and that was the Reason.

*L. C. J.* Pray tell him 'tis testified here, that he bought the Musquetoon and charged it.

*Mr. Craven.* He says, he did assist at the Loading of it, he was by.

*Sir Fra. Winn.* Pray, my Lord, let us know who it was assisted him?

*L. C. J.* Why, that is no Evidence against any body.

*Sir Fra. Winn.* But, my Lord, it was delivered to the *Polander* charged, and we desire to know who loaded it?

*L. C. J.* North. That is no Evidence; but yet the Question may be asked, and the Jury may be told 'tis no Evidence.

*L. C. J.* But we must not let the Jury be possessed by that which is not Evidence:

*L. C. J.* North. Pray will you ask him, Mr. Craven, who helped him to load the Gun?

*Mr. Craven.* The Captain was by, he says, and the Captain and he did it together.

*Sir Fra. Winn.* Now we will ask Sir John Reresby the same Questions: You were by, Sir, at the Examinations of these three Men, pray what did the *Polander* say upon his Examination?

*Sir John Reresby.* My Lord, I cannot charge my Memory with the Particulars; but if your Lordship pleases, I will read it.

*L. C. J.* No, refresh your Memory with it, and then tell us the Substance of it.

*Sir John Reresby.* In general, he did confess to me, that he was the Person that did discharge the Blunderbuss into Mr. Thynn's Coach, and that he was commanded so to do by Captain *Vratz*.

*L. C. J.* That is the Substance of all.

*Sir Fra. Winn.* That is as to him; but what did Captain *Vratz* say?

*L. C. J.* He said that he did go out with an Intention to fight with Mr. Thynn, and did take these Persons with him; that he did not order the *Polander* to discharge, but he mistook him when he bid the Coachman stand, the other apprehended he bid him shoot, and he did so.

*Mr. Williams.* What said Stern?

*Sir John Reresby.* Stern did say this, that the Captain told him he had a Quarrel with an English Gentleman, and desired him to go along with him and assist him in it, and be his Second; but, said he, I was chiefly carried out to keep off the People, in case there should be a Crowd about them when they were fighting; this is the chief Part of what they did confess.

*L. C. J.* We would not trouble you with more than is material. Did he acknowledge he was there at the Time when he was shot?

*Sir John Reresby.* Yes, he did, about nine or ten Yards off, I think.

*L. C. J.* All three confessed they were there?

*Sir John Reresby.* Yes, they did so.

*L. C. J.* North. They had a Design of killing, which was unlawful.

*Sir John Reresby.* They said they came on Purpose to fight.

*Sir Fra. Winn.* Call Michael Fenderoston. My Lord, we would willingly spare your Time, and offer only what is proper in this Case, and now we shall produce our Evidence against the Count, and if any thing fall out in that Evidence that touches these three Men (which we think will be but the killing of dead Men) your Lordship will take Notice of it. Now we shall not go to open the Heads of our Evidence against the Count, Sir Francis Withins has given an Account of the general, and our Witnesses will declare it.

*Mr. Williams.* We will begin with Frederick Hanson.

[Who was sworn and stood up.]

*Mr. Hanson.* How long have you known Count *Coningsmark*?

*Mr. Hanson.* A matter of four Years.

*Mr. Williams.* Pray do you remember his last coming into *England*?

*Mr. Hanson.* Yes, my Lord, I do remember it.

*Mr. Williams.* Then let us know the Time.

*Mr. Hanson.* I think 'tis above a Month since.

*Mr. Williams.* Where was his Lodging first?

*Mr. Hanson.* The first Time I saw him was in the Post-House.

*Mr. Williams.* Did he come privately or publicly?

*Mr. Hanson.* Privately, to my best Knowledge.

*Mr. Williams.* Which was his first Lodging?

*Mr. Hanson.* In the Hay-Market.

*Mr. Williams.* Where there?—*Mr. Hanson.* At the Corner House.

*Mr. Williams.* How long did he continue there?

*Mr. Hanson.* A matter of a Week.

*Mr. Williams.* Pray in all that Time did he keep privately at home, or did he go abroad sometimes?

*Mr. Hanson.* I believe he kept his Chamber all the Time.

*Mr. Wil.* Were you with him at any Time there?—*Mr. Hanson.* Yes, I was.

*Mr. Wil.* What Company did use to be with him to your Knowledge?

*Mr. Hanson.*



Mr. Hanſon. To my Knowledge I have ſeen Dr. Frederick in his Company.

Mr. Williams. One Dr. Frederick, you ſay, who elſe?

Mr. Hanſon. When I came from Whitehall on a Sunday in the Evening, when my Lord was going to Bed, I called, if I could be admitted to ſee him, ſo I went in to him, and a little after the Doctör came.

Sir Fr. Winn. Pray, Sir, at that Time that he was in that Lodging, did he wear his own Hair, or was he in a Diſguiſe?

Mr. Hanſon. That Sunday Night he was in his Night-Cap and Night-Gown, ready to go to Bed.

Mr. Williams. When you firſt came to him to the Poſt-houſe, did you go of your own Accord, or were you ſent for?

Mr. Hanſon. Count Coningsmark ſent for me.

Mr. Williams. Was it ſent in his own Name, or the Name of another?

Mr. Hanſon. It was in a ſtrange Name, *Carlo Cuſk*.

Mr. Williams. Have you the Note by you?—Mr. Hanſon. No.

Mr. Williams. In whoſe Character was it writ?

Mr. Hanſon. In the Count's own Character.

Sir Fr. Winn. What was his Name in his firſt Lodging? What Title was he called by, Captain, or what?

Mr. Hanſon. I know of no other Name but only the Stranger.

Sir Fr. Winn. Was it known to any Perſon in the Family?

Mr. Hanſon. No.

Mr. Williams. When did he remove from thence?

Mr. Hanſon. I know not.

Sir Fr. Winn. You ſay the firſt Place of his Lodging was in the Hay-market, where did you ſee him the ſecond Time?

Mr. Hanſon. At a Corner Houſe, I know not the Name of the Street.

Sir Fr. Withens. Did he direct you to come to him?

Mr. Williams. Had you any Diſcourſe with him, what his Buſineſs was here in England?

Mr. Hanſon. I aſked him, if we ſhould have his Company here ſome Time? He told me he was come over about ſome Buſineſs, and was afterwards to go into France.

Mr. Williams. Then he never told you what that Buſineſs was?

Mr. Hanſon. No.

Mr. Williams. Where was his ſecond Lodging, do you ſay?

Mr. Hanſon. It was at a Corner-Houſe, not above two Streets off from the former.

Mr. Williams. How long did he continue in his ſecond Lodging?

Mr. Hanſon. A few Days, becauſe the Chimney did ſo ſmoke, that he could have no Fire made in it.

Sir Fr. Winn. Then I aſk you in his ſecond Lodging, was he there publicly or privately?

Mr. Hanſon. He was there after the ſame Manner that he was in his firſt Lodging.

Mr. Williams. Whither went he afterwards?

Mr. Hanſon. To St. Martin's-Lane, I think it is called.

Mr. Williams. How long did he continue there?

Mr. Hanſon. There I ſaw him the laſt Time before he went away.

Mr. Williams. When was that?

Mr. Hanſon. It was Sunday Evening, after I came from Whitehall.

Mr. Williams. Was it near the Time of killing Mr. Thynn?

Mr. Hanſon. It was about two or three Hours afterwards.

Mr. Williams. Was he as private there as he was in his other Lodgings?

Mr. Hanſon. Yes.

Mr. Williams. What Company came to him thither?

Mr. Hanſon. The ſame that came to him in the other.

Sir Fr. Winn. Who were they?

Mr. Hanſon. The Doctör was in his Company.

Sir Fr. Winn. And who elſe?

Mr. Hanſon. I ſaw one Captain Vratz there.

Sir Fr. Winn. Sir, I aſk you upon your Oath, you are a Man of Underſtanding, Did you frequently ſee Captain Vratz in his Company? How often do you remember you ſaw him at his Lodging?

Mr. Hanſon. I do not remember that I ſaw Captain Vratz at that Lodging above one ſingle Time.

Mr. Williams. Pray, Sir, thus: Did Captain Vratz come with the Count into England this laſt Time?

Mr. Hanſon. To my beſt Remembrance he did.

Mr. Williams. You ſay Captain Vratz came with the Count to England.

Mr. Hanſon. I believe he was before the Count, but not long before: I can't exactly tell.

Mr. Williams. How long before the Count?

Mr. Hanſon. Truly I can't tell, but I believe not long.

Mr. Williams. What makes you think he came into England with him?

Mr. Hanſon. Becauſe I ſaw him in Company with the Count, as ſoon as I ſaw the Count.

Mr. Williams. Were they in Company at the Poſt-Houſe?

Mr. Hanſon. Yes.

Sir Fr. Winn. And you ſaw him once at his firſt Lodging?

Mr. Hanſon. Yes.

Mr. Williams. Pray, Sir, have you carried any Meſſage from the Count to the Swediſh Reſident?

Mr. Hanſon. My Lord, I can ſay this upon my Oath, to my beſt Remembrance, Count Coningsmark never charged me, or gave me any poſitive Order to go to the Swediſh Envoy, but he did name the Swediſh Envoy to me, as if he were willing to know his Advice; and ſo I being obliged to pay my Reſpects to the Swediſh Envoy, who had treated the young Count and myſelf very civilly before; and ſo paying my Reſpects to the ſaid Envoy, I did remember the Converſation I had with the Count, and ſpoke with the ſaid Envoy about this Buſineſs, and that is all that I can ſay.

Sir Fr. Winn. What was that Meſſage?

Mr. Hanſon. I ſay there was no direct Meſſage: But I ſay this was the Buſineſs: Count Coningsmark told me in private familiar Diſcourſe, that he had heard that Eſquire Thynn had ſpoken ſome abuſive Language of him, and he would fain know what the Conſequence of this would be, if he

ſhould call him to Account about this Buſineſs: And he named the Swediſh Envoy to me: And I ſaw his Deſire was to know his Opinion about the Buſineſs, what the Conſequence of it would be. So I ſpoke to the Swediſh Envoy, and he gave me this Answer, That if the Count ſhould any way meddle with Eſquire Thynn, he would have but a bad Living in England; but what the Law would ſay in that particular Caſe he could not answer, but he would enquire, and afterwards would give me an Account; but I never ſpoke with him after.

Sir Fr. Winn. I aſk you, becauſe you have been formerly examined in another Place, about this Matter; Do you remember any Thing that ever you heard the Count ſpeaking of fighting with Mr. Thynn?

Mr. Hanſon. Count Coningsmark ſpoke to me in the German Language; I ſpoke to the Swediſh Agent in French; and when I was before the King and Council I ſpoke in Engliſh; therefore I deſire no evil Conſtruction may be made of it. I cannot remember the Count ſpoke of killing or duelling. On the contrary I can ſwear for Count Coningsmark this, That I am confident he never told me that he had reſolved or would fight with Mr. Thynn or would call him to Account, but if he ſhould call him to Account, what would be the Conſequence of it.

Sir Fr. Winn. Call him to Account, about what?

Mr. Hanſon. The Count in familiar Diſcourſe with me did tell me, that he had heard Eſquire Thynn had ſpoke abuſively of him.

Sir Fr. Winn. How had he ſpoken abuſively of him?

Mr. Hanſon. He reflected upon his Perſon and upon his Horſe.

Mr. Williams. Was there any Thing in that Meſſage about marrying my Lady Ogle?

Mr. Hanſon. That was the laſt Part of the Queſtion, That if he ſhould meddle with Eſquire Thynn, what the Conſequence might be, if the Laws of England would be contrary to him in the Hopes or Pretenſions he might have to my Lady Ogle.

Mr. Williams. You mince your Words mightily; pray remember yourſelf; Did he ſpeak of killing Mr. Thynn, or that Mr. Thynn ſhould be deſtroyed?

Mr. Hanſon. No, his Phraſe was, if he ſhould have an Advantage of him, when he ſhould meddle with him, or call him to an Account, what the Conſequence might be; I can ſay this upon my Conſcience.

Sir Fr. Winn. Sir, you are in a Place where you are ſworn to ſpeak the Truth, the whole Truth, and nothing but the Truth: What Relation have you to Count Coningsmark's Family?

Mr. Hanſon. I have no Relation to the Family at all.

Sir Fr. Winn. Are not you Governor to the young Count?

Mr. Hanſon. The Counteſs has given me her younger Son, for me to be his Companion in his Travels.

Sir Fr. Winn. Sir, I aſk you a plain Queſtion, let it lie at your own Door, if you won't tell the Truth; had you any Converſation with Count Coningsmark, wherein he did deſire you to aſk Advice of the Swediſh Envoy or Reſident here, about duelling Mr. Thynn, or in Caſe he ſhould kill Mr. Thynn, or upon any ſuch Account?

Mr. Hanſon. My Lord, I ſay this was ſpoken in ſeveral Languages, by the Count in Dutch, by myſelf to the Envoy in French; and I do know I ſwore before the King and Council, but I cannot lay this to Count Coningsmark's Charge, for then I muſt forſwear myſelf.

Sir Fr. Winn. Sir, you can answer me all my Queſtions in Engliſh, if you pleaſe, what the Diſcourſe was.

L. C. J. Pray, Sir, thus: What was the Diſcourſe, as near as you can remember it, between Count Coningsmark and you, relating to Mr. Thynn.

L. C. J. North. Tell the whole, Sir, for you are bound to tell the whole indifferently.

Sir Fr. Winn. And pray remember what you ſwore in another Place.

Mr. Hanſon. The Count ſent to me a Note, that he had a Mind to ſpeak with me, and he entertained me with a familiar Diſcourſe about his Travelling, and about the ſettling of his Buſineſs, and thereupon he fell upon other Diſcourſe about Mr. Thynn, and, not to miſtake, having had Time in my own Chamber, I have put it down in Writing, to ſatisfy my Lord and all this honourable Court, what I can ſay about this Matter.

[Mr. Hanſon reads—'Tis very hard to give a true Account.]

L. C. J. Read it to yourſelf, if you will, and tell us the Subſtance.

Mr. Hanſon. If my Words may not turn to the Prejudice of my Lord Count Coningsmark; but this is the Subſtance of the Thing. My Lord Count Coningsmark did tell me in a familiar Diſcourſe, that Eſquire Thynn had ſpoken ſome reflecting Words upon him; he did deſire to know if he did call him to Account, whether in this Caſe the Laws of England might not go contrary to his Deſign, in his Pretenſions that he might have upon my Lady Ogle. And in that familiar Diſcourſe, he ſeemed to think that Monſieur Lienburgh could give him Advice. In a little while afterwards, I was paying my Reſpects to the Envoy, and reflecting upon the Count's Converſation, I ſpoke to him about this Buſineſs, and his answer was this; he told me, that if he ſhould meddle with Mr. Thynn, he would have no good Living in England: But as to the particular Queſtion, what the Conſequence of the Law might be, he did not know, but would enquire and tell me; but I never aſked him any Queſtion about it afterwards. And if my Converſation with this Count, or with Monſieur Lienburgh, ſhould turn to the Count's Prejudice, I ſhould be answerable for it to God and my own Conſcience, all the Days of my Life. I deſire Mr. Thynn's Blood might be revenged, but I deſire alſo that innocent Blood may be ſpared.

Sir Fr. Winn. Pray, Sir, will you look upon that Paper; you ſigned it.

L. C. J. North. Only to recollect your Memory.

[Then he was ſhewed his Examination before the Council.]

L. C. J. Now you have read it over; that there is under your own Hand? Do you now again deliver the Subſtance of your Diſcourſe you had with Count Coningsmark, as you will ſtand by it.

Mr. Hanſon. I ſee that there are Expreſſions in this Paper.

L. C. J. Speak not what is in that Paper, but what Diſcourſe (as near as you can) you had with Count Coningsmark.

Mr. Hanſon. My Diſcourſe with Count Coningsmark was this: In a familiar Diſcourſe amongſt other Things, he ſpoke, that he heard Eſquire



quire *Thynn* had affronted him, I don't know upon what Subject; but I believe it was Words reflecting upon him and his Horse; he did not tell me that he desired me to go, nor did he give me any positive Charge to go to the *Swedish* Envoy, but by the Discourse I had with him, I did understand that he was desirous to have his Advice; I thought his Inclinations were, that I should go and ask his Advice; I did not go on purpose to do the Message, nor did I receive any Order that can be called a Message, in my Life, to my Remembrance; but when I came to pay my Respects in a familiar Discourse, I did propose this to the Envoy; what might be the Consequence, if the Count should call Mr. *Thynn* to Account; and he told me the same Answer that I have already told you. Now this I desire only to consider, that it was spoken in divers Languages; and if a Man should write down my Expressions now, as they came from me, they would upon reading, perhaps, appear not so well; so if these Expressions of mine should turn to Count *Coningsmark's* Prejudice, as that I should swear that this Phrase of killing or duelling was used, or that ever Count *Coningsmark* told me that he resolved to call, or that he would call him to an Account, I might do him Wrong, perhaps; but if he should call him to Account, what might be the Consequence of it.

Sir *Fra. Winn*. I would not entangle you, but only I would seek after the Truth. I do not ask you positively, whether he did bid you go to ask Advice of the *Swedish* Envoy, that he did resolve so and so; but did he discourse it thus, if he should duel him, or fight him?

Mr. *Hanson*. As I am before God Almighty, I cannot say I heard such Expressions.

Mr. *Williams*. Pray, Sir, you confess you acquainted the Envoy with it?

Mr. *Hanson*. Yes.

Mr. *Williams*. Did you bring the Envoy's Answer to the Gentleman, or no?

Mr. *Hanson*. If I should be upon the Gospel, I am sure I cannot exactly tell what was the Expression.

L. C. *Baron*. What was it that you discerned he doubted, if he did call Mr. *Thynn* to Account?

Sir *Fra. Winn*. He spoke in Relation to a Marriage, pray what was it?

Mr. *Williams*. What did that relate to?

Mr. *Hanson*. If he should ask him Satisfaction about it, having heard that he had spoken abusive Words of him.

Sir *Fra. Winn*. What then was to follow?

Mr. *Hanson*. If he should call him to Account then how the Laws of *England* might do in this Point.

Mr. *Williams*. To whom?—Mr. *Hanson*. To the Count.

Mr. *Williams*. What should befall him?

Mr. *Hanson*. Whether the Law should be contrary to him in the Design and Proposals he might have concerning the young Countess of *Ogle*.

Mr. *Williams*. Well, I see you will give no reasonable Answer to that; but now when came the *Polander* over into *England*?

Mr. *Hanson*. I cannot say positively I can tell when he came.

Mr. *Williams*. But when did you see him first?

Mr. *Hanson*. Upon the *Friday* he came and asked me for the Count at Monsieur *Faubert's* Academy. Now the young Count *Coningsmark's* Chamber and mine joins together, next to one another, and there came a Man with him, I do not know his Name, but if I see the Man I know him.

Mr. *Williams*. You say the *Polander* came over on *Friday*.

Mr. *Hanson*. He came to me on *Friday*.

Mr. *Williams*. And he came to you to the *French Academy*, to enquire for Count *Coningsmark*?—Mr. *Hanson*. Yes, he did so.

Mr. *Williams*. Had he any Letters?

Mr. *Hanson*. Yes, he had two Letters.

Mr. *Williams*. From whom, and to whom?

Mr. *Hanson*. I asked him if he had any Letter for Count *Coningsmark*, and he said no; but he told me he had two Letters, and the one was to the Count's Secretary, and the other was to the Count's Steward in *London*. So I gave him back his Letters, and asked him whence he came? He told me he was just come into *England*. I asked him whether he had been a great while at Sea? And he told me yes; and that it was stormy, and he had like to have been cast away: said I, I hear you are expected, therefore have you paid your Lodging? No, said he; then, said I, go and pay your Lodging, and come to me in the Morning early.

Sir *Fra. Winn*. You say you heard he was expected, pray who expected him?

Mr. *Hanson*. The Count; for he had spoken formerly twice of the *Polander*, and in the great Storm thought he had been drowned. To the best of my Remembrance, I have heard the Count speak twice of this *Polander*.

Sir *Fra. Winn*. Of this Man?

Mr. *Hanson*. I suppose it is the same.

Sir *Fra. Winn*. You say you saw him on *Friday*?

Mr. *Hanson*. Yes, I did.

Mr. *Williams*. When did he speak of the stormy Weather, and that he was afraid the *Polander* might miscarry?

Mr. *Hanson*. About twelve or thirteen Days before.

Mr. *Williams*. Now say as near as you can what the Count said.

Mr. *Hanson*. He said the *Polander* was a mighty able Man, and understood Horses, and the Count had a Mind to buy *English* Horses, and intended to have had this *Polander* as a Groom, to dress them after the *German* Way, and no Man was abler than the *Polander* to do it; and when he spoke of it, I went once to the 'Change, and enquired whether the Ship was lost?

Sir *Fra. Winn*. By whose Direction did you go to enquire whether the Ship was lost?

Mr. *Hanson*. I had no Direction, but only Count *Coningsmark's* speaking about it.

Sir *Fra. Winn*. He seemed to be concerned at it, did he?

Mr. *Hanson*. Yes, he was afraid that the *Polander* would be drowned.

Mr. *Williams*. You say you directed him to clear his Quarters?

Mr. *Hanson*. Yes, I did so.

Mr. *Williams*. Did you see him again the next Day?

Mr. *Hanson*. Yes, he came the next Day.

Mr. *Williams*. Was he the next Day in Company with the Count, or no?

Mr. *Hanson*. I brought him to the Count.

Sir *Fra. Winn*. Where?

Mr. *Hanson*. It was a little before Noon; because I went the Back way, and left him at the Count's Lodging.

Mr. *Williams*. Did you leave him with the Count?

Mr. *Hanson*. Yes, I did.

Mr. *Williams*. Pray as long as you were there, what passed between the Count and the *Polander*?

Mr. *Hanson*. I remember very well what passed between the Count and him, for I have thought of it. He spoke to him, and called him *Thou*, as to his Servant, and asked him where he had been all the while? And he answered, he had been at Sea, and tossed up and down.

Sir *Fra. Withens*. Pray what Directions had you given about a Sword for that *Polander*?

Mr. *Hanson*. I went to the Count's Lodgings, and being desired by him to stay, I desired he would excuse me, for I could not stay, because I was to go about another Business; he told me the Fellow was all naked, and he had no Man to send to buy him a Riding-Coat; I told him I would very willingly and heartily do it. And after I had dined I went to an House near the *Hay-Market*, and bought a Riding-Coat, and brought the Riding-Coat to the Count's Lodgings. I delivered it to the Count. Then the Count told me his Man had never a Sword, and I asked him how much his Lordship would please to bestow on a Sword, he told me a matter of 10s. or thereabouts; I told him I did not know where I should get such a Sword, nor how to send for it, because I was to meet his Brother; but I withal said, it is no Matter for that, I will take Care you shall have it this Evening; I went into St. *Martin's-Lane*, but could not find ever a Sword worth a Groat. Then I went as far as *Charing-Cross* to a Cutler whom I knew, so I told him, Sir, said I, I have a Commission to bestow ten Shillings upon a Sword for a Servant, therefore, said I, I leave it to your Discretion, use my Friend well, and use yourself favourably too. I asked him when I should have the Sword, he told me in the Evening; I told him I would call for it when I came from the Play, where I was to be with the Count's Brother. When I came back with the young Count *Coningsmark* from the Play, I called for the Sword, but he told me it was not ready. I seemed to be a little angry, and told him that it was strange, a Gentleman could not get a little Sword ready for him in an whole Afternoon. Well, Sir, said he, pray do not be impatient, I will send you the Sword, and afterwards he sent it to the Academy, and I afterwards sent the Sword to Count *Coningsmark's* Lodgings.

Mr. *Williams*. Pray had you this Direction for the Sword after you had brought the *Polander* to the Count, or before?

Mr. *Hanson*. Count *Coningsmark* did never give me any Direction or charge to buy a Sword for him, but I did offer my Service, if he pleased, because he said he had no Body to send.

Mr. *Williams*. Sir, you do not know the Question, or you won't apprehend it; pray, when had you this Direction from the Count to buy this Sword?

Mr. *Hanson*. On *Saturday* in the Afternoon.

Mr. *Williams*. When was it you brought the *Polander* to the Count?

Mr. *Hanson*. In the Morning.

Mr. *Fra. Winn*. Pray let me ask you another Question. When was it you first heard Mr. *Thynn* was killed?

Mr. *Hanson*. I heard it, I believe, about Eight o'Clock in the Evening on *Sunday*.

Sir *Fra. Winn*. Had you any Discourse with the Count about the Murder?

Mr. *Hanson*. Yes, I had.

Sir *Fra. Winn*. Pray tell what that Discourse was?

Mr. *Hanson*. I was at *Whitehall* till ten of the Clock, and then I went to the Count; but I desire this may not be taken as an extraordinary Visit, because I used to go to him on *Sundays* in the Evenings, and those three *Sundays* before he was taken, I used to come to him in the Evening, after I had been at *Whitehall*. When I came into his Lodgings, I found him in his Night-Cap, and his Night-Gown; he asked me what News, I told him I could tell him great News, and that was of the killing of *Esquire Thynn*, who was shot in his Coach: The Ambassador of *Sweden* had told me all that he had heard about it, and I told it him. After I had spoken of this Business, he asked me where his Brother was; I told him, his Brother was at the Duke of *Richmond's*. And after some Discourse I went away.

Sir *Fra. Winn*. When you told him of the Murder of Mr. *Thynn*, did he make no Answer, nor say any thing about it?

Mr. *Hanson*. He did not make me any Answer, by which I could conclude that Count *Coningsmark* was any Way concerned in the Business.

Sir *Fra. Withens*. Pray, Sir, I ask you upon your Oath, the Count is a Man of great Quality himself; when you told him of such an horrible Murder, what, did he say nothing about it?

Mr. *Hanson*. He asked me several Questions what the People did say, but I would not make any Mistake.

Sir *Fra. Winn*. Tell all he said, Sir, about it.

Mr. *Hanson*. I told him the greatest News I had was, the killing of Mr. *Thynn*; and I told him who brought the News; and I told him the Count was heartily angry at it, that such an Accident should happen; and I told him it was an *Italian* Trick, not used in *England*.

Sir *Fra. Winn*. What said he then?

Mr. *Williams*. Pray do you remember what he said?

Mr. *Hanson*. What I have answered now. He made me such Questions upon this Story as I have told you.

L. C. *J*. Let him explain himself: Pray, as near as you can, relate what Discourse you had with Count *Coningsmark* that *Sunday* Night, after you came to him and told him of the Murder.

Sir *Fra. Winn*. What did he say to you?

Mr. *Hanson*. I will tell you, my Lord; the Count was surprised every Man would be, to hear of so sad an Accident, and so the Count asked me what the People said, so I told him what I heard at *Whitehall*; I cannot call to my Memory all the Particulars; but I said the King was



heartily sorry, and all the Court, for so sad an Accident, and I must wrong myself, or Count Coningsmark, if I should undertake to relate exactly what passed, for I cannot remember it.

Mr. Williams. But you said just now, that you told the Count it looked like an Indian Trick, not used in England.—Mr. Hanson. Yes, I did so.

Mr. Williams. What did he reply to that?—Mr. Hanson. Not a Word.

Mr. Williams. Did he mention any thing of Fortifications to you then?

Mr. Hanson. Yes, he gave me a Plan, or a Draught of a Fortification done with his own Hand, and that was all the Discourse.

Mr. Williams. So then he diverted the Discourse to the Business of Fortification.

L. C. J. The Evidence is heard; what it is that he ended all the Discourse with, shewing him a Paper of Fortifications.

Sir Fr. Winn. But this he does say, he asked him what the People did say of it?

Mr. Hanson. For my Life, I dare not say I remember any more than I have told.

L. C. J. Look you, Sir, now will you in French deliver this for the Benefit of those Jurymen that don't understand English.

Mr. Williams. We pray, my Lord, that our Interpreter may do it.

L. C. J. When a Man can speak both Languages, he needs no Interpreter, he is his own best Interpreter.

Mr. Williams. My Lord, I will tell you why I ask it; there is a great deal of Difference, I find, where you examine a Man with the Hair, and where you examine him against the Hair: Where you find it difficult to make a Man answer, you will pump him with Questions, and cross-interrogate him, to sift out the Truth; now if you leave this Man to the Interpretation of what he hath said himself, he will make a fine Story of it, and we shall be never the wiser.

L. C. J. You may examine him in French, if you will.

Mr. Williams. And I understand none but Pedlar's French.

Sir Fr. Winn. The Truth of it is, what your Lordship says cannot be opposed regularly; but I do appeal to your Lordship, and all the Judges, and all the Court, whether this Man does answer like an ingenuous Man; you see he shifts.

L. C. J. I do not see it, nor do I believe any see he shifts in any thing you ask of him; either he tells you what the Question is, or the Reason of it; how far that is a Reason, is left to the Jury to consider.

Sir Fr. Winn. Certainly it can do no Hurt to have an Interpreter.

L. C. J. North. My Lord, if there be two Ways to take, 'tis best to take that which will give Satisfaction to all Persons; let him be asked by the Interpreter, what Questions the Counsel would have answered, and then let him tell his Answer in French.

L. C. J. If that be liked better, let it be so. Mr. Craven, can you tell the Substance of the Evidence that this Gentleman hath given?

Mr. Craven. No, I cannot, his Evidence has been so long, and so many cross Questions have been asked.

Sir Fr. Winn. I would spare your Time—

L. C. J. But this is the way to spend our Time.

Sir Fr. Winn. I know your Lordship does not value Time in such a Case as this, but you would have the Truth found out.

L. C. J. You must repeat first the Discourse you had with Count Coningsmark.

Sir Fr. Winn. My Lord, we will reduce it to two or three Questions. Mr. Craven, will you please to ask him what Discourse he had with Count Coningsmark.

Mr. Craven. He says, the Discourse he had with Count Coningsmark about the Polander, was, that he came over as a Groom to serve him to look after his Horses; that he had Occasion for several English Horses, and English Servants to look after them as Grooms; and among the rest of his Grooms, he intended the Polander should be one, to dress his Horses after the German Way.

Sir Fr. Winn. So far he goes as to that, That the Polander came over to serve the Count.

L. C. J. Look you Sir, does not he tell you, the Count had a Purpose to buy Horses here?

Mr. Craven. He says there was a Discourse about Bills of Exchange of 7000 Pistoles to buy Horses.

Sir Fr. Winn. Pray then will you ask him, what Discourse he had with Count Coningsmark about the Death of Mr. Thynn, and what the Consequences in Law might be?

Mr. Craven. My Lord, he says, that the Discourse with Count Coningsmark, concerning the Swedish Agent, was, That in Case he should ask Satisfaction of Mr. Thynn, for the Affronts that he had given him, not understanding the Customs of the Nation, if he should call him to Account, what Prejudice it might be to him; for he did not hear, he says, that Count Coningsmark designed any thing, or resolved upon killing him, or any thing of that Nature; but whether if he should call him to Account, what the Laws of England might be.

Mr. Williams. Call John Wright.

Sir N. Johnson. My Lord, the Count desires to know if he may be permitted to make his Defence against these Witnesses?

L. C. J. No, he is not to make his Defence now. But pray tell him, if my Lord have a Desire to ask any Questions of this Witness, he may ask what he pleases.

L. C. J. North. Let the Question be put to the Interpreter, that we may know what the Question is before the Witness gives an Answer.

Mr. Craven. He asks him, if he has not seen him often in his Lodging undressed than dressed, and whether he was not to take Physick from his Physician?

Mr. Hanson. I do not remember, that in all the Time I saw Count Coningsmark, I saw him dressed four times in his Coat, I cannot say I remember three times in all. The first time when he came, he was in a Campaign Coat; but all the time he was in his Lodging, as I remember, he was in his Night-Gown and Cap. As to the other Part of his Question, whether I heard that he took Physick? I say this, When I saw Count Coningsmark first at his Lodging, when I came to him, on the Sunday Evening, I was told the Count was in Bed: It was late, but I ventured to go into his Room, and sat a Quarter of an Hour there; and afterwards the Doctor came in,

Dr. Frederick, I saw him oftentimes at his Lodging; and at the same Time the young Count was sick of an Ague: And when he came one Evening to see the young Count, I asked him what was the Distemper the Count had? The Doctor answered me, that he had not told any body that the Count was sick, or what he was sick of, but he hoped in God, in a short time, he would be recovered.

Mr. Craven. He asks him if he gave any positive Order, that he should go of any Message to the Swedish Envoy?

Mr. Hanson. This I have answered before, and I say now, if this Discourse that I had with the Swedish Envoy, turn to the Lord Count Coningsmark's Prejudice, it would grate upon my Conscience all my Life: Count Coningsmark never gave me any positive Order to carry any Message; but I did gather, by his Discourse, that the Count might be desirous to know the Envoy's Opinion about this Question; and therefore I thought, the Count desiring it, I would do it to please him, rather than by Order. But I do not know that ever the Count had a Mind to give me such an Order, but I did it voluntarily.

L. C. J. In plain English, Did he ever direct you to go to the Swedish Envoy?

Mr. Hanson. No, my Lord, he never did direct me.

L. C. Bar. How came you to choose a Foreigner on know what the Laws of England are?

Mr. Hanson. I thought it would please the Count to know his Opinion.

L. C. Baron. But how came you to chuse a Foreigner, I ask?

Mr. Hanson. He has been 19 Years here in England, and sure he should know.

Mr. Craven. My Lord, he asks him if ever he told him that he had a Design to fight Mr. Thynn, or do him any Prejudice, or send him a Challenge?

Mr. Hanson. My Lord, I am upon my Oath, and this I say, I speak it before God and the Court, Count Coningsmark did never tell me that he had any Mind, or did resolve to call Esquire Thynn any ways to Account.

Mr. Williams. Call John Wright. [Who stood up and was sworn.]

Sir Fr. Winn. We shall ask him but a Question or two, my Lord.

Mr. Williams. Pray tell me the Time when this Polander came into England; that Man at the Bar?

Mr. Wright. He came the Tenth Day of this Month.

Mr. Williams. Pray what Ship did he come in? Where did you first meet with him?—Mr. Wright. Here in Town.

Mr. Williams. Where was it?

Mr. Wright. At the Cross-Keys in Throgmorton-Street.

Mr. Williams. Pray, when you first saw him, what did he ask you?

Mr. Wright. He asked me where Count Coningsmark's Lodgings were? I told him I thought he was at Oxford, I meant the young Gentleman, for I did not know the other was in Town; but I went and enquired, and they told me it was at Faubert's Academy.

Mr. Williams. Whither went you with the Polander then?

Mr. Wright. I went to my Lord's Lodgings.

Mr. Williams. What Lord?—Mr. Wright. The young Count's Lodgings.

Mr. Williams. Well, and what then?

Mr. Wright. And I came to Mr. Hanson, and he did deliver a Letter to Mr. Hanson, and I staid there about Half an Hour, or thereabouts.

Mr. Williams. When was this?

Mr. Wright. Upon Friday the tenth Day of this Month.

Mr. Williams. How long was Mr. Hanson and the Polander together?

Mr. Wright. About Half an Hour.

Mr. Williams. What said Hanson to him in your Presence?

Mr. Wright. Mr. Hanson said nothing.

Mr. Williams. Was there any thing said about going back and paying his Lodging, and coming back?

Mr. Wright. Mr. Hanson came down to me, and told me he was glad to see me, and bid me take the Polander back with me, and bring him to him to-morrow betimes, for he must dispatch him about his Business.

Sir Fr. Winn. Then he said nothing to the Polander?

Mr. Wright. No, but to me.

Sir Fr. Winn. Well, what did you do the next Morning?

Mr. Wright. I came to him the next Morning, to this Polander, and he took his Things with him, which was a Sea-bed that he had, and a Gun with a Wheel-Lock, and some other Things.

Sir Fr. Winn. And whither did you bring him?

Mr. Wright. I brought him to the Upper-End of the Hay-Market, Monsieur Faubert's School.

Mr. Williams. To what Place did you come in the Morning, say you?

Mr. Wright. Sir, if it please you, I brought him within a Door or two of Mr. Faubert's the Horse-master, that teaches to ride the great Horse; for he did desire that we might go to an House hard by, because he would not carry his Carriage to my Lord, he had a Sea-bed, a Portmanteau, a Gun, and other Things; and so I brought him to an House, and there I called for a Pot of Ale; and he put down his Things and went out, I thought he had gone to make Water, but within a little while after returns again, and Mr. Hanson comes in with him: He asked me why I did not come sooner; I told him I had some other Business, I was with some French Merchants to look upon some Goods. So he bid the Pole pay me for my Trouble, and take up his Things, and go along with him; and he did do so, and I never saw the Pole afterwards.

L. C. J. You that are the Interpreters, repeat what he hath said to the Jury. [Which was done.]

Sir Fr. Winn. We have done with this Man, the Use we make of him is to follow this Polander, and we shall bring him to the Count by and by.

Call Dr. Frederick Harder. [Who was sworn.]

L. C. J. The Doctor understands English, don't he?

Sir Fr. Winn. Yes, we are told he does.

Mr. Williams. How long have you known the Count that stands there at the Bar?

Dr. Harder. I have known him a good while, it may be this four or five Years. I have known him four or five Years.

Mr. Williams. How long have you known Capt. Vratz?

Dr. Harder. About a Year and a half, or two Years



Mr. Williams. Was my Lord and Capt. Vratz acquainted then?  
 Dr. Harder. Yes.  
 Mr. Williams. Was he in Employment under my Lord? Was he in the Count's Service?  
 Dr. Harder. He was with the Count, but whether he was his Companion I cannot tell.  
 Mr. Williams. Did he live with the Count?—Dr. Harder. Yes.  
 Mr. Williams. Did Captain Vratz, when the Count came last over into England, come over with him?  
 Dr. Harder. Yes, by my Knowledge.  
 L. C. J. Do you know it or not?  
 Dr. Harder. Captain Vratz came to me, and told me, my Lord desired to speak with me, and I went with him to my Lord.  
 Sir Fr. Winn. Was that the first Message you received from the Count?  
 Dr. Harder. Yes, it was.  
 Mr. Williams. How long was that ago?—Dr. Harder. The same Day the Morocco Ambassador did exercise in Hyde-Park.  
 Sir Fr. Winn. How long is that ago?  
 Dr. Harder. About a Month ago.  
 Sir Fr. Winn. What was that his first Lodging after he came last into England?—Dr. Harder. It was in the Hay-Market.  
 L. C. J. Was it a Corner-House, as the other Witnesses faith, or not?  
 Dr. Harder. Yes, it was.  
 Mr. Williams. Was the Count a private Lodger there?  
 Dr. Harder. He lay in his Bed when I came to him; he came as a Traveller privately.  
 Mr. Williams. Did he go by his own Name, or another Name?  
 Dr. Harder. No body did question him about his Name, but when I did come to him, I did discourse him about his Body.  
 Mr. Williams. Pray Sir, thus: You went often to visit him, pray did you enquire for him by his own Name, or any other Name?  
 Dr. Harder. He desired that he might be private, because he was to take some Medicines, and he would not have it known.  
 Mr. Williams. Now, Sir, I would ask you, did you observe him to be in any Disguise? Did he wear a Perriwig, or how?  
 Dr. Harder. He had a Perriwig.  
 Mr. Williams. Was it a fair Perriwig, or what Colour?  
 Dr. Harder. It was brown or black.  
 Sir Fr. Winn. Sir, was he in a Disguise, or no?  
 Dr. Harder. He had his own Clothes, but he had a Perriwig.  
 Sir Fr. Winn. Pray what Name did he go by, his right Name, or any particular Name?  
 Dr. Harder. In the first Beginning I gave him no Name; but, said he to me, if any Body ask you about me, I would not be known; for if they know that I lie privately thus, they will think I am some ill Distemper, therefore I would have you call me by the Name of *Carlo Cuski*.  
 Mr. Williams. Were you with him, pray Sir, upon the Sunday Morning that Mr. Thynn was murdered?  
 Dr. Harder. I cannot certainly tell, but I was with him in the After-noon.  
 Sir Fr. Winn. Pray call yourself to Mind, Sir.  
 Dr. Harder. I cannot certainly tell.  
 Sir Fr. Winn. What Time were you with him in the Evening?  
 Dr. Harder. At Nine o'Clock at Night, or thereabouts.  
 Mr. Williams. Did you receive any Letter from Capt. Vratz at any Time?  
 Dr. Harder. I did upon Saturday Morning, the Saturday before Mr. Thynn was murdered.  
 Sir Fr. Winn. Have you that Letter about you?—Dr. Harder. No.  
 Sir Fr. Winn. What was in the Letter?  
 Dr. Harder. He desired me to go to the Count, who had a Desire to speak with me. I came there, and had some Speech with him about his Indisposition. I told him he had better stay till next Day before he took Physick, because it was cold Weather. And after that, went with the *Polander* to my Lodging, and the Captain's Man came in, and then said, here is a Man that will direct you to Captain Vratz's Lodging; which I did not know.  
 Mr. Williams. Look you, Sir, you say you went to the Count, did you shew the Count that Letter from Capt. Vratz, or no?  
 Dr. Harder. The Count saw it.  
 Mr. Williams. Then hear a little, When was it you shew'd the Letter to the Count? Was it Saturday or Sunday?  
 Dr. Harder. It was Saturday.  
 Mr. Williams. Now, was the *Polander* then in the Count's Lodgings, or no?—Dr. Harder. Yes, he was.  
 Mr. Williams. Was there any Discourse about him then?  
 Dr. Harder. I had never seen him in my Life.  
 Mr. Williams. But was there any with the Count?  
 Dr. Harder. No, not at all.  
 Sir Fr. Winn. Then, upon your Oath, I ask you once more, Was the *Polander* ever in Company with you and my Lord at any Time?  
 Dr. Harder. No.  
 Sir Fr. Winn. Upon the Sunday, upon your Oath?—Dr. Harder. No.  
 Sir Fr. Winn. Nor the Saturday Evening?  
 Dr. Harder. No, I have not seen him since that Morning when the Captain's Man took him along with him to his Master.  
 Mr. Williams. Pray, how came the *Polander* into your Company on Saturday Morning?  
 Dr. Harder. I had him from my Lord's that Morning.  
 Mr. Williams. Then my Lord and the *Polander* were together?  
 Dr. Harder. No, they were not together.  
 Mr. Williams. Was the *Polander* in my Lord's Lodgings?  
 Dr. Harder. Yes, the *Polander* was below Stairs.  
 Mr. Williams. And did you take him from the Lodging?  
 Dr. Harder. Yes, I did.  
 Mr. Williams. How long did he continue with you?  
 Dr. Harder. Not at all, I went home with him.  
 Mr. Williams. Had you no Discourse with him?  
 Dr. Harder. No, none at all.  
 Mr. Williams. Where did you part with him?

Dr. Harder. I brought him to my House; and when he came in-a-doors, the Captain's Man being there, I told him there was a Man would shew him the Captain's Lodgings; and he took him away along with him.  
 Mr. Williams. You say, the Captain's Man had the *Polander* from you; pray name that Man?—Dr. Harder. I cannot tell his Name.  
 Mr. Williams. Was his Name *Berg*?  
 Dr. Harder. I believe it was.  
 Sir Fr. Winn. You say you delivered a Letter from Captain Vratz on Saturday Morning to the Count?—Dr. Harder. Yes.  
 Sir Fr. Winn. Did the Count read the Letter, and tell you the Contents of it?—Dr. Harder. No, it was not sealed.  
 Sir Fr. Winn. Did not you know the Contents of it then?  
 Dr. Harder. No.  
 Sir Fr. Winn. Pray, when you delivered the Letter from Captain Vratz to the Count, what did the Count say to you?—Dr. Harder. The Letter was not written to the Count, but it was writ to me.  
 Mr. Williams. What was the Reason that you shewed it to him then?  
 Dr. Harder. I received a Letter from Captain Vratz, that the Count desired to speak with me; and afterwards I was desired to direct this Man, the *Polander*, to Captain Vratz; and so I directed him to Captain Vratz, and nothing more I know.  
 Sir Fr. Winn. Well, Sir, one thing more and I have done with you; for you will not, I see, give a reasonable Answer: pray, when the *Polander* came along with you from the Count's, did you observe he had any thing about him?—Dr. Harder. He had a great Campaign Coat.  
 Sir Fr. Winn. Did he seem to have any thing under it?  
 Dr. Harder. He had a Portmanteau under it, I think, or some such thing.  
 Mr. Craven. My Lord, the Count desires to ask him some Questions.  
 L. C. J. Let him ask what Questions he will.  
 Mr. Craven. My Lord, he asks him whether he does not remember, when he first came to Town, he had not his Body full of Spots?  
 Dr. Harder. Yes, my Lord, when he came from *Tangier*, he had Spots over all his Breast; and it was feared they might get up higher towards his Neck, and endanger him very much.  
 Mr. Craven. He says, if my Lord pleases, he will shew it openly.  
 L. C. J. No, there is no need of that, Doctor. Did you give him Physick for that?  
 Dr. Harder. Yes, for that I did administer Physick to him.  
 Mr. Craven. He says, my Lord, he over-heated himself in riding to *Tangier*, thinking to do the King and the Nation Service, and the Heat broke out in Spots over his Breast.  
 L. C. J. The Doctor knows nothing of that.  
 Mr. Craven. He asks whether the Doctor was not desired by him to cure him? whether he did not tell him he would cure him of those Spots?  
 Dr. Harder. He desired me to administer Physick unto him.  
 Mr. Craven. He says he went to *Straßburgh*, and when he came back he was in the same Condition he was in before; and he asks whether the Doctor did not undertake to cure him?  
 Dr. Harder. Yes, I did administer Physick unto him; and this my own Man can testify and be Witness of; because my Lord bid me take Care that he might be private, for he would not have it known that he did take Physick; but I told my Man, said I, 'tis my Lord *Coningsmark*, and therefore pray take Care of him, and see that the Physick be made very well up.  
 L. C. J. You seem to intimate, as if he lay private to take Physick; pray let me ask you this Question, Did you give him Physick all this Time?  
 Dr. Harder. Not always purging Physick, but some Sort of Physick all the Time.  
 L. C. J. What every Night and Morning?  
 Dr. Harder. Yes, every Day.  
 Mr. Craven. The Count desires to ask him where he was that unhappy Day this Business was done?  
 Dr. Harder. I found him that Day ill, lying down upon the Bed, I asked him how his Physick had worked: he told me he was afraid he had got some Cold; and indeed I found him very much disordered, and I went home and fetched him some Physick to take that Night.  
 L. C. J. By the Oath you have taken, was there any other Occasion, or had you any other Discourse with him, when you came on the Sunday Night but concerning his Physick?  
 Dr. Harder. My Lord, I will tell you the Truth; I never heard the Count speak any Word in my Life, that he had any Concern, or Design of any Quarrel at all, nor any Discourse, but about the Administration of his Physick.  
 L. C. J. Let me ask you this Question, for they desire it here, What was the Occasion? and whether you know the Occasion, why my Lord altered his Lodgings so often?  
 Dr. Harder. The first Occasion was this; Because it was in the Hay-market; and his Man said it would be quickly known if he did continue there; so he would take another Lodging, which was in *Rupert-street*, and there he lodged three Days; but the Chimney did so smoke, that my Lord could not stay, because he could have no Fire in his Chamber, and the Weather was very cold, for it did snow, and therefore I told my Lord, it was not so proper for taking of Physick: Thereupon he desired me to take him another Lodging in *Queen-street*, which I did look about for, but it was not ready, so he had a Lodging taken for him in *St. Martin's-Lane*, where he lodged till he went away.  
 Mr. Williams. Pray, Sir, the Physick that you gave the Count, did it require his keeping within Doors? might not he walk abroad with it, upon your Oath?—Dr. Harder. It did require him to keep in.  
 Mr. Williams. Pray then, how comes it to pass that the Count so suddenly could go by Water to *Gravesend*?  
 Dr. Harder. I do not know what was done afterwards.  
 Sir Fr. Winn. I would ask you one Question, and I would fain have you give me a fair Answer to it, What became of the Letter that Captain Vratz writ to you, and you shewed to the Count?  
 Dr. Harder. It remained there upon the Table.  
 Sir Fr. Winn. Did not you keep your own Letter?  
 Dr. Harder. It was not of any Concern.  
 Sir Fr. Winn. If the Letter were written to you, it is not so long since, but you can tell us the Contents of it; Pray, what were the Contents?  
 L. C. J.



L. C. J. Can you remember what were the Contents?  
 Dr. Harder. He desired me to go to Count Coningsmark, who would speak with me, and that I would give his Man an Answer when I came from him.  
 Sir Fr. Winn. But what were you to go to the Count to do?  
 Dr. Harder. Nothing; but the Count discoursed to me about his own Body and Indisposition.  
 Sir Fr. Winn. But Captain Vratz was no Physician; why should he send you a Letter to talk about Physick?  
 Dr. Harder. It was nothing but my Lord would speak with me.  
 Mr. Williams. We need not trouble ourselves with this Fellow, he confesses he found the Polander in the Count's House.  
 Sir Fr. Withens. Pray, Sir, let me ask you, who was with the Count on Sunday Night?  
 Dr. Harder. Mr. Hanson was there, I think.  
 Sir Fr. Withens. Who else?  
 Dr. Harder. The Captain came in, and went out again.  
 Sir Fr. Winn. What Time of Night was it that Vratz came into the Count's House?  
 Dr. Harder. It was at the same Time that I was with him.  
 Sir Fr. Winn. That he swears to be about nine o'Clock: Was it after Mr. Thynn was killed?  
 Dr. Harder. We had not heard it.  
 Sir Fr. Winn. Sir, was it nine of the Clock?  
 Dr. Harder. Yes, it was.  
 Mr. Williams. You say you found the Polander at the Count's Lodgings?  
 Dr. Harder. Yes, upon Saturday Morning.  
 Mr. Williams. Then he came along with you from the Count's Lodgings?  
 Dr. Harder. Yes, to my House.  
 Mr. Williams. And you parted with him there?  
 Dr. Harder. Yes, the Captain's Man took him away with him.  
 Mr. Williams. That was Berg, wa'nt it?  
 Dr. Harder. Yes.

Then this Evidence was interpreted to the Jury.

Mr. Craven. He desires the Jury should know what the Doctor said about his Sickness.

L. C. J. Let it be repeated to them.

Mr. Craven. He desires to know whether he may not speak it in French himself?

L. C. J. No, the Interpreter must do it; (which was done.) My Lord, would you ask any more Questions of the Doctor?

Count Con. No more Questions but them I have asked.

Sir Fr. Winn. Call Thomas Howgood. [Who was sworn.]

Mr. Williams. Pray, did you sell any Sword to the Count?

Mr. Howgood. I sold a Sword to the Governor; a broad Horseman's Sword.

Mr. Williams. When was this?

Mr. Howgood. On Saturday was Fortnight.

Mr. Williams. What Time was it that he bespoke it?

Mr. Howgood. He bespoke it half an Hour after Six at Night.

Mr. Williams. What did he say to you when he bought it?

Mr. Howgood. He said he would call for it about eight o'Clock at Night, when he came from the Play.

Mr. Williams. What Kind of Sword was it?

Mr. Howgood. An Horseman's Sword, as broad as two Fingers, such as the Gentlemen of the Guards wear.

Sir Fr. Winn. When he came for the Sword, what said he?

Mr. Howgood. He was angry it was not done, and I told him that I would send it to him quickly.

Sir Fr. Winn. Where was it sent?

Mr. Howgood. To the Governor's Lodgings at the Accademy.

Mr. Williams. Now, my Lord, we will call several Persons that were privy to the concealing of this Gentleman, that can give you a better Account, Richard Hays and Robert French.

[Robert French appeared, and was sworn.]

Sir Fr. Winn. Pray will you tell my Lord what you know of the Count's concealing himself and changing his Habit.

Mr. French. I never saw him, my Lord, before I came here in Court; but it seems he did lodge in my House three or four Days.

Sir Fr. Winn. How long is it since?-----Mr. French. Between three Weeks and a Month ago, just ten Days before the Murder.

Sir Fr. Winn. What Name did he go by then?

Mr. French. I did not know his Name.

Sir Fr. Winn. Who used to resort to him at that Time?

L. C. J. You say, Sir, you saw him not, what Company did come to him?  
 Mr. French. I did not see him indeed.

Sir Fr. Winn. Pray did Captain Vratz come to him to your House?

Mr. French. He lodged with him all the Time.

Sir Fr. Winn. You say you know Capt. Vratz was there?

Mr. French. Yes.

Mr. Williams. Did Dr. Harder use to come to him?

Mr. French. Yes, several Times a Day.

Mr. Williams. What Name did he enquire for him by?

Mr. French. The Doctor took the Lodging, and it was for a Stranger; I heard no Name at all.

Interpret. My Lord desires to know, whether you did not suspect he took Physick in the House?  
 Mr. French. I suppose the Doctor did give you an Account of that; I don't know that he did.

Interpret. Did not your Maid know of any such Thing?

Mr. French. My Maid is here, she will give you an Account.

Sir Fr. Winn. Call Ann Prince: (Who was sworn.) Pray do you acquaint my Lord what you know of Count Coningsmark; whether ever you saw him at your Master's House in the Hay-market?

Prince. Yes, he lodged there.

Mr. Williams. When?

Prince. He came thither last Friday was a Month.

Mr. Williams. How long did he stay there?

Prince. Till Wednesday.

Mr. Williams. At that Time, who used to frequent his Company?

Prince. I know no body but the Doctor that used to come to him.

Mr. Williams. What Name did he go by?

Prince. No Name at all; as I know of; they did not ask for him by any Name.

Mr. Williams. Did the Captain use to come to him?

L. C. J. Her Master says he did lie there.

Prince. Yes, he used to lodge there.

Mr. Williams. Did the Captain give him any Physick?

L. C. J. No, but the Doctor did.

Sir Fr. Winn. He only asks a merry Question.

L. C. J. But we are now upon the Life and Death of a Man, pray let us have those Questions asked that are serious, not such light Things as are permitted in ordinary Cafes.

Sir Fr. Winn. Now, my Lord, we will call Francis Watts.

Mr. Craven. Maid, my Lord asks, whether he did not take a Vomit in your House?  
 Prince. Not that I know of.

Then Francis Watts was sworn.

L. C. J. How old is the Child?

Fr. Watts. Fifteen Years old last Christmas.

L. C. Baron. Ask him whether he understands what an Oath is?

Mr. Thynn. He was sworn before the King and Council.

L. C. Baron. If he were sworn before the Council, he may give Evidence here sure.

Sir Fr. Winn. Were you at the Count's Service at any Time?

Watts. Yes.

Sir Fr. Winn. How long?

Watts. I was with him eleven Days: I came to him upon the Friday.

Sir Fr. Winn. How long was it before the Death of Mr. Thynn?

Watts. I think it was ten Days before the Death of Mr. Thynn.

Sir Fr. Winn. What was your Employment with him?

Watts. His Boy to wait upon him.

Sir Fr. Winn. Did you lie in the same Lodging?

Watts. No, at my Father's.

Sir Fr. Winn. What was the Agreement between your Father and the Count?  
 Watts. Six-pence a Day and my Diet.

Sir Fr. Winn. What Company did you observe came to the Count's Lodgings?

Watts. That Gentleman there in the black Perriwig.

Sir Fr. Winn. Was he often with your Master?

Watts. Yes, every Day.

Sir Fr. Winn. How many Lodgings had he while you were with him?

Watts. Three: One in the Hay-market, and one in Rupert-Street, and then the last in St. Martin's.

Mr. Williams. Thus, Child; do you remember the Time of killing Mr. Thynn?  
 Watts. Yes.

Mr. Williams. Were you in your Master's Service then?

Watts. Yes, I was.

Mr. Williams. Who was in your Master's Company that Morning before Mr. Thynn was killed?

Watts. I came up, as I used to do in the Morning, to my Master, and he asked me what was the Matter with the Buffle in the Street? And I told him some body was taken upon Suspicion for killing Esquire Thynn.

Sir Fr. Winn. That was on Monday Morning; but the Sunday Morning before, what Company did you observe there then?

Watts. I cannot tell any Thing exactly of the Sunday Morning.

Sir Fr. Winn. Was Captain Vratz there?

Watts. I can't exactly remember.

Sir Fr. Winn. What Time in the Evening was it reported Mr. Thynn was killed?  
 Watts. About eight o'Clock.

Sir Fr. Winn. Can you tell who brought the first News?

Watts. One of my Lady Seymour's Maids, who was telling the People of it below.

Sir Fr. Winn. Did you observe any Body come to your Master's Lodgings afterwards?  
 Watts. Yes.

Sir Fr. Winn. Pray who came?

Watts. That Gentleman in the black Perriwig.

Mr. Williams. Pray in what Habit was he? And how came he in?

Watts. He came in a great Coat; I can't tell whether it was Cloth or Camblet.

Mr. Williams. And what, did he speak to any Body, or go strait up?

Watts. No, he spoke to no Body, but went strait up Stairs.

Mr. Williams. Did he go up to your Master's Lodgings?

Watts. Yes, I believe so, but I stayed below in the Shop.

Mr. Williams. How long did you stay in the Shop?

Watts. I stayed there about half an Hour.

Mr. Williams. Did you leave him there?  
 Watts. Yes, I did.

Mr. Williams. Did he continue there all the Time that you were in the House?  
 Watts. Yes.

Mr. Williams. What Time did you go away?

Watts. About three Quarters of an Hour after that Gentleman came in.

Sir Fr. Withens. Do you remember you had any Discourse with the Count, about riding on Sunday?

Watts. He asked me on Sunday in the Forenoon, whether People were suffered to ride about the Streets on Horseback on Sundays?

Sir Fr. Winn. This was that Sunday Morning, was it?

Watts. Yes: He asked if they might be suffered to ride about the Streets on Sunday? I told him yes, before Sermon-time and after Sermon-time.

Sir Fr. Winn. About what Time of the Day was it that he had heard this Discourse?

Watts. About ten or eleven o'Clock.

Sir Fr. Winn. Are you sure it was Sunday?  
 Watts. Yes.

Sir Fr. Winn. Then I ask you another Question: Upon Sunday Morning, or any other Time, do you remember that the Polander was with the Count, your Master?

Watts. He came in on the Saturday Morning.

Mr. Williams. Was he in the Company or Presence of the Count?

Watts. I was above Stairs when he came in.

Sir Fr. Winn.



Sir Fr. Winn. What do you know of any Sword that was delivered to him?  
 Watts. Upon the Sunday Morning there was a Sword brought to my Master's Lodgings, and my Master's Man took it of me, and carried it up Stairs, and this Man, the *Polander*, afterwards had it below Stairs.

Mr. Williams. When was this Sword brought to your Master's House?

Watts. It was on the Sunday Morning.

Mr. Williams. What, the Cutler brought the Sword?

Watts. No, it was sent by a Porter from Mr. Hanson.

Mr. Williams. What Room was it carried into when it was brought?

Watts. I think I did not carry it up: Yes, truly, now I remember, I did, and delivered it to my Master?

Mr. Williams. Pray what did the Count say to you?

Watts. I asked him if there needed an Answer to the Note I carried with it, and he said no.

Mr. Williams. To whom was the Sword delivered afterwards?

Watts. It was brought down, and afterwards this *Polander* had it.

Mr. Williams. That Man there?—Watts. Yes.

Mr. Williams. You say that the Sword was given to the *Polander*: Pray speak that the Jury may hear. Who brought down the Sword?

Watts. I saw it in the *Polander's* Keeping when it was below, but I cannot say who brought it down.

Sir Fr. Winn. Where did the *Polander* dine on Saturday?

Watts. He dined with my Master's Man and I on Saturday.

Sir Fr. Winn. Where did he lie that Night? At whose Chamber?

Watts. At our Lodgings in the Garret, in my Master's Man's Chamber.

Sir Fr. Winn. What Day was this, do you say?—Watts. Saturday.

Mr. Williams. When the *Polander* had the Sword, do you remember any Boots that he had under his Arm?

Watts. Yes, he had Boots under his Arm.

Mr. Williams. And he had the Sword with him when he went away?

Watts. Yes.

Mr. Williams. Had he any Coat?—Watts. Yes, a new Coat.

Mr. Williams. Well, I ask you once more, what Time of Day was it that he went away with the Sword and the Boots?

Watts. It was in the Forenoon.

Mr. Williams. What Day of the Week?—Watts. Sunday Morning.

L. C. J. Ay, but your Doctor that you examined before, says, the *Polander* went away with him, and he was not there on Sunday Morning.

Sir Fr. Winn. It is true, my Lord, it was too tender a Point for the Doctor, he lies under some Suspicion; and 'tis *proximus ardet* with him.

L. C. J. Well, call him again: Look you, Doctor, you were asked before, and now you are asked again, Were you at Count Coningsmark's Lodging's on Sunday Morning?

Dr. Harder. I cannot certainly tell.

L. C. J. When did you see the *Polander* at the Count's Lodgings, and whether was it on Sunday Morning?

Dr. Harder. On Sunday Morning I did not see him. The only Time was when I fetched him from my Lord's; I have not seen him before nor since.

L. C. J. Then call the Boy again. Where did the *Polander* dine on Saturday?

Watts. He dined with me and my Master's Man.

L. C. J. Where?—Watts. Below in the Kitchen of our Lodgings.

L. C. J. Where lay the *Polander* that Night?

Watts. He lay in our Garret.

L. C. J. When went he from your Master's Lodgings?

Watts. On Sunday Morning.

Mr. Williams. Had he an old Coat or a new Coat upon him?

Watts. He had a new Coat.

L. C. J. Was the Doctor with him?

Watts. Yes, the Doctor went away with him.

Dr. Harder. I have not seen the *Polander* above once in my Life.

Sir Fr. Winn. But were you at the Count's on Sunday Morning, or no, I ask you?

Dr. Harder. I do not know whether it was Saturday or Sunday.

L. C. J. But when you fetched him away, was it Saturday or Sunday Morning?

Dr. Harder. My Lord, I cannot very well remember.

L. C. J. Had the *Polander* a Sword when you went away with him?

Dr. Harder. I cannot positively say, but (as Travellers commonly have) he might have a Sword.

Sir Fr. Winn. Now come to yourself, and deal honestly, for you are upon your Oath; I ask you, Friend, this, You say he might have a Sword, do you remember a Pair of Boots?—Dr. Harder. No, I do not.

Sir Fr. Winn. Do you remember the Coat he had uppermost?

Dr. Harder. Yes, he had something under his Coat, but I don't know it was Boots.

L. C. Baron. Had he a Buff-Coat under his Campaign?—Watts. Yes.

Sir Fr. Withens. Let me ask you one Question, young Man; Do you remember you saw any Musketoon in your Master's Lodging?

Watts. I did see a Gun there.

Sir Fr. Withens. When was that?—Watts. I saw it upon Saturday.

Mr. Williams. The Musketoon or Gun that was in your Master's Lodgings, was it that which was brought by the *Polander*, or no.

Watts. I can't tell that.

Mr. Williams. Was it a long Piece or a short Piece?

Watts. It was not a short Piece.

L. C. J. Did the *Polander* take it away with him?

Watts. No, not that I know of.

Mr. Williams. Now, young Man, I would ask you as to Monday Morning: About what Time on Monday Morning did you come to your Master's Lodgings?

Watts. It was between seven and eight o'Clock, a little after seven.

Mr. Williams. What Condition was he in? Was he in Bed, or up?

Watts. He was up.

Mr. Williams. What was he doing? Was he packing up?

Watts. Not that I see.

Sir Fr. Winn. It was when he asked you about the Hubbub in the Street; pray tell what he said to you?

Watts. He asked me what the Matter was with the Bustle in the Street, and I told him that some were taken that had killed Esquire *Thynn*; and I told him all the Story, as near as I could: He asked me when Esquire *Thynn* was murdered; I told him the Night before; but I did not mind any thing that was done: But as I went down Stairs, I met with a Stranger, and he went up Stairs, but I never saw my Master after, till he was taken.

Sir Fr. Winn. Did he ask you what Mr. *Thynn* was?

Watts. Yes, and I told him I heard he was a Man of a great Estate, and well beloved, and that the Duke of *Monmouth* was in the Coach but a little before, and if he had not gone out, he had been killed too.

Sir Fr. Winn. What said the Count to you, when you told him Mr. *Thynn* was well beloved?—Watts. He said nothing.

Sir Fr. Winn. Can you remember who it was came to your Master then?

Watts. I know the Man if I see him again.

Sir Fr. Winn. Do you know his Name?

Watts. No, I do not know his Name.

Mr. Williams. Were any of your Master's Goods carried away then?

Watts. Yes.

Mr. Williams. What Goods were carried away then?

Watts. Two Portmantles.

Mr. Williams. Who carried them away?

Watts. My Father carried them away.

Mr. Williams. What Time was it?

Watts. Between eight and nine of the Clock.

Sir Fr. Winn. It was time to be gone. How parted you and your Master?

Watts. The Stranger did come in, and I never saw my Master afterwards.

Sir Fr. Winn. What, did your Master take no Leave, nor say any Thing to you?—Watts. No.

Sir Fr. Winn. What Kind of Perriwig had he when he went away?

Watts. He had a black Perriwig.

Sir Fr. Winn. What Clothes?

Watts. A light-coloured Suit, with Gold Buttons.

L. C. Baron. Will the Count ask the Boy any Questions?

Mr. Craven. Did you see the Gun in the Room after the *Polander* was gone?—Watts. Yes.

L. C. J. 'Tis very plain that this Gun was none of the Gun that did this Mischief, but the Gun the *Polander* brought over from beyond Sea.

Sir Fr. Winn. Call the Boy's Father, *Thomas Watts*, (who was sworn.) How long have you known the Count?

T. Watts. I do not know him, but as I have seen him.

Sir Fr. Winn. Were you employed to carry any Thing for him?

T. Watts. Two or three Times I was.

Mr. Williams. When were you last employed by him?

T. Watts. The Morrow after the Murder was committed.

Mr. Williams. What Time in the Morning was it?

T. Watts. It was between eight and nine of the Clock in the Morning.

Mr. Williams. What was it you did for him?

T. Watts. I carried a Portmantle, and a Portmantle-Trunk, and some other Things.

Mr. Williams. Where were you directed to deliver these?

T. Watts. His Man told me they were to go to *Windfor*.

Mr. Williams. Well, tell the whole Story.

T. Watts. He bid me carry them to *Coaring-Crofs*, that they might be put into the Coach there. But when he came to *Charing-Crofs*, a Coachman and he had some Words, and he bid him open his Boot, and then he took the Things from me, and put them into the Coach.

L. C. J. Who was it that told you they were to go to *Windfor*?

T. Watts. It was his Man.

Sir Fr. Winn. I would ask you, Sir, when was the first Time you knew the Count?

T. Watts. It was ten or eleven Days before.

Sir Fr. Winn. What was the Occasion that brought you acquainted with him?

T. Watts. I was Dr. *Frederick's* Porter, and he sent me to carry some Things to the Count.

Mr. Williams. Was it your Son that waited upon him?

T. Watts. Yes. For when I brought the Things, they said they had forgot to give me a Sword which I was to carry with the Things; and I said, that I had a Boy that I would send, and I did so, and so they took a Liking to the Boy.

Mr. Williams. What was the Agreement for your Son's Service.

T. Watts. Six-pence a Day and his Victuals.

Sir Fr. Winn. What was the Man's Name (as you remember) that gave you the Things to carry to the Coach, which were said to go for *Windfor*?

T. Watts. I can't tell his Name.

Mr. Williams. He that pinched and pushed you back, and took the Things from you, and put them into the Coach?

L. C. J. Did you see the Count that Morning?

T. Watts. No, I did not see him.

Mr. Williams. Have you been laboured and fought to by any Body to conceal your Boy, that he should not be brought at this Trial?

T. Watts. No, Sir.

Mr. Williams. Had you no Endeavours used with you about it?

T. Watts. No.

Mr. Williams. Did no Body speak of any such Thing to you?

T. Watts. No.

Mr. Williams. Did any Merchant or any Body send to you about this Boy, to take him into Service?

T. Watts. There was a Merchant that would have helped the Boy to a Place on Saturday last, but the Persons that would have procured it, were about it a good while ago.

Mr. Williams. Call *Derick Raynes* and *Richard Chappel*, (who were sworn, and Raynes stood up.) When did you see the Count, the Prisoner at the Bar?

Raynes. On Monday in the Afternoon.

Mr. Williams. What Time was it in the Afternoon?

Raynes.



Raynes. In the Evening.  
 Mr. Williams. Where was it?—Raynes. At my House.  
 Mr. Williams. Where is that?—Raynes. At Rotherbith.  
 Mr. Williams. How came the Count to your House?  
 Raynes. I know not; I was not at Home when he came.  
 Mr. Williams. Pray when you saw him, had he his own Hair or a Perriwig, or how was he habited?  
 Raynes. He had black Hair then.  
 Mr. Williams. How long did he continue at your House?—Raynes. From Monday till Thursday Morning.  
 Mr. Williams. Was he privately there or publickly?  
 Raynes. He walked up and down the House.  
 Sir Fr. Winn. What Countryman are you?—Raynes. I am a Swede.  
 Sir Fr. Winn. What became of him after Thursday?  
 Raynes. On Thursday Morning he took Water and went to Deptford.  
 Sir Fr. Winn. What Way did he go, by Boat, or how?  
 Raynes. A Waterman carried him.  
 Mr. Williams. Pray what did the Count say to you about his coming in a Disguise to your House?  
 Raynes. I knew nothing at all. I came late home, and when I came to know of him what he was, then he told me that he was Count Coningsmark.  
 Mr. Williams. What did he say to you when you discovered that he was the Count? What did he tell you of his Business?  
 Raynes. He said nothing; but that he was desirous to go to Gravesend.  
 Sir Fr. Winn. Upon your Oath, Sir, did you furnish him with any Clothes?  
 Raynes. Yes, I lent him a Coat.  
 Sir Fr. Winn. What say you to a black Suit?  
 Raynes. The black Suit did not belong to me.  
 Sir Fr. Winn. What say you to a Velvet Cap?  
 Raynes. I helped him to a Coat, Stockings, and Shoes.  
 Sir Fr. Winn. Then I ask you, what did he declare to you?  
 Raynes. Why, he did desire to have those Clothes.  
 Sir Fr. Winn. You are an honest Man, tell the Truth.  
 Raynes. He declared nothing to me.  
 Sir Fr. Winn. When you dressed him, why did he put on that Habit?  
 Raynes. He thought his own Clothes were too cold to go upon the Water.  
 Sir Fr. Winn. Had he no Clothes before?  
 Raynes. Yes, he had.  
 Mr. Williams. You had the warmer Coat, had you?  
 Sir Fr. Winn. Did he desire you to let him have your Clothes, because he was in Trouble?  
 Raynes. He desired a Coat of me, and a Pair of Stockings to keep his Legs warm; and when he had got them, his own Shoes would not come on, so I lent him a Pair of Shoes.  
 Sir Fr. Winn. I do ask you, did he declare the Reason why he would have those Clothes was, because he would not be known?  
 Raynes. He said he was afraid of coming into Trouble.  
 Sir Fr. Winn. Why were you unwilling to tell this?  
 Raynes. As soon as I came to know he was the Man, I told him he should not stay in my House.  
 Sir Fr. Winn. Did you lend him those Clothes, or sell them?  
 Raynes. I lent him them.  
 Sir Fr. Winn. Had you them again?—Raynes. No, I had not.  
 Sir Fr. Winn. Are you paid for them, or no?  
 Raynes. No, my Ship lies at the Key, and I came home late in the Evening, and found him there.  
 Sir Fr. Winn. Set up Richard Chappel.  
 Mr. Williams. When did you first see that Gentleman?  
 Chappel. On Thursday Morning, at Ten of the Clock.  
 Mr. Williams. Where?  
 Chappel. At Rotherbith.  
 Mr. Williams. How came you to him? Who brought you?  
 Chappel. That Man.  
 Mr. Williams. What were you to do with him?  
 Chappel. To carry him to Gravesend.  
 Mr. Williams. Do you row in a Pair of Oars, or a Sculler.  
 Chappel. A Sculler.  
 Mr. Williams. Whither did you carry the Count that Day?  
 Chappel. To Deptford.  
 Mr. Williams. Whither the next Day?—Chappel. To Greenwich.  
 Mr. Williams. And whither then?  
 Chappel. To Greenbith, and then the next Day to Gravesend.  
 Mr. Williams. Was he in the same Clothes all the while?  
 Chappel. Yes, all the while.  
 L. C. Baron. Were you hired to wait upon him all that time?  
 Chappel. Yes, I was to have five Shillings every 24 Hours.  
 L. C. Baron. Was he alone?—Chappel. No, this Man was with him.  
 L. C. J. Did he go in the Sculler with him?  
 Chappel. Yes, to Deptford.  
 Mr. Williams. Well, now we will call the Gentleman that seized him at the Water-side at Gravesend.  
 Sir Fr. Winn. What did the Count call himself? What Profession did he tell you he was of?  
 Chappel. He told me he was a Merchant.  
 Sir Fr. Winn. Did he say he was a Jeweller, upon your Oath?  
 Chappel. Yes, he said he had bought Jewels.  
 Sir Fr. Winn. Where is Mr. Gibbons, and Mr. John Kid?  
 [Who were sworn, and Mr. Kid stood up.]  
 Mr. Williams. Mr. Kid, pray, Sir, will you acquaint my Lord and the Jury in what Condition you found the Count at Gravesend? Tell the whole Story, and speak aloud, that all may hear you.  
 Mr. Kid. I had some Information upon Friday Night of him.  
 Mr. Williams. Of whom and what?  
 Mr. Kid. Of the Count where he was. So I made it my Business to

enquire into it. On Saturday in the Afternoon a Gentleman came to me, and gave me certain Information where he thought that Gentleman the Count was. This Gentleman coming to me, said, Mr. Thynn is a Stranger to me, but said he, I would not have Mr. Thynn's Blood lie at my Door. This same Person who is put out in the Gazette, I believe, is at a Neighbour's House of mine. Says he, I desire you to be private in it, because it may do you a Prejudice; so we went into a Coach at Charing-Cross to go to a Justice of Peace; I did not know where Sir John Reresby lived, but enquired of Mr. Gibbons, who told me, but he was not at home, and Mr. Bridgman was not at home; so we went to the Recorder, and there we had a Warrant, and then I came by Water to Rotherbith, and this same Raynes that was examined, and his Wife where he lay, were gone to Greenwich to carry his Clothes, a grey Suit, and other Clothes that he had left. So going down to Greenwich, we called every Boat that was upon the River aboard of us, to know whence they came. And we had taken her Sister along with us, and she called out her Sister's Name, Mall Raynes, and her Brother's Name, Derick Raynes, and so at last we got the Boat wherein they were, on board us. And we asked the Man what he had done with the Gentleman that lay at his House? He declared he was gone away, he did not know whither. So I went back again to this Gentleman that gave me this first Information, who did go to him as a Neighbour, to know whither he was gone, and where he was to be found, and where he would land. So he declared the Particulars: That if we missed him that night, we should have him in the Hope upon Monday Morning, upon a Vessel that was to be cleared on Monday Morning. So upon Sunday Night coming to Gravesend about Eight or Nine or Nine o'Clock, or thereabouts, there he landed. There were 13 or 14 Swedes at the same House where he was to land; so we thought it convenient to take him at his first landing, for fear of further Danger. So I staid at the Red-Lion Back-stairs, and he landed at the Fore-stairs, where the Watermen were. As soon as he was laid hold of, I came to him; said I, your Lordship shall not want for any thing that is convenient: He desired to know whether I knew him; I told him yes; and that his Name was Count Coningsmark. That is my Name, says he; I do not deny it. So the Mayor came, and the Custom-House Officers searched him, and found nothing at all of any Arms about him. He desired he might be used like a Gentleman, and so he was; for there was no Abuse given to him, as I know of. Coming up the River, the most of my Discourse was about martial Affairs; a Serjeant that had the Command of a File of Musqueteers, which the Deputy Governor sent to guard the Count to Whitehall, a Gentleman sitting there by me, was asking me concerning Mr. Thynn's Murder; I told him, that I was at Newgate on Friday, and there I saw those that had done that barbarous Fact. With that, my Lord, asked what Lodgings there were in Newgate? And whether the Captain had a good Lodging? I told him a very good one. He asked me whether he confessed any thing? I told him he had confessed some Particulars. And, said I, 'tis the most barbarous Thing that ever was done. Certainly, says my Lord, this Mr. Thynn must have Correspondence and Commerce with some Lady that this Captain knew, that belonged to the Court, or he would never have done it. As for the Polander, I told him that he had confessed, he wept mightily. With that my Lord seemed very much concerned, and took up his Clothes and bit them, and sat awhile up, but was very much discomposed, and then desired to lie down.

Sir Fr. Winn. That was, when you told him, the Polander had confessed?

Mr. Kid. Yes; my Lord was mightily altered in his Countenance.

Sir Fr. Winn. Did you at the first Time that you seized him charge him with the Murder?—Mr. Kid. No, I did not.

Sir Fr. Winn. Was he in a Black Perriwig?

Mr. Kid. His Cap fell off, and his Perriwig, just as I came to him.

Sir Fr. Winn. Set up Mr. Gibbons. Pray will you tell what passed?

Mr. Gibbons. My Lord, as soon as ever he came to shore, I walked by him, and gave him a little kind of a Juffle; and my Reason was, to see whether he had not a black Coat under his Campaign: I walked close to him just in this Manner, as he walked along, so he turns about again and went down to the Water-side, and asked the Watermen; Watermen, Have you stowed your Boat? They answered, Yes. Then come away, said he; so soon as he came back again, I caught him fast hold by the Arm, and the first Word he said to me was, What do you come to rob me? Said I, my Lord, you are my Prisoner, and I told him I was the King's Messenger, that had waited there several Days for him; and holding of him very hard, whether that was the Occasion of it, or the Watermen that were on the other Side of him, he dropped down his Sword between his Legs; but when I named his Name, he gave a little Start, and his Perriwig dropped off his Face. We went up the Street to the Mayor, and the People crowding about us, were very rude and very rugged, and he desired he might be well used. We did all we could to keep the People from him: We went up to the Mayor's House, and when we came there, I desired he might be searched, whether he had any Arms: He said he had none, and there was none.

Sir Fr. Winn. When you had the Custody of him, whither did you carry him?

Mr. Gibbons. We carried him to the Mayor's House, and afterwards we removed him from his House to an Inn.

Sir Fr. Winn. What did you do the next Day?

Mr. Gibbons. We staid there about some two or three Hours. After an Hour, or half an Hour's Time, near upon an Hour, my Lord came to me, and asked me my Name; and he said, the Reason was, that after his Trouble was over, he would give me Thanks for my Civility to him. Captain Sinkler, who stood by, gave him my Name before I could, that it was Gibbons. Yes, said I, my Name is Gibbons, and I belong to the Duke of Monmouth: Why, says he, the Duke of Monmouth has no Command now, and therefore how could I take him by his Order? My Lord, said I, I do not apprehend you by his Order; you have killed a very good Friend of mine, and had not Providence ordered it otherwise, you had like to have killed a more particular Friend, and a Master: So,

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my Lord, he seemed to be very sorry at that; but, says he, I don't think they would have done any Harm to the Duke of Monmouth.

Sir Fr. Winn. What else did he say?

Mr. Gibbons. I think I have told you all that is material.

Sir Fr. Winn. Were you in the Boat at any Time, and gave him any Account of the Man's having confessed; what did he say to it?

Mr. Gibbons. Sir, I was not there, nor I did not come up in the same Boat with him.

Mr. Williams. Did he mention any thing about a Stain to his Blood?

Mr. Gibbons. I ask your Pardon, he did so.

Mr. Williams. What did he say?

Mr. Gibbons. Says he, it is a Stain upon my Blood; but one good Action in the Wars, or one Lodging upon a Counterfcarp will wash away all that.

L. C. J. What did he say was a Stain upon his Blood?

Mr. Gibbons. My Lord, if you please, I will tell you: As I said, he asked me my Name, because he would come to give me Thanks for my Civility after his Trouble was over; the Captain, being quicker than I, told him my Name: Yes, Sir, said I, 'tis Gibbons, and I belong to the Duke of Monmouth; said he, he has no Command now, how could you come upon his Order? Said I, I do not come upon his Command, but you have killed a very good Friend of mine, and a Countryman; and if Providence had not ordered it otherwise, you had killed a more particular Friend of mine, and a Master, that I had served many Years; said he, I don't think they would have done the Duke of Monmouth any Injury: After that he walked up and down a-while, and then said he, 'tis a Stain upon my Blood; but one good Action in the Wars, or a Lodging upon a Counterfcarp, will wash away all that. The Mayor was in the Room, and several others.

Sir Fr. Winn. Pray, Sir, one Thing more; when you did speak to him of Confession, did he say any thing to you about Captain Vratz?

Mr. Gibbons. Sir, he was only asking of me how Things were, what the People said, or some such Thing? I was not forward to tell him at first, but afterwards I did tell him, that the Captain had made a Confession, though it was a Thing I did not know then. Says he, I do not believe the Captain would confess any Thing.

L. C. J. Did he say so?

Mr. Gibbons. Yes, he did, to the best of my Remembrance.

Sir Fr. Winn. We have done with our Evidence, my Lord.

L. C. J. My Lord Coningsmark, will you ask him any thing?

Count Coningsmark. No.

L. C. J. Then the next Thing is, you heard the Evidence that is given against you. Now you must come to your Defence: I will put you in mind of some Things, my Lord, which Things it will concern you to give some Account of. It is here laid to your Charge, That you were accessory to this Murder of Mr. Thynn, and that you were the Person that directed and designed it. And these Evidences there are against you, That you were cognizant of this, and that you were the Person that designed this: That you came into England about a Fortnight or three Weeks before the Death of Mr. Thynn; that Captain Vratz, who was one of them that killed him, came with you, that he lay at your Lodging, that he was constantly with you, that you lay *incognito* there, and private, would not be known what your Name was, that you shifted Lodgings from Time to Time, that Borosky the *Polander* came over by your Order, was brought to your Lodging, was provided for there, that he had Clothes, and he had a Sword provided by your Lordship for him, and that there was Care taken that it should be an extraordinary good Sword, that you did discourse to Mr. Hanson about your calling Mr. Thynn to Account, and this much about the Time, or a little before the Time of his Death, and what the Laws of England would be in case you should call Mr. Thynn to Account; and particularly you desired to know what Monsieur Lienberg's Opinion might be concerning it, and especially what in Relation to my Lady Ogle. And that after all this, Mr. Borosky was not only clothed by you, but was sent by you to Vratz, (that the Doctor says) and after Vratz him, that he lay in your Lodging that Night before this evil Thing was done, and that after the Thing was done, the same Night Vratz came to your Lodging and was with you, and had private Conference with you, that the next Morning you got up and went away, though you had taken Physick the Night before, and though you yourself, nor your Doctor, thought you fit to go abroad, and you go away *incognito*, in a Perriwig, disguised, you direct your Servant to carry your Clothes one way, while you go another; then you go down to the Water-side, and lie private near the River, at a Swede's House at *Rotherhithe* for several Days together; you afterwards take great Care to conceal yourself, by changing your Clothes, and putting yourself in a Garb not like your own, and giving out you were a Merchant or a Jeweller, or some other Trade; that afterwards you trifled away the Time and went two or three Miles, and then struck in upon one Side of the River, and afterwards on the other Side of the River, suspiciously up and down not to be known, and this not like yourself in any manner, but in a pitiful poor Disguise, and hire a Sculler to carry you, from whom you concealed yourself, and so all along you trifled away the Time 'till you were taken at *Gravesend*: That afterwards when you were taken, you were inquisitive about the Captain, whether he did confess; that you should likewise say some such suspicious Words as these, That you believed those that killed Mr. Thynn had no Design against the Duke of Monmouth; that you believed the Captain would not confess; that you seemed to be concerned when you were told the *Polander* had confessed; that afterwards you should say, my Lord, this is a Stain to my Blood; but one good Action in the Wars, or a Lodging upon a Counterfcarp, will take away all this, or wash it clean. And then, which is also testified against you, that you should ask the Boy that very Morning of the Day the Murder was committed, whether they used in London here to permit Men to ride up and down on Horse-back upon a *Sund-y*? Now these Things, my Lord, it will import you to give some Account of.

Sir N. Johnson. My Lord says, he desires he may answer all these Things one after another.

L. C. J. Let him do so. And first let him answer what his Reason was to come into England in such a Manner *incognito*, at this Time, and lie concealed, when he had been in England before, and lived in a mighty good Equipage and Condition?

Mr. Craven. My Lord, he says that hearing there was a Peace between Swedeland and England, and Holland designed, and like to be confirmed suddenly against the French, he came with a Design to serve England, and to raise a Regiment of Horse here for the Service of the King of England.

Count Coningsmark. If any such Peace should be, if any Appearance of an Alliance between England and Holland, and Swedeland, I had a Design to propose, if I could have a Regiment.

L. C. J. Why did he come unknown, and in a Disguise?

Sir N. Johnson. Secondly he says, my Lord, the Reason of his coming *incognito* was, because he had a Distemper upon his Arms and Breast, and having formerly tried and employed this Physician, and having Experience that he was an able Man, he was resolved to lie privately till he had cured himself; for he could not drink Wine nor keep Company, having this Distemper upon him, and he was afraid, if he had kept Company, it would have hinder'd his Cure, and he should not have been so soon cured, as if he kept in the House; and he says, that this Equipage could not come 'till after, and he would not willingly appear 'till he had his Equipage as a Man of his Quality ought to do; and these were the Reasons that made him keep private.

L. C. J. Pray ask him upon what Occasion he did change his Lodgings so often?

Sir N. Johnson. He says that his first Lodging was changed because it was too cold for him; and he says, the next Lodging, where he was, those that were there can tell, the Room where he was smoked so cruelly, that he was not able to endure it. And he says, he liked the House so well, that he sent to see if the Chimney could be mended, and it was not to be done, otherwise he had gone back to that House, and he has the Man and his Wife to bear Witness of it, if you please.

L. C. J. Let him call them.

Count. Call Joseph Parsons and his Wife. [But they did not appear.]

L. C. J. Then ask my Lord this, To what Purpose he did bring over this *Polander* here? He ought to consider of that, and give an Account why he brought him hither.

Interpreter. He says this *Pole* was taken into his Service when he went to *Tangier*, when he went several Thousand Miles to do the King's Service, and he had designed at that Time to bring him into England to dress his Horses after the German Way.

L. C. J. Had the *Polander* been a Groom formerly?

Interpreter. He says, he thinks he had been Groom to his Uncle before.

L. C. J. But to what Purpose did he bring him hither?

Interpreter. He says there was a great Discourse about *Strafsburgh's* being besieged, he did design to buy some Horses, for every one did arm themselves; and he says he sent over 1000 Pistoles to be answered by the Merchants here, to buy Horses.

L. C. J. Hath he any body to prove it?

Count. There is Mr. Risby, Mr. Hanson, and my Brother.

Young Count. My Lord, I had a Bill of Exchange.

L. C. J. For how much Money, my Lord?

Young Count. For 1000 Pistoles, to buy Horses, and he has bought one Horse, and was to buy more.

L. C. J. Do you hear, Gentlemen, what he says? He came over to buy Horses, and he returned 1000 Pistoles for that Purpose; and his Brother does attest there was such a Sum returned by Bills of Exchange, for the buying of Horses.

Interpreter. My Lord, he says he does fear that the Jury that do not understand English, do not understand his Reasons for being in a Disguise.

L. C. J. Can't he give an Account of it himself?

Mr. Williams. No, my Lord, his Evidence must be interpreted to them by the Interpreter.

L. C. J. The Doctor's Evidence hath been heard already about the same Matter.

Sir N. Johnson. He desires, my Lord, to know this; whether he may not say the same Things over again to the Jury in French? there are a great many Persons of Quality that understand it, and they will see whether he speak true.

L. C. J. Let him, if he pleases.

Sir Fr. Winn. But then, my Lord, I hope that your Lordship will tell the Jury it goes for nothing without Proof.

[Then the Count spoke to the Jury in French.]

L. C. J. My Lord, I do not know whether the Gentlemen that are of your Right-Hand heard you or not.

Juryman. We understand not French. [Then the Count spoke it in Dutch.]

Interpreter. He says, if it had not been for the great stormy Weather, the *Polander* had been sooner in London, for he sent for him before. He says, the Letters go from *Strafsburgh* to *Hamburg* in seven Days, and that most commonly Ships do come from thence in Eight Days, but in a great deal less Time than the *Polander* came over in. And he says, that he writ four Months before to fetch the *Polander* over, and he might have been here long ere now, if it had not been for the Weather.

L. C. J. Then, my Lord, I would ask you some more Questions, which it concerns you to answer. Upon what Occasion did you make your Discourse of Mr. Thynn's Death to Mr. Hanson? Had you any Discourse with him? And upon what Occasion?

Sir N. Johnson. My Lord, he says in common Discourses, 'tis impossible to give an Account of the Discourse, or remember the Occasion of it so long ago.

L. C. J. Ask him if he had any Quarrel with Mr. Thynn? Or knew Mr. Thynn?

Sir N. Johnson. He says, my Lord, that he never had any Quarrel with Mr. Thynn, nor to the best of his Remembrance, with his Eyes, never saw Mr. Thynn.

L. C. J. Then I ask you this, my Lord, did you ever hear Mr. Thynn had married my Lady Ogle before you last came into England?

Interpreter



*Interpreter.* He says, he never heard of it 'till he was going to *Straßburg*, and then all the whole Town did talk of it.

*L. C. J.* How long is that ago?—*Interpreter.* Half a Year ago.

*L. C. J.* Then it was before his last coming into *England*.

*Sir Fr. Winn.* My Lord, his Discourse with Mr. *Hanson*, was not when he was last in Town, but before.

*L. C. J.* Then pray ask him this, What Occasion he had to ask the Boy upon Sunday, Whether *Horfes* might ride about the Town of a Sunday?

*Interpreter.* He says, my Lord, this is a very strange Thing, That he should go and ask a Scullion-Boy, whether People might ride on Sundays, when he himself, over and over again, has rid upon Sundays to *Hyde-Park*, as many Persons of Quality do.

*L. C. J.* Has he any Body to prove it?

*Sir N. Johnson.* Here is Major *Oglethorp*, (who, with divers other Gentlemen, testified they had seen him riding divers Times, on Sundays, in *Hyde-Park*).

*L. C. J.* Then that Question signifies nothing; there could be nothing in that Question.

*Sir N. Johnson.* My Lord, he desires that I may be examined concerning the Boy, of what I heard by Chance from the Boy himself, and I will give you an Account of it upon my Faith and Reputation.

*L. C. J.* Do so, Sir *Nathaniel*, say what you can say.

*Sir N. Johnson.* My Lord, I having had the Honour to serve a-while under my Lord's Father, I was desirous, knowing the Honour of the Family, and bearing a great Respect to it, to do my Lord all the reasonable Service I could. So hearing my Lord was taken, and in *Newgate*, I went to wait upon him; and coming there, Mr. *Richardson* told me, there was a little Boy waited at the Count's Door for his Wages, as he said. So I spake to the Boy, and asked him, what do'st thou stay for? He told me for his Wages. Said I, certainly my Lord will pay you your Wages; how long have you served him? He said, a little while; and then said I, if you lived with him, what do you know of his Business? And then of himself he began and told me: Only this I know, That *Vratz* was in my Master's Chamber that Night, and the *Polander* that Night went out with a Pair of Boots under his Arm, and more than this I do not know. Said I, Boy, Who do you serve? Says he, I have no Master at present; but then of his own Accord he told me, Sir *Thomas Thynn* had promised him a Place, and in the mean Time, I am, says he, to go to serve my Lord *Priest-Seal*; so my Lord gave him twenty Shillings for his Wages.

*Interpreter.* My Lord desires the Boy may be asked, whether he did not go to fetch Physick.

*L. C. J.* Ask him; where is the Boy?

*Watts.* No, I do not remember it.

*L. C. J.* Now, you should put the Count in Mind.

*Sir Fr. Winn.* We observe what a Sort of Interpreter Sir *N. Johnson* is: He speaks more like an Advocate than an Interpreter; he mingles Interpreter, and Witnesses, and Advocate together, I don't know what to make of him.

*L. C. J.* The Count had taken Physick that Day.

*Sir Thomas Thynn.* My Lord, I desire to be heard, I never spake to the Boy in all my Life.

*Mr. Thynn.* Nor I. But he gave the same Testimony he gives now, before the King and Council.

*L. C. J.* Look you, Sir *Thomas*, it does not concern you at all to speak to that, there is no Reflection made upon you in it. But my Lord *Coringmark*, it will concern you a little, to shew upon what Occasion Captain *Vratz* came to you that Night that Mr. *Thynn* was killed.

*Interpreter.* He says, my Lord, he can't tell why he came there; 'tis a proper Question to ask Captain *Vratz* himself.

*L. C. J.* That can't be.

*Interpreter.* He says, my Lord, he kept his Chamber at that Time; he had taken Cold upon his taking Physick, and the Captain came to give him a Visit, and he never reflected what any one came for; he was lying upon his Bed.

*L. C. Baron.* Pray ask my Lord this: Why this Man, that was sent over to attend *Horfes*, should come upon the *Friday*, and a Campaign Coat be bought him on the *Saturday*, and he furnished with a Sword on the *Sunday*?

*Interpreter.* My Lord, the Noise is great, but I suppose your Lordship desires to know what was the Reason why he bought a Sword for him and a Coat?

*L. C. Baron.* Ay, and how he came by the Buff-Coat?

*Interpreter.* He says he had that before.

*L. C. Baron.* But why must he have such a strong Basket-hilted Sword furnished him in a Day's Time.

*Interpreter.* He says, my Lord, as to the Clothes, when he saw him with all his Clothes torn, he must of Necessity get him a Coat, or else he was a Shame to him and his Service. And as for the Sword, it was no more (he says) than what Servants of his Bulk and Making used to wear.

*Sir N. Johnson.* And he says all the Servants of Gentlemen in *Germany* wear such broad Swords.

*L. C. J.* You know it yourself, Sir *Nathaniel Johnson*, you have travelled there.

*Sir N. Johnson.* Yes, my Lord, they do; and the *Poles* much broader and greater Swords than the others. Here is one in Court that hath a great broad Sword now by his Side.

*L. C. J.* Now, my Lord, it will import you to give some Account, now, you having brought over this *Polander* (as you say) to choose *Horfes*, and help you in the Management of them, to take Care of them in the Nature of a Groom, how you came to part with him to Captain *Vratz* as soon as he came over?

*Interpreter.* My Lord, he says, being that he was sick himself, and there was no Hopes of the Alliance between *England* and *Holland*, he had no such Occasion for him, as when he wrote for him, and therefore saw no Reason to keep him.

*L. C. J.* How long was it before that he wrote for him?

*Count.* My Lord, after the Siege of *Straßburg*, when every Body thought there would have been a War, but it was not so; therefore I had

not Need of him, but he had been seven Weeks at Sea; and, my Lord, 'tis a common Thing in *Germany*.

*Interpreter.* He says, 'tis a common Thing in their Country, to give Servants away, if there be no Occasion for them.

*Count.* My Lord, it is a common Thing in *Germany*, it may be, it may not be so much used in *England* to give a Servant away.

*L. C. Baron.* What, the next Day that he comes over?

*L. C. J.* What say you, Sir *Nathaniel Johnson*?

*Sir N. Johnson.* Yes, my Lord, 'tis very frequent in *Germany* to give a Servant away if there be no use of him, for these *Polanders* are like Slaves.

*Interpreter.* And, my Lord, he says, that Mr. *Ruffel* does know, that the Merchant that sent him over hither is a Man of good Repute; and if this Man had had an ill Reputation in *Germany*, he would not have sent him.

*Witness.* My Lord, I know very well he is a Man of very great Credit in *Hamburg*, and of great Estate.

*L. C. J.* Did he send over this *Polander*?

*Witness.* Yes, my Lord, so I understand.

*L. C. J.* Can you speak of his Credit, Sir *Nathaniel Johnson*?

*Witness.* Of the Merchant's Credit I can, my Lord; I know him to be a Man of considerable Estate and Credit. He is a Man of such Reputation, that he would not send a Man of an ill Reputation.

*L. C. Baron.* Oh, Sir, *Nemo repente fit turpissimus*. He could not be so ill a Man at the first Dash; he must be a Man probable for such a Service.

*Sir Fr. Winn.* You may observe, my Lord, how Sir *Nathaniel Johnson*, who is Interpreter in the Case, is a Witness, and argues for the Prisoner too.

*Mr. Williams.* Pray, Sir *Nathaniel*, is a Rencounter the killing of a Man after this Manner?

*Sir N. Johnson.* A Rencounter is another Sort of thing, Sir; you don't speak as if you were a Soldier.

*Mr. Williams.* My being a Soldier or not is nothing to the Business; but the Captain said, he intended to have made a Rencounter of it.

*Sir Fr. Winn.* But, my Lord, we desire to take Notice of Sir *Nathaniel's* Forwardness; for it may be a Precedent in other Cases.

*L. C. J.* What do you talk of a Precedent? When did you see a Precedent of a like Trial of Strangers, that could speak not a Word of *English*; but you would fain have the Court thought hard of, for doing Things that are extraordinary in this Case.

*Mr. Craven.* My Lord, he desires he may inform the Jury what he sent for this *Polander* for.

*L. C. J.* Let him.

[Then the Count spake it in French and Dutch.]

*L. C. J.* My Lord, another Thing is this, how came your Lordship presently to go away in such a private secret Manner, and to direct your Clothes to be sent as it were to *Windsor*? And yourself to go away, and to make such a private withdrawing of yourself down the River in this Manner?

*Mr. Craven.* My Lord, he says, that one *Markham*, that is here, came and told him, that upon the killing of this Man by the *Polander* and the Captain, who were taken in such a Fact, there was a Discourse of it that it might turn to his Prejudice, and that the common People do commonly fall upon Strangers; that his Taylor told him, that he heard the common People name him as concerned in it, and that he believed, if the common People did catch him, they would tear him to Pieces, and so his Friends did counsel him that he would withdraw himself.

*L. C. J.* Is the Taylor here? Call him.

*Interpreter.* Call *Markham* the Taylor. [who stood up.]

*Sir N. Johnson.* My Lord, he says, that he was afraid the People might tear him to Pieces, before he could come to justify himself.

*L. C. J.* Look you, Friend, did you come to Count *Coringmark's* Lodgings after Mr. *Thynn* was killed, on the Monday Morning?

*Markham.* Yes.

*L. C. J.* What did you tell him?

*Markham.* I told him nothing, but I was sent there by Mr. *Hanson*; says he, tell the Count that the Duke of *Monmouth* and several Noblemen have been here: Now I had not seen the Count at that Time before, but he told me where he lodged; when I came there I told the Count of it, but he told me he knew nothing of it; but, said he, I am sorry if any such Thing be done.

*L. C. J.* But what did you say his Friends advised him to about it?

*Markham.* I did say nothing of it.

[Then the Count spake to him in Dutch.]

*Markham.* That was afterwards.

*L. C. J.* What was that afterwards?

*Markham.* I was told, the People said, if he were taken, he would be knocked on the Head.

*L. C. J.* What Time afterwards was it?

*Markham.* After he went away.

*L. C. J.* Who told you so then?

*Markham.* Mr. *Hanson* told me so then; I would not tell a Lie for all the World.

*Count.* He can tell also when I went away—the rest he spake in Dutch.

*Interpreter.* He says this Man can witness, that he asked his Man what Money he had left, and he told him that he had not above 10 or 11*l.* so he put his Hand in his Bag and took out some, and put it into his Pocket.

*Count.* So ill was I provided for an Escape.

*L. C. J.* Ask him that Question; do you know any Thing of what Money he took with him?

*Markham.* No, I saw him take an handful of Silver, but what it was I can't tell.

*Mr. Thynn.* He had 7 or 8*l.* about him when he was taken.

*Interpreter.* He desires Leave to tell it to the Jury, (which he did.)

*L. C. J.* Now, my Lord, this will require some Answer; how came you to tell those Gentlemen that took you, that you believed Mr. *Vratz* and the rest would have done the Duke of *Monmouth* no harm?

*Interpreter.* He says, the People told, when he was taken, that the Duke of *Monmouth* was in the Coach, and that they did follow the Coach a great way, and would not do the Action 'till the Duke of *Monmouth* was out of the Coach.

Count.



*Count.* They did tell me, the Croud that were about me, that those that were taken said they would not do it till the Duke was out.

*Interpreter.* And he says, that gave him sufficient Reason to say to Mr. Gibbons that he did believe they had no Design upon his Grace the Duke of Monmouth.

*L. C. J.* He heard it so commonly, it seems. Now, my Lord, there is one Thing more that you should explain yourself in, what you meant by this, when you said it would be a Stain upon your Blood, yet one noble Act in War, or the Lodging upon a Counterscarp, would wash it off.

*Interpreter.* He says, my Lord, that though he knew himself not Guilty of any Thing, yet his being taken upon Suspicion, and clapped up in Prison, would be a great Disgrace to him, and would be worse re- spected in his own Country than the Thing itself was: It being not the Custom in his Country to take Persons of his Quality Prisoners in that Manner.

*L. C. J.* Now, my Lord, is there any Person that you would have called to ask any Questions of? If you have, they shall be called.

*Count.* No, my Lord; but if you please to give me Leave to tell some- thing that may be necessary.

*Sir N. Johnson.* My Lord, he says, if you will give him Leave, though it does not come very well from himself, yet he desires to say something for his own Reputation,

*Mr. Williams.* He should be armed with Witnesses to make his Defence.

*L. C. J.* 'Tis fit for Men that stand here to say any Thing that is rea- sonable for themselves. My Lord, if you can speak any thing that you apprehend the Jury can understand, speak to them what you please, so as they understand it, but do not be too long.

*Mr. Craven.* My Lord, if your Lordship please, he says he would speak it first in French, and then in German.

*L. C. J.* Ay, but then the Englishmen of the Jury will not understand a Word of it; he had better speak in English to the Jury.

*L. C. J. North.* My Lord, it is an indifferent Thing, it may be inter- preted, not being Matter of Fact.

*Sir N. Johnson.* My Lord, he says it is a great Happiness in all his Trouble, that he was in a Country where he was to appear before a Pro- testant Judicature, himself being a Protestant, and his Fore-fathers also. He says, that his Fore-fathers, under *Gustavus Adolphus*, were Soldiers, and did there, with their Swords in their Hands, and the Loss of their Blood, endeavour to settle the Protestant Religion in Germany, and protect it there: He says, that it has been the Honour of himself and his Family, that they have always been ready to venture their Blood and their Lives for the advantage of the Protestant Religion, as the Examples of his Grandfather and Father do shew; and there never was any thing done by his Family but what was done for the Honour of his Country, and his Religion: And he says, that if any of his former Actions can give any the least Suspicion of his being Guilty of this, or any foul Fact, he is very willing to lay down his Life, and very willing to have it cut off immedi- ately.

*Count.* Immediately.

*Sir N. Johnson.* He says, that he is very ready, upon all Occasions, to serve the King of England; and that he loves the English Nation so well, as always to be ready to do any Thing to serve them.

*Count.* Without any Interest in the World, against the Will of all my Relations; and I have brought my Brother into England to be brought up into the Protestant Religion, to shew my Inclinations to the Religion, and the English Nation.

*L. C. J.* Have you done?

*Sir Fr. Win.* Yes, my Lord, we have done with our Evidence, and we have no Matter of Fact to reply unto; but we think it is our Duty, considering the Defence my Lord has made, that we should take some Care to put the King's Evidence a little together, it being a Case of such Nature, and so cruel and horrid a Murder.

My Lord, and you Gentlemen of the Jury, I am of Counsel here for the King, and you are Gentlemen upon an Enquiry to find out the Of- fenders in a very great, a barbarous, and a wilful Murder. And, my Lord, in relation to the Principals, I need not spend your Lordship's and the Jury's Time about them; for all those three Men, that are indicted as Principals, do, my Lord, confess the Fact, though they do it in a diffe- rent Manner, and though in Form of Law they have pleaded Not Guilty; yet when they come to be asked the Question, their Guilt flies in their Faces, and they cannot deny it. So then for those three Men there is no Need to spend Time in repeating the Evidence.

But, my Lord, that seems to require the Consideration of the Jury is, whether this wicked and horrid Murder be only circumscribed in the Guilt of it to those three Men that have confessed it, or whether any rati- onal Man in the World will believe, upon the Account they give them- selves, that they had only a Design, a Study, or a Delight to kill this in- nocent Gentleman. No, my Lord, the Thing must lie a little deeper, and there must be some other Reason why this barbarous Murder was committed, I would crave your Pardon for what I say. My Lord, I would not speak any Thing that should mislead a Jury in Matters of Blood, and I think it was rightly said by your Lordship, that when a Man is tried for his Life, we ought all to behave ourselves seriously, as in a Matter of Weight and Moment. And so it is, I think, a very serious Thing, and a Matter of Concernment to us all to enquire who hath shed innocent Blood; for such was this poor Gentleman's Blood that was killed, inno- cent Blood.

My Lord, this Count is a very unhappy Person to have such a Relation as has been proved to be of the Principals: I will do my Lord no Wrong in the Repetition, if I do, and am mistaken, I crave your Direction, I am sure you will correct me in it. Two of the Persons that are Princi- pals, that was Captain *Vratz* and the *Polander*, happened to be Persons re- lating to my Lord's Family as his Servants. For it is agreed by the Wit- nesses that were that Count's Friends, that they came over into England with the Count, the last Time he came over in that private Manner; and 'tis likewise proved, and not denied by him, that Captain *Vratz* was

frequently with him, not only to the very Day when this bloody Fact was done; but after that great Crime was committed: I say, my Lord, 'tis a very unfortunate Thing for this Lord, that those Men should have so near a Relation to him, who have had their Hands in it, and can give no Account why they did it.

My Lord, I do know, (and your Lordship has justly directed us) that no Evidence from one Prisoner, or the Confession of one can charge the others in point of Evidence; but I cannot but take Notice, that Captain *Vratz* could give no Reason in the World for it, but as it were for some Affront to the Count and himself. But, my Lord, the Evidence that lies heavy upon this Lord at the Bar, is made up of these Particulars.

First, That here is a Murder committed is plain, then that this Lord did fly, is also plain; and when he did fly, Gentlemen, he kept himself in Disguise before that Fact was committed, and whether or no the Reasons be sufficient that he has given to your Lordship, and the Jury, must be left to Consideration. He says, that he had not his Equipage, that he was not very well, and that he could not drink Wine: Those I take to be the Reasons given, why my Lord *Coningsmark* did conceal himself, 'till the Time after the Fact was committed.

*L. C. J.* He was taking of Physick, and he thought it might be preju- dicial to him to drink Wine, or keep Company.

*Sir Fr. Winn.* But, my Lord, these Kind of Shifts, we think, are not able to balance the Evidence; for that which is truly the Evidence is this, Mr. *Hanson*, who is very much conversant in that Family, and who did give his Evidence very unwillingly; yet, he did really confess that which will go very far in this Case; for after he was pressed several Times (your Lordship, and the Court, and the Counsel pressed him) to tell what was the Reason of that Discourse he had with the *Swedish* Resident, and he was asked, Had you any Command from my Lord *Coningsmark*? He answered no: but, says he, I thought it would please him, if I could have the Opinion of the Agent or Resident to know what the Laws of England were, if so be he called Mr. *Thynn* to Account, and what the Con- sequence would be in Reference to his Design upon my Lady *Ogle*, and upon this he does go, and ask the Question of the Resident.

Now, What does he mean by this calling to Account? We must take Things according to the Reason of them. Certainly it was some Offence that he had taken to Mr. *Thynn*, and that is plain in regard when he was asked what the Prejudice did refer to, Mr. *Hanson* was pleased to name that great Lady, my Lady *Ogle*, and said she was mentioned, and he did desire to know what the Influence of the Laws of England would be in that Matter, if he should call him to Account.

My Lord, I think, with Submission, it carries this in it, as if he had a Purpose in his Mind to call Mr. *Thynn* to Account by quarrelling with him and hazarding him in his Life; I do not undertake, nor would not, of myself, to expound it, but this I will say, it must signify something, and must have some Consideration; and without all Doubt, a Person of this Lord's Quality would not let fall such an Expression, but for some End and Purpose.

My Lord, after Mr. *Hanson* had given his long Evidence, which came so difficultly from him, we traced it down by several Witnesses, *Wright*, *Harder*, and others; that this *Polander* came over, as it happened, on the Friday, (which is a Thing comes mighty close) upon the Saturday he is provided with a Coat and a Sword; on the Sunday he committed this in- human bloody Fact. Now, it is a mighty unfortunate Circumstance upon this Lord, that this should be a Man whom my Lord *Coningsmark* should be so very much concerned for, that because he was not come, he should be afraid he had miscarried in the Weather; to that his Answer was this, that he was sent for over by him to look after his Horses, and he had come a great deal sooner, if it had not been for the stormy Weather. But, your Lordship observes, that it was not above three or four Months before, and then by his own shewing the Business of Mr. *Thynn*, and his Marriage with my Lady *Ogle* was talked of far and near; and so, my Lord, it makes the Suspicion of the Malice the greater, that he who has done this bloody Murder, and has been so much under the Command of this Lord's Family, that he should come but two Days before, and the Count provide him with a Sword that very Day, and then that Letter from Cap- tain *Vratz* to Dr. *Harder*, which he carried to the Count, and the Count read, but of which he can tell you none of the Contents; that speaks some- thing in regard when the Doctor went away, this *Polander* was sent to the Captain by the Doctor; but this is certain, however, there was a Sword that was brought by the Cutler, that Sword was carried up to the Count's Chamber, that Sword was delivered afterwards to the *Polander*; for he had it on the Sunday Morning when he went away with the Boots under his Arm, and the Campaign Coat upon his Back, with a Buff-Coat under it; and he went out, and never returned 'till the Fact was committed.

I say, my Lord, it carries a vehement Suspicion, that he was privy to this Murder, because this was a Servant at his Devotion, and your Lord- ship and the Jury see what Kind of a Creature he is, likely to do any thing, being at the Command of so great a Person.

But then, my Lord, to come closer to the Matter, (for I will only re- peat that which is most material) there is the Evidence of the Boy, who I must say, tells you a very sensible Story; he tells you upon what Ac- count he came to him, that he was there ten Days before the Murder was committed; he swears expressly, that the *Polander* lay there the Night be- fore, was there that Morning, went away with the Sword, and Dr. *Harder* with him; that this Murder was committed about eight o'Clock at Night, that Captain *Vratz* came bustling into the Count's Lodgings, where he lay concealed, and the Boy, by Agreement, being to go home every Night, staid 'till half an Hour past nine, and left the Captain there at that Time, and the Captain had been there in the Morning.

My Lord, surely it is a strange Thing, and much to be won- dered at, that the Captain, who had the Management of the Murder, had no where to go for a Refuge, but to his Patron my Lord *Coningsmark*, reeking hot with Mr. *Thynn*'s Blood, when the Blow was given, within an Hour after the Murder committed, to the Boy swears expressly, for the Blow was given at



a-Clock) and afterwards he went to the Doctor's to Bed, about ten a-Clock at Night, as the Doctor hath confessed; I take that for a mighty Evidence. And then, my Lord, upon the Monday Morning, when the Boy comes in, the Count asks him, *What was the Matter with the Bustle in the Street the last Night?* Will any Man in England believe, but that he had had earlier News of it? And for what Reason should he ask the Question, if Mr. Hanson speaks true, who brought the News in from Whitehall?

But the great Question that we wonder should be asked the Boy, is, *What Mr. Thynn was?* Which certainly was a very odd Expression, if we consider what Mr. Hanson says, *That the Count had mentioned him in his Discourse, and my Lady Ogle too.* One of the Count's Answers was, *It could not be imagined that he could speak to a Scullion-Boy;* but you see the Boy swears it, and tells it so, as that it is very probable.

We now come, my Lord, to give an Account of his Flight.

The Father of the Boy comes in the Morning: And I would observe, though he pretended his Business and his Distemper brought him over, and that he was ill and under Cure; yet this Matter made the Place too hot to hold him; stay here he durst not; immediately he forgot his Physician's Prescriptions, and gave Order to his Man to send away his Things. Then the Boy's Father was sent for, and the Portmantles are given him, and he is told my Lord was going to Windsor; but when he came to Charing-Cross, the Things are put into a Coach in the Strand, and from thence they went for Rotherhithe.

Then came the Man at whose House he lay, and he was a Swede, and by the Way I would observe, the Witnesses are most of them my Lord's own Friends, unwilling to tell the Truth till we get it (and that very hardly) from them. This Man was very unwilling to tell his Knowledge, but he got him the Clothes, which Clothes, by the Bulk of the Man, one would think would hardly fit the Count; but the more he was disguised, the more was his Security; and when he was asked this Question, *Why he desired to have those Clothes to secure him?* He said at last, *It was to prevent Trouble.*

Now let us consider, my Lord, whether the Count has given any Answer to that. My Lord, there is nothing in what he said, under Pardon. He says, *He went away, because he was afraid the People would tear him in Pieces, before he could justify himself.* If he were innocent, he knew where to go to be secure from any Hurt from the People; he might have applied himself to your Lordship, or to any other Magistrate. He is so ingenious he could not but know he might have protected himself under the Government, which protects and secures any Man whatsoever if he be innocent.

I have these two Things more to mention, and then I shall leave it to your Lordship, and the Jury; and one is the Evidence of Mr. Gibbons, and Mr. Kid.

Mr. Kid gives that which to me is a very material Evidence of what passed when they seized him: As they were coming up the River, the Count asks him, *Whether there were any good Lodgings in Newgate?* and particularly expressed his Care of the Captain, to ask whether he were well lodged. And when he was told that the Polander had confessed, he says he seemed on the sudden to be very much concerned, bit his Clothes, and threw himself along with some Agony. My Lord, an innocent Man needed not to use any such Actions.

Then comes Mr. Gibbons, who was very instrumental in the pursuing of him, and is known to be an honest Man, he gives this Evidence, *That when there was a Discourse about Mr. Thynn, and his old Master the Duke of Monmouth, the Count presently replied, They meant to have done the Duke of Monmouth no Harm;* and walking about the Room on a sudden, burst out into this Expression, *This is a Stain upon my Blood; but one good Action in the Wars, or lodging upon a Counterfeits, will wash it all away.*

Now, my Lord, as to what he answers to this, I say any Man may make that Evasion which he would excuse it by, to say that the Accusation is a scandal or a Stain, may be worse than the Guilt of the Action: But your Lordship and the Jury see plainly, if so be the Thoughts of a Man's own heart be that he is Guilty, it will break out some way or other. These things I only repeat, I leave them to the Consideration of the Jury. But when I have said this, there is one Thing more, and that is, above all, relating to the Captain: Says Mr. Gibbons, *I did not know that the Captain had confessed, but I did venture to say he had;* but the Count replied, *He did not believe the Captain had confessed.* My Lord, you see how the Captain appears before you, and if the Count will take upon him to say, he does not believe the Captain would confess; it doth strongly argue he knew as much of the Captain's Mind as he himself. Then look upon the absolute Behaviour of the Captain, the Familiarity he lived in with the Count, that he had always been a Dependunt upon his Family, it shews the Reason for his Assurance of Secrecy from the Captain, that he would confess the Author of this most notorious Murder, and it lies heavy upon him. My Lord, I look upon the Discovery of this as a very miraculous thing: And pray consider, Gentlemen, where shall a Man go to settle his Thoughts for the Original Business? Do you (or can you) think it begun, invented and contrived by yonder three Men? To what End Purpose, or for what Advantage to them? You have heard the Evidence that I have repeated to you; you have heard what this Lord has said for himself; how he has fled, and what has been done. My Lord, I will use any thing of Argument to persuade the Jury; but I cannot chuse to say, we know no where to go for the Author of this villainous Fact, to whom to accuse as the prime Contriver, but this Count before you. I leave the God of Heaven to direct you in your Enquiry; and if I have said any thing amiss, I beg your Pardon for it.

[Then a great Shout was made, which the Court rebuked the People for.]

Mr. Williams. My Lord, I did not think to have said any thing more in this Case; but I must crave your Lordship's and the Jury's Patience a few Words. As for the three Persons at the Bar (the Pole, the Captain, and the Lieutenant) it is, Gentlemen, very notorious they are Guilty of this most hellish Murder. But all the Labour and Difficulty of the Matter is, how far this Count is Guilty or Not Guilty.

Pray, Gentlemen, do but observe the Nature of this Crime, and the Manner of our Evidence that has been given you. The Crime he is accused of, is, for being accessary to a wilful Murder: accessary before the Fact; contriving of it, and laying the Train, which these Persons were made use of to fire. This being so, it is almost impossible to give you that clear Light and pregnant Proof against an Accessary, as against the Principals. The Principal is he that doth the Fact; that is notorious and open. The Accessary is the Person that prepares the Scheme, contrives the Management, first sets the Wheel on work, gives the necessary Instructions, who lies behind the Curtain. Now, considering that, and the Nature of the Thing, it is impossible to give a clearer Evidence than what you have had.

Pray, Gentlemen, do but first consider who hath been the Privadoes and the Intimates of this Count, with whom he has had Conference since he came into England, Hanson and Dr. Frederick, who are brought as Witnesses (though unwilling ones) against him: the Boy that was employed by him; he is in no other Hands; I cannot hear he was among any other Persons but these, and Captain Vratz, and the Polander. These are his Company and those alone with whom he had Conversation. Now, Gentlemen, that we should be able to produce these very Men (that were his only Companions) against him as Witnesses, is a mighty Thing, considering the Privacy he lay in.

As for Vratz, his most intimate Privado, he came over with him into England, lived with him in his first Lodging, and was continually with him during his Stay. So then, What can we expect about this Man, Gentlemen, when he had laid his Design with all the Privacy he could, would have as little Conversation with Englishmen as he could. It was very craftily laid, that he would converse with none but those that were privy to his Design, or had an Hand in it in a great Measure. Then pray consider how it was carried on, Gentlemen; Vratz, who was the great Commander, and the Polander, who was the immediate Actor in it, had been his own Servants. Vratz, I say, he had a great Confidence in; he came over with him; and will not any Man believe, that this Man, who eat of his Bread, who lay in his Family, was a likely Man to do this for his sake, that thus cherished him? For whose sake, pray, can it be thought to be? Not for his own sake; for the Captain tells you he never had any Communication or Conversation with this unhappy Gentleman, Mr. Thynn. So that if it were as they would have it, that they did it out of Respect to this Count, who was the Captain's Friend, it will turn upon the same Point, and confirm the Suspicion. Why should the Polander do it, if he had no Reason to do it upon his own Account? For he never saw the Face of Mr. Thynn, but was brought Hood-wink'd, in a Manner, to the Fact.

Therefore whether it were not done for his sake, is that which you are to consider; and as a Proof that for the Count it was done, I shall pitch upon one Circumstance that will bring it home to his Door, and that is, the Evidence of Hanson, his Brother's Tutor: And, by the Way, I cannot but repeat it, that this Thread goes through all the Cloth, we have no Witnesses but those of his own familiar Acquaintance and Dependance. Now Hanson has (though very shufflingly) told you, the Count and he had some Discourse about my Lady Ogle; and tho' we cannot come to know all the Circumstances, yet he does acknowledge so much, as that there was Mention made of requiring Satisfaction of Mr. Thynn, or some Account of him, and what might be the Consequences of the Laws of England, in Reference to my Lady Ogle, in case he should call him to Account. So far he is plain, though he will not tell what the Discourse was; that there was a Discourse of my Lady Ogle, of Mr. Thynn, of asking Satisfaction of Mr. Thynn, or calling him to Account, and what the Consequences in Law might be. And pray, Gentlemen, observe, being to take Advice about this Matter, they would not consult an English Lawyer, though I see one behind him now, but a Foreigner, the Swedish Agent; not ask the Opinion of one Man of this Kingdom. And then he gives you a mighty Reason for it, That the Swedish Resident knew very well how to advise him in this Affair, because he had lived in England about 19 Years: So that all his Acquaintance and Friends, the Managers of the Business, and those consulted with about it, all Outlandishmen; I cannot say they are all Guilty, but I will say this makes our Proof more difficult.

Gentlemen, This being taken Notice of as a mighty Circumstance, I would bring it a little more home to this Gentleman, whom we accuse as accessary before the Fact. Pray consider how all along he lay skulking, and hiding himself in Disguise, and shifting his Lodging from Place to Place. I need not repeat it, but I would desire you to think of what was concurrent with that very Day, and, as it were, concomitant with the very Murder, and that will appear to be sufficient to satisfy any rational Man. We are not picking up an Evidence upon flying Word, or unconcluding Circumstances, but we offer Facts to you, and Facts are to guide you, you being to compare Facts with Facts. As to his lurking and hiding, this Gentleman gives you no Manner of rational Account, that he had any Business with any Man in England that should occasion his lying private; but only he tells you, he laboured under a Distemper that he would not have discovered; and yet take him in that very Distemper, and in the Process of his Cure, as soon as this Fact is over, the next Morning he values neither his Disease nor his Physick, but goes by Water, and made an Attempt to fly abroad. Will any understanding Man believe that he came privately into England, that he lay skulking here, that he made use of another Name, and other Clothes, that he should do all these Things, and run away so immediately after the Fact was done, and all only because of a little Distemper of Spots on his Breast?

But then, says he, it was reported in the World, and told him the next Morning, that the People, the Rabble, would tear him in Pieces. He was asked where he had this Report, and he brought up a Taylor, and depended mightily upon it, but the Taylor denied it; and, Gentlemen, he that fails in one Thing he says, is not to be credited in another without good Proof. He says, that he said no such Thing, so that, Gentlemen, this fictitious Argument of his Fear falls to the Ground.

S f f

Then



Then observe what follows upon this villainous Fact; he flies away privately, he goes to a *Swedish House* at *Rotherhithe*, from thence by a *Swede* he must be put into a Sculler, and that Sculler must be towing of him for several Days together, till he come to *Gravesend*, from whence he was to have gone over Sea. Pray lay all this together, and weigh it well, and see if you can imagine any other Reason for it all, than what we alledge.

I would observe it to you, Gentlemen, and pray think of it, what the Count has said to you in his own Defence in so many Languages, without Proof, must pass for nothing. The Court has had a great deal of Patience to hear him, and shewn him a great deal of Favour in permitting it; but without Proof, I say, it all passeth for nothing. And what Proof he hath made of it, I must submit to you; for I will not spend your Time in running into Particulars: And where he has proved any Things, pray compare Facts with Facts, especially that concerning the Captain, *Vratz*, which is not, in my Opinion, to be answered; that he lived with him, that he should be with him on the *Sunday Morning*, that in the Evening he should come thither again after the Fact done, that he should be left in his Chamber, and continue in the House so long. Will any one believe, that when *Vratz* came over with the Count from abroad, lodged with him here, was every Day with him in familiar Conversation, should come that Morning before, and in the Evening immediately after, and stay with him so long, and yet the Count be innocent? Nay, will not any Man rather absolutely conclude him an Accessory to the Murder?

Then, Gentlemen, take into your Consideration his Flight, and Endeavours to escape out of the Hands of Justice; if there were no more, that is a great Evidence of his Guilt, but you have much more, and as strong as you can desire or expect. He says he was afraid of the People; alas! he needed not to fear that, he finds a very fair and generous Treatment here; he knew the Temper of our *English Nation* well enough, to know they do not presently fly in Men's Faces; and he could not but know, he might, without Danger, resign himself up to the Law if he were innocent.

Gentlemen, we have given you a fair and a full Evidence; we have offered you sufficient Proof in Fact, and have offered no Shams to you; and I do not doubt but you will do Right to the Honour of *England*, and the Justice of the Nation, which are deeply concerned in this Case.

[Then there was a great Noise made.]

L. C. J. Look you, Gentlemen, the Counsel for the King have been very large in the repeating of the Evidence, therefore you must not expect from me, that I should go over it again in the same Method that they have done. I will direct you a little as to some Points in Law as to this Case: Here is, as they tell you truly, a Murder as horrid and barbarous as peradventure can be committed upon any Subject. It is a Murder of a very bad Nature, so that the repeating of it is enough to make all Men abhor it; it needs no Aggravation, it is in its own Nature so very barbarous; and those Gentlemen that had a Hand in it, must certainly needs be ashamed, and look upon themselves as not fit to be accounted Men, whoever they be that had any Hand in it, so barbarous and inhuman, and base in its own Nature, and so unworthy of a Man.

I must tell you, Gentlemen, when one Man shoots another, and two are with him, though they do nothing but come on purpose to countenance that evil Fact, that is Murder in them all; all that were present are guilty whenever such an Act is done: And three or four come together, and one does the Fact, and the others stand by to countenance it, whether they be there to bring the Party off, or to animate him, and put him into a Condition that he may murder and kill, it is Murder in all, and they are all as equally guilty as he that shot, or actually gave the Blow.

Now as to these three Persons here, the *Polander* that shot, *Vratz* who was with him and stop'd the Coach, and *Stern* that was by with them, they do all acknowledge themselves to be there at this Murder; the least they say for themselves, is, that they came to countenance a fighting with Mr. *Thynn*, that is the least any of them say; for Captain *Vratz* makes this his Excuse, that he intended to kill him (as he calls it) fairly, and the others were to stand by to let him make the best of it; so that they all came with a murderous Intent, and a Murder followed. And I must declare this for Law to you, that this is Murder in them all, if you believe themselves; so that I think there is little, very little for you to consider concerning these three Men, but according to what they have acknowledged of themselves both before the Council, and here likewise in your own Presence, they seem all to be guilty of this Murder.

The more doubtful Question is concerning Count *Coningsmark*, that stands here before you, for he was not at the Murder, nor is he charged as Principal; and the Question will be as to him, Whether he commanded, or gave any Authority or Direction to have this Murder committed? That is the Thing that is now charged upon him, and without that, he cannot be Accessory in this Case.

Now, Gentlemen, you must consider as to that, several Things are certain and positive; That this *Polander* was once his Servant; That he was brought over from beyond Sea by his Order; That he was given by him to Captain *Vratz*; That *Vratz* was his great Acquaintance, and lay in his Lodging some Time, though not at this very Time. These Things are plain: Now what Answer is given to this? You hear, he says, the *Polander* was taken for him, and hired as a Servant beyond Seas, knowing that he had skill in Horses; and the Count having remitted Money to buy Horses, he was willing to have him manage the Horses, and to have his Judgment in them, and sent for him three Months before for that Purpose, and that he came for that Purpose; but knowing that the Occasion for which he was to buy his Horses was passed over, there being like to be no War, and therefore there would be Occasion for Horses, he was willing to part with the *Polander*, as he says, is usual for Persons of Quality in his Country to do upon such Occasions, to give their Servants to one another; and so, having clothed him first, he gave him to Captain *Vratz*: And you hear how much of this is made good by Witnesses, and how far this is satisfactory to you as an Excuse and Reason for this, I leave to you.

There is more too that is very plain: It is apparent that the Count bid him come to his Lodging after this Murder was committed. According to the Calculation of the Time, it must be after the Murder, for that was about eight o'Clock, and he was there about Nine. You hear what An-

swer the Count gives to that; That he came as formerly he had done, he knowing nothing of this, nor of Mr. *Thynn's* Murder, and that he did not speak to him concerning it.

The next Thing, Gentlemen, is, 'Tis plain the Count did lie private when he came to *England*; and he tells you (he brings the Doctor to witness it) his Occasion of Privacy was, because he had a Sickness, which he was loth should be known, having been formerly in Splendor in *England*; but now without his Equipage, he would not publicly appear; and he was afraid, if he appeared in Company, he should be inticed to drink high, and that would retard his Cure. And the Doctor tells you, he was under his Hands for Cure of his Disease, which was some Spots upon his Body.

It is plain too that Count *Coningsmark* did go away the next Morning after he had heard of the Murder, he acknowledgeth it himself; and that he did conceal himself upon the Water, and was taken in such a Manner as the Witnesses speak. But withal, he tells you the Occasion of this was, a Stranger here, Captain *Vratz*, as he heard, was accused for the Murder, and seized, and he did not know what this might occasion to him; how the common People might fall upon a Stranger that was of that Man's Acquaintance; and it was through his Fear of the People (lest they should fall upon him before he could vindicate himself) that he withdrew himself, and concealed himself in this Manner. As it was told you by the Counsel it was an unreasonable Fear in him, for there is no such disorderly Proceeding (we thank God) in *England*; but he tells you he was afraid of it; and if he were, being a Stranger, he might not know our Constitution so well.

But I must tell you another Thing for Law, Gentlemen, which was urged by the Counsel for the King. Captain *Vratz* doth say, that he, knowing of an Affront that had been given to the Count, and having received an Affront himself, he did, without the Count's Knowledge, do this Murder, for Revenge, upon Mr. *Thynn*. It has been said by the Counsel, it will be all one whether it were with the Knowledge of Count *Coningsmark*, or not. Now, I must tell you, Gentlemen, the Law is not so: For if a Gentleman has an Affront given him which he does seem to resent, if any of his Servants officiously, without acquainting him with it, out of too much Zeal, and too forward a Respect to their Master's Honour, will go and pistol and kill him that they apprehend has affronted their Master, he not knowing of it, it will not charge their Master with any Guilt at all. The Law, Gentlemen, is not so as was urged; for if it were without the Count's Knowledge and Direction, if a zealous Captain has gone and over-did himself, out of respect to his Master's Honour, when really it was a Dishonour to himself, and all that were acquainted with it, this cannot lie upon him, to make Count *Coningsmark* Guilty. But it lies upon me to direct you, for otherwise you might swallow it as a Maxim, to be all one in Law, which it is not.

So that it will return to this, Whether here be any Proof that Count *Coningsmark* did consent to this Murder, or any ways countenance the killing of Mr. *Thynn*, or command any of these Persons to do it.

Look you, Gentlemen, there are some suspicious Speeches that are mentioned here of the Count's. One is, that the Boy should say that the Count asked him whether Men might ride in *London* on *Sundays*? You hear what Answer is given to that. The Count denieth that he asked any such Question: And to shew and prove that such a Question could not likely be asked, he says and proves, by divers Persons, that it was an ordinary thing for himself to ride on *Sundays* in *Hide-Park*, before this Business long.

It is also said, that when he was taken, he should say, That he did believe they intended the Duke of *Monmouth* no Hurt. Now that he said these Words he doth not here deny; but he says he spoke it upon the common Report, that these Men had watched the Coach till they saw his Grace out of it, and then they did do this Villainy; so that he apprehended they had no Design to hurt the Duke at all. This is the Answer he gives; how satisfactory it is, I leave it to you.

Then as to those other Words; That it would reflect upon his Family, and stain his Blood; but he presently recollected himself, and said, O brave Action in the Wars, or Lodging upon a Counterfarp, would wash it off. You hear what he says to that: He looked upon it as an Injury to his Family, and it would be some Stain to his Blood, that he should be accused of so base and unworthy an Act; but that Accusation he thought might be washed off; and so, though he were innocent, it might be looked upon as a Stain, which a brave Behaviour in the Wars would wipe off.

Gentlemen, Thus, as near as I can, I have given you an Account of the most material Things that are objected against him, and his Answers to them. I must leave it to you, whether upon the Evidence which you have heard, you do believe that this Murder was directed or countenanced by Count *Coningsmark*. If it were, he then is Guilty as accessory before the Fact, and you must find it; but if you believe he did not know it till after the Murder was done, then he is innocent, and you must acquit him. And upon the whole, Gentlemen, I must leave it to you.

Then, it being late, after an Officer was sworn to keep the Jury, the Court adjourned for a while; and in an half an Hour returned; and then the Jury who came in and answering to their Names, gave this Verdict.

Cl. of Cr. Gentlemen, are you all agreed of your Verdict?

Omnes. Yes.

Cl. of Cr. Who shall say for you?

Omnes. Foreman.

Cl. of Cr. *George Borofsky*, alias *Boratzki*, hold up thy Hand. (Which he did.) Look upon the Prisoner: How say you? Is he Guilty of the Murder and Murder whereof he stands indicted, or Not Guilty?

Foreman. Guilty.

Cl. of Cr. What Goods and Chattels, Lands and Tenements?

Foreman. None to our Knowledge.

Cl. of Cr. *Christopher Vratz*, hold up thy hand—Is he Guilty, &c.

Foreman. Guilty.

Cl. of Cr. What Goods, &c.

Foreman. None to our Knowledge.

Cl. of Cr. *John Stern*, hold up thy Hand—Is he Guilty or, &c.

Foreman. Guilty.



*Foreman.* Guilty.  
*Cl. of Cr.* What Goods, &c. — *Foreman.* None to our Knowledge.  
*Cl. of Cr.* Charles John Coningsmark, hold up thy Hand, (which he did.)  
 How say you, is he Guilty of the Felony whereof he stands indicted as Accessary before, or not Guilty?

*Foreman.* Not Guilty.  
*Count Con.* God bless the King and the honourable Bench.  
*Cl. of Cr.* Then hearken to your Verdict as the Court hath recorded it, you say that George Borofky, &c. and so you say all.

Then the Jury was dismissed, and the Court ordered a Recognizance to be taken from the Count, with three Sureties, to appear the next Sessions, and to answer any Appeal if brought; after which the Judges went away, and the Recorder, with the Lord Mayor and Aldermen, stayed to pronounce Sentence on the convicted Malefactors.

*Cl. of Cr.* Keeper, set George Borofky to the Bar, hold up thy Hand, (which he did.) Thou standest convicted of Murder, for killing Thomas Thynn, Esq; what canst thou say for thyself why the Court should not give Judgment upon thee to die according to Law?

*Interpreter.* He says, he prays God to have Mercy upon him.

*Cl. of Cr.* Tie him up. Set Christopher Vratz to the Bar----

*Interpreter.* He says he hears he is condemned, but he was never rightly examined, nor fairly tried\*.

*Cl. of Cr.* Set John Stern to the Bar-----

*Interpreter.* He says he did it for the Captain's Sake, he went as a Second along with him.

Then the Prisoners being tied all up by the Executioner, Proclamation was made for Silence, during the pronouncing of the Sentence.

*Mr. Recorder.* You the Prisoners at the Bar, George Borofky, Christopher Vratz, and John Stern, you have been all indicted for the Murder of a Gentleman of great Quality, Mr. Thynn; a great, and heinous and a crying Crime, that cries aloud for Vengeance: You have been brought to your Trial, and tried indifferently by a Jury not consisting only of the Countrymen of the Party slain, but compounded of Foreigners and Freeholders of the County too. These Impartial Men have found you Guilty, and indeed the Plainness of your Guilt is such, that you yourselves have acknowledged yourselves Guilty. For when you were apprehended, your Guilt did so stare in your Faces, and you could give so little an Account how you had bestowed that Time wherein he was murdered, that you were forced to confess your Interest in the Fact.

It is our Duty to pronounce the Sentence of the Law against you upon this Conviction; but it is also our Usage to open the Nature of the Crime for which the convicted Person is to suffer Death, for the Conviction of the Offenders themselves. Now your Crime is one of the deepest Die; it is the wilful shedding of innocent Blood, to which you could be led by nothing but what you are charged with in the Indictment, the Motion and Seduction of the Devil. This Crime of Murder is put into the highest and foremost Rank. When God himself had given Laws to the World under the old Administration, after the Command of honouring Father and Mother, in the next Place he forbids Murder. This Crime you have committed, and that, with the most aggravating Circumstances that I have ever known attend any Crime of this Nature. It was committed upon a Gentleman of great Quality, that was so far from giving you any Provocation to it, that you acknowledge yourselves you never had any Communication with him. It was done upon a Day when you ought to have exercised and busied yourselves in Acts of Piety and religious Worship. It was done in the Streets of the City, near the King's Royal Palace. But the greatest Circumstance of all, is the doing of it in such a Manner, that is, it was done by Way-laying; a Sort of killing the most unworthy, the most base, and the most ungenerous of all other. For that it gives the Party assaulted no Liberty for any Prevention, or any Defence by any Prudence he can use; and the Consequence of it is, as much as lies in the Malefactor, to destroy as well the Soul as the Body; by such an insidious Murder, to take a Man out of this Life, before he can have any Opportunity to prepare for another Life. Therefore in our publick solemn Prayers in our Church it has very justly and worthily been made part of our Liturgy, to pray to be delivered from Murder and sudden Death.

You that are Strangers in this Country, if you had been tried and convicted of a Breach of our municipal Laws, the peculiar Laws of this Kingdom, much Indulgence might be shewn to you because of your little Acquaintance with the Law. But that is not your Case: Your Offence is a Transgression against the Law of God, written in large Characters in the Nature of Man. It is against the Laws of all Nations, even your own Country from whence you come, and any other Country where-ever you could go, are severe in their Laws against that by which you have broken the Law in so foul a Fact. The very Barbarians could say, *This Man is a Murderer, and Divine Vengeance will not suffer him to live*; so that they all think the Divine Vengeance concerned to revenge it.

You have slain this innocent Gentleman, which is but a single Distemper as it concerns him, but if it should go unpunished, it would turn to a pestilential Contagion. If such Assassinations and Murders of Persons should not be severely punished, it were a greater Woe than ever was brought upon this Kingdom. Therefore it is thought fit by his Majesty, to make his Justice signal and exemplary upon those that have thus basely and inhumanly brought themselves under the Censure of it. That when the Fame of this barbarous Action shall go abroad, his Justice shall also be celebrated upon the Actors, and that this Kingdom is maintained by Justice. I have but one Thing more to say to you, and that is in Tendernefs to you yourselves. You are to consider that you are to receive another Judgment than that you will be condemned by here, and that you may be prepared, for that is your great and your only Care. Now it is Repentance that is the only Antidote against the Sting of Death. You cannot be found innocent, yourselves acknowledge your Guilt; then let it be your care to be found Penitent. For that Purpose you shall have the Assistance of some learned Divines here, and you will do well to hearken to their good

Counsels. I pray God you may submit to Justice patiently, and that your Contrition may be correspondent to your Crime, that so you may obtain Pardon and everlasting Favour from God.

It remains only that we pass the Sentence of Law against you, which is this:

*That you shall go from hence to the Place from whence you came, from thence to the Place of Execution, where you shall be severally hanged by the Neck until you be dead: And the Lord have Mercy upon your Souls.*

Then the Prisoners were carried away, and the Court adjourned.

On the 10th of March following they were all three executed, according to the Sentence, in the Pall-Mall, in the same Place where they had committed the Murder. Stern and Borofky left each of them a Paper signed with their own Hands.

*The Confession of Lieutenant John Stern.*

ABOUT twenty seven Years ago my Father sent me out of Swedeland to Germanland, where for two Years together I went to School: Two Years after that came the Muscovites, which obliged us to fly back to Swedeland. About twenty three Years ago I left Sweden, and went towards Pomerania, where I served the Elector of Brandenburg a quarter of a Year; from thence I went through Poland towards the German Emperor's Dominions. From Bohemia I travelled into the Netherlands, from thence into France; from France again into the Netherlands with the Army: After the Peace, I went back to Bohemia, Austria, and Hungary, and after that again to the Netherlands, where I stayed eight Years; from thence I went farther, to Holland, Denmark, Sweden, Poland, and then to Holstein, which was in the Year 81. During these thirteen Years I have been a Papist twelve Years, because I was commonly all that Time in Popish Territories; but in Holstein in the Year 81, I turned again to the Lutheran Religion, in which I was born and baptized, and in that, God willing, I mean to die. I could no longer bear with the Popish Religion, because of their many Saints and Intercessors. There is no Religion comes nearer to mine, than that of the Protestants in England; God grant they may live in Peace with the Calvinists, to prevent Quarrels, and in Opposition to the Papists.

And now I will let you know how I came to that late Misfortune here in London. About the end of October last I came to London, and lodged in the City, near the Royal-Exchange in Broadstreet, in the Dutch Ordinary, at the Sign of the City of Amsterdam. When I had been there about a Month, a Gentleman came to lodge there, who called himself Vallichs, but his Name is Vratz: He and I began to be acquainted: At last he told me he had a Request to me; to whom I replied, That to the utmost of my Power he might command me. To this he said, That he had a Quarrel with a Gentleman, and desired me to be his Second. I told him, without any Consideration, I would. A Fortnight after he told me, That it was good Living thereabouts; and if I would take a Lodging in that Place, during the four Weeks he should stay in London, he would pay for me. Hereupon he took four Servants; sometimes he was for marrying, sometimes for fighting; and if he could get one who would kill the Gentleman, he said, he would give him 200, nay 300 Dollars. There it rested for a while. He dismissed two of his Servants, and was going for France, or Holland. The two Servants continued without Places. Six Days after, I took leave of my Acquaintance; and after my Things had been two Days on Shipboard, I went to the Lutheran Church, where I received a Letter from Capt. Vratz. O unhappy Letter! The Contents were as follows.

S I R,

I AM sorry I could not have the Honour to take my leave of you; but be it all to your Advantage. I am going for France, yet have not as yet a certain Commission. In the mean while be pleased to continue either at Mr. Block's, or in the City of Amsterdam, where I will not fail to pay for all. I am, your obliged Servant,

*De Vratz, alias de Vallichs.*

After I had read this unhappy Letter, I changed my Resolution, and stayed here and fetched my Things from the Ship, and went to lodge in Blackmoor-street. About ten Weeks after he returns to London, sends for me, and I came; and himself took a Lodging in Westminster, where I was with him; and the Count himself lay one Night in the Captain's and my Lodging. The Captain then asked me, How Thynn did? I told him, I could not tell, for I had never seen him. Thereupon he told me, *I must see now how to order it, that I may come at him; if I could get but some stout Fellows* ----- *Do you know no Frenchman about Town, or what other People there is?* I said, I would see. Then he added; could not one get an Italian who might dispatch him, I would give him three or four hundred Dollars? I said, I knew none: Hereupon he got four brace of Pistols, three little ones, and one brace of great ones. The great ones, and one brace of little ones, he had by him before, and two long Swords; and then said, Now he is a dead Man. He prayed me to cause two Poniards to be made, whereof he gave me the Draught, but I would not do it. And now he had a Mind to draw in a great many more. At last I had a very strange ominous Dream. He saw I was musing, and then asked me, What I ailed? I told him, and he laughed, saying, There was no need to be given to Dreams; yet the Dream proved too true. Now, I say, he was resolved to kill him; when therefore he importuned me to engage more Men in the Business; I told him, What can you do with so many People, cannot you take three Horses, you will have use for no more? Hereupon he fetched out Money, and on the Friday, before the Murder was done, he bought three Horses. On Sunday following he told me, I shall get a brave Fellow, (that was the miserable Polonian) who came to Town on Friday, and the Sunday after he killed the Gentleman, (according to Order from his Master, and you know who his Master was) myself being then, alas! in the Company. Half an Hour past four, the Gentleman went by in his Chariot before our Window. Thereupon we went for the Horses, and afterwards rid toward the Pall-Mall, where we met the Gentleman in his Chariot, I rid before the Coach, the

\* This was because when the Evidence for the King was finished, he was never asked what he had to say for himself, which ought to have been done, as is usual in all cases, but is not unlikely the Court were apprehensive he might lay the Guilt on the Count.



Captain went close by it, and then cried, *Hold*, and shewed the *Polonian* the Man in the Coach; who thereupon gave Fire, and shot four or five Bullets into his Body. They say, he lived till next Morning, and then died. On *Monday* following we were all taken Prisoners, and must now die too; we have yet four Days to live: The Great God pardon us this Sin, for Christ his sake. *Amen*. For I repent, from the bottom of my Heart, that in my old Age, to which I was advanced with Honour, I should come to this Disaster: But 'tis done, and cannot be remedied. It is written, *The Days of our Years are few, and when we come to our best Age, it is then but Labour and Sorrow.*

*Memorandum.*] The Letter the Captain shewed me one Day, was to this Purpose.

*I have given Captain Vratz full Commission to dispose of the Places of Captain or Lieutenant, to whomsoever he shall find capable of it.* So far I read the Letter; five Lines lower stood these Words, 600 Dollars, which was not the Captain's Hand, or writing; it was *High-Dutch*. I seeing the Letter, threw it down upon the Table, but he put it up, and underneath the Letter was signed *Coningsmark*. Thus much I saw, but made no farther Reflections upon the Letter, because, God knows, I was blinded.

Another *Memorandum*, I have forgot in the Papers, which, after my Death, are like to be published, *viz.* It hath been twice in my Thoughts, when Captain Vratz was in *Holland*, to go and tell Mr. *Thynn* what the Captain intended against him, but I still forgot.

I desire the Doctor, in case any Thing of the Captain's Writing should come abroad, to compare what he saith with my Confessions, and to consider one with the other, *Give unto Cæsar the Things that are Cæsar's, and unto God the Things that are God's.* I hope I shall go with the Publican into the Temple of God: I am a great Sinner, yet God's Mercy is greater, wherein I trust; nor will Christ therefore refuse a Soul, though the Body is hanged up by the World. My Lords, ye Judges, I do with you all Happiness; I confess you have a weighty Office, God give you his Grace, that you may neither add to, nor diminish from a Cause. You have seen how I have exposed all my Failings, and that openly to God, and to the whole World, because others may take Warning by me, whom I leave behind me in the World. I beg of God, that People may consider this my poor Writing, the Effect of the Assistance of God's Spirit, and the Desire of a pious Soul.

The Captain desired me that I would cause two Daggers to be made, because at first it was resolved, we should fall upon Mr. *Thynn* on Foot; and he would have had some Italian or another to thrust them into Mr. *Thynn's* Body; yet I neither looked out for a Man fit for that Purpose, nor would I cause those Daggers to be made. The Musquetoon, or the Gun, I fetched indeed; but it was out of a House, which the Captain described to me.

*I must now die for a Man's Fortune, with whom I never changed Word all my Life; for a Woman, which I never saw; nay, for a Man that is dead, whom I never had a view of; and are not these three very great Things, I leave it to every Man's Consideration? It would grieve a Man; I confess, it is a little hard, yet be it as God pleases? I have entirely resigned myself to his Will. O Jesu, receive my poor Soul into thy Hands, then shall I die thy Servant; my Soul I commend to thee, and then shall I feel no Pain nor Sorrow. Amen, Amen.*

*The Confession of George Borodzyecz the Polonian.*

**I** George Borodzyecz do here, in few Words, intend to make known to the World, how I came into the Service of Count *Coningsmark*. About eighteen Months ago I was recommended, by Letters, to the Quartermaster General *Kemp* at *Staden*; and from thence I was to be sent to the Count at *Tangier*; but by reason of the hard Winter I was stop'd, for the Ship in which I was to go stuck in the Ice in the River *Elbe*; this made me stay till farther Order. In *March* last I received a Letter, which ordered me to go and stay in a Manor belonging to the Count in the Bishoprick of *Bremen*, and there expect new Orders from the Count. At last I received a Letter, with Orders to come by Land for *Holland*; but destitute of an Opportunity, I staid till the 12th of *November* 1681, and then new Orders came, that I should come for *England* to the Count's Brother, where I should fetch Horses, and convey them to *Strasburgh*. And accordingly I left *Hamburg* the 24th of *December* 1681, and was at Sea till the 4th of *February* 1682. When I came to *London*, I lay the first Night in the City, hard by the *Royal Exchange*, at one *Black's*; and from thence I was conducted to the Count's Brother, and from thence to the Count himself, who was to be my Master: When I came to him, Captain *Vratz* being with him, my Lord told me, I should be with Capt. *Vratz* three Days, till his *i. e.* the Count's Baggage and Goods he had on Shipboard came. Whereupon the Captain said, He would send his Man for me next Day, which was *Sunday*, which he did accordingly. I went with his Man, and my Lord charged me, I should do what Capt. *Vratz* should order me to do. I went thereupon to my Chamber, and said the Lord's Prayer. On *Sunday*, about one of the Clock, came up the Captain's Man for me, and brought me to the Captain. When I saw him, he told me, *It's well you are come, for I have a Quarrel with an English Gentleman; I did formerly send him two Challenges, but he answered them not; whereupon Count Coningsmark and myself went for France; but that Gentlemen sent six Fellows after us, who were to kill the Count and me. Accordingly they came on us, the Count received two Wounds, we killed two of them, and I am now come hither to attack that Gentleman in the open Streets as a Murderer; and as he hath begun, so I will make an end of it.* Whereupon he gave me the Gun, which I should make use of to kill him. When hereupon I pleaded with Captain *Vratz*, and shewed myself unwilling, saying, That if we were taken we should come to a very ill End. He answered, I need not trouble myself about that, if we should be taken Prisoners, it was he that must suffer for it, not I; and for my Service, he would recommend me to Count *Coningsmark*; whereupon I thought with myself, that it might be here as it is in *Poland*, *viz.* where a Servant does a Thing by his Master's Order, the Master is to suffer for it, and not the Servant.

We went therefore soon after for our Horses, and rid toward the *Pall-*

*Mall*. The Captain told me, I will stop the Coach, and do you fire upon the Gentleman; which was done accordingly. *Lord have Mercy upon me.*

I am heartily sorry that my honest Parents must receive this unwelcome News of me; the Almighty God take care of my Soul. I have great confidence in Almighty God, and know that he hath offered his Son upon the Cross for the Sins of all Mankind. Therefore I believe that Satisfaction was also made for my Sins; and in this Faith, in the Name of God I will live and die. Lord Jesu give me a happy End, for thy bitter Death and Passion sake. *Amen.*

What pity is it, that I should be about the Space of Seven Weeks upon the Sea, betwixt *Hamburg* and *London*, and in great Danger Day and Night, and yet should fall at last into this unexpected Misfortune! I can bear Witness, with a good Conscience, that I knew nothing of the Business aforehand: The great God pardon those Men that have brought me to this Fall; God keep every Mother's Child from all such Disasters, for Christ his sake. *Amen.*

And I desire the Doctor to pray for me, and to let all the World know my Innocence after I am dead, that Men may see and fear.

GEORGE BORODZYECZ.

Captain *Vratz* would make no Confession, but persisted in denying what the others had owned; never Man died with more Resolution, and less Signs of Fear or Disorder; his Carriage in the Cart both as he was led along, and at the Place of Execution, was astonishing; he was not only undaunted, but looked cheerful, and smiled often: When the Rope was put about his Neck he did not change Colour, nor tremble; his Legs were firm under him; he looked often about on those who stood in *Balconies*, or at the Windows, and seemed to fix his Eyes on some particular Persons; three or four Times he smiled; he would not cover his Face as the rest did, but continued in an undaunted Manner, looking up to Heaven with a cheerfulness in his Countenance, and a little Motion of his Hands. Being asked, if he had any Thing to say to the People, he said no. When they had stood about a quarter of an Hour under the Gibbet, after they had been tied up, they were asked, when they would give the Signal for being turned off; they answered they were ready; so a little while after the Cart was driven away; and thus they ended their Lives.

Captain *Vratz* was permitted to be buried, but *Stern* and *Borofsky* were hanged in Chains.

*The Examination of Lieutenant John Stern, taken before Sir John Rereby, Bart. and William Bridgman, Esq; two of Majesty's Justices of the Peace of the County of Middlesex, Feb. 17, 1681.*

**T**HIS Examinee saith, that seven Months ago he came into *England*, and lodged at the *Amsterdam* Ordinary. That about five Weeks after Captain *Vratz* came and lodged in the next Room to him, and in a few Days made an Acquaintance with him, and said to him, It is dear living here, but as long as I stay it shall cost you nothing. This Place is dear, I will go and lodge at another Place. Accordingly they went to an House in *St. Nicholas Lane*, where the Captain paid for him. That the Captain told him, he had a Quarrel with a Gentleman with whom he would fight, and that he wanted a good Servant or two. That about fourteen Days after the Captain went out one Morning, saying, he would return in the Afternoon, but that he sent for his Boots and came not again; that a certain Taylor (who wrought for the Captain) came and discharged the Lodgings. That the Sunday following he received a Letter from the Captain, excusing his going away, and saying he would return in eight Days, (but he came not in nine or ten Weeks) that in the said Letter the Captain directed him to go and lodge at the *Amsterdam* Ordinary, or one *Back's*, saying, he would defray his Charges. That the Captain came to Town again a Day or two after the *Morocco* Ambassador had been to see the Guards in *Hide-Park*. That the Examinee then meeting the above mentioned Taylor (who is now Prisoner) with the Captain's Sword (which he knew,) the Taylor told him the Captain desired he would come and see him; that he accordingly went, but nothing past between them then of any Moment. That the next Day the Captain came to him, and began to discourse again about his Quarrel, repeating that he wanted a good Servant or two, for he would fight. That about nine or ten Days ago the Captain told him he should have a good Servant suddenly; and that if he this Examinee would assist him the Captain, he would make his Fortune. That the Captain gave him Money to buy a Musquetoon, which he did accordingly. That this Day *Sev'n* night the Captain bought three Horses, and the Day after said to this Examinee, I must have the Rogue now. Next Day, being *Sunday*, about Noon, when the *Polander* came, the Captain said to this Examinee, Now I have got a brave Fellow; and so the Captain went to the *Polander* into another Room, and when he came back to this Examinee, he said to him, This is a brave Fellow indeed, for he says those that will not fight must be killed. That after Dinner the Captain sent out one of his Servants to know whether the Gentleman (with whom he had a Quarrel) went out; that the Servant brought Word he was gone out, whereupon the Captain put on his Boots, and sent this Examinee for two Horses, to be brought to the *Black-Bull* in *Holborn*; soon after which another Person brought a third Horse, and then the Captain, the *Polander*, and this Examinee, got on Horseback, and went towards *Charing-Cross*, and having gone further in the *Pall-Mall*, this Examinee being about ten Yards behind the Coach (which he had met and passed) heard the Captain say, Stop or halt to the Coachman, and presently heard a Shot, and saw the Fire, upon which he turned about, and saw the other two Persons ride away, whom he followed.

The Examinee being gone out of the Room, and desiring to be brought in again, further said, that the Captain hath often told him, that he would give two, three, or four hundred Crowns to find a Man to kill Mr. *Thynn*.

*His further Examination taken Feb. 19, 1681.*

He saith that he had it in his Thoughts twice to go to Mr. *Thynn* and acquaint him that the Captain was resolved to kill him. That the Captain desired him to get an Italian that would stab a Man, and that he this Examinee would get two Poniards made: And asking the Captain how he would have them made? The Captain took *Pea-*

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VOL. II



Ink, and Paper, and made a Draught of them, adding, that if he could find such an Italian, he would give him three or four hundred Crowns; that this was before the *Polander* came over. That upon the same Day when the Murder was committed, the *Captain* bid him charge the Musquetoon with fifteen Bullets; whereupon he replied, that then they should kill the Footmen, and all about the Coach. The *Captain* answered, it matters not for that. That this Examinee charged two Pistols more, but put only five or six Bullets in the Musquetoon. That some of the Bullets were wrapt up in Rags, with Rosin powdered, which would burn. That he heard the *Captain* say (as he thinks to the *Polander*) that if the Duke of *Monmouth* were with Mr. *Thynn*, nothing must be done. That the *Captain* told him, if he would assist him in this Business, he would procure him the Command of a Company. That as he was sitting one Day melancholy by himself, the *Captain* came to him, and asked him what he ailed? Whereupon this Examinee said, that he had dreamt that four Dogs did fly at him, but that two were chained, and the other caught hold of him; upon which the *Captain* seemed concerned, but presently plucked out a Letter which was signed *Coningsmark*, in which was expressed that the Count gave the *Captain* full Power to dispose of the *Captain-Lieutenant's* Place of his Regiment, saying at the same Time (this Examinee not being willing to receive the Letter at first) What do you think I would be one of the Dogs to bite or deceive you? That he afterwards saw, towards the End of the Letter, the Figures of six hundred (which he thinks was to express *Six Dollars*) but what they concerned or related to, he knows not, for being he had seen the Power to dispose of the Company, he read no further.

J. RERESBY.  
W. BRIDGMAN.

The Examination of George Borosky, a *Polander*, the seventeenth of February, 1681-2. before Sir John Reresby, Bart. and William Bridgman, Esq; two of his Majesty's Justices of the Peace for the County of Middlesex, who saith,

THAT he came into England by the Desire of Count *Coningsmark* (expressed to him by his Merchant at *Hamburg*) but knew not for what Cause; but after he came, Count *Coningsmark* told him on Saturday the 11th Instant, that he had a Quarrel with an English Gentleman that had set six Persons upon him upon the Road, in which Conflict he was wounded, and two of the Assailants were killed. Therefore since the said Mr. *Thynn* did attempt for to kill him, he would make an End of it. He further said, To-morrow will come a certain Servant to conduct you to the *Captain*, and what he bids you to do, that you are to observe. That a Person came on Sunday Morning about eleven o'Clock accordingly, and carried him to another House, where he found the Person that conveyed him to the *Captain*, who told him that he must do what he bid him do, giving him a Musquetoon, a Case of Pistols, and a Pocket-Pistol, he having a Sword before given him by the Count; and the *Captain* further added, repeating it five or six times, when we go out together, if I stop a Coach, do you fire into it, and then follow me. They accordingly took Horse, and when they met the Coach, the *Captain* having a Pistol in his Hand, cried to the Coach, *Hoid*, and at the same Time bid this Examinee fire, which he did accordingly. That he being further examined as to Mr. *Hansen's* knowing any thing of this Matter, he saith he doth not know that he doth. That as to the Arms, there was a Blunderbuss, two Swords, two Pair of Pistols, three Pocket Pistols, two Pair of Boots tied up together in a kind of Sea-Bed, and delivered to Dr. *Dubartin*, a German Doctor, who received them at his own House.

J. RERESBY.  
W. BRIDGMAN.

CXII. The Trial of Nathaniel Thompson, William Pain, and John Farwell, at the Guild-Hall of London, for writing, printing and publishing Letters, importing that Sir Edmundbury Godfrey murdered himself; as also for several Falsities relating to the said Matter printed in several Papers, called the Loyal Protestant Intelligence, June 20, 1682. 34 Car. II.

The Jurors were,

Peter Houlton.	Gervas Byfield.	William Jacomb.
John Ellis.	Jonathan Lee.	John Delmee.
William Barret.	George Widdawes.	Samuel Bayly.
Joshua Brooks.	William Sambrook.	Samuel Howard.

The INFORMATION.

FOR that in *Hillary* Term, in the 30th and 31st Years of this King's Reign, in the Court of King's Bench at *Westminster*, by a Jury of the County of *Middlesex* were indicted, Robert Green, — Gerald, Clerk, Henry Berry, Lawrence Hill, Dominick Kelly, and Philbert Vernatt; for that they by the Instigation of the Devil, &c. the 12th of October, in the 30th Year of this King's Reign, at the Parish of St. Mary le Strand in the County of *Middlesex* aforesaid, with Force and Arms, in and upon Sir Edmundbury Godfrey, Kt. in the Peace of God and the King then and there being, feloniously, wilfully, and of their Malice aforethought, did make an Assault, and kill and murder him in this manner, viz. Green did fold and fasten a Linen Handkerchief about his Neck, and therewith choked and strangled him, of which choking and strangling he instantly died: And the others, viz. Gerald, Berry, Hill, Kelly and Vernatt were present, aiding, abetting, comforting, assisting and maintaining the said Green to kill and murder the said Sir Edmundbury Godfrey in Form aforesaid; and so they the said Green, Gerald, Berry, Hill, Kelly and Vernatt, in Manner and Form aforesaid, him the said Sir Edmundbury Godfrey feloniously, wilfully, and of their Malice aforethought, did kill and murder, against the Peace of our said Lord the King, his Crown and Dignity: To which Indictment afterwards, the said Term, the said Robert Green, Henry Berry, and Lawrence Hill severally pleaded, Not Guilty, and put themselves upon the Country; and after in the said Term of St. Hillary, in the said Court of King's Bench at *Westminster*, for the Felony and Murder aforesaid, by a Jury of their Country in due Manner were tried, and thereof lawfully convicted and attainted, as by the Record thereof in the said Court of King's Bench at *Westminster* remaining more fully appears; which said Robert Green, Henry Berry and Lawrence Hill, were afterwards executed and suffered Death, according to the Form and Effect of the Judgment and Attainder aforesaid. And whereas one Miles Prance, upon the Trial of the Indictment aforesaid, was produced a Witness and sworn for the King, and gave material Evidence against the said Green, Berry and Hill, to prove them Guilty of the Felony and Murder aforesaid: And one William Bedloe, John Brown, Elizabeth Curtis, Zachary Skillarne, and Nicholas Cambridge, upon the Trial aforesaid, were Witnesses in like Manner produced and sworn for the King, and gave divers material Evidences against the said Green, Berry and Hill, to prove them Guilty of the said Felony and Murder. And whereas also the said — Gerald, Robert Green, Lawrence Hill, Dominick Kelly, and Philbert Vernatt, at the Time of the Felony and Murder aforesaid, were Papists, and Maintainers of the Romish Superstitions: And the said — Gerald, Dominick Kelly, and Philbert Vernatt have fled, and not yet appeared to the said Indictment. And whereas also by the Coroner's Inquest taken upon the View of the Body of the said Sir Edmundbury Godfrey lying dead before John Cooper, Gent. one of the Coroners of the said County of *Middlesex*, by the Oaths of honest and lawful Men of the same County, above the Number of twelve Persons, it was found that certain Malefactors unknown, feloniously, and of their Malice pre-

pense, him the said Sir Edmundbury Godfrey did strangle and choak, of which he died. The said Nathaniel Thompson, William Pain and John Farwell, well knowing the Premises, and being Persons devilishly affected, devising, practising, and with all their Strength intending the Peace and common Tranquillity of this Kingdom of England to disturb, and as much as in them lay the due Course of the Law to destroy, and subvert and elude, and the Justice of this Kingdom of England to defame and scandalize, and as well the said Miles Prance, William Bedloe, John Brown, Elizabeth Curtis, Zachary Skillarne, Nicholas Cambridge, as the said John Cooper, and the honest and lawful Men sworn upon Inquest aforesaid, upon view of the Body aforesaid, to bring into the greatest Hatred, Contempt, and vile Esteem with all the King's Subjects, and to deter the King's Subjects from finding, detecting, and proving the Designs of Papists against our Lord the King, and the true Religion now by Law established, and impiously and wickedly devising and intending them the said — Gerald, Dominick Kelly, and Philbert Vernatt, from undergoing the Pains and Sentences by Law upon them to be inflicted, for the Murder aforesaid, and to aid and assist them (although they be Guilty) to be found Not Guilty thereof; and to deceive and beguile the King's Subjects in the Premises with their false Affirmations and Arguments, and cause and procure that it should be believed and esteemed, that the said Green, Berry, and Hill, the Persons for the Murder of the said Sir Edmundbury Godfrey as aforesaid convicted and executed, had been convicted, and executed unjustly; and that the said Sir Edmundbury Godfrey was *felo de se*, and himself had feloniously murdered. They the said Thompson, Pain, and Farwell, their most impious, wicked, and diabolical Intentions to fulfil and perfect afterwards, to wit, the 23d of February, in the four and thirtieth Year of the Reign of our now Sovereign Lord the King, at the Parish of St. Mary le Bow, London, with Force and Arms, &c. falsely, unlawfully, unjustly, wickedly, and diabolically, made, composed, and caused to be printed, a certain false, scandalous, and defamatory Libel, entitled, *A Letter to Mr. Miles Prance, in relation to the Murder of Sir Edmundbury Godfrey*: In which said Libel, amongst other Things, it is contained as follows, And hearing that the Coroner's Jury or Inquest were first of Opinion, and accordingly declared, he was *felo de se*, and that there was much Art and Skill used to procure their Verdict to the contrary, more particularly the refusing of the Body, at their Instance and Request, to be opened. And in another Place of the same Libel, it is farther contained as follows, They say, that if a Man or any other Creature be strangled or hang'd, and his Body cold, and the Blood settled in the Veins (as he must needs be, if your Evidence be true) (meaning the Evidence of the said Miles Prance) run twenty Swords through such a Body, not one drop of Blood will come out; but on the contrary, his Body, when found, was full of Blood, in so much that (over and above the Cakes or great Goblets of congealed putrified Blood found afterwards in his Clothes) the Constable when he pulled the Sword out of his Body, it crashed against his Back Bone, and Goblets of Blood and Water gushed or gubbed out of that Wound in abundance, not only in that very Place where the Sword was pulled out, but in all his Passage to the White-house; especially, there where his Body was lifted over two high Stumps, and also when he was laid upon the Table, the Blood and Water so issued out of that Wound, that it ran from off the Table upon the Floor, and from thence into the Cellar: So that they do aver, that that Wound that he received by that Sword, must of Necessity be the Cause of his Death. And in another Part of the same Libel, it is further contained as follows, They observe that Bedloe's, before the Committee of Lords, and your Evidence in relation to this Gentleman's Death, are as different as the

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East is from the West; for you dog him out of St. Clement's, the other decays him from Charing-Cross; you swear he was strangled with an Handkerchief near the Stables going to the Water-side; Bedloe, that he was smothered with a Pillow in a Room in the great Court in Somerset-house; you say, he took Horse at Soho; Bedloe says, that he took Coach at Clarendon-house, with many more such like Contradictions; and considering the old Proverb, fore-warned, fore-armed; a further and fuller Account of the whole Matter expect. And that the said Nathaniel Thompson, William Pain, and John Farwell, their most impious, wicked and diabolical Intentions to fulfil and perfect, afterwards, to wit, the third Day of March, in the said four and thirtieth Year of the Reign of the said late Lord the King, at the said Parish of St. Mary le Bow, London, aforesaid, with Force and Arms, &c. falsely, unlawfully, unjustly, evilly, maliciously, scandalously, and diabolically, made, composed, and caused to be printed, another false, scandalous, and defaming Libel; entitled, a second Letter to Miles Prance, in Reply to the Ghost of Sir Edmundbury Godfrey. In which last mentioned Libel, amongst other Things, it is further contained as follows, Next, whereas my Letter saith (and that truly) that the Coroner's Jury were first of Opinion, and accordingly declared he was *felo de se*; and that much Art and Skill was used to procure their Verdict to the contrary. And in another Place of the same last mentioned Libel, amongst other Things, it is further contained as follows: And it would be very material, if the Coroner would declare, what he received for that Job, and of whom; and what Evidence he had to induce the Jury to find (as the Inquisition imports) that he was strangled with a Linen Cloth, a Matter of Fact never so much as spoken of until you came in with your Evidence, which was not in some Weeks after; and I do again aver, that the Body was required by the Jury to be opened, and was refused; and if the Body was in their and the Coroner's Power (as the Ghost insinuates) such Power was concealed from and denied the Jury. And in another Place of the same last mentioned Libel, it is, amongst other Things, contained as follows: He is to understand, that Mr. Brown, the two Surgeons (meaning the said Zachary Skillarne and Nicholas Cambridge) and Mrs. Curtis, are no competent (nor can be material) Witnesses in this Case. And in another Place of the same last mentioned Libel, it is further contained as follows: But Mr. Prance, it will be fully proved, that the Body was full of Blood, and that there were Cakes or Gobbets of dry Blood, found in his Clothes, which, with his Body, stunk extremely: And it will be also fully and effectually proved that his Eyes, Nostrils, and Corners of his Mouth were Fly-blown. And in another Place of the same last mentioned Libel, amongst other Things, it is contained as follows: And as the seventh and last Paragraph, which relates only to the Difference betwixt you and Mr. Bedloe's Evidence, I must take Notice, that what you and he swears is very contradictory. And in another Place of the same last mentioned Libel, amongst other Things, it is further contained as follows: But I cannot omit to take further Notice of Mrs. Curtis's Affidavit, in relation to the Wax found upon the Clothes, in which I cannot say but she may swear true; but this I do aver, that if it be so, those Drops were put upon the Clothes long after he was found, and after the Jury had sat on the Body; for there was no such thing then on the Clothes. And, I suppose, this was some Artifice used by those, who either out of Interest or Design, were desirous to confirm his being murdered at Somerset-House. And the said Attorney-General for the same Lord the King, gives the Court here to understand and be informed; That the said Nathaniel Thompson, William Pain, and John Farwell, in their further Prosecution aforesaid, falsely, wickedly, and maliciously, their Contrivances and Intentions aforesaid, afterwards, to wit, the 7th Day of March, in the four and thirtieth Year of our said Lord the King, at the Parish of St. Mary le Bow, London, with Force and Arms, &c. falsely, unlawfully, unjustly, wickedly, maliciously, scandalously, and devilishly, composed, made, and caused to be printed, a certain other false, scandalous, and defamatory Libel, entitled, *The Loyal Protestant and True Domestic Intelligence, or News both from City and Country*. In which last mentioned Libel, it is contained as follows: That there is not in the said Letter (meaning the said false, scandalous, and defaming Libel) entitled, a Letter to Mr. Miles Prance, in relation to the Murder of Sir Edmundbury Godfrey, before first mentioned, the least Item or Circumstance, but what will be by undeniable Evidence made out to be the Truth: So the said Mr. Prance, having not as yet vouchsafed an Answer to that Letter, he will speedily receive a further Letter relating to that Murder, wherein the further Truth will not only be fully set forth, and other Circumstances set out. And further, that the said Nathaniel Thompson, William Pain, and John Farwell, in their further prosecuting, falsely, wickedly, and maliciously, their Contrivances and Intentions aforesaid, with Force and Arms, &c. falsely, unlawfully, wickedly, maliciously, and devilishly, composed, and caused to be printed, a certain other false, scandalous, and defamatory Libel, entitled, *The Loyal Protestant Intelligence, &c.* In which last mentioned Libel, amongst other Things, it is contained as follows: Whereas Dick Janeway, in this Day's Mercury, promises an Answer to the late Letter to Mr. Prance, &c. This is to give him and all the World Notice, that such an Answer is impatiently expected by the Author of that Letter; who questions not but to prove every Title of that Letter, to the Satisfaction of all Mankind: And besides, he is very desirous that the Courantier (according to his last Pacquet of Advice from Rome) would go on, and use his Interest, to procure the Lord Mayor, Court of Aldermen, and Common Council of London, to inspect the Truth of that Letter; whereby it will appear inevitably, that there is not one Papist or Popishly affected Person concerned in that Letter, or in the Proof of the Particulars thereof; but the same (with divers other material Circumstances relating to the Murder of Sir Edmundbury Godfrey, and the Fraud and Blind put upon the World in relation thereto) will be more fully, plainly and manifestly proved, without giving ill Words, or scurrilous Language, or Reflections to any Persons that really are, or supposed to be therein concerned in any Circumstance whatsoever. And that the said Nathaniel Thompson, William Pain, and John Farwell, in their further Prosecution aforesaid, falsely, wickedly, and maliciously, their Contrivances and Intentions, after, to wit, the first Day of April, in the four and thirtieth Year of the Reign of our said Lord the King, with Force and Arms, &c. at the Parish of St. Mary le Bow, London, aforesaid, falsely, unlawfully, unjustly, wickedly, maliciously, scandalously, and devilishly, made, composed, and caused to be printed, a certain other false, scandalous, and defamatory Libel, entitled, *The Loyal Protestant Intelligence, &c.* In

which last mentioned Libel, amongst other Things, it is contained as follows: Last Wednesday, Nathaniel Thompson, upon Summons, appeared before the Lords of his Majesty's most honourable Privy Council, about the Letters to Mr. Miles Prance, concerning the Death of Sir Edmundbury Godfrey, where he justified the Matter, and produced the Authors, who are ready to prove (by undeniable and substantial Witnesses, not in the least accused or suspected of Popery, as the malicious Party do suggest) that every Title and Iota of those Letters are true. And that in another Part of the last mentioned Libel, amongst other Things, it is contained as follows: Mr. Thompson and the Gentlemen his Friends are to attend the next Wednesday at Council, where they do not doubt, but that honourable Board will put them into a Method to prove the whole, or any Particular, which their Honours in their great Wisdom shall think convenient to be brought to the Test or Examination. And further, that the said Nathaniel Thompson, &c. the twenty third Day of February, in the aforesaid thirty fourth Year of our said Lord the King; and divers other Days and Times betwixt the said twenty third of February, and the aforesaid thirty fourth Year, and the Day of the exhibiting of the said Information at the Parish of St. Mary le Bow, London, aforesaid, knowingly, and every of them knowing the said several Libels to be false, malicious, scandalous, and seditious, with Force and Arms, &c. falsely, unlawfully, unjustly, wickedly, maliciously, scandalously, seditiously, and devilishly, the said false, malicious, scandalous and seditious Libels uttered and published, and each of them uttered and published in manifest Contempt of the Laws of this Kingdom of England, and the Scandal and Defamation of the publick Justice of the same, to the evil Example of all others in like Case offending; and against the King's Peace, his Crown and Dignity, &c.

Then Proclamation for Information being made, Mr. Thompson acquainted my Lord and the Jury with the Effect of the Information, as follows:

Mr. Thomps. My Lord, and you Gentlemen of the Jury, this is an Information against Nathaniel Thompson, William Pain, and John Farwell, and it is for writing and printing several scandalous Libels, about the Death of Sir Edmundbury Godfrey: In which we set forth, that Green, Berry, and Hill, were indicted for the Murder of Sir Edmundbury Godfrey, and thereof convicted and attainted; and that the said Green, Berry, and Hill, were executed for it: That upon their Trial for that Matter several Witnesses were examined, namely, Mr. Prance, Bedloe, and Curtis, and several others to prove, Sir Edmundbury Godfrey murdered at Somerset-house. And before the Trial there was an Inquest taken by the Coroner of Middlesex, by which it does appear, that Sir Edmundbury Godfrey was murdered by several Persons unknown; and that the Defendants, to reflect upon the Justice of the Nation, and scandalize the Witnesses produced at that Trial, and to make it believed that these Persons died wrongfully, did write and print several scandalous Libels and Letters, one of them entitled, *A Letter to Miles Prance, concerning the Murder of Sir Edmundbury Godfrey*; and in these Letters did suggest, as if he had been *felo de se*, and do reflect upon every one of the Witnesses, as if they had contradicted themselves; and also do reflect upon the Coroner, as though he had bribed the Jury; and do undertake by these Arguments, and several others (that you will hear) to prove, that Sir Edmundbury Godfrey murdered himself. And that in another Libel that Thompson printed, called his *Loyal Protestant Intelligence*, he says, he will make it out by a cloud of Witnesses. This we lay is against the Peace of the King, and defaming of the Justice of the Nation: If we prove this Matter upon them, you are to find them Guilty.

Mr. Serj. Maynard. My Lord, the Matter which you have now before you, is as impudent a Thing as ever was done. Gentlemen, Sir Edmundbury Godfrey was murdered, and Green and the Contrivers of it have been executed for it; the Matter hath passed the Examination of the Parliament, and the King and Council and all: Now this Thompson is a Printer, I may as well say a Printer of Libels, for he does constantly print Libels against the Religion established, and the Justice of the Nation. The Jury that were impannelled upon the Coroner's Inquest, he says of them, that they at first did agree that he murdered himself, and afterwards did return, and find that he was murdered by others. Gentlemen, it is plain that he was murdered by others, and the particular Persons have been tried for it, and found Guilty. Now this Person after all this, What does he do? He takes upon him to write a Letter to Prance (Prance was one of the Witnesses in that Case) he writes it by the Name of a Letter, but it is a foul and wicked Libel; and therein 'tis too long for me to mention the Particulars) he scandalizes the publick Justice of the Nation, he undertakes to vindicate the Murderers, and to accuse the Proceedings of the Nation. But, Gentlemen, we will prove these Men guilty of framing and publishing of these wicked Libels, and that is all that is needful to be done upon the point of Evidence. We will call our Witnesses.

Then Mr. Clare was sworn, and produced a Copy of the Record of the Conviction and Attainder of Green, Berry, and Hill, for the Murder of Sir Edmundbury Godfrey. As also a Copy of the Inquisition, taken by the Coroner of Middlesex, upon the View of the Body of the said Sir Edmundbury Godfrey, whereby it is found that he was murdered by them, strangled with a Cord by Persons unknown. Both which (Mr. Clare having sworn to be true Copies) were read.

\* L. C. J. This Matter of his being thus strangled, was found before it was discovered who did the Murder. It was upon the Sight of the Body, and they supposed it to be done by a Cord, but afterwards it came to Light that it was done with an Handkerchief.

Mr. Thomps. (To the Counsel of the Defendants) If you will put to prove all, we must prove that these Men were executed.

Then Captain Richardson was sworn.

L. C. J. Were these Men executed for this Murder?  
Capt. Rich. Yes, I saw them executed.

Then Mr. Prance was sworn.

Mr. Thomps. Did you give Evidence upon the Trial of Green, Berry, Hill, for the Murder of Sir Edmundbury Godfrey?—Mr. Prance. Yes.

Mr. Thomps.



Mr. *Thompf.* Do you remember that *Brown* was a Witness too?

Mr. *Prance.* Yes, *Brown* was.

Mr. *Thompf.* Was *Curtis* a Witness, and Mr. *Bedloe*?

Mr. *Prance.* That *Curtis* was, I don't remember; Mr. *Bedloe* was.

Then *Curtis* was sworn.

Mr. *Thompf.* Were you a Witness at the Trial of *Green*, *Berry*, and *Hill*?  
Mrs. *Curtis.* Yes, I was.

Then Sir John Nicholas, and Sir Philip Lloyd, and William Bridgman, Esq; were sworn, and the two Letters in the Information were shewed to them.

L. C. J. Were these shewed to the Defendants, *Thompson*, and *Pain*, and *Farwell*, at the Council?

Sir Phil. Lloyd. These were the same, I know because they are endorsed by my Hand; *Thompson* owned the printing of both, and one other of the Defendants owned the writing of one of them, and the other of the other.

L. C. J. But *Thompson* owned the printing of both?

Sir Phil. Lloyd. Yes, my Lord.

Mr. Sol. Gen. Did *Pain* and *Farwell* own the bringing of both to *Thompson* to print?

Sir Phil. Lloyd. One owned the one, and the other the other.

Then Sir John Nicholas and Mr. Bridgman testified the same.

Mr. Saunders, of Counsel for *Pain*, said to Sir Phil. Lloyd, Did *Pain* or *Farwell* own that they brought both, or one the one, and the other the other?

Sir Phil. Lloyd. One the one, and the other the other.

Mr. Saunders. Then pray, Sir, which was that *Farwell* did own?

Sir Phil. Lloyd. My Lord, my own Memory does not tell me which, but here are Notes say that *Farwell* owned the first, and that *Pain* owned the second.

L. C. J. Do you believe them to be true?

Sir J. Nicholas. Yes, Sir, I took the Notes.

Mr. Yalding. Did he readily discover his Authors?

Sir Phil. Lloyd. Yes, he did.

Associat. The Title is thus, *A Letter to Mr. Miles Prance, in relation to the Murder of Sir Edmundbury Godfrey.* Shall I read it all?

L. C. J. All of it.

Read it in these Words; Mr. Prance.

A LETTER to Mr. Miles Prance, in Relation to the Murder of Sir Edmundbury Godfrey.

Mr. Prance.

Perceiving by some late Pamphlets several Rumours rais'd, as if there were Endeavours us'd to asperse your Evidence in Relation to the Death of Sir E. B. G. and to lay that Murder upon himself. And remembering the Confirmation, which then was in all People's Minds, by the Discovery at that Time of a dreadful and most horrid Popish Plot, which occasioned divers to report, and most to believe (even several Days before the dead Body was found) That he was murdered by the Papists at Somerset-house. And hearing that the Coroner's Jury or Inquest, were first of Opinion, and accordingly declared he was *felo de se*: And that there was much Art and Skill us'd to procure their Verdict to the contrary: More particularly, the refusing of the Body (at their Instance and Request) to be opened; and opposing the Assistance of the Coroner of *Westminster*, (who is taken notice of to be a knowing and impartial Man in the Execution of his Office;) who was desired to, and did attend for that Purpose, but was dismissed with a Guinea; telling him, they had no need of his Service. I made it my Business, partly for Your's, but chiefly for the Truth's sake, to make a strict Enquiry into the farther Causes of the aforesaid Rumours, and do and these Particulars very much urged, and discoursed of, (viz.)

#### I.

In Opposition to the Evidence of his being dogged up and down, and lodged in a great House at St. Clement's on Saturday the 12th of October 1678. (being the Day he was first missing.) It is affirmed, he went out of his House that very Saturday Morning about nine o'Clock (which is the last Time he ever returned thither;) and about ten that Forenoon was in the Fields walking towards *Marybone* (in which Parish his dead Corps was afterwards found) and was there met by a Brewer in St. Giles's, who discoursed with him; and about eleven of the same Day he was seen passing by the Lady Cook's Lodgings near the Cock-pit; after which, he was seen in St. Martin's Lane, went by the Church, and down Church Lane into the Strand; about he passed by the Door of one Mr. Ratcliff an Oilman in the Strand, and soon after was met in the back Court of *Lincoln's-Inn* by two Gentlemen, who observed him to make a sudden turn, and to go out at the back Door; they went out at that Door also, and did see him turn the corner Wall, between which Place and *Turn-stile*, he was met by a Barrister at Law; and at a Person living near *Primrose-hill*, declared before divers Persons, that he saw him about three that Saturday in the Afternoon walking in those fields, his usual Walk being that way.

#### II.

They say, the Place where, and the Posture wherein he was found, are very remarkable. As to the Place, it was in a Ditch on the South-side of *Primrose-hill*, surrounded with divers *Cheses*, fenced with high Mounds and hedges, no Road near, only some deep dirty Lanes made only for the convenience for driving Cows and such like Cattle in and out of the grounds; and those very Lanes not coming near 500 Yards of the Place, and impossible for any Man on Horse-back with a dead Corpse before him at midnight to approach, unless Gaps were made in the Mounds, as the Constable and his Assistants found by Experience when they came on Horseback thither. As to the Posture, his Breast was unbuttoned, his Waistcoat and Shirt put up, his Sword run in under his left Pap next his Skin, the Point coming out at his right Shoulder about six Inches, his left Arm doubled under him, (on which his Head seemed to lean) and his right Arm stiff, stretched out upon the Bank, his Belly and Breast being sup-

ported by the Side of the Bank, his Knees knit together, and with his Hips a little bending or doubling under him.

And they infer from thence, that he being a tall raw-boned Man, (after he had been several Days dead) could never be crooked so as to be crammed into a Sedan, (which are very low built, and difficult to be carried with proper Braces, much more as you evidenced, with Cords) then straitened, and his Legs opened, and mounted on Horseback, and then put into the Posture he was found in, and stiffened again.

#### III.

Now although the Matters aforesaid may be said to be only circumstantial, yet they produce undeniable Arguments against your Evidence, viz. They say, that if a Man, or any other Creature, be strangled, or hanged, and his Body cold, and the Blood settled in the Veins, (as he must needs be, if your Evidence be true) run twenty Swords through such a Body, not one Drop of Blood will come out: But on the contrary, his Body, when found, was full of Blood, insomuch, that (over and above the Cakes or great Gobbets of congealed putrified Blood found afterwards in his Clothes) the Constable when he pulled the Sword out of his Body, it crashed against his Back-bone, and Gobbets of Blood and Water gushed or gubbed out of that Wound in abundance, not only in that very Place where the Sword was pulled out, but in all his Passage to the White house, especially there where his Body was lifted over two high Stumps; and also when he was laid upon the Table the Blood and Water so issued out of that Wound, that it ran from off the Table upon the Floor, and from thence into the Cellar; so that they do aver that that Wound that he received by that Sword, must of Necessity be the Cause of his Death. And they take Notice, that so much of the Sword as was in his Body, was discoloured and blackish; and that Part that came out at his Back was of a dullish Colour, and the Point thereof was rusty; also, that the Clothes, Belt, and Scabbard, were weather-beaten to Rags; his Body stunk extremely; his Eyes, Nostrils, and Corners of his Mouth were Fly-blown; all which must naturally be by his being so long in the Air.

#### IV.

They say, That when a Man is strangled, or hanged, his Eyes will be extorted, his Face will be swelled and black; whereas his Eyes were shut, his Face was pale, only the left part of his Chin, with his Breast and Bell being next the Earth, were putrified, and looked of a blue and greenish Colour, more especially about the Wound; for that the Blood, when hot, running to the Wound, caused the greater Putrefaction in that Place: whereas, if the Wound had been made after he was dead and cold, the rest of his Body would have putrified as soon, and as much as there.

#### V.

They say, That the cleanness of his Shoes makes against your Evidence; for his Shoes were cleaned, or rather glazed on the very bottoms of the Soles, occasioned by his walking in the Grass, and Grass-seeds were observed to stick in the Seams of his Shoes: And besides, there was not one speck of Dirt on his Clothes, or Legs, not so much as a Horse-hair sticking thereon; whereas the Constable, and those that went with him, were dirtied and miled up to the very Saddle-skirts, and not easily to be cleaned? and Mr. Prance, you know that a tall dead Man on Horse-back, cannot lift up his Legs to save them from the Dirt.

#### VI.

As to the looseness of his Neck, and the Rim or green Circle about it, they say they are ridiculous and impertinent Arguments against so many demonstrative ones; especially, when there is not a Nurse, or any Woman of Age, that hath buried any Relations, but will tell you 'tis very common for People to die with Necks as loose as his was. And the Rim about his Neck was so far from being like one made with a Cravat or Handkerchief, that it seems to be occasioned by the great height and stiffness of his Collar, which was fast buttoned about his Neck, and on which his Head rested, and was unbuttoned about ten of the Clock the next Day, before the Coroner or Jury came. But if that Rim, or those Bruises, that your Evidence seems to make the Cause of his Death, were really so; then they alledge, that in such Case, the whole Mass of Blood would have settled there, and his Neck and Bruises would have swelled, and have been perfect black, which was not in his Case.

#### VII.

They also say, That all these Matters are notorious, and will be proved by divers credible and undeniable Eye and Ear-witnesses: And besides, they observe, that *Bedloe's* (before the Committee of Lords) and your Evidence, in Relation to this Gentleman's Death, are as different as the East is from the West; for you dog him out of St. Clement's; the other decoys him from *Charing-cross*: You swear he was strangled with a Handkerchief near the Stables going to the Water-side; *Bedloe*, that he was smothered with a Pillow in a Room in the great Court in *Somerset-house*. You say, he took Horse at *Sohoe*; *Bedloe* says, he took Coach at *Clarendon-house*; with many more such like Contradictions: And considering the old Proverb, *Forewarn'd, fore-arm'd*. A further and fuller Account of the whole Matter expect, I being loath at present to exceed the Bounds of a Letter. I am,

SIR,

Your very loving Friend,

TRUEMAN.

Cambridge,  
Feb. 23, 1681.

London, Printed for M. G. at the Sign of Sir E. B. G.'s Head near Fleet-Bridge.

Sir Fr. Winn. Now read the other Letter.

Associat. This is entitled, *A second Letter to Mr. Miles Prance, in Reply to the Ghost of Sir Edmundbury Godfrey.*

Mr. Prince.

SINCE my last to you of the 23d past, I have seen a prolix, railing, and impertinent Pamphlet, intitled, *Sir E. B. G.'s Ghost*, and pretended to be an Answer to my said Letter. And conceiving you are better acquainted with Ghosts than myself, I thought fit to direct my Answer to that Ghost to you,



you, and thereby shew the Ridiculousness thereof as also vindicate the Truths contained in my said former Letter, and shew you and the World further Circumstances to justify the same; and therefore, according to the Method of my former Letter, I shall now proceed by these Heads.

And first, Not understanding what the Ghost means, by arraigning the Justice of the Nation, unless he would assert that all that are legally, (are likewise justly hanged;) and so consequently, that the Mother and her two Sons were justly hanged in *Gloucestershire*, for the Murder of the Lady Viscountess *Cambden's* Steward, though he afterwards appeared alive; and I do not find that ever his Appearance arraigned the Justice of the Nation. And remitting the Consideration of Mr. *Brown's*, the Surgeons, and Mrs. *Curtis's* Evidence in relation to the Blood, to it's proper Place; and affirming, (as the Truth is) that Mrs. *Celliers*, Mrs. *Mary Gibbon*, the *Newgate* Priests, *James Magrath*, and all other *Irish* Men, or *Irish* Evidences, or other Papist or Papists, or popishly affected Persons whatsoever; as also those concerned in the late Sham of his having hanged himself, are Strangers to, and had not the least Knowledge or Intimation of the Contents of my said former Letter, nor any Way concerned therein, or in, or with any Part thereof, (as the said Ghost most falsely and maliciously insinuates.) I take notice that the said Ghost seems to admit so much of the Truth of the said Letter, as that it was reported divers Days before the dead Body was found, that he was murdered in *Somerfet-house* by the Papists, and which Report was made even the next Morning after he was missing, (being Sunday the 13th of October, 1678.) Now I would fain have this Ghost to inform the World who first raised that Report: But as to Mr. *Dugdale's* Letter of it, I cannot give it any better Answer, than that as his Evidence hath since been disbelieved in Matters of greater Consequence; so he not producing any such Letter, you must give me leave also to suspect him in this. But as to the other Evidences of Mr. *Birch* and the rest; theirs I believe to be very true; for 'tis no Miracle that a Report so cunningly raised, (without any Ground) might as industriously be promulged to most Parts of the Kingdom, before the respective Days they speak of, especially when the Plot had filled all Mens Heads with Fears and Jealousies, without which it had not been in the Power or Art of the Ghost, or any of his Tribe, to have suggested the least Surmise to contradict his being *Felo de se*.

Next; Whereas my Letter saith, (and that truly) that the Coroner's Jury were first of Opinion, and accordingly declared, he was *Felo de se*, and that much Art and Skill was used to procure their Verdict to the contrary. This Ghost, instead of contradicting that Truth, would insinuate, as if that Letter reflected upon the Reputation of the Jurors, when as there was no such Thing implied or intended, they being known to be honest Men, of good Reputation, and free from Fraud or Guile, and consequently the easier to be over-reached by the Cunning of those and that Party, whose Interest it was to deceive them, and who never leave any Stone unturned to attain their Designs. And I cannot but observe how skilful and industrious these People still are, to hide and prevent the Truth of that Man's Death from clearly appearing and shining forth, as without doubt it would, and must do, was not the Matter now (as formerly) puzzled with Legends, and long Stories, nothing to the Purpose. And as to the Coroner's Warrant for burying the Body, and recited in the Ghost, 'tis notorious they are common Tricks, used by Men of his Profession, who (if any Money is like to come) will usually adjourn the Jury, and then make such Warrants (they knowing, that if the Verdict be *Felo de se*, 'tis then out of their Power to give leave to bury the Corps.) And it would be very material, if the Coroner would declare what he received for that Job, and of whom, and what Evidence he had to induce the Jury to find (as the Inquisition imports) that he was strangled with a Linen Cloth, a Matter of Fact never so much as spoken of, until you came in with your Evidence, which was not in some Weeks after. And I do again aver, that the Body was required by the Jurors to be opened, and was refused; and if the Body was in their and the Coroner's Power, (as the Ghost insinuates) such Power was concealed from, and denied the Jury. And 'tis very probable the Coroner of *Westminster's* Assistance was refused, for some such indirect Doings, for that there was not the least Difference betwixt the Coroners in relation to their Jurisdictions; and the *Westminster* Coroner came not voluntarily of himself, but was importuned to be there by Mr. *Wigg*, and divers others of the chief Inhabitants of *St. Martin's* Parish: And particularly, the Reverend Dr. *Lloyd* (who preached the Funeral Sermon) spoke to the Coroner of *Westminster* before he went, so that it had been proper to have given the Matters mentioned in that Sermon, in Evidence before the Jury. And 'tis observable, the Person mentioned to give the Information to the Doctor of the two Wounds in the Body, and that two Hours before it was found, was never produced; for if he had, and that Sir *E. B. G.* had been murdered, such Person might have been secured, and thereby the Murderers detected. But I suppose the Ghost will not pretend either that Sermon, or the Pamphlet printed by *Nath. Thompson* to be legal, or (indeed) any Evidence at all.

And now, Mr. *Prance*, being come to the several Paragraphs of my Letter, I shall take them in order as they are placed, and give the Ghost particular Answers accordingly.

## I.

As to Sir *E. B. G.'s* Perambulations therein mentioned to be on the *Saturday* he was first missing, they are true in every Particular, and will be proved by divers able, credible, and undeniable Witnesses. And how vain it is for the Ghost to ask, Why these Witnesses did not come in sooner at the Trial of *Green*, *Berry*, and *Hill*, do you judge, when all the World remembers the great Torrent that carried all before it in favour of the Plot, and the Murder of Sir *E. B. G.* by the Papists, without which (as *T. O.* was heard to say) his Plot had failed: And when it is duly considered, that the two Persons that first found the Body, (for no other Cause) suffered much in their Persons and Estates, by a long and chargeable Imprisonment. And all others that then seemed to doubt of the truth of that Man's being murdered by the Papists, were stigmatized with the odious Names of Papists, and Encouragers (if not Promoters) of the Plot: It

will appear no wonder, if People were unwilling to discover their Knowledge, or to come voluntarily (without Process) to give their Evidence. And how can it be imagined those three unfortunate Men, being kept close Prisoners, could make enquiry after proper Evidences, or against the common Vogue) draw into Suspicion the Assertion of his being murdered by the Papists?

## II.

The Ghost hath so much Ingenuity to grant the second Paragraph of my Letter, as to the Place and Posture he was found in, but would avoid the Inaccessibleness of the Place, pretending a Lane near, when as that Lane is, in effect, unpassable with two on a Horse, and comes not within 500 Yards of the Place, and the Mounds thither very high, and the Constable and his Assistants (though they lived in the Parish, and well knew the Way) were forced to break a Gap in the Mounds, though they were singly horsed. And whereas the Ghost alledges, that you do not depose he was carried to the Place wholly on Horseback, he hath run himself into a worse Dilemma, having made no Provision of Men (either as to Strength or Number) to carry so great and weighty a Corps, in the dead of the Night, over such Mounds and Fences; but let all inquisitive People, desirous of Truth, take the Pains but to go to the Place, (and that without any Burden on their Backs) they will soon be convinced of the Assertion of the Difficulty (if not Impossibility) of the bringing a dead Corps thither, either on Foot or on Horseback. And the Pretensions of the Ghost's, as to the limberness of the Body and Joints, does not answer that Part of my Letter which relates to the Impossibility of his being put into a Sedan. For his Body, when found, was stiff; so that what Limberness happened, or appeared afterwards, hath no relation to the Question. For it's a certain Maxim, a dead limber Body cannot be stiffened. And pray, Mr. *Prance*, gives us an Account what became of the Sedan, and the Cords? And how you could carry it with Cords; for the meanest Sedan-man in the Town will tell you it is impracticable, or, rather impossible; and you may, if you please, make an Experiment with a Cord.

## III.

As to the Body being full of Blood, when found, the Ghost endeavours to disprove that Assertion, by the Evidence of Mr. *Brown* the Constable, the two Surgeons, and Mrs. *Curtis*, and produceth the Evidence given at the Trial of *Green*, *Berry*, and *Hill*, and an extrajudicial Affidavit since made by Mr. *Brown*, and another by Mrs. *Curtis*, to countenance such his Denial. But, Mr. *Prance*, (when you see the Ghost) tell him the Matter of the Blood will (and I assure you and all the Word it will) be proved by divers credible and undeniable Evidence; and that I may pacify the Ghost in the mean Time, he is to understand that Mr. *Brown*, the two Surgeons, and Mrs. *Curtis*, are no competent (nor can be material) Witnesses in this case. For Mr. *Brown*, as he did a rash and unaccountable Act (to give it no worse Name) in removing the Body before the Coroner and Jury saw it, (which hath occasioned all this Dispute) so he must not think to help himself by Affidavits, or to justify one ill Act by another: And besides, as he unadvisedly (and contrary to all Law and Practice) removed the Body before the Coroner and Jury came; so he did the same in the dark, (about eight o'Clock at Night) when the Candle was blown out; whereby it was impossible for him to look for any Blood, so as to find it: And neither he or the Surgeons (by any Day-light) saw the Place where the Body was found, or where the Sword was pulled out, until after ten o'Clock the next Day, before which Time much of the Blood was taken up, and the rest trampled out of Sight by the great Concourse of the People which came thither. And as for Mrs. *Curtis*, she only saw the Body after it was brought home, when as the Body was strip'd at the *White-house*, and a Blanket borrowed there to wrap the Body in. So the World may judge of the Truth of her Affidavit. But (Mr. *Prance*) it will be fully proved, that the Body was full of Blood; and that there were Cakes, or Gobbets of dry Blood found in his Clothes, which (with his Body) stunk extremely. And it will be also fully and effectually proved, that his Eyes, Noftrils, and Corners of his Mouth were Fly-blown; though the Ghost (without the least colour of Reason) pretends it to be contrary to Nature and Reason; when as common Experience daily evinces the contrary. And I do observe, that the Ghost omits to take Notice of two material Circumstances in this third Paragraph, (*viz.*) The first, as to the Sword's crashing against the Backbone. The second, as to that part of the Sword which was in his Body being discoloured. And pray, Mr. *Prance*, do you (or the Ghost) give the Reasons thereof, and of it's Point being rusty; as also, what was, or could be the Cause of the Spots in the Shirt, Waistcoat, and Drawers, of greenish Colour, mentioned in Mrs. *Curtis's* Affidavit.

## IV.

As to the fourth Paragraph of my Letter, I perceive the Ghost admits that when a Man is strangled or hanged, his Eyes will be extorted; and admits that Sir *E. B. Godfrey's* Eyes (when found) were shut; only he seems to quarrel with the colour of his Face: And, seeing he admits his Face not black (as all hanged Men's are, when cold) I care not to contend whether his Face was pale or ruddy, or a little swelled, or not, those being very inconsiderable Circumstances. But his denying the Putrefaction charged in that Paragraph, and the Consequences deduced from thence, is not only a great Untruth, but is directly opposite to the Evidence given by Mr. *Skillarne*, at the Trial before mentioned, Page 37, 38.

## V.

As to the fifth Paragraph, the Ghost is so far from answering the Assertions therein, as that he only quibbles at Words; and begging the Question, deduces thence impertinent and ridiculous Arguments. For it will be proved, that his Shoes were glazed at the bottom of the Soles, and that must of Necessity be occasioned by his walking on the Grasse. And (Mr. *Prance*) if you and the Ghost will walk together, you will easily experience it, and so may any Body else satisfy himself in this Speculation: As to the Grasse-seeds that stuck in the Seams of his Shoes; which is far from being impossible at that time of the Year, (as the Ghost would argue) as that it will be proved by undeniable Evidence. But (Mr. *Prance*)



pray ask the Ghost how he came there without a speck of Dirt; and who pick'd the Horse-hairs off his Clothes; and let him contrive (if he can) a probable or rational way for a dead Man on Horseback to hold up his Legs, or to save them or his Clothes from the Dirt: For though a Man may walk thither very clean, yet 'tis impossible at that time of the Year to ride, either without being dirtied, and some Horse-hairs sticking on his Clothes. But perhaps the next Account from the Ghost will be, that he either rid with Gambadoes, or else a pair of Fishermen's Boots.

## VI.

As to the sixth Paragraph, pray, Mr. *Prance*, tell the Ghost, his railing against Popish Nurses, and Popish Midwives, is no Answer to the Assertions in that Paragraph; for all the Women in the Town are competent Judges thereof, and I hope the Ghost will not say they are all Papists. But pray tell the Ghost he takes no Notice of the Height of the Collar, and it's being fast button'd about his Neck when found; nor the conclusion of that Paragraph; and therefore I suppose he admits it to be true.

## VII.

And as to the seventh and last Paragraph, which relates only to the Difference betwixt Your's and Mr. *Bedloe's* Evidence; I must take Notice, that what you and he swear are very contradictory, and much more than I hinted in my said Letter: And though part of it be as he and you were informed; yet you and he swear the Informations were received from the Persons actually concerned in the Murder, and who had confidence enough in Mr. *Bedloe* (though he refused 4000*l.* to help to kill him, and 2000*l.* to help to carry him away) as to shew him the dead Body, and so were under no Temptation of mis-informing either him or yourself. And pray, Mr. *Prance*, will you let the World know what Reward you were to have for that Job; for certainly you deserved as much as Mr. *Bedloe*, and needed more, you having a Wife and Children, and he a Bachelor?

Thus, Mr. *Prance*, having gone through each Paragraph of my Letter, and answered the Ghost to your Satisfaction; I should leave off here, fearing I have been too tedious already: But I cannot omit to take further Notice of Mrs. *Curtis's* Affidavit, in relation to the drops of Wax found upon the Clothes, in which I cannot say but she may swear true; but this I do aver, that if it be so, those Drops were put upon the Clothes long after he was found, and after the Jury had sat on the Body; for there was no such thing then on the Clothes: And I suppose this was some Artifice used by those, who either out of Interest or Design, were delirious to confirm his being murdered at *Somerset-house*, and to carry on the great Lie, and impertinent Story, then invented, and given out (amongst others) that he was laid under the High-Altar there; and if my Information fail not, there were other such-like Tricks used, which I shall make bold to acquaint those more nearly concerned therein, than yourself; and shall give them to understand, that 'tis no wonder a Man in Sir *E. B. G's* Circumstances, should kill himself, such Accidents being no News to that Family, wherein Melancholy and Distraction (that often produces such Effects) hath been predominant, and might occasion the Words he spake to Sir *Thomas Robinson*, as to his being the first Martyr.

And now, Mr. *Prance*, for a Conclusion, If you were guilty of the Murder of Sir *E. B. G.* how durst you (as you did) on the Friday after he was found, go to *Primrose-Hill* to see the Body, and not be afraid it should at your approach have bled afresh? And how came you (after *Green*, *Berry*, and *Hill*, were hanged) to declare, in Answer to a solemn Question, that you knew nothing of the Death of Sir *E. B. G.*? Pray remember me to your old Friend and Lodger Mr. *Renn*, my Respects also to your Wife, not forgetting your little Daughter, who gave you so good Advice before you took your Journey into *Nottinghamshire*, and help'd to take *Beddingfield*, who was bury'd fourteen Months.

I am,

Your Loving Friend,

TRUEMAN.

Cambridge, March 13, 1681.

London, Printed for N. Thompson. 1682.

Then the Associate read out of a Paper, Intituled, The Loyal Protestant Intelligence, &c. Number 125. Tuesday, March 7, 1681. the following Paragraph.

March 4, 1682. **W**HEREAS the Mayor of Gotham, in his pretended *True Protestant Mercury* of Saturday last, seems mightily offended with a Letter, therein mentioned to be sent to Mr. *Prance*, concerning the Murder of Sir *E. B. Godfrey*; and endeavours to avoid the Examination of the Truth of the Matter of Fact contained in that Letter, by his old way of railing and stigmatizing all honest Church of England Men with the Name of Papist, or popishly affected: He and his Whiggish Tribe, are hereby desired to take Notice, that there is not in the said Letter the least Item or Circumstance, but what will be by undeniable Evidence made out to be the Truth. So the said Mr. *Prance* having not as yet vouchsafed an Answer to that Letter, he will speedily receive a further Letter relating to that Murder; wherein the further Truth will not only be fully set forth, and other Circumstances set out; but also it will thereby plainly appear, that the Reputation of that dead Knight is so far from being therein murdered, or the Justice of the Nation from being questioned; as that it will concern Mr. *Prance*, Mr. *M. G.* and all Parties on that side, to lay their Heads together more effectually than they did on Wednesday Morning last: For Truth seeks no Corners; and, were it not for a vicious and unchristianized Generation of Vipers, need not require an Advocate. For, though a Lie may prevail for a Time, and eclipse the Truth, yet at length Truth will shine forth, with the Assistance of that God, who is the Author of Truth itself.

Then a Paragraph out of another of the like Intelligences, was read. The Intelligence was Number 127. Saturday, March 11, 1681.

March 9, 1682. **W**HEREAS Dick Janeway, in this Day's *Mercury*, promises an Answer to the late Letter to Mr. *Prance*, &c. This to give him, and all the World Notice, that such an Answer is impatiently expected by the Author of that Letter, who questions not but to prove every Tittle of that Letter, to the Satisfaction of all Mankind: And besides, he is very desirous that the *Courantier* (according to his last Packet of Advice from Rome) would go on, and use his Interest to procure a Lord Mayor, Court of Aldermen, and Common-Council of London, inspect the Truth of that Letter; whereby it will appear inevitably, that there is not one Papist, or popishly affected Person concerned in that

Vol. III.

Letter, or in the Proof of the Particulars thereof; but the same (with divers other material Circumstances relating to the Murder of Sir *E. B. Godfrey*, and the *Fraud* and *Blind* put upon the World in relation thereto) will be more fully, plainly, and manifestly proved, without giving ill Words, or scurrilous Language, or Reflections to any Persons that really are, or supposed to be therein concerned, in any Circumstance whatsoever.

Mr. Serj. *Maynard*. You see what they have done; they say, What was testified against the Murderers of Sir *Edmundbury Godfrey*, was a Lie. They go over all the Evidence given against these Fellows, and undertake, by undeniable Witnesses, to prove the contrary.

L. C. J. To the Defendant's Counsel; What say you to it?

Mr. *Saunders*. I am of Counsel for *Pain*, my Lord, the Charge against *Pain* is, That he should own, that he did bring one of these Letters to be printed; I have forgot whether Sir *Philip Lloyd* said the First or the Second.

L. C. J. The Second he says.

Mr. *Saunders*. If *Pain* did own it, I think he did more ingeniously, than when he did make it, or bring it to the Press: But, my Lord, it was a rash, unadvised Act; but not out of any Malice: My Lord, we will prove that *Pain* was not a Papist, nor any of his Family. My Lord, this cannot justify or excuse them, it will only extenuate their Fault. We will call some Witnesses.

L. C. J. I will hear any thing in this Case, be as large as you will, you shan't say you are flinted; for it is a Business of mighty Concern.

Mr. *Gooding*. I am of Counsel, my Lord, for *Pain*: My Lord, we have made Application to Persons to intercede for us; we are sorry for what we have done, and have offered to give any Satisfaction.

L. C. J. To me he said, he would make it out by Five hundred Witnesses: They would make it as plain as the Day.

Mr. *Thompson*. Since the last Time that was appointed for the Trial, they have printed, That they would prove it by Threescore Witnesses; and were very sorry it did not come on.

Mr. *Yalden*. I am of Counsel, my Lord, for *Thompson*, who, I think, was unfortunately drawn into the Business; and that by *Pain* and *Farwell*, though they turn all upon him now. It was a great piece of Ingenuity for him to discover his Authors; and it had been very mischievous if they had not been discovered.

L. C. J. What say you to the two Protestant Intelligences?

Mr. *Yalden*. They are as much the Author of them, as of the other. *Thompson* says, the Authors would be able to prove it by undeniable Witnesses: *Thompson's* Intelligence is open to any Man that will put any Thing into it, and he is paid for his Pains.

Mr. *Osborne*. I am of Counsel for *Farwell*, my Lord, it was a foolish thing to do as we have done; but that is no Satisfaction: My Client says he hath several Witnesses.

L. C. J. Call them, they shall be heard.

Mr. *Farwell*. I begin with *Hazard*, my Lord, he and I went to the Place.

Then *Hazard* was sworn.

Mr. *Hazard*. I went along with Mr. *Farwell*. He was at the *Rainbow Coffee-house*, it was in the Morning, and he desired me to go to the Place where Sir *Edmundbury Godfrey* was found.

L. C. J. What Day was it?

Mr. *Hazard*. I can't tell, I went along with him, and stay'd as long as he did. I saw Sir *Edmundbury Godfrey* lying upon the Table, his Shoes were clean as if he had been on an *Haymow*, and his Eyes were closed.

L. C. J. Where was he?

Mr. *Hazard*. Upon a Table in the *White-house*. There were Gobbets of Blood (that I will aver, my Lord) by the Ditch-side, and likewise at a Place where there were two or three Things to go over, there was more Blood: I can't tell how he was carried, or how he came there, but I saw him at the *White-house*.

Mr. *Williams*. Who went along with you, besides Mr. *Farwell*?

Mr. *Hazard*. No Body.

Mr. *Williams*. Did he bring you the Place where the Body lay?

Mr. *Hazard*. Yes.

Mr. Serj. *Maynard*. What did *Farwell* tell you when he desired you to go with him?

Mr. *Hazard*. Why, Word was brought by one *Hancock* a Wood-monger, to the *Coffee-house*, some would not believe him, but sent a Porter to Sir *Edmundbury Godfrey's* House, and then, when the Porter came, and said the Body was found, and carried to a *White-house* on *Primrose-hill*, he spake to me to go and see the Body, and I fetched my Coat and was there quickly.

Mr. *Williams*. When you came near the Ditch, did *Farwell* shew you the Place?

Mr. *Hazard*. He and others that were there.

Mr. *Williams*. I ask you this, Did any Body shew you the Place where the Body lay, besides *Farwell*?

Mr. *Hazard*. No.

Mr. *Osborne*. Did he go to the Place directly, or about over Ditches?

Mr. *Hazard*. Truly, I know the way to *Primrose-hill* as well as he. We went as direct a Way as we could.

L. C. J. The straightest Way to the Place?

Mr. *Hazard*. Yes: We went over several Ditches.

Sir *Fra. Winn*. As you were going over several Ditches, there was no Body with you, but *Farwell*, was there?

Mr. *Hazard*. No.

Mr. *Williams*. Did you enquire of any Body as you went along?

Mr. *Hazard*. I can't remember such a small Circumstance.

Then William Baston was sworn.

Mr. *Osborne*. What do you know about the Blood that was in the Ditch where Sir *Edmundbury Godfrey* was found?

Mr. *Baston*. The Morning after the Murder was discovered, and that Sir *Edmundbury Godfrey* was found in the Fields, I went with two or three Neighbours, and went to the *White-house*, and I saw him lie upon the Table in the *White-house*; and coming back again, they shewed me in a Ditch, where they said he lay, some Blood, I cannot say it was his Blood; and going a little farther, I saw some more whitish Blood, and this all I can swear.

L. C. J. Was it frosty Weather?

Mr. *Baston*. My Lord, I can't tell whether it was, but I'll assure you the Blood looked to me more like Blood that was laid there, than any thing else.

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*One Fisher was sworn.*

Mr. Farwell. Was you there when Sir Edmundbury Godfrey was stripped?

Mr. Fisher. Yes, I stripped him of his Clothes, pulled off his Hose and Shoes; I was Carpenter to my Lord Wooten, and I was sent for in October, Day or two before, and I came to get the House covered up, and to take Order with my Partner: And as I went, there was a Report that Sir Edmundbury Godfrey was found and laid up in the White-House, and when I came, the Coroner and the Jury were there, and I got into the Room where Sir Edmundbury Godfrey lay upon the Table and took his Hat off; and I saw two Wounds within an Inch and a half one of another, one went no further than his Bone, and the other went through his Back. And, my Lord, immediately there was an Order come down from the Coroner to get him stripp'd. They ask'd me if I would give an Hand, I told them yes. I pull'd off his Shoes, and they were clean, and I pulled off three pair of Stockings, and a pair of Socks, his black Breeches, and his Drawers, and they came off very well; there was a Man in the Company that desired to help, so I got upon the Table, and set him upright with his Breech upon the Table, and his Feet hanging down; we unbutton'd his Coat, and pull'd it off, I came to his Flannel Shirt, and when I came to his Back, there was Blood. But I did not see any Blood till I came to his Back-part. About his Throat there was something that had girt him.

L. C. J. He looked as if he were strangled, did he?

Mr. Fisher. Yes, and his Neck was so weak that you might turn it any where.

L. C. J. To the Defendant Farwell. How do you pretend he murdered himself? That he ran himself through?

Mr. Farwell. I make no Inference, my Lord. But I would only prove that what I write is true; I writ only the first Letter; and there are three Heads I am charged with upon that Letter, and That about the Blood is one. My Lord, I was concerned they should pretend there was no Blood at all; when I came there, there was near my Hat full of Blood.

L. C. J. Can you tell who laid it there?

Mr. Farwell. My Lord, if you will hear two Witnesses more, I will satisfy your Lordship who laid it there. My Lord, this Man was one of them that helped to remove the Body out of the Ditch.

*Another Witness, John Rawson, called by Mr. Farwell, and sworn.*

Rawson. My Lord, I was there taking him up, we fetched the Constable, and pulled him out of the Ditch, and when we had done, we pulled the Sword out, and removed him to the House, and there was Blood upon some Posts (explaining himself to me, on a couple of Stumps to go over upon) and going into the Door, his Back did sweep a little against the side, and there was some Water and Blood lighted there, and likewise lay upon the Table where he lay, and upon the Floor.

Mr. Farwell. Did the Blood of his Body fall upon the Floor, and go through the Floor into the Cellar?

Mr. Rawson. Some Drops were there, I won't swear whether it were Blood or no, my Lord.

Mr. Farwell. My Lord, I desire the same Question may be put to Mrs. Rawson.

*Mrs. Rawson sworn.*

Mrs. Rawson. My Lord, if you please, I have not a word to say, but there was Blood and Water ran through the Table, that is all I can say.

Mr. Farwell. My Lord, as to the Difference between Mr. Prance's Evidence, and Mr. Bedloe's, I desire I may prove the Difference between them.

L. C. J. You shall make any Proof you will.

*John Stanley called by Mr. Farwell, and sworn.*

Mr. Farwell. I call him to prove the Copies of the Journals of the House of Lords.

L. C. J. What would you infer from the Journals?

Mr. Farwell. My Lord, they charge me, that I should say there is a great deal of Difference between the Evidence Mr. Bedloe gave in the House of Lords, and the Evidence that Prance gave at the Trial of Green, Berry, and Hill.

L. C. J. Would you prove any Evidence given by Bedloe out of the Journals?

Mr. Farwell. I can prove he gave that Evidence before the House of Lords.

*But Mr. Farwell afterwards went off from that Proof, and called Mr. Hobbs, Mr. White, Mr. Chase the Father, and Mr. Chase the Son, and Mr. Lazineby, who were sworn.*

Mr. Farwell. I ask Mr. Chase, what he observ'd about Sir Edmundbury Godfrey?

Mr. Chase the Son. My Lord, on Friday Morning the Day after the Body was found, I went to Primrose-hill, in Company with my Father, to see the Body which they said was found; I came into the Field where the Company in the Field said the Body had been laid; the Body had been then carried into the House, I looked into the Ditch where they said the Body was laid, I could not see Blood in the Ditch, but four or five Yards aside off the Ditch, there seem'd some Blood to me, which the Constable said, followed the Sword when it was pulled out of the Body: I saw the Body in the House, and saw the two Wounds; he had a great Contusion on the left Ear, and his whole Face was very much bruised.

L. C. J. Do you believe there was any Violence offered to him?

Mr. Chase. My Lord, I believe he was strangled, for I don't believe those Injuries that were offered about him, could be after he was dead.

L. C. J. What say you, Mr. Hobbs?

Farwell. I desire he may be asked, Whether he did not propose to Mr. Godfrey, that the Body might be opened, that any Doubt may be laid aside, concerning his being murdered in that Place?

Mr. Hobbs. My Lord.

L. C. J. Had you any doubt, whether he was murdered or not?

Mr. Hobbs. Indeed, my Lord, I thought he was strangled, that was my Opinion, I can't tell whether I was mistaken. I said to Dr. Goodall it would be very well if Mr. Godfrey would send for a Surgeon and a Physician from the Court, and others from the City, to satisfy all Persons.

Mr. Farwell. What Colour was his Face?

Mr. Hobbs. My Lord it was blotted.

L. C. J. Did it look as if Violence had been used to him?

Mr. Hobbs. Ay, my Lord; and the bloody Vessels of his Eyes were so full, as if he had been troubled with sore Eyes.

Mr. Farwell. Did you observe any Fly-blows in his Face?

Mr. Hobbs. No, my Lord, not that I know of.

L. C. J. What say you, Mr. Chase?

Mr. Chase. My Lord, on Friday when I came to see the Body at the White-house, I found a great Contusion; and two Wounds, one yielded towards the right, the other went into the Body. I troubled myself no more at that Time, but the next Day I was desired by Dr. Lloyd, that I would go to his House and see the Body again, and there I found a swelling upon the left Ear, as if a Knot had been tied; there I found him beaten from this place to this, (pointing to the Neck and Stomach) I never saw any Man beaten so in my life. Before this Business was broached, Mr. Farwell did take me aside at Man's Coffee-house, and did tell me what Proof he could make of this Business; I told him, Mr. Farwell, I love you well, don't meddle with the Business, for I know it is impossible any thing can be said against it that hath the Face of Truth. I did so a second time (my Lord) when the Book came out, I found one before I went to New-Market; and the other at New-Market; I was very much troubled to see them. The Night before Easter, the Eve of Easter Day, I met with Mr. Farwell at an House where I had been with a good Friend of his and mine, and Farwell came and asked for me, and he came up to the Room as they called for another Bottle of Wine, I told them it was needless, only since Mr. Farwell is come up, said I, I will drink one Glass with you. And he told me then, that six Months before I had given him good Counsel if he had taken it.

Mr. Farwell. My Lord, I desire Mr. Smith to be called.

L. C. J. Let him. But he came not then.

*Mr. Brown is called by Mr. Farwell, and sworn.*

Mr. Farwell. I desire Mr. Brown may be asked, whether his Eyes were not Fly-blown?

L. C. J. 'Tis propos'd to you by Mr. Farwell, whether the Eyes of Sir Edmundbury Godfrey were not Fly-blown?

Mr. Brown. No, my Lord, I did not see any Fly-blows.

Mr. Farwell. Whether there were any Specks that one might call Fly-blows?

Mr. Brown. My Lord, I did not see any Specks that one might call Fly-blows.

Mr. Farwell. I desire that I may call two Witnesses to prove that he said so.

L. C. J. What will you get by that, Mr. Farwell, to disparage your Witness?

Mr. Brown. My Lord, Mr. Farwell would have had me say so, but I never said so.

*Then Smith came.*

L. C. J. What do you ask Smith?

Mr. Farwell. Only about the Blood.

Mr. Brown. My Lord, he came to me another time, and told me I was wrong in my Affidavit, as if he knew what I could make Affidavit of better than myself.

Mr. Farwell. My Lord, I was not the Party that told him so.

Mr. Brown. He was at my House twice at Marybone, at the Sign of the Sun.

L. C. J. Was Pain with him there?

Mr. Brown. My Lord there was a Man with Plate buttons with him there. I don't know Pain.

*Mr. Smith sworn.*

L. C. J. Well, what say you, Mr. Smith, it is required of you by Mr. Farwell, here to declare whether you took up any of Sir Edmundbury Godfrey's Blood, and brought it home in your Handkerchief?

Mr. Smith. No, my Lord, I know nothing of that.

Mr. Farwell. I desire Rawson and his Wife may be called again.

*Rawson appears.*

L. C. J. What say you, 'tis required by Mr. Farwell, whether you saw any Fly-blows in Sir Edmundbury Godfrey's Eyes?

Mr. Rawson. There was something like Fly-blows, but I can't say they were Fly-blows.

L. C. J. Did you observe the Flies were busy at that time of the Year?

Mr. Rawson. My Lord, I did not see them.

*[Then the People laughed.]*

Mr. Farwell. I desire Rawson's Wife may come.

Mr. Rawson. I must fetch her then.

*Rawson's Wife appears.*

L. C. J. Look you, Mr. Farwell requires of you to tell us, whether there were any Fly-blows in the Eyes of Sir Edmundbury Godfrey?

Mrs. Rawson. If it please you, my Lord, there were a great many People said there were Fly-blows, I took no great notice of them.

L. C. J. He asks you what you say to his Mouth, and his Nostrils, were there Fly-blows?

Mrs. Rawson. If it please you, my Lord, I can't say nothing to it, I did not much mind it, but they seem'd Fly-blows.

L. C. J. Have you any more Witnesses, Mr. Farwell?

Mr. Farwell. I pray Mr. Lazineby (my Lord) may be asked, whether Men that kill themselves look as Sir Edmundbury Godfrey did?

L. C. J. Mr. Lazineby, Mr. Farwell requires of you, whether you have seen Men that have killed themselves look in such a manner about the Neck and Face?

Mr. Lazineby. My Lord, he appeared to me to be strangled, and the which strangled him was kept about his Neck till he was cold. My Lord, People that are hanged and let down while warm, the Blood drains away the Vessels that are broken, and their Faces are rather less, and their Faces become very pale; but the Thing wherewith he was strangled remained about his Neck, the Blood could not drain away, but it made his Face bloody. The two Mr. Chases, the King's Apothecary, was there when he was there, and the Blood that was some four Yards from the Ditch, I put my Finger in it, and smelt to it, and it smelt like that which comes from a Body after a Fornight's time dead, rather than a Week's; my Lord, it was Blood and Water. The Water will separate from the Blood.

Sir Fra. Winn. But you believe he was strangled?

Mr. Lazineby. Yes; his Neck from this place hither (pointing to the upper part of his Neck, and then to his Stomach and Breast) was so much discoloured and black, and his Mouth was discoloured. Now when ever a Man is bruised whilst he is alive, or whilst he is warm, that Part after the Person is dead, will soonest corrupt.

L. C. J. It stands to Reason that the bruised Part will first corrupt.

Mr. Lazineby.



Mr. *Lazinby*. My Lord, after Mr. *Chafe* the Apothecary and I had seen him at the *White-House*, I went up to drink a Glass of Beer, and Mr. *Chafe's* Son unbuttoned Sir *Edmundbury Godfrey's* Collar, which was more than I saw, when I was come in, and unbuttoning the Collar, there were two great Creases both above and below, so they sent for me down for to come and see it, so I put the Collar together, and I perceived the Collar made the Mark like a Strait Ring upon a Finger, the Neck being swelled above the Collar and below, by the strangling with a Cord or Cloth.

Sir *Fr. Winn*. Do you think he killed himself now, Mr. *Farwell*?

Mr. *Lazinby*. There was something in the Cover of his Eyes, like Matter, but I can't say it was Fly-blows. His Eyes were open, my Lord, and his Eyes were Blood-shed, as Mr. *Hobb's* hath given you an Account, as if he had an extraordinary great Cold, or a Man that had a Blow upon the Temples or Forehead.

Mr. *Farwell*. Whether were his Eye-lids closed?

Mr. *Lazinby*. My Lord, his Eyes were open when I saw him.

Mr. *Farwell*. When I saw him about six a Clock in the Morning, his Eyes were shut.

Mr. *Lazinby*. I felt upon his Clothes; I admired that his Clothes were not wet, there having been so great a Storm the Afternoon before.

L. C. J. And his Clothes were not wet?

Mr. *Lazinby*. His Clothes were as dry as mine.

Mr. *Farwell*. My Lord, they made a great Fire there, and dried his Clothes.

L. C. J. Come, Mr. *Farwell*, there is no Man so blind as he that won't see. Will you call any more Witnesses?

Mr. *Farwell*. I will call no more Witnesses; but I suppose they will offer against me that I am a Papist.

Mr. *Serj. Maynard*. No, no.

L. C. J. Truly your Religion is not worth the enquiring into: 'Tis not much to the purpose what Religion you are of.

Mr. *Serj. Maynard*. Gentlemen, you hear he hath been able to make no Defence for himself; but for the Satisfaction of the World, my Lord hath taken great Pains in hearing him. I shall speak but very few Words, and call a Witness or two of some new Matter; that if it be possible to convince him, we will do it. We need not do it because his own Witnesses tells you of the several Bruises and Wounds he had; that there were no Fly-blows, no putrified Matter. How can a Man that stabs himself, bruise and beat himself in the manner that you have heard? There is never a Witness that hath spoken on his side, but hath spoken against him, to prove himself as malicious a Fellow as can be. What had he to do with this? Sir *Edmundbury Godfrey* was murdered, was found, inquiry made after it, and prosecution thereupon; now comes this Fellow and permits several Arguments against it, every one of them from Matter of Fact that is false, and yet publishes it to the World, that he will prove it by 500 undeniable Witnesses. We will now call some Witnesses to prove him as wicked a Liar as lives. I say what had he to do with it, only mere Malice; He would have me ask him, what Religion he is of? I shall not ask him, for I don't think he is of any; none of any Religion can be so wicked to own such a Thing. We shall desire the favour to call a Witness or two, to prove something more than hath been proved in this Murder, though there was Evidence enough upon the Trial to prove it.

Mr. *Sol. Gen.* Gentlemen, Mr. *Farwell* does pretend that he hath only told so many Lies, and hath left the World to make use of it. And hath brought Witnesses to colour this Matter over, in hopes to make you believe the Matter is true, But Mr. *Farwell* hath forgot himself, his Paper is quite otherwise, for he hath argued upon it, and made Inferences, that therefore Sir *Edmundbury Godfrey* murdered himself, therefore he is guilty of the highest Malice in the World. He tells a great many Falsities, and from those Falsities hath inferred others. The Paper is full of Arguments.

L. C. J. Gentlemen, I did give him leave to go into what Evidence he would in this Case, not that I thought it material; for if he could have proved never so much, yet his Malice had never been the less to have gone and aspersed the Government. What had he to do to meddle with it? To what purpose should he write Books concerning the Matters of Government, to traduce the Justice of the Nation? The People had suffered as *Malefactors*, and what had he to do with it? If they had suffered innocently, he ought to have done no such thing as this is.

Mr. *Serj. Maynard*. My Lord, but one Witness.

L. C. J. Pray call whom you will.

Mr. *Serj. Maynard*. *John Oakley*. We will prove that he was way-layed that very Day he was strangled.

Mr. *Sol. Gen.* We have no need to call any Witnesses now, to over-do a thing. We may leave it here.

Jury-Man. Pray, my Lord, if they have any more Witnesses, let us hear them.

L. C. J. 'Tis nothing to this purpose to call any for the King, nor hath *Farwell's* Evidence signified any thing to this. He did design, and would (no doubt of it) have been very much satisfied if he could have made but some probable Evidence that Sir *Edmundbury Godfrey* killed himself, and I was desirous to hear what they would say for themselves. But you hear what a kind of Evidence it is; not a Witness he hath called, but is as much against him as can be, and does evince it plainly, that the Man was killed, and that he was killed by strangling; and so the Evidence was upon the Trial of *Green*, *Berry*, and *Hill*. If he could have raised a doubt about it, yet his Offence had not been mitigated by it, for a private Person is not to arraign the Justice of the Nation; but I was willing to hear what could be said in the Case, whether a doubt could be made in the World, that Sir *Edmundbury Godfrey* was not murdered. And you see how his very Evidence hath, in all Things, confirmed the Evidence *Prance* hath given that he was killed, and that he was killed by strangling. I must leave it with you, Gentlemen, they are all three in this Mischief, 'tis a Combination of them to affront the publick Justice of the Nation, and what is the End of it? The End of it is to make People believe there is no Popish Plot; but it is plain he was killed by the Popish Party; as *Prance*, upon his Evidence against *Green*, and the others, attested. But if they could have made it out that he killed himself, all of them would have cried out the Popish Plot was a Sham, nothing but a thing raised by the Protestants

against the Papists, and all the Plot must have gone for nothing. Gentlemen, I do leave it to you, whether upon this Evidence you do not believe them all to be Guilty of this Design, of traducing the Justice of the Nation.

The Jury thereupon, without going from the Bar, found them all three Guilty of the Information.

And the People gave a great Hum.

Monday, July 3, 1682.

*Nathaniel Thompson*, *William Pain*, and *John Farwell*, were brought up by Rule, to the Bar of the Court of the King's Bench to receive their Judgment: Mr. *Thompson*, the Counsellor, moved for Judgment, and particularly pray'd they might have some corporal Punishment, acquainting the Court, that since their Trial (though they had as much Time and Liberty given them by the Lord Chief Justice, to call their Witnesses, and examine whom they would, as they could desire) the very next News-Book *Thompson* put out, he took upon him to give an Account, as though Justice had not been done him; and further said, if there was any doubt of the Fact with Mr. *Thompson*, or Mr. *Farwell*, or of Mr. *Pain*, there were Affidavits to satisfy the World about it.

Then Mr. *Spence's* Affidavit was read.

*Richard Spence*, Citizen and Upholder of London, living in *Arundel-street* in the Strand, in the Parish of St. *Clement's-Dane*, in the County of *Middlesex*, having been twice subpoena'd to give Evidence for the King, upon an Information exhibited in the Crown-office against *Nathaniel Thompson*, *William Pain*, and *John Farwell*, and not being called at their Trial to give Evidence in open Court, maketh Oath, That upon Thursday the tenth Day of October, 1678, it being the Thursday before Sir *Edmundbury Godfrey* was missing from his own House in *Hartshorn-lane* in the Strand: As he this Deponent was coming from St. *James's* Market to go to his own House, about seven of the Clock at Night, there were then at the Water-gate of *Somerset-house*, five or six Men standing together, who laid hold on this Deponent as he was passing by them, and they taking hold of both this Deponent's Arms, dragg'd him down about a Yard within the Water-gate of *Somerset-house*, it being dark; but one of the said Men, which this Deponent believes to have been *Hill*, (for that this Deponent knew *Hill* very well, as also his Master Doctor *Godwyn*,) cried out and said this is not he, upon which they immediately let this Deponent go.

Jurat. 10 die Julii, 1682. Coram me,

W. Dolbin.

RICHARD SPENCE.

Whereupon the Clerk of the Crown said, that it was one Captain *Spence*, whom he knew very well, and that he was a tall black Man, and like Sir *Edmundbury Godfrey*.

Then John *Oakley's* Affidavit was read.

*John Oakley*, of the Parish of St. *Martin's* in the Fields, in the County of *Middlesex*, Servant to Mr. *Robert Breedon* of *Hartshorn-lane* in the said Parish and County, Brewer, maketh Oath, That on Saturday the 12th Day of October, in the Year of our Lord 1678, about eight or nine of the Clock in the Evening, he was in the City of London, in the Company of his Father *Robert Oakley* of *Bissiter* in the County of *Oxon*, Maltster, and his Father came with him so far as *Ludgate*, where they parted. And this Deponent going homewards to his Master *Breedon's* House, coming by *Somerset-house* in the Strand, when he came near the Gate of that House which leads down to the Water-side, commonly called the Water-gate, which was about nine of the Clock at Night, he there saw Sir *Edmundbury Godfrey*, and pass'd close by him, and put off his Hat to him, and Sir *Edmundbury Godfrey* put off his Hat again to him; and after that this Deponent had passed beyond Sir *Edmundbury Godfrey*, he this Deponent turned about and looked upon him again, and Sir *Edmundbury Godfrey* stood still, and there was a Man or two near Sir *Edmund*. And this Deponent further faith, that he knew Sir *Edmundbury Godfrey* very well, for that he saw him almost daily pass by his Master *Breedon's* House in *Hartshorn-lane*, going or coming from his own dwelling-House, which was also in *Hartshorn-lane*. And this Deponent further faith, that about two or three Days after, when the Rumour was that Sir *Edmundbury Godfrey* was missing, he acquainted his Fellow-Servant *Elizabeth Dekin*, that he saw Sir *Edmundbury Godfrey* near the Water-gate at *Somerset-house* in the Strand, that very Saturday Night that he was reported to have been missing from his House in *Hartshorn-lane*. And this Deponent further faith, that he told the same Thing to his Uncle *Ralph Oakley* of the Parish of Little St. *Bartholomew*, about a Week after the time that Sir *Edmundbury Godfrey's* Body was found; and also that he told the same Thing to his Father the aforesaid *Robert Oakley*, and to several others in a short time after.

Jurat 22 die Junii, 1682. Coram me,

JOHN OAKLEY.

Sworn to again the 1st of July, 1682, before Judge *Dolbin*, Examiner and is left filled up in the Crown-Office.

After which the Court consulted together, and Mr. Justice *Jones* having first set out the Greatness of their Crime, gave the Judgment of the Court, which was, that *Thompson* and *Farwell* should stand upon the Pillory, in the Palace-yard, the last Day of the Term, between the Hours of Ten and One of the Clock, for the space of an Hour, and each of them to pay an Hundred Pound Fine, and to be imprisoned till they had paid it. And as for *Pain*, he told him, because the Court did not conceive him altogether so guilty, they would inflict no corporal Punishment on him, but did adjudge him to pay an Hundred Pound Fine, and to be imprisoned till he paid it.

Afterwards the Court was moved to explain their Judgment, it being apprehended that it was pronounced upon the Pillory; and the Court did declare that their Intention was (and so the Expression upon the Pillory was to be understood) that they should stand in the Pillory.

Accordingly, Wednesday the 5th of July, 1682, *Thompson* and *Farwell* stood in the Pillory in the Old Palace-yard at Westminster, with this Writing over their Heads.

For Libelling the Justice of the Nation, by making the World believe that Sir *Edmundbury Godfrey* murdered himself.



CXIII. The Trial of Ford Lord Grey of Werk, Robert Charnock, Anne Charnock, David Jones, Frances Jones, and Rebecca Jones, at the King's-Bench, for a Misdemeanour, in debauching the Lady Henrietta Berkeley, Daughter of the Earl of Berkeley, Nov. 23. 1682. Mich. 34 Car. II.

**T**HERE having been an Information preferred against the Right Honourable Ford Lord Grey of Werk, and others, by his Majesty's Attorney-General Sir Robert Sawyer, the first Day of this Michaelmas-Term; and the Lord Grey having then pleaded to it Not Guilty, and the other Defendants, the like afterward, and the King's Attorney joined Issue upon it; Tuesday the 21st of November, was appointed for Trial of this Cause; but it was then adjourned to this Day, because

\* Sir Francis Pemberton, C. J. Sir Thomas Jones, Sir William Dolben, and Sir Thomas Raymond.

one of the Witnesses for the King was not ready; but this Day it came on about Nine in the Morning at the King's-Bench-Bar, and held till Two in the Afternoon\*, all the Judges

of the said Court being present.

First, Proclamation was made for Silence, and then for Information, if any Person could give any, concerning the Misdemeanour and Offence whereof the Defendants stood impeached: Then the Defendants being called, and appearing, were bid to look to their Challenges, and the Jury being all Gentlemen of the County of Surrey, were Called, Challenged, and Sworn in this Order.

Cl. of Cr. 1. Sir Marmaduke Gresham, Jur.  
2. Sir Edward Bromfield, Jur.  
3. Sir Robert Knightley, Jur.  
Sir John Thompson.

Mr. Serj. Jeff. We challenge him for the King.

Mr. Holt. Then we challenge *toutz per avails*, unless the King shew his Cause of Challenge; for by the Statute of 24 Ed. I. the King cannot challenge without Cause.

Mr. Serj. Jeff. But by the Course of Practice, all the Pannel must be called over before the King shew his Cause.

† Mr. Att Gen. Before the Party can have his Challenges allowed, he must shew his Cause; but they must go on with the Pannel in the King's Case, to see if the Jury be full without the Persons challenged, and that is sufficient.

‡ L. C. J. If they challenge any Person for the King, they must shew Cause in due time. For I take the Course to be, that the King cannot challenge without Cause, but he is not bound to shew his Cause presently; it is otherwise in the Case of another Person.

Mr. Serj. Jeff. That hath always been the regular Course.

Mr. Holt. Our Challenging *toutz per avails*, doth set all the rest aside till Cause be shewn.

L. C. J. The Statute is, the King shall shew Cause: but when it comes in a Case between the King and another Party, that they both challenge, the other Party shall shew Cause first.

Mr. Holt. My Lord, we challenge *toutz per avails*.

L. C. J. You must shew a Reason for it then.

Mr. Att. Gen. The King shall not be drawn to shew his Cause, if there be enough in the Pannel besides.

Mr. Williams. That is to say then, that the King may choose whom he pleaseth against the Statute.

Mr. Serj. Jeff. No, Sir, we desire none but honest and indifferent Gentlemen to try this Cause.

L. C. J. The old Challenge is taken away, by that Statute, from the King, *quia non sunt boni pro Domino Rege*, and therefore if the King challenge any, he must shew Cause, but it must be in his Time, and not before you shew your's. Let him stand by a-while.

Cl. of Cr. John Sandys, Esq;

Mr. Serj. Jeff. We challenge him for the King.

Mr. Holt. For what Cause, Sir?

Mr. Serj. Jeff. We will tell you in good time.

Cl. of Cr. 4. Sigismund Stiddulph, Jur.

John Weston.

Mr. Weston. My Lord, I am no Freeholder.

Mr. Holt. He challenges himself.

L. C. J. Well, he must be set aside.

Cl. of Cr. 5. Thomas Vincent, Jur.

6. Philip Rawleigh, Jur.

7. Robert Gavel, Jur.

8. Edward Bray, Jur.

9. Thomas Newton, Jur.

10. John Halfey, Jur.

11. Thomas Burroughs, Jur. and

12. John Pettyward, Jur.

Cl. of Cr. Gentlemen, you of the Jury that are sworn, hearken to your Charge.

Surrey ff. **S**IR Robert Sawyer, Kt. His Majesty's Attorney General, has exhibited an Information in this Court, against the Right Honourable Ford Lord Grey of Werk; Robert Charnock, late of the Parish of St. Botolph, Aldgate, London, Gent. Anne Charnock, Wife of the said Robert Charnock; David Jones, of the Parish of St. Martin in the Fields, in the County of Middlesex, Milliner; Frances Jones, Wife of the said David; and Rebecca Jones, of the same, Widow; for that they (with divers other Evil-disposed Persons, to the said Attorney General yet unknown) the 20th Day of August, in the 34th Year of the Reign of our Sovereign Lord the King that now is, and divers other Days and Times, as well before as after, at the Parish of Epsom in the County of Surrey, falsely, unlawfully, unjustly, and wickedly, by unlawful and impure Ways and Means, conspiring, contriving, practising, and intending the final Ruin and Destruction of the Lady Henrietta Berkeley, then a Virgin unmarried, within the Age of 18 Years, and one of the Daughters of the Right Honourable George Earl of Berkeley

(the said Lady Henrietta Berkeley, then and there being under the Custody, Government and Education of the aforesaid Right Honourable George Earl of Berkeley her Father) they the said Ford Lord Grey, Robert Charnock, Anne Charnock, David Jones, Frances Jones, and Rebecca Jones, and divers other Persons unknown, then and there falsely, unlawfully, and devilishly, to fulfil, perfect, and bring to effect, their most wicked, impious, and devilish Intentions aforesaid; the said Lady Henrietta Berkeley, to desert the aforesaid Right Honourable George Earl of Berkeley, Father of the aforesaid Lady Henrietta; and to commit Whoredom, Fornication, and Adultery, and in Whoredom, Fornication, and Adultery, to live with the aforesaid Ford Lord Grey (the said Ford Lord Grey, then and long before, and yet, being the Husband of the Lady Mary, another Daughter of the said Right Honourable George Earl of Berkeley, and Sister of the said Lady Henrietta) against all Laws, as well Divine as Human, impiously, wickedly, impurely, and scandalously, to live and cohabit, did tempt, invite, and solicit, and every of them, then and there, did tempt, invite, and solicit. And that the aforesaid Ford Lord Grey, Robert Charnock, Anne Charnock, David Jones, Frances Jones, and Rebecca Jones, and other Persons unknown, with Force and Arms, &c. unlawfully, unjustly, and without the Leave, and against the Will of the aforesaid Right Honourable George Earl of Berkeley, in prosecution of their most wicked Conspiracies aforesaid; the said Lady Henrietta Berkeley, then and there, about the Hour of Twelve in the Night-Time, of the said 20th Day of August, in the Year aforesaid, at the aforesaid Parish of Epsom in the County of Surrey aforesaid, out of the Dwelling-House of the said Right Honourable George Earl of Berkeley there situate and being, and out of the Custody and Government of the said Earl of Berkeley, did take, carry, and lead away. And the said Lady Henrietta Berkeley, from the said 20th Day of August in the Year aforesaid, and continually afterwards, unto the Day of the Exhibition of this Information, at the Parish of Epsom aforesaid, in the County of Surrey aforesaid, and in divers secret Places there with the said Ford Lord Grey, unlawfully, wickedly, and scandalously to live, cohabit, and remain, did procure and cause, and every of them did procure and cause, to the great Displeasure of Almighty God, to the Ruin and Destruction of the said Lady Henrietta Berkeley, to the Grief and Sorrow of all her Friends, and to the evil and most pernicious Example of all others in the like Case offending; and against the Peace of our said Sovereign Lord the King, his Crown and Dignity. To this Information, the Defendant, the Lord Grey, and the other Defendants, have severally pleaded Not Guilty, and for their Trial, have put themselves upon the Country, and the King's Attorney likewise, which Country you are: Your Charge is to enquire whether the Defendants, or any of them, are Guilty of the Offence and Misdemeanour whereof they stand Impeached by this Information, or not Guilty: If you find them, or any of them, Guilty, you are to say so; if you find them, or any of them, not Guilty, you are to say so, and no more, and hear your Evidence.

[For which Evidence to come in, Proclamation was made, and then Edward Smith, Esq; a Benchet of the Middle-Temple, opened the Information.]

Mr. Smith. May it please your Lordship, and, Gentlemen, you of the Jury; Mr. Attorney General hath exhibited an Information in this Court, against Ford Lord Grey of Werk, Robert Charnock, Anne Charnock, David Jones, Frances Jones, and Rebecca Jones, wherein is set forth, That the Defendants, the 20th of August, in the 34th Year of this King, at Epsom, in your County, did conspire the Ruin and utter Destruction of the Lady Henrietta Berkeley, Daughter of the Right Honourable George Earl of Berkeley; and for the bringing about this Conspiracy, they have seduced her to desert her Father's House, tho' she be under the Age of 18 Years, and under the Custody and Government of her Father; and solicited her to commit Whoredom and Adultery with my Lord Grey, who was before married to the Lady Mary, another Daughter of the Earl of Berkeley, and Sister to the Lady Henrietta. That after they had thus inveigled her, they did upon the same 20th Day of August, carry her away out of the House, without the Earl's Licence, and against his Will, to the intent she might live an ungodly and dishonourable Life with my Lord Grey. And after they had thus carried her away, they obscured her in secret Places, and shifted about from Place to Place, and continued this Course of Life ever since. And this the Information says, is to the Displeasure of Almighty God, the utter Ruin of the young Lady, the Grief and Affliction of her Friends, the evil Example of all others in the like Case offending, and against the King's Peace, his Crown and Dignity. To this all these Defendants have pleaded Not Guilty; if we shall prove them, or any of them, Guilty of any of the Matters charged in this Information, you shall do well to find them Guilty.

Mr. Att. Gen. My Lord, and Gentlemen of the Jury, the Course of Evidence will be this; That this unhappy Gentleman my Lord Grey, for four Years together, prosecuted an Amour with this young Lady; when it came to be detected (some little Accident discovering somewhat of it) my Lady Berkeley did find there was some Business of an extraordinary nature between them, and thereupon forbid my Lord Grey her House. My Lord Grey he made many Pretences to my Lady, that he might come to her House to give them a Visit before he departed, being to go into the Country; try; and he takes that opportunity to settle this Matter of conveying the young Lady away in a very short time. And early on the Sunday Morning, he was, by Charnock, another of the Defendants, conveyed from the House of my Lord Berkeley at Epsom, and brought here to London. We shall in the Course of our Evidence shew how she was shifted from Place to Place, and the several Pursuits that were made in search after her. We shall discover to you, how she was hurried from one Lodging to another, for fear of Discovery. Nay, we shall prove, that my Lord Grey



has owned and confessed that he had her, that she was in his Care and Custody, and that he owned the several Instances of his Amours. But I had rather the Evidence should speak it, than I open so much as the Nature of it.

Mr. Sol. Gen. My Lord, we shall call our Witnesses, who will very fully make out this Evidence that Mr. Attorney has opened to you. That my Lord Grey did a long time make Love to this young Lady, tho' he were before married to her Sister. This Treaty was discover'd by my Lady Berkeley last Summer, upon an Accident of surprizing the young Lady in writing a Letter to my Lord, and thereupon my Lady Berkeley chargeth my Lord Grey with these Applications to her Daughter, that did so much misbecome him. My Lord Grey was then so sensible of his Fault, that he seem'd very full of Penitence, and assured my Lady, he would never do the like again, and earnestly desired her by all means to conceal it from my Lord Berkeley; for if this should once come to be known to him, he and the young Lady would not only be ruined, but it would occasion an irreparable Breach between their two Families, and of all Friendship between my Lord Berkeley and him. And therefore he desired my Lady Berkeley (who had justly forbid him her House for this great Crime) left the World should inquire into the Causes of it, and so it should come to be known, that his Banishment from her House might not be so soon or sudden: But he begged of her Ladyship, that he might be permitted to make one Visit more, and with all the Protestations in the World assured her, it was not with any purpose of Dishonour, that he desired to come and see her, but that his Departure might be by degrees, and so the less taken notice of. When my Lady had thus charged my Lord with his unworthy Carriage to her Family, and he had seem'd thus penitent for it, she charges her Daughter also, with her giving any allowance to these undecent Practices of my Lord's; she thereupon falls down on her Knees to her Mother, to ask her Pardon for her great Offence, and, with Tears in her Eyes, confess'd she had done very much amiss, and did humbly hope she might obtain her Forgiveness for it, being young, and seduc'd by my Lord Grey, and promised she would see him no more, nor have any thing more to do with him. My Lord Grey he is permitted to come once more to the House, upon those Assurances and Promises of his, that it should be with no dishonourable Purposes in the World. It was, it seems, in his way to his own House at *Suffex*, but coming thither, he takes an occasion to continue there, and stay a little too long for a Visit; whereupon my Lady Berkeley began to suspect it was not a transient Visit he came to make at her House, but that he had some ill Design in prosecution of the same Fault that he had been so long guilty of. And that Suspicion of her's was but too well grounded, as appear'd afterwards. Our Witnesses will tell you, that my Lord Grey, just before his Departure, was observed to be very solicitous and earnest with his Man *Charnock* (whom we shall prove by undeniable Evidence to be the Man that convey'd her away) giving him some Directions with great earnestness, what to do was indeed not heard, but the Event will plainly shew it. For my Lord Grey himself, he went on his Journey into *Suffex*, and lay at *Guilford* that Night she was carried away, and the next Morning she was missing. Thereupon my Lady sends after my Lord Grey, justly suspecting him to be guilty of this Violence and Outrage offered to her Daughter and Family, and they overtook him at *Guilford*, before he was got any further on his Journey, and there acquaint him the Lady was carried away, and that my Lady suspected (as well she might) he knew whither. Then immediately he makes haste up to Town, and writes my Lady a Letter, that truly he would take Care to restore Peace to the Family, that by his Folly had been so much disturbed: And there were some hopes of retrieving the Matter, that this Scandal upon so noble a Family might not be made publick; for certainly an Offence of this Nature was not fit should be so, nor indeed was ever heard of in any Christian Society; I am sure I never read of any such Cause in the Courts of Law. And it was impossible any way to have prevented the Scandal, but that which my Lady took, to pass over all, by desiring to have her Child restored again to her, before such time as it was gone so far, as there is too great Reason to suspect it now is. But after that, my Lord Grey was so far from performing what he had so solemnly promised, and making the Matter up, that he stood upon Terms; he was Master of the Lady, and would dispose of her as he thought fit: Third Persons and Places must be appointed where she must be disposed of; with Capitulations, that she should see her as often as he thought fit; which was (if possible) a worse indignity than all that he had done before.

We shall prove to your Lordship, that he did, a long time before this Violence was offered, make Applications to this young Lady, and that must as any Man will believe) be upon no good Account. We shall shew all the base Transactions in carrying away the Lady, after that Confidence which my Lady reposed in his Protestations to do nothing dishonourably, so to admit him to make a Visit; which certainly was the greatest Breach of the very Laws of human Society, against all the Laws of Hospitality, besides the great Transgression of the Laws of God and Men. Yet even then, he seduced the Lady away. For we shall plainly prove she was carried away by his Coach-man that once was, afterwards his Gentleman, and how she was from time to time conveyed to and fro.

Mr. Serj. Jeff. This Story is indeed too melancholy to be often repeated; the Evidence had better tell it: Only this one Aggravation I would take Notice of, which will be made out in the Proof to you of this Matter charged; and that is this, That my Lord Grey, after such time as it was known she was in his Power, gave one Reason for his not delivering her up, (and I am sorry to see his Lordship should think it a Reason) he had required how far the Law would extend in such a Case, and that he knew, it could give a Precedent for it (which the Witness will tell you of) at the Law could not reach him; and that as long as he had run such a course for obtaining that which was his greatest Pleasure, he would not part with her, but upon such Terms, that he might have access to her when he pleased. To such a height of Confidence was this Gentleman arrived, in this barbarous and infamous Wickedness. But, as I said, it is a story too black to be aggravated by any thing but by itself; we shall therefore call our Witnesses, and prove our Fact.

[About this time the Lady Henrietta came into the Court, and was set by the Table at the Judges Feet.]

Earl of Berkeley. My Lord, my Daughter is here in Court, I desire she may be restored to me.

Mr. Serj. Jeff. Pray, my Lord Berkeley, give us leave to go on; it will be time enough to move that anon. Swear my Lady Berkeley—(which was done, but she seem'd not able to speak.)—

Mr. Sol. Gen. I perceive my Lady is much moved at the sight of her Daughter. Swear my Lady Arabella her Daughter. (Which was done.)

Mr. Serj. Jeff. Pray, Madam, will you acquaint my Lords the Judges, and Jury, what you know concerning the Letter you discovered, and how you came by that Discovery?

Lady Arabella. My Mother coming to my Lady Harriett's Chamber, and seeing there a Pen wet with Ink, examined her where she had been writing. She, in a great Confusion, told her she had been writing her Accompts. My Mother not being satisfied with her Answer, commanded me to search the Room. Her Maid being then in the Room, I thought it not so much for her Honour to do it then. I followed my Mother down to Prayers; after Prayers were done, my Mother commanded my Lady Harriett to give me the Keys of her Closet and her Cabinet. When she gave me the Key, she put into my Hands a Letter, which was written to my Lord Grey, which was to this Effect.—My Sister Bell did not suspect our being together last Night, for she did not hear the Noise. I Pray come again Sunday or Monday, if the last I shall be very impatient.—I suppose my Lady Harriett gave my Lord Grey Intelligence that this was found out; for my Lord Grey sent his Servant to me, to acquaint me he desired to speak with me. When he came in first, she (I mean my Lady Harriett) fell down upon the Ground like a dead Creature. My Lord Grey took her up, and afterwards told me, said he, *You see how far it is gone between us*; and he declared to me, he had no Love, no Consideration for any Thing upon Earth but for her; *I mean dear Lady Hen*, said he to me; for I say it just as he said it. And after this, he told me, he would be revenged of all the Family, if they did expose her. I told him it would do us no injury, and I did not value what he did say; for my own particular, I defied him and the Devil, and would never keep Counsel in this Affair. And afterwards, when he told me he had no Love, no Consideration for any Thing upon Earth but her, I told my Lady Harriett, *I am very much troubled and amazed, that you can sit by and hear my Lord Grey say and declare, he has no Love for any but you, no Consideration for any one upon Earth but you, when it so much concerns my Sister; for my part, it stabs me to the Heart, to hear him make this Declaration against my poor Sister Grey*—[Here she stooped a while.]

Mr. Serj. Jeff. Pray go on, Madam.

Lady Arabella. After this she said nothing; I told her, I suspected my Woman had a Hand in it, and therefore I would turn her away. This Woman, when my Lady Harriett ran away, being charged with it, swore she had never carried any Letters between them; but after my Mother's coming to London, both the Porter at St. John's, and one Thomas Plomer accused her that she had sent Letters to *Charnock*, who was my Lord Grey's Coachman, now his Gentleman. I told her then, I did much wonder, she being my Servant, should convey Letters between them without my knowing: She then confess'd it to me, but withal she told me, *How could I think there was any ill between a Brother-in-Law and a Sister?* And upon this she confess'd to me she had sent Letters to *Charnock*, tho' before she had sworn it.

Mr. Att. Gen. Madam, have you any thing farther to testify in this Cause? Have you any Matters that you remember more?

Lady Arabella. There is more of it to the same Effect; but all of it is only to this Effect.

L. C. J. My Lady Arabella, pray let me ask you, have you any more to say to this Matter?—Lady Arabella. It is all to this purpose.

Mr. Serj. Jeff. Then if you please, Madam, to turn now your Face this way towards the Gentlemen of the Jury, who have not heard what you said, and give them the same Relation that you gave to the Court; and pray be pleased to lean over the Seat, and expose yourself a little, and let them have the same Story you told before, and pray tell the Time when it was.

[Then she turned her Face towards the Bar.]

Lady Arabella. It was in July, Sir.

Mr. Serj. Jeff. Pray, Madam, tell what happen'd then.

Lady Arabella. In July last, some time then, my Mother came into my Lady Harriett's Chamber, and seeing a Pen wet with Ink, she examined her who she had been writing to. She, in great Confusion told her, she had been writing her Accompts, but my Mother was not satisfied with that Answer.—The sight of my Lord Grey doth put me quite out of Countenance and Patience.—[Here she stooped again.]

[My Lord Grey then was by the Clerks under the Bar, and stood looking very steadfastly upon her.]

L. C. J. Pray, my Lord Grey, sit down (which he did.) It is not a very extraordinary Thing, for a Witness, in such a Cause, to be dashed out of Countenance.

E. of Berkeley. He would not, if he were not a very impudent barbarous Man, look so confidently and impudently upon her.

Mr. Serj. Jeff. My Lord, I would be very loth to deal otherwise than becomes me, with a Person of your Quality, but indeed this is not so handsome, and we must desire you to sit down. Pray go on, Madam.

Lady Arabella. After this, my Mother commanded me to search my Lady Harriett's Room; Her Maid being then in the Room, I thought it not so much for her Honour to do it then. I followed my Mother down to Prayers. After Prayers were done, my Mother commanded my Lady Harriett to give me the Keys of her Cabinet and of her Closet, and when she gave me the Keys, she put a Note into my Hand, which was to my Lord Grey; and that was to this Effect.—My Sister Bell did not suspect our being together last Night, for she did not hear any Noise: Pray come again Sunday or Monday, if the last I shall be very impatient.—I suppose my Lady Harriett gave my Lord Grey intelligence of this, for he sent a Servant to tell me he desired to speak with me. Upon his first coming in, my Lady Harriett fell upon the Ground like a dead Creature, and my Lord Grey took her up, and said, *Now you see how far it is gone between us*: I

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love



love nothing upon Earth but her; I mean dear Lady Hen, said he to me; and if you do expose her, I will be revenged upon you and all the Family, for I have no Consideration for any Thing but her. After that I told him, We defied him, he could do us no Injury; and for my own particular, I defied him, and the Devil and all his Works, and would not have any thing to do with such a Correspondence. After this, I told my Lady Harriett, I was much troubled and amazed, that she should sit by and hear my Lord Grey, her Brother-in-Law, say he had no Consideration for any Thing on Earth but her. For my part, said I, Madam, it stabs me to the Heart, to hear this said against my poor Sister Grey. I told her, I suspected my Woman had an Hand in this Affair, and therefore I would put her away. Afterwards, the same Day my Lady Harriett ran away, this Woman came to me; and I then told her, You have ruined her, and asked her, Why would you send Letters between my Lord Grey and my Lady Harriett? She denied it, and swore she never did it, but when we came to London, the Porter of St. John's came and accused her of conveying Letters to Charnock, my Lord Grey's Gentleman, formerly his Coach-man. I then asked her again about it; she then acknowledged to me she had done it, But, Madam, said she, how could I think there could be any Prejudice or Ill between a Brother-in-Law and a Sister-in-Law? Said I, Were not you my Servant? Why did you not tell me? Besides, you know we have all reason to hate Charnock for a great many Things. This is all I have to say that is material, all else is to the same Effect.

Mr. Serj. Jeff. Now this Matter being thus discovered to the Countess of Berkeley, this unfortunate Young Lady's Mother; she sent for my Lord Grey, and we shall tell you what happen'd to be discourd between them two, and between the Lady and her Mother, and what Promises of Amendment he made. My Lady Berkeley, pray will you tell what you know.

[She seem'd unable to do it.]

—She is very much discompos'd, the sight of her Daughter doth put her out of Order.

Lady Arabella. I have something more to say, that is, I told my Lady Harriett, after my Lord Grey had made his declaration of his Love to my Sister, to me, That if ever he had the Impudence to name her Name to me, I would immediately go to my Father, and tell him all.

[Then the Countess lean'd forward, with her Hood much over her Face.]

Mr. Att. Gen. Pray, my Lady Berkeley, compose yourself, and speak as loud as you can.

Lady Berkeley. When I first discovered this unhappy Business, how my Son-in-Law, my Lord Grey, was in Love with his Sister, I sent to speak with him, and I told him he had done barbarously and basely, and falsely with me, in having an Intrigue with his Sister-in-Law. That I looked upon him, next my own Son, as one that was engaged to stand up for the Honour of my Family; and instead of that, he had endeavour'd the Ruin of my Daughter, and had done worse than if he had murdered her, to hold an Intrigue with her of Criminal Love. He said, he did confess he had been false, and base, and unworthy to me, but he desired me to consider (and then he shed a great many Tears) what it was that made him guilty, and that made him do it. I bid him speak. He said he was ashamed to tell me, but I might easily guess. I then said, What? Are you indeed in Love with your Sister-in-Law? He fell a weeping and said, he was unfortunate; But if I made this Business Publick, and let it to take Air (he did not say this to threaten me, he would not have me to mistake him) but if I told my Lord her Father, and his Wife of it, it might make him desperate, and it might put such Thoughts into his Wife's Head, that might be an occasion of parting them; and that he being desperate, he did not know what he might do, he might neither consider Family, nor Relation. I told him this would make him very black in Story, tho' it were her Ruin. He said that was true, but he could not help it; he was miserable, and if I knew how miserable, I would pity him: He had the Confidence to tell me that. And then he desired, tho' he said I had no reason to hear him, or take any Counsel he gave me (and all this with a great many Tears) as if he were my Son Dursley, that I would keep his Secret. For my Lord, if he heard it, would be in a great Passion, and possibly, he might not be able to contain himself, but let it break out into the World. He may call me Rogue and Rascal perhaps in his Passion, said he, and I should be sorry for it, but that would be all I could do, and what the evil Consequence might be, he knew not, and therefore it were best to conceal it. And after many words to pacify me, tho' nothing indeed, could be sufficient for the Injury he had done me; he gave it me as his Advice, that I would let my Daughter Harriett go abroad into Publick Places with myself, and promised, if I did, he would always avoid them. For a young Lady to sit always at Home, he said it would not easily get her out of such a Thing as this. And upon this he said again, he was to go out of Town with the D. of M. in a few Days, and being he had been frequently in the Family before, it would be looked upon as a very strange thing, that he went away, and did not appear there to take his Leave. He promised me, that if for the World's sake, and for his Wife's sake (that no one might take notice of it) I would let him come there, and Sup before he went into the Country, he would not offer any thing, by way of Letter or otherwise, that might give me any Offence. Upon which I did let him come, and he came in at Nine o'Clock at Night, and said, I might very well look ill upon him, as my Daughter also did (his Sister Bell) for none else in all the Family knew any thing of this Matter but she and I. After Supper he went away, and the next Night he sent his Page (I think it was) with a Letter to me, he gave it to my Woman, and she brought it to me; where he says that he would not go out of Town.-----If your Lordship please I will give you the Letter.-----But he said, he fear'd my Apprehensions of him would continue.-----There is the Letter.

L. C. J. Show it my Lord Grey, let us see if he owns or denies it.

Lord Grey. Yes, pray do, I deny nothing that I have done.

Mr. Just. Dalben. Bepleased, Madam, to put it into the Court.

Mr. Att. Gen. It is only about his keeping away.

L. C. J. Shew it my Lord Grey.

Mr. Serj. Jeff. With Submission, my Lord, it is fully proved without that.

L. C. J. Then let the Clerk read it, Brother.

Cl. of Crown. There is no Direction, that I see, upon it. It is subscribed Grey.

[Reads.]

"MADAM,

"AFTER I had waited on your Ladyship last Night, Sir Thomas Armstrong came from the D. of M. to acquaint me that he could not possibly go into Sussex; so that Journey is at an End. But your Ladyship's Apprehensions of me I fear will continue: therefore I send this to assure you, that my short stay in Town shall no way disturb your Ladyship; if I can contribute to your Quiet, by avoiding all places where I may possibly see the Lady. I hope your Ladyship will remember the promise you made to divert her, and pardon me for minding you of it, since 'tis to no other End that I do so, but that she may not suffer upon my Account: I am sure, if she doth not in your Opinion, she never shall any other way. I wish your Ladyship all the Ease that you can desire, and more quiet Thoughts than ever I expect to have. I am with great Devotion,

Your Ladyship's

most Humble, and

Obedient Servant,

GREY."

Mr. Att. Gen. Madam, will you please to go on with your Evidence. Lady Arabella. I have one thing more to say: After this, three or four Days after this ugly Business was found out, I told my Lady Harriett, she was to go to my Sister Dursley's. She was, in a great Anger and Passion about it, which made my Mother so exasperated against her, that I was a great while before I got my Mother to go near her again.

Mr. Serj. Jeff. My Lady Berkeley, will you please to go on?

Lady Berkeley. When I came to my Daughter, (my wretched unkind Daughter, I have been so kind a Mother to her, and would have died rather, upon the Oath I have taken, than have done this, if there had been any other way to reclaim her, and would have done any thing to have hid her Faults, and died ten times over, rather than this Dishonour should have come upon my Family.) This Child of mine, when I came up to her, fell into a great many Tears, and begged my Pardon for what she had done, and said, she would never continue any Conversation with her Brother-in-Law any more, if I would forgive her; and she said all the things that would make a tender Mother believe her. I told her, I did not think it was safe for her to continue at my House, for fear the World should discover it, by my Lord Grey's not coming to our House as he used to do; and therefore I would send her to my Son's Wife, her Sister Dursley, for my Lord Grey did seldom or never visit there, and the World would not take notice of it. And I thought it better and safer for her to be there with her Sister, than at home with me. Upon which this ungracious Child wept so bitterly, and begg'd so heartily of me that I would not send her away to her Sister's, and told me, it would not be safe for her to be out of the House from me. She told me, she would obey me in any thing; and said, she would now confess to me, tho' she had denied it before, that she had writ my Lord Grey word that they were discovered, which was the Reason he did not come to me upon the first Letter that I sent to him to come and speak with me. And she said so many tender Things, that I believed her penitent, and forgave her, and had Compassion upon her, and told her (tho' she had not deserved so much from me) she might be quiet (seeing her so much concerned) I would not tell her Sister Dursley her Faults, nor send her thither, till I had spoken with her again. Upon which, she, as I thought, continuing penitent, I kissed her in the Bed when she was sick, and hoped that all this ugly Business was over, and I should have no more Affliction with her, especially if my Lord removed his Family to Durdants, which he did. When we came there, she came into my Chamber one Sunday Morning before I was awake, and threw her self upon her Knees, and kissed my Hand, and cried out, Oh, Madam! I have offended you, I have done ill, I will be a good Child, and will never do so again; I will break off all Correspondence with him, I will do what you please, any thing that you do desire. Then, said I, I hope you will be happy, and I forgive you. Oh; do not tell my Father, (she said) let not him know my Faults. No, said I, I will not tell him; but if you will make a Friend of me, I desire you will have no Correspondence with your Brother-in-Law; and tho' you have done all this to offend me, I will treat you as a Sister, more than as a Daughter, if you will but use this wicked Brother-in-Law as he deserves. I tell you that Youth, and Virtue, and Honour is too much to sacrifice for a base Brother-in-Law. When she had done this, she came another Day into my Closet and there wept very much, and cry'd out, Oh, Madam! 'tis he, he is the Villain that has undone me, that has ruined me. Why? said I, What has he done? Oh! said she, he hath seduced me to this. Oh! said I, fear nothing, you have done nothing, I hope, that is ill, but only hearkening to his Love. Then I told her about the Neck and kissed her, and endeavoured to comfort her. Oh, Madam! said she, I have not deserved this kindness from you; but 'tis he, he is the Villain that hath undone me: But I will do any thing that you will command me to do; if ever he send me any Letter, I will bring it you unopened; but pray do not tell my Father of my Faults. I promised her I would not, so she would but break off all Correspondence with him.

[Here she swooned, and soon after recovered and went on.]

—Then my Lord Grey's Wife, my Daughter Grey, coming down to Durdants, he was to go to his own House at Up-Park in Sussex, and he was down to his Wife to come up to London.-----It is possible I may omit some particular Things that were done just at such or such a Time, but I can remember in general. My Lord Grey, when I spoke to him of it, told me, he would obey me in any Thing; if I would banish him from my own Son, that the World would take notice of it, that therefore it would be better for me to take her abroad with me, he would avoid all places where she came, but he thought it best for her not to be kept too long at Home, nor he absolutely forbid the House, but he would by degrees come feldomer, once in six Weeks or two Months. But to go on with



Daughter Grey's coming down to Durdants; he writing to his Wife to come up to London, that he might speak to her before he went to his own House at Up-Park; my Daughter Grey desired he might come thither, and it being in his way to *Suffex*, I writ him word, that believing he was not able to go to Up-Park in one Day from London, he might call at my Lord's House at Durdants, and dine there by the way, as calling in, intending to lie at *Guilford*, for it is just the half-way to *Guilford*. He, instead of coming to Dinner, came in at Nine o'Clock at Night (I am sure it was so much) for it was so dark, we could hardly see the colour of his Horses, from my Lord's great Gate, to the Place where we were in the House: And coming at that time of Night, I thought if I turned him out of the House; my Lord would wonder at it, and so would all the Family. Therefore I was forced, as I then thought, in point of Discretion, to let him lie there that Night, which he did; and he told me, Madam, I had not come here, but upon your Ladyship's Letter, nothing else should have brought me: Because I was to give him leave to come, knowing the Faults he had committed against the Honour of our Family. Upon which I told him, my Lord, I hope you have so much Honour and Generosity in you, after the Promises you have made me, and the Confidence and Indulgence I have shewn you, that you will give my Daughter no Letters, and I will look to her otherwise, that you shall have no Conversation with her. He desired me to walk up with him into the Gallery, and there he told me he had brought no Letters, and would have had me looked in his Pocket. I told him that would be to no purpose, for his Man *Charnock* (whom we knew he did not prefer from being his Coach-man to be his Gentleman, but for some extraordinary Service he did him, or he thought he would do him) might have Letters enough, and we be never the wiser: But I trusted to his Honour and his Christianity: and I told him, that his going on in any such way would be her utter Ruin. He told me he would not stay there any longer than the next Day; nay, he would be gone immediately if I pleased, and he sent his Coach to London, and had nothing but Horses left. But his Wife desiring her Husband to stay, I had a very hard Task to go through, being earnestly press'd, both by her and my own Lord's importunities for his stay. But my Lord Grey, whilst he was there, did entertain me with his Passion, he had the Confidence to do it, and he wished himself the veriest Rake-hell in the World, so he had never seen her Face since he was married. And, said he, Madam, you will always think me a Villain, and never have a good Opinion of me, I shall be always unfortunate, both in myself, and your bad Opinion of me. Seeing this, I thought it was time to do something more; and I told him that Night he should stay no longer, he should be gone; and his Wife seemed to be much concerned, and would fain have him stay. For by this time she began to find out that there was some Disorder in her Mother and the Family, tho' she knew not what it was; and she sent her Sister *Lucy* to beg he might stay: I told her I would not suffer it: However, she proposed an expedient how her Sister *Harriett* should take Physick, and keep her Chamber while he was there. That I was in a sort compelled to do, and I told him, upon their importunity for his stay, that his Sister *Harriett* should be seen no more by him, but take Physick while he stayed there: To which he replied, Madam, indeed it is rude for me to say it to you, but I must say it, give me my Choice, either to be drown'd or hanged. Upon this I was extremely disturbed, and the next Morning, I told him, I was not satisfied he should stay in England; he had ordered his Wife to go into France, and she was to go within a Month after, I would have him go with her. He told me, he had Law-Suits, and he could not: I told him, he had told me before, they were of no great consequence, and therefore they could not hinder him; and I pressed him very much, and I fell into a great Passion at last; and told him, if he would not go, I would tell her Father, and he should take care of her, to send her where she should be safe enough from him. For I was sensible the World would take notice if he came not thither; and, said I, I am not able to bear you should. Upon this, he promised me with all the Oaths, Imprecations, and promises in the World, that he would go and follow his Wife into France at Christmas, and stay there eight Months; and by that time, I did hope, this unfortunate miserable Business might be over: For I had a great kindness for my Child, and would have done any thing to save her, if it had been in my Power, or would yet do any thing: I would give my life that the World did not know so much of it as now it must this Day. The World knows I had always the greatest Kindness and Tenderness for her, which was such, that some that are now here have said since, that it was my Indulgence to her, and not making it known to my Lord, that encouraged this last ill Business. And thereupon my Lord Grey was ordered by me to go away, and he promised me so to do, which was upon Saturday. I then went up to her Chamber and saw her very melancholy, and did what I could to comfort her. Said I, I warrant you, by the Grace of God, do but do what you ought, and I will bring you off this Business; be chearful, and be not so much cast down (for I thought she was troubled at my Carriage to her) and tho' I said some severe Things to you at Dinner (as I did talk of her going away, and being sent abroad) be not troubled, for I only meant it out of Kindness to you; for all I design, is only to seek an Occasion of getting him away; and therefore, as long as it stays, I will seem to whisper with you, and look frowningly upon you, but if he hath any Tenderness for you, he may see I am angry with you, and do the more to leave you at quiet: But take no notice of it, for I now write to you, tho' I frowned before him, be not affrighted. In the Afternoon I told her the same thing again. But then, said she, he will shew my Letters to him, and that will ruin my Reputation for ever, and that troubles me; but yet it need not, for I never writ to any Man but him, and he doth shew them, he will expose himself for a base unworthy Man, and can but deny it, and he can never prove it. This is true, said I, and he will say so, and therefore be not afraid of him, but trust to the Friendship of your Mother, and do as you ought to do, and I am confident we will bring you clear off from this ugly Business. And then, said she, oh, Madam! my Sister, my Sister Grey, will she forgive me this? I told her, her Sister Grey was good-natur'd and religious, and I made no doubt she would forgive her the Folly of her Youth, and if she would take yet, she was young, and her Sister would impute it to that, and, said I,

I am sure she will forgive you; and I told her, I would do all that lay in my Power to assist her; and I bid her be chearful and trust in God and in my Friendship. She was to blame, indeed, she acknowledged; but she was young, and he was cunning, and had made it his Business to delude and intice her. I told her it was true, and therefore now she must consider with herself, what was to be done to bring her off; which I doubted not, if she would do but as she ought; she promised me so to do; and yet that very Night when I was in my Sleep she ran away. —

[Here she swooned again]

Mr. Serj. Jeff. What time went my Lord Grey away, Madam, that Day?

Lady Berkeley. He went away about four a Clock in the Afternoon.

Mr. Serj. Jeff. And the ensuing Night the Lady was gone?

Lady Berkeley. Yes, that Night she went away too.

Mr. Serj. Jeff. My Lord, I crave leave to acquaint you with one Circumstance that has been already hinted, that is about *Charnock*, a Person that is taken notice of by both the Ladies that have given Evidence; and one of the Defendants in this Information. This Man, as they seem to intimate, for some extraordinary Service he had done my Lord Grey, or was designed for the doing of, was removed from the Degree of his Coachman; to the waiting upon him in his Chamber. He at this time came with my Lord Grey to Durdants, a House of my Lord Berkeley's near *Epsom*, and which was in the way to my Lord Grey's House in *Suffex*, that is called Up-Park. And they being there, notwithstanding all those Protections and Promises made by my Lord Grey to his Lady Mother, as you have heard, to meddle no more in this Matter, yet we shall give you an account; how that the Day before the Night that the young Lady went away, my Lord Grey was very importunately busy with his Man *Charnock*; what Discourses they had, or what Directions he gave him perhaps may not be known; but his earnestness in talking with him, and his impatience and restlessness we shall prove; and then give you a very full Proof that *Charnock* was the Person that took her away; and then let the Jury and the Court make the Conclusion.

Mr. Att. Gen. It may be, my Lord, we shall not be able to prove the actual Taking-away from thence, but only by undeniable Circumstantial Proof. Such Impieties use not to be acted openly.

L. C. J. Truly, as far as I can see, here has been more done barefaced, than one would think should be done in any Christian Nation.

[Then a Clergyman that stood by was sworn, but his Name not told.]

Mr. Serj. Jeff. Pray, Sir, will you tell my Lord and the Jury what you know.

Mr. — My Lord, I was at Durdants, my Lord Berkeley's House near *Epsom* in *Surrey*, at the time of this ill Accident, and some time after. And upon the Saturday in the Afternoon I (immediately after Dinner was over at my Lord's own Table) walked into the great pav'd Hall; and stood in the Door that looked towards the Downs; and my Lord Grey came into the Hall alone, and walked three or four times very thoughtfully, and then leaned upon the Window, and often looked upon the Ground, and within a little while he steps into the Steward's Hall, where the Gentlemen were at Dinner, and he calls to *Charnock*, who came out to him. He takes him out of the Hall to the Foot of the Stair-case, and there they talked together a great while, and after some time my Lord Grey went away, and *Charnock* did so too, I think to his Dinner again, I cannot tell any thing to the contrary. The Reflection I made upon this Passage then was, That my Lord Grey was very punctual in giving his Servant Orders, which I thought he was to carry to London with him, but I suspected nothing of this Matter, nor any thing else that was ill then. Mr. *Charnock* then passing by me, said I, Mr. *Charnock*, How long will it be before you are going? He made me no Answer, not one word. Thereupon I went into the Library, and between that and Mr. *Charnock*'s Chamber there was but a very thin Wall, and presently after I came into the Library, my Lord Grey sent one (as the Messenger said) for Mr. *Charnock*, and he went down to him, as I suppose, and in a little time came up again. And after that, I do believe, I did hear another Messenger come from him to Mr. *Charnock* again, I will not swear that, for I am not sure of it; because, being at that time busy in reading, I made no Reflection upon it till afterwards. But about a fortnight or three Weeks after, there comes a Gentleman to see me at my Lodgings, and falling into Discourse what News there was; our first Discourse was of the Lady's being missing; he said, it would be sad he feared when she was heard of. Why, said I, what do you mean? I suppose Mr. *Forrester* and she are together, for that was the talk of the Town. No, said he, it is no such thing; but if you will make it a Secret, unless it comes to be made a publick Business, I will tell you; I do not doubt my Lord Grey carried her away with a design to debauch her. That is hard to be believed, said I; I cannot believe it. Why, said he, you were there when he went away? Yes, said I, but how long was that before the Lady was missing? Said he, it was that Afternoon. Then came into my Mind his earnest Discourse with *Charnock*, and that which I observed about it, and sending so often for him; and I told that Person of it. Why *Charnock*, said he, was the Man that took her away.

Mr. Serj. Jeff. Who was it that said so to you, Sir? Name him.

Mr. — Mr. Rogers, my Lord Berkeley's Chaplain.

Mr. Serj. Jeff. If your Lordship please to observe the particular Times, when my Lord Grey was so earnest in giving *Charnock* Directions, that was on the Saturday at Noon, and it was that Night the young Lady went away.

L. C. J. When came my Lord Grey to my Lord Berkeley's?

Mr. Att. Gen. The Tuesday or Wednesday before, I think; some Days it was.

Mr. Serj. Jeff. But upon the Saturday Night it was she went away; this unfortunate Lady that we have produced, her Mother, and so the Lady her Sister, spoke both of their Fears of *Charnock*. Now we shall prove, that this *Charnock* was on the Sunday Morning, at eight of the Clock in the Morning, here in London, with a young Lady, in what Habit that young Lady was, our Witnesses will tell you; and others will give you an Account



count what Habit this Lady went away in, and then it will be seen who she was. Call *Eleanor Hilton*.

*Mr. Att. Gen.* But if you please, Mr. Serjeant, I think it will be proper first to examine my Lady *Lucy*, who upon the missing this young Lady, followed my Lord *Grey* to *Guilford*, and overtaking him, acquainted him with it, and immediately he took Post and came to *London*. Pray swear my Lady *Lucy*.

[Which was done, she being in a Box by the Bar.]

*L. C. J.* Well, what do you ask that Lady?

*Mr. Serj. Jeff.* We produce her, my Lord, to hear what pass'd between her and my Lord *Grey* at *Guilford*. Pray, Madam, will your Ladyship acquaint the Court what occasion you had to go to *Guilford*, and what you said to my Lord *Grey*, and what he said to you, and did afterwards.

*Lady Lucy.* My Lord, as soon as my Lady *Harriett* was missing, supposing my Lord *Grey* could best give an Account where she was, I went after him to *Guilford*, and he was gone half an hour from thence before I came thither, but by sending Post after him, he was overtaken, and came back to me. I told him my Lady *Harriett* was gone away, and I conjured him by all that was sacred and dear to him, to prevent so great a Misfortune as this would be to the Family. He then pretended he did not know any thing of her going, but promised me, that if he could find her out, he would endeavour to persuade her to return Home, but he would not force her. After several Discourses, which it is impossible for me to remember particularly (saying that he had done nothing that was illegal, and if she did not any thing, we could do nothing against him;) he at last parted from me, to go to *London*, as I suppose. I begged of him that I might be permitted to go along with him, that I might speak to her, supposing I might retrieve this Business, and recover her, before it were gone too far, but he denied it me, and went away. After that I met him, a Day or two after, I think, I cannot tell justly the Time, and he pretended, he did not know where she was, but only he knew where to send to her; and he would do all he could to get her to return Home. He was sensible of what a Misfortune this was to the Family. But soon after he went to *Up-Park* again, as he said, to shew us that he was not with her. And he afterwards writ me a Letter, wherein he says, he could not persuade her to come Home, but the Conclusion of it was, "He would do all he could to restore Peace and Quiet to the Family, which by his Follies were so miserably disturbed."

*Lady Arabella.* My Lord, I desire to speak one thing; About six Weeks ago I met my Lord *Grey* at my Lord Chief Justice's Chamber, and he told me, he had my Lady *Harriett Berkeley* in his Power, or in his Protection, or to that effect, he said.

*Mr. Att. Gen.* Pray tell, Madam, when that was?

*Lady Arabella.* About six Weeks ago, I cannot justly say the Day.

*Mr. Serj. Jeff.* But if your Ladyship pleases, my Lady *Lucy*, it will very much satisfy the Jury, if you would shew the Letter you speak of.

*Mr. Williams.* Ay, pray Madam, shew the Letter.

*Lady Lucy.* It was a Letter before that which he writ to me at *Durdants*.

*L. C. J.* When was that Letter you speak of written?

*Lady Lucy.* About a Week after my Sister was gone, I cannot exactly remember the Day.

*Mr. Williams.* Pray, Madam, can you produce that Letter?

*Lady Lucy.* No, I have it not here.

*Mr. Serj. Jeff.* Then swear *Eleanor Hilton*. [Which was done.]

*Mr. Sol. Gen.* Is your Name *Eleanor Hilton*?

*Mrs. Hilton.* Yes, it is, Sir.

*Mr. Att. Gen.* Pray speak out, that my Lord and the Jury may hear you. Do you remember the 20th of *August* last? Did *Charnock* come to your House with a young Lady? Did you see her, and what time of the Day was it?

*Mrs. Hilton.* I cannot tell what Day of the Month it was.

*Mr. Serj. Jeff.* What Day of the Week was it?

*Hilton.* It was on a *Sunday*.

*Mr. Sol. Gen.* What Month was it in?—*Hilton.* I cannot tell, truly.

*Mr. Serj. Jeff.* About what time of the Year was it?

*Hilton.* About eight or nine Weeks ago, or something more.

*Mr. Serj. Jeff.* Well, what did you see then?

*Hilton.* There was a young Lady that came to our House, she came of herself, *Charnock* he was not with her; he came before indeed, and asked me if I had any Room to spare, and I shewed him what we had; he went away, and I saw no more of him; afterwards, as I said, she came; but who she was, or what she was, I cannot tell.

*Mr. Serj. Jeff.* Can you describe her Clothes?

*Hilton.* She had a coloured Night-gown on of several Colours; I cannot say what particular Stuff it was: And she had a Petticoat on White and Red.

*Mr. Serj. Jeff.* Did you see her Face?—*Hilton.* I cannot say I did fully.

*Mr. Att. Gen.* Do you think you should know her again, if you should see her?—*Hilton.* I cannot say that.

*Mr. Serj. Jeff.* (to the Lady *Harriett*) Pray Madam, will you stand up a little, and turn up your Hood. [Which she did.]

*Hilton.* Truly I cannot say that is the Lady.

*Mr. Att. Gen.* Do you believe it was she?—*Hilton.* I cannot say it, truly.

*Mr. Att. Gen.* Have you seen her Picture since, and is this Lady like that Picture?

—*Mr. Attorney,* she says, she cannot say it is the same Lady.

*Mr. Sol. Gen.* Pray, Mistress, to what Purpose was she brought to your House?—*Hilton.* They did not tell me that.

*Mr. Att. Gen.* Was it not to lodge there?

*Hilton.* She staid there but a while, and went away again.

*Mr. Att. Gen.* Whither did she go then?

*Hilton.* To one *Patten's* in *Wild-street*.

*Mr. Serj. Jeff.* You went with her, Mistress, did not you?

*Hilton.* Yes, I did so.

*Mr. Serj. Jeff.* Pray, was there any Letter or Note brought to your House for *Charnock*?

*Hilton.* Yes, I brought it to *Mrs. Charnock*.

*Mr. Serj. Jeff.* Did you hear any Reason given for her Removal from your House?

*Mr. Att. Gen.* Pray did she go to Bed at your House?

*Hilton.* She did lie down.

*Mr. Serj. Jeff.* What Time of the Day was it?

*Hilton.* About nine or ten o'clock in the Morning?

*Mr. Sol. Gen.* Pray, did she say she had been at Church, or what did she say?

*Hilton.* She said somewhat to that Purpose, she said she was weary.

*Mr. Serj. Jeff.* What Company came to the Lady, while she was at your House?

*Hilton.* No Body but *Mrs. Charnock*.

*Mr. Serj. Jeff.* Did you see *Mrs. Charnock* in her Company?—*Hilton.* Yes.

*Mr. Serj. Jeff.* You saw her come in to her?—*Hilton.* Yes.

*Mr. Serj. Jeff.* Did she behave herself to her, as to a Lady of Quality?

*Hilton.* I cannot tell that, truly.

*Mr. Serj. Jeff.* Why, how did she carry it to her?

*Hilton.* Whether she was in Bed or no, I cannot tell; but when she came in, the young Lady said, How do you, *Mrs. Charnock*? She said, Your Servant, Madam, or to that purpose, I cannot exactly tell.

*Mr. Serj. Jeff.* You brought the Note to *Mrs. Charnock*, you say?

*Hilton.* Yes.

*Mr. Att. Gen.* Did she stay at *Mrs. Patten's* after that?

*Hilton.* I suppose she might.

*Mr. Sol. Gen.* Pray recollect yourself a little, and tell us what Colour was her Manteau?

*Hilton.* Truly, it was all manner of Colours, Red, and Green, and Blue, and I cannot tell what Colours.

*Mr. Att. Gen.* What coloured Petticoat?—*Hilton.* Red and White.

*Mr. Sol. Gen.* How long after this, did you hear my Lord *Berkley's* Daughter was missing?—*Hilton.* A While after.

*Mr. Att. Gen.* How long? Was it that Week?

*Hilton.* I cannot tell, it was not long after.

*Mr. Att. Gen.* Was it the same Lady that came to your House in those Clothes, that went to *Patten's* at Night?

*L. C. J.* Why, she says she went with her, do not examine her the same things over again.

*Mr. Att. Gen.* Were you examined before Sir *William Turner*, about this Matter?—*Hilton.* Yes, I was.

*Mr. Att. Gen.* Was it the Day of the Month you then said it was?

*Hilton.* I suppose it might; I cannot tell the Day of the Month.

*Mr. Att. Gen.* Was it the Month?—*Hilton.* It is like it was.

*L. C. J.* She has fix'd it now to be about eight or nine Weeks ago.

*Mr. Serj. Jeff.* Did she give any Reason why she was removed?

*Hilton.* None at all.

*Mr. Serj. Jeff.* Now, my Lord, we will bring it down to be this very Lady. My Lady *Arabella*, Pray, Madam, what Clothes did my Lady *Harriett* go away in?

*Lady Arabella.* My Lady *Harriett* had such Clothes as they speak of, I cannot say she went away in her Night-gown, but here is one that can: But there was a striped Night-gown of many Colours, Green, and Blue, and Red.

*L. C. J.* She does remember she had such a one, but she cannot say she went away in it.

*Mr. Serj. Jeff.* Was there not a chequer'd Petticoat Red and White?

*Lady Arabella.* She had such a Petticoat, but I cannot say she went away in it; she had also a White quilted Petticoat.

*Mr. Serj. Jeff.* Then swear *Mrs. Doney* (Which was done.) My Lord, we call this Gentlewoman to give an Account what Habit she went away in; for she lay with her always.

*Mr. Att. Gen.* Did you lie with my Lady *Harriett Berkeley*, when she stole away?

*Mrs. Doney.* Yes, indeed, Sir, I did lie in the Chamber that Night, and she went away with her Morning Clothes, which lay ready for her there, against she did rise in the Morning. It was a striped Night-gown of many Colours, and a Petticoat of White and Red, and a quilted Petticoat.

*Mr. Att. Gen.* Was she so habited, that came to the House, *Mrs. Hilton*?

*L. C. J.* She has said so already.

*Mr. Serj. Jeff.* Now you are pleased to observe, that besides the Circumstances of the Clothes, there is mention made of a Note; *Mrs. Hilton* says she received a Letter and gave it to *Mrs. Charnock*; and that soon after they went to *Patten's* House in *Wild-street*. We shall call the People of that House, to give an Account what Gentlewoman it was that came to that House. Pray swear *Mr. Patten*. [Which was done.]

*Mr. Sol. Gen.* Pray, will you tell my Lord and the Jury, whether *Mrs. Charnock* and his Wife came to your House, and with whom, and about what time?

*Mr. Patten.* My Lord, about the latter end of *July*, or the beginning of *August*, *Mr. Charnock* and his Wife came to my House when we were just removed, to take some Lodgings for a Person of Quality; but they did not say who. Said I then, We have no Lodgings now ready; but they said, We shall not want them yet, till towards the middle of *September*. Says my Wife, I suppose by that time our House will be ready; and if you any Kindness you may have it. About the 20th of *August* being *Sunday*, *Mrs. Hilton* brings a Gentlewoman with *Mrs. Charnock* to my House; and when they were come, they called me up, and seeing them all three there, I told *Mrs. Charnock*, We have no Lodgings fit for a Body of any Quality, at present. Says *Mrs. Hilton*, Let's see the Chamber and runs up Stairs into a Room where there was a Bed, but no Hangings; when they came in, they locked themselves into the Room. *Mrs. Charnock's* Wife's Daughter being in the House, I desired her to send for my Wife, who was then abroad; which she did. They desired my Wife's Daughter to lodge with the Gentlewoman that they brought thither, and they were making the Bed ready. I sent them up word, That I desired they would walk into the Dining-room for the present; they sent me word again, They did not desire to do that, for they were afraid the Lady would be seen into the Street, and withal, if any Body came to enquire



Mrs. Charnock, or Mrs. Hilton, I should say there was no Body there. Presently after, I think (or before, I cannot justly say which) a Letter was carried up Stairs to them, upon which they came down Stairs, and away they went up the Street, and when they were gone a little Way on Foot, Mrs. Charnock desired them to turn back again, for she hoped to get a Coach, and she did so, and went away.

Mr. Att. Gen. So they did not lodge there?

Mr. Patten. No, they did not.

Mr. Serj. Jeff. Did they say any Thing of Care that was to be taken, how they passed by my Lady Northumberland's?

Mr. Patten. My Lord, I do not well remember that: But the next Day Mrs. Hilton comes again to our House, and she runs up Stairs into the same Room, and sits her down upon the Bed-side. Said I to her, Mrs. Hilton, What Gentlewoman was that that was here last Night? Says she, I cannot tell, but I believe she is some Person of Quality, for Mrs. Charnock brought her to our House at seven o'Clock in the Morning. But whoever she is, she is much troubled, we could get her to eat nothing, but her Eyes were very red with crying, and we came away to your House at Night; because hearing some Noise of People in the Street, she was afraid some of her Father's Servants were come, but it was only some People that were gathered about to observe the Blazing Star. So we whip'd out of the Door, and so came to your House, for we had never a Back-door out of our own.

Mr. Att. Gen. Pray give an Account what Habit the Gentlewoman was in that came to your House.

Mr. Patten. She had a striped flowered Gown, very much sullied, it was flung about her, just as if she had newly come out of Bed. I did see her Face, but when I had just looked upon her, she clapped her Hood together over it presently.

Mr. Serj. Jeff. Do you think you should know her again if you see her?

Mr. Patten. I believe I might.

Mr. Serj. Jeff. Pray, Madam, stand up again, and lift up your Hood.

[Which she did.]

Mr. Patten. This is the Lady. I saw her Face twice, once as I told you, and then when she went away, I dropped down, and peeped up, and looked her in the Face again, though she hid it as much as she could.

Mr. Att. Gen. Thus we have proved it upon Charnock and his Wife.

Mr. Serj. Jeff. He gives an Account of the 20th of August, which was the Day after she went from her Father's House. Pray call Mrs. Fletcher.

Mr. Att. Gen. We shall now prove, that they went from thence to one Jones's; that my Lord Grey came there to take Lodgings, and after she was brought, came thither again, and though he changed his Hair into a Perriwig, yet he was known for all his Disguise.

Mr. Sol. Gen. My Lord, you see that it is proved upon three of the Defendants, my Lord Grey, and Charnock, and his Wife; now we shall prove it upon the other two, the Jones's. Swear Mary Fletcher.

[Which was done.]

Mr. Serj. Jeff. Sweetheart, pray tell the Court where you lived, and when my Lord Grey came to your House; tell the Time as near as you can, and the Day of the Week.

Fletcher. Sir, he came to David Jones's on the Tuesday after my Lady Berkeley was missing.

L. C. J. Where does David Jones live?

Fletcher. At Charing-Cross just over-against the Statue. And living there, my Lord Grey came there in a Hackney-Coach, first on the Monday without a Perriwig, or any Thing of that, and desired Mr. Jones to come to the Coach-side, which he did, and after a little Discourse with Mr. Jones, they came both into the House, and went up two Pair of Stairs to look upon Lodgings. After that, I had order to make ready the Room for some Lodgers who were expected to come that Night, but did not till the next Day. About Tuesday at Nine of the Clock, my Lord Grey comes again in a Coach to the Door, and threw his Cloak over his Face, he was then without his Perriwig too, and desired to speak with Mr. Jones: I and my Fellow-Servant standing at the Door, he desired to speak with my Master. I went to him and told him, and he came up, and after he had been at the Coach-side, he bid us go down, and keep down in the Kitchen, and would not let us come up any more. And afterwards my Fellow-Servant and I were bid to go to Bed, and my Mistress shut up the Shop-windows herself.

Mr. Serj. Jeff. Well, go on, what happened after that?

Maid. Afterwards there was the Warming-pan, and the Candle-stick, and other Things were carried up into the Chamber by my Mistress's Sister. Says my Fellow-Servant, There is some great Stranger sure, come to lodge here, that we must not know of. Ay, said I, this is some great intrigue or other. After a while came in some Company that stayed all Night. I know not who they were, nor how they came.

Mr. Serj. Jeff. Well, what was done the next Morning?

Maid. I was never admitted into the Room while they were there, but through the opening of the Door I did see one Lady in Bed, but I cannot say who she was, nor what she was.

Mr. Att. Gen. Do you know her if you see her again? Look at that Lady; is that she?

Maid. No, I do not know her; I cannot say that is she: My Mistress, and my Mistress's Sister stood both before me, when I just peeped into the Room, and when she perceived that, I did see her pull the Clothes over her Face.

Mr. Sol. Gen. How long did she stay there?

Maid. Nine Nights.

Mr. Serj. Jeff. Do you know my Lord Grey well?

Maid. Yes, I have seen him often.

Mr. Serj. Jeff. And did you know him notwithstanding his Disguise?

Maid. Yes.

Mr. Serj. Jeff. What did Mrs. Jones say to you about my Lord Grey?

Maid. She said to us, What Fools were we, to say this was my Lord Grey, it was a Country Gentleman.

Mr. Serj. Jeff. But you are sure it was my Lord Grey?

Maid. Yes, I am sure it was he.

Mr. Att. Gen. Did any Body else lodge at your House at that Time?

Maid. Yes, Captain Fitz-Gerrard.

Mr. Att. Gen. What Discourse had you with him about this Lady?

Mr. Williams. You, Woman, Did my Lord Grey stay there?

Maid. I cannot say he did.

L. C. J. Mr. Attorney, if the Question you ask, be to introduce another Part of your Evidence from Captain Fitz-Gerrard himself, it may be something; otherwise that can be no Evidence against the Defendants, what Discourse was with another.

Mr. Serj. Jeff. It is so, my Lord; and therefore we ask you, Sweetheart, what pass between you and the Captain?

Maid. Captain Fitz-Gerrard, the Monday-Morning Seven-night, after my Lord Grey first came, called me to his Bed-side, and asked me if I knew what Lady that was that lodged in the House, and what Clothes she wore, and whether she were young or old, and whether she were married or no? I told him I could not tell any Thing, for I could never see her.

Mr. Serj. Jeff. Do you know what Linen she brought with her? Did you wash any for her?—Maid. Yes, one Shift.

Mr. Att. Gen. What kind of Shift was it?

Maid. I said, It could be no Person of Quality by her Shift.

Mr. Serj. Jeff. Why so?

Maid. Because the Body was finer than the Sleeves, and Ladies use to make the Sleeves finer than the Body.

[At which there was some Laughing]

Mr. Williams. A very petty Evidence!

Mr. Serj. Jeff. Pray call Mrs. Doney again, because you shall not make so slight a Business of the Shift as you pretend, for such Actions as these must be detected by Circumstances.

Mr. Att. Gen. Mrs. Doney, Pray did you shew this Woman another of my Lady Harriett Berkeley's Shifts?

Mrs. Doney. Yes, I did.

Mr. Serj. Jeff. Was it the Fellow of that she went away with?

Mrs. Doney. Yes, it was.

Mr. Serj. Jeff. Woman, do you believe, upon your Oath, that was the Fellow of the Shift you saw?

Maid. Yes, Sir.

Mr. Serj. Jeff. Was the Body of that you saw from this Gentlewoman, finer than the Sleeves?

Maid. Yes, it was.

Mr. Sol. Gen. Then pray swear Captain Fitz-Gerrard.

[Which was done.]

Mr. Sol. Gen. Pray, Sir, will you tell the Court and the Jury, what Passages fell out at your Lodgings?

Capt. Fitz-Gerrard. My Lord, It was my Fortune six Months ago, to take a Lodging at Mr. Jones's, and while I kept my Lodgings there, I had Occasion sometimes to go to Windsor, to wait upon his Majesty; and one Night coming Home to my Lodging, my Servant that waits upon me in my Chamber, told me, there was a Lodger lately come to the House, who lay in the upper Rooms. I asked who it was; he told me, the Maid of the House told him it was a Mistress of my Lord Grey's. I asked how long she had been there; he said, it was but two or three Days since she came. I never thought of this for four or five Days after, nor thought myself obliged to take Notice of the Discourse of the Servant in the House; but being in Covent-Garden in Company, there was some Discourse about my Lady Harriett Berkeley's being gone from her Father's, as it was the Talk of the Town. I came Home about nine o'clock at Night, and having no Servant just then ready to wait upon me, Mr. Jones himself came very kindly to put me to Bed. I had some Fancy upon the Discourse of the Town, this might be my Lady Harriett. Upon which, I said to Mr. Jones, You cannot but hear of the Report of my Lady Berkeley's being run away from her Father, and I know you have a Dependence upon my Lord Grey, and I have a Suspicion you conceal her in your House. If you do, said I, you do a very dishonest Thing, a very ill Thing, and occasion a great deal of trouble and disquiet to a noble Family. And possibly my Lord and my Lady may not know she is alive; therefore, I desire you as a Friend, to make a Discovery of the Lady, that they may know where she is. He seemed very angry upon my saying of this, and told me, As long as I lodged in his House quietly, I need not trouble myself who lodged there besides. Upon that I thought more earnestly upon this Thing; and I told him again, I am resolved to go into the Room, and know who this Lady is that lies here, for now I suppose there is something more in it. Says he again, No Body shall offer such a Rudeness in my House. Said I, I assure you I will do it. He grew very angry, but I went from him to my Sword and was going up. Says he, Pray, Mr. Fitz-Gerrard do not offer such a Thing as this is; you would take it unkindly yourself to have your House searched at this Time of Night. Well, said I, upon Condition that I may see her Tomorrow Morning before she goes away, who she is, I will make no Disturbance in your House To-night. Upon that he left the Room, promising me, I should Tomorrow Morning see who the Lady was. I went out early the next Morning upon some necessary Business, and coming Home between eleven and twelve o'Clock, said I to him, Now is a very civil Time to see this Lady, who she is, for it is not fit you should receive any Person into your House, in such Circumstances, when there is such Cause of a Suspicion. Says he, She is now gone out of the House. And this is all that I can say in this Matter, I never saw the Lady there then, nor did I ever see her in my Life, but once or twice at Epsom.

L. C. J. Did they lock the Door upon you, Captain?

Capt. Fitz-Gerrard. No, they did not.

Mr. Serj. Jeff. And you know nothing more?

Capt. Fitz-Gerrard. I neither knew when she came, nor who she was.

Mr. Att. Gen. Then swear Mr. Smith here, who married one of my Lord Berkeley's Daughters.

[Which was done.]

Mr. Smith. Before my Lord Berkeley made this Affair publick, he used all Means possible to know where my Lady Harriett was; and after it was known to him what Concern my Lord Grey had in it, there were all Means used to make it up: and discoursing with my Lady Berkeley about it, it was proposed that she should be married, but that would cost a great deal of Money; that my Lord did not stick at, nor my Lady, if any Divine of the Church of England did think it proper to treat with any Parson about it, after such a secret Correspondence between her and my Lord Grey. And my Lord said, If my Lord Grey would not prosecute her with any more Visits, he would give a Sum of Money to marry her. Said I, Then, my

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Lord,



Lord, will you give me Leave to wait upon my Lord Grey in it? He answered, Yes. So I went to him, and offered him that my Lord Berkeley would give 6000*l.* with her, if he would place her in a third Hand, where it might be convenient to treat with any one about it. He talked with me as if he knew where she was, but would not discover it. Says he, You must always suppose, I will take your Proposal in this Manner, if she is in my Power, which it may be she is, it may be not. Said I, My Lord, you make that (if) only as a Subterfuge, for to be sure, you know where she is. Says he, She is beyond Seas, and if you will give me Leave to visit her sometimes, I will promise she shall come again; but that depends upon Time and Tide, it cannot be so very soon. Said I my Lord, you may as well send Horles to Dover, and so over to Calais, for I suppose she may not be far. He said it would be a Work of Time, but he would write to her. I desired he would write that Night. For, said I, my Lord, if this Business be taken in Time, she may yet be saved, if you will contribute what you can to it. He promised me to write that Night to her, but it would be some Time before she got to Town. Then discoursing further with my Lord about it. Says he, if I should bring her to Town, I will not use any Force or Persuasion to her, if she be obstinately bent not to come Home again; betray her to be sure I will not. I am sure, my Lord, said I, that your Persuasions would do very much with her, and a great deal of Good may come of it, if the Matter be speeded. But, says he, if I should bring her to Town, then my Lord Berkeley would disturb her with my Lord Chief Justice's Warrant. Said I, If you will bring her to Town, I will ask my Lord and my Lady, how long Time they will allow for the making up of this Treaty; and in the mean Time, she shall be free from any Disturbance. Says my Lady Berkeley, when I spoke to her of it, Though my Lord Grey has been so barbarous to a Family, that has been so kind to him; yet, if I give him my Word, I will keep it inviolably to him; and I do promise him, if he will bring her to any Place where my Daughter Lucy may visit her, I will engage there shall be no Search made after her. And if he can contribute to carry her into a Place where she may be safe, and not visit her himself, he shall have 2000*l.* to do it. This Message of my Lord's being barbarous, Madam, said I, is not fit for me to carry to my Lord Grey, but you will promise not to take her away, if he bring her to Town, but from the Moment you know where she is, she shall be safe. Thereupon my Lord Grey promised to write to her; whether he did or not, I cannot tell. Afterwards he said he had writ, but she would not come.

Mr. Att. Gen. What Expence has my Lord been at in looking after her?

Mr. Smith. A great Expence; I cannot tell particularly.

Mr. Serj. Jeff. My Lord, we have but one Witness more, and that is a Gentleman, who, by Order from my Lord and Lady Berkeley, kept my Lord Grey Company, and he will tell your Lordship what my Lord Grey confessed to him, what a Passion he had for the Lady, and what Methods he used to get rid of it, but could not. Swear Mr. Craven.

[Which was done.]

Mr. Sol. Gen. Will you tell my Lord and the Jury, whether you were sent by my Lord Berkeley, to be with my Lord Grey at Up-Park, and what passed there between you?

Mr. Craven. My Lord, the Wednesday after my Lady Harriett Berkeley went away, my Lady Berkeley told me, my Lord Grey had proffered he would go down into the Country for six Months, to shew that he had no Designs upon her; and therefore, if she would propose some Friend of her's to go along with him to keep him Company, he would be very well satisfied with it; and then my Lady Berkeley told me, she would fix upon no Body but me, if he would take me with him. Then I met my Lord Grey on Wednesday Morning at Sir Thomas Armstrong's, and afterwards, went down to his House to him. When I came there, he met me on Horseback, and came up civilly and kindly to me. I thought fit to give him a Caution, having received such Orders from my Lady. My Lord, said I, I am sorry I am forced to come upon such an Account as this, to be a Guard over your Words and Actions; and I am very much troubled that this unfortunate Thing has happened, and you are reputed to be the Occasion of it. Says he, I do own, Craven, I have done a very ill Thing; but that is past, I cannot help that now; but the Thing that is to be thought on is, what is to be done for the future. My Lord, said I, the best Way, if I may give you my Advice, were to send her Home again, before any Report be spread abroad of the Business. How can that be? Says he, I do not know where she is, but I have had a Letter from her, as I told my Lady, I did believe I should find a Letter here when I came down. I will shew you the Letter, which he did. My Lord, said I, this Letter will be thought as of your penning before you came out of Town. I cannot tell what they will think, said he, but here it is. Said I, my Lord, I have a great Respect for your Lordship, and do very much desire, for your own Reputation and Honour, as well as their's, it may be made up in some Way before it be too publick. We were discoursing of this. How shall that be done, says my Lord Grey. My Lord, said I, if you would consent to this, to send her over into France, to Calais or Diep, we will there find some Body that will help her into a Nunnery; and when she is there, she may write to her Mother, that she found she had an Intention to marry her to a Match she could not by any Means approve or like of, and therefore she went away to prevent her being forced to it; and this would be as plausible a Thing as any in the World. And when that Letter should come, my Lady Berkeley should shew it about to her Friends; nay more, she should go over herself to fetch her back again, that she might receive her into her House with Honour. He said, That was a very plausible Thing, and he would do it, if he could tell where she was; but her Letter to him was, that she was gone from her Father, but she did not think fit to let him know where she was, for Fear he should deliver her up again. Then my Lord Grey asked me in what Condition they were all at my Lord Berkeley's about it. Said I, They are in such a Confusion and Trouble they are all mad almost. Says he, How does my Lord bear it? Said I, He is so afflicted that it will go near to break his Heart. Says he, He is indeed one of the Men in the World that is to be pitied; the pitieth him very much, but for her Mother she doth not care. One Day when we went out a Shooting, as we did several Days together; Mr. Craven, says he, I will tell

you the whole Intrigue between my Lady Harriett and I. I have had a great Affection for her ever since she was a Child, and have always been taking great delight in her Company; and keeping her Company so often till she grew up, my Passion grew to that height, that I could stifle it no longer, but I was forced to tell her of it, and then I could not speak to her of it, but writ. But withal I begged her to take no Notice of it to any Body, for if she did, it would ruin us both. She was very angry to hear of it, and neither by writing nor speaking could I perceive she had any Affection for me again, till the Parliament sat at Oxford; and then I did pursue my Love and my Amours, and at last, she one Day told me, said she, I have now consider'd of it, and if you do not leave writing or speaking to me of this Matter, the very first time you write or speak to me again, I will tell my Father and Mother of it. That struck him so, he said, that he did not know almost what to say or what to do, and he walked up and down just like a Ghost; but he hid it as well as he could, that it should not be perceived by others. But that Parliament being quickly dissolved, he did intend to go down to Suffolk to his House there, being he found she was resolved against admitting his Affection, and he would stay there several Years, till he had weaned himself of his Passion, and by that time she would be disposed of otherwise, and he might be at Ease. And he hiding his trouble as much as he could from my Lord Berkeley and my Lady, forbore to speak to her, but only when he saw her he could not forbear looking earnestly upon her, and being troubled. My Lord Berkeley, not knowing any thing of it, asked him to go to London with us and not to Suffolk; he was very much persuaded by my Lord and my Lady to it: and at last, my Lady Harriett Berkeley came to him, and told him, Said she, You are very much persuaded by my Father and Mother to go to London and not to Up-Park, why do not you go with them? Madam, says he, you have stop'd my Journey to London, you have hindered my going with them, for I will rather suffer any thing than render you any Disturbance, and if I go to London with you, I shall not be able to contain myself; but if I go to Suffolk, I alone shall have the trouble of it. But one Day, when my Lord of Aylesbury was leading my Lady Berkeley, and my Lord Grey was leading my Lady Harriett, she took my Lord Grey's Hand and squeeze'd it against her Breast, and there was the first time he perceived she loved him again; and then she told him she should go to London with them; and he did go, and from that time, for a twelve-month before she went away, he did see her frequently, almost every Night, pursuing his Amour in writing and speaking to her as often as he could have Opportunity. And tho' my Lady Berkeley put a French Woman to lie with her, yet she did use to rise from the French Woman, and he did use to see her. And one Day, says he, do not you remember you came to the Chamber Door, and she was angry at your coming, and that the Door was not bolted, and if you had come in, you had found me there?

Mr. Serj. Jeff. Do you remember any such thing?

Mr. Craven. I do not, unless it were at Durdants. And, says he, you cannot imagine what I have suffered to come to see her. I have been two Days locked up in her Closet without Meat or Drink, but only some Sweetmeats.

Mr. Serj. Jeff. What did he say of his making Addresses to other Ladies to take off his Passion?

Mr. Craven. He said, He did all he could, for he would fain have avoided bringing such an Infamy upon his own Family and his Lady's, and he did endeavour to cool his Passion, by making Love to two other Ladies, whom he courted, and enjoyed both of them, but yet all did signify nothing, he could not subdue it.

Mr. Att. Gen. Pray tell us what Terms he insisted upon, for his parting with her, and what he said the Law was in the Case?

Mr. Craven. I told him, My Lord, besides the Dishonour you bring upon yourself and two Noble Families, you should do all that in you lies, to avoid the Punishment that will come upon you for it by the Law. Oh, says he, you mistake yourself in that, for you must think I have consider'd of all that before; they cannot do any thing in Law against me for it; let them examine the Case of Mrs. Henage and my Lord Cavendish.

Mr. Att. Gen. What, did he say he would not part with her but upon Terms?

Mr. Craven. He said, I cannot persuade her, and I will not betray her. Truly, said I, My Lord, you had better betray her, and when she comes to be sensible of her own Good, she will thank you for it. Then he owned he had her in his Power, but would not part with her never to see her again.

Mr. Att. Gen. What were the Terms he stood upon?

Mr. Craven. My Lady Berkeley sent me to the Coffee-house, and desired me to ask him, If he would give her an Answer to what she had met him at my Lord Chief Justice's about. My Lord told me, He did not approve of sending her to the Place proposed, but he would send her to his own Sister, his Brother-in-Law Mr. Nevil's. I told my Lady of it, who said, If he did state the Case right to Mr. Nevil, she was sure he would not receive her, nor let him come to her if he did. After that, Mr. Pett's was proposed, so he might visit her. But he did say, If that be the Design, that they would have her from me, and I not to come at her when I please, they shall never see her while they live, nor will I ever deliver her.

Mr. Serj. Jeff. We rest here, to know what they on the other Hand say to it, and we think this foul Fact is fully proved.

Lord Cavendish. My Lord Chief Justice, I desire to be heard on Word in this Matter. This Gentleman, Mr. Craven, that was last examined, has been pleased to tell a very long improbable Story in itself, amongst other things that he has said, he has been pleased to make use of my Name impertinently enough; for he speaks of a Case that that noble Lord, he says, was pleased to mention to him. If he did mention the Case to him, and did name my Name, he also mentions the Case of the Ladies, he says, my Lord was concerned with. I desire to know how he came to name my Name, and not name the two Ladies he speaks of, that noble Lord made his Courtship to and enjoy'd?

L. C. J. My Lord Cavendish, I could have wished he had not named your Lordship, because it was not at all to the Purpose.

Lord Cavendish. My Lord, I am not concerned at it at all, more at the Impertinency of his using my Name.

L. C.



*L. C. J.* I could have wished, indeed, the Gentleman had spared your Lordship's Name.

*Lord Cavendish.* I desire to know why my Name was mentioned more than the two Ladies Names?

*Mr. Craven.* My Lord Grey did not mention the two Ladies Names to me.

*Lord Grey.* No, nor my Lord Cavendish's neither; It is all a Lie.

*Lord Cavendish.* I will believe my Lord Grey's Word more than I will his Oath.

*L. C. J.* That your Lordship may do if you please. But we must not do so here. Come, what say you to it on the other Side?

*Mr. Williams.* May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel in this Case for my Lord Grey and the other Defendants: And that we may come closely to the Question, I desire I may first state the Question before you upon this Information, and then you will the better judge how far the Evidence that has been given, is pertinent to the Issue that you Gentlemen are to try. The Parts of the Information are these: That my Lord Grey, and the rest of these Defendants, should conspire together to ruin and destroy this young Lady, and in the Execution thereof, to bring this their Conspiracy to effect, they did often solicit and entice her to Adultery with my Lord Grey; and in Prosecution of these their ill Purposes and Designs, she was by Force and Arms taken away from the Custody and Tuition of the Earl of Berkeley, her Father, and being so taken away, my Lord Grey, and the rest of them, did procure her to live scandalously with my Lord Grey, in Whoredom and Adultery. These are the Parts of the Charge, and the Question is; whether we are guilty of it? For the Evidence, I dare presume to say; that they have not made any direct Proof of the Matter charged. On the other Side, they have, I do agree, offered something conjectural, upon which a Man may imagine and think what he will; but how far you are to conclude the Defendants Guilty, out of those Presumptions, must be left to you; I know you will very well consider of it: It is plain, we are in a very tender Case; it is a Case of Honour on all Sides; and I have often heard it, and always believed it, *That Persons of Honour and Quality in the World, would rather lose their Lives than their Honour.* And I believe it is the Opinion of my Client, my Lord Grey, as well as of the Prosecutors in this Information. And therefore, you, Gentlemen, I doubt not, will expect to have a clear Evidence to convict him of this Crime. And it is not only his Honour is concerned, but that also of another great, illustrious, and noble Family, to which he is by Marriage allied. So that the acquitting of my Lord Grey of this Matter, doth, in a great Measure, acquit the other Family of so great a Scandal. For that will falsify the Information, and by your Verdict you will remove those Stains, that else may stick on both Sides. We are equally between the two Families, and your Consideration will be, whether you will lay a Stain upon both of them, or acquit them both. Now there has been no Proof against my Lord Grey, of any one Point in the Information.—

*L. C. J.* No? Sure you are much mistaken; it is a direct Proof against my Lord Grey, I must tell the Jury so, and therefore apply your Defence to it as you can.

*Mr. Williams.* Truly, my Lord, I hope it is not; and our Case is best stated, by laying open the Truth of the Fact, and then the Matter will plainly appear. I cannot go about to justify the Passion and the Folly, for I may well call it so, of my Lord Grey and this young Lady in this Case. It is misfortune enough, to be accused of a Thing of that Nature, and it may be a great deal worse to be convicted. I shall agree there have been those Transactions between them, that it may be, we cannot justify in strictness every Thing that my Lord Grey has done. But yet, we say he is not guilty of this Information. We do agree, there has been an extraordinary Passion, nay, I must say, a very unjustifiable one, between this Lady and my Lord Grey: But to conclude out of that, that because there was such an unreasonable, unjustifiable, extraordinary Affection between them, therefore we must infer and conclude him guilty of this Information, is a very forced unreasonable Construction; for there are Degrees in Love, and we must not conclude the worst Thing a Man can be guilty of, because he is guilty of some Degree. Then, to come Home to the Case of my Lord Grey, we shall prove, and give your Lordship and the Jury undeniable Satisfaction, that my Lord Grey's so far from having inveigled away this young Lady, or being any Way instrumental to the conveying her away, that he used all Means he could to have prevented any Thing of that Nature before, by discovering to my Lady Berkeley her Mother, my Lady Arabella, and my Lady Lucy, her Sisters, all Persons of great Honour, and her nearest Relations, that she did intend to go away, by warning them, and giving them full Notice, that there might be such an Intention in the young Lady. We shall prove likewise, that no Man in the World could do more, when she was gone, to retrieve her. We shall make it out by undeniable Circumstances, proved even by their own Witnesses. It happened that my Lord Berkeley and his Family withdrew to a Country-House of his near *Epsom*, in your County, Gentlemen. My Lady had some jealousy, as she has been pleased to testify, that there might be some extraordinary Passion between my Lord Grey and the young Lady; having discovered it by some Letters, as she hath given Evidence. My Lord Grey acquainted her with his Suspicion, that she intended to go away, and was just; that he did not conceal any one Thing that he knew; yea, to acquaint himself that he had no ill Design himself, and if she did get away it was none of his Fault, he produced a Copy of a Letter of Admonition, which my Lord Grey himself had written to her: And when my Lady had heard his Advice about it, and his Counsel he gave her, she said, her Father would not have given her better Counsel. This was so early as *July*; in the Beginning of *August*, my Lord Berkeley going down to his Country-house at *Epsom*, and the Family removing thither. Then my Lord Grey was sick here in Town; and in this Sickness of his, there was a Letter sent my Lord Grey from his Lady, desiring him to come down to my Lord Berkeley's; but it seems he had been under some Engagement to my Lady Berkeley, not to come without her Leave; and having regard to his Word to my Lady, he would not do it. My Lady Berkeley, in a few Days after, sent for him herself, and therein thanks him that he was so just to Word and Honour, that he would not come down without her Invitation.

Upon *Tuesday* before this unhappy Lady went away from her Father's House, my Lord Grey came to my Lord Berkeley's. When he came down, he was very kindly received by my Lord and my Lady. On the *Thursday* following my Lady Berkeley acquaints my Lord Grey, that this young Lady had a Design to leave her Father and Mother's Family, and run away. My Lord Grey was so frank with her, as to tell her; Madam, I have long suspected such a Thing, as I have told you; but Madam, your Daughter *Harriett* is all Day in your Eye, you may lock her up at Night, and secure her if you please. This was a timely Caution given before she made her Escape. On the *Friday* following comes a Letter from an unknown Hand to my Lady Berkeley, that intimated, That except they had a great Care of their Daughter, and a strict Eye over her, she and her Father should not long enjoy her Company. My Lady Berkeley shews this Letter to my Lord Grey, says he, Madam, this is no more than what I have often told you, I have have given you some Intimations already, and my Thoughts and Advice about it; and whoever it be that writ this Letter, I am afraid her Apprehensions of some ill Usage may put her upon some such Design. And he repeated it again, Madam, let me caution and advise you, have her always in your Eye, and lock her up safe at Night. This was repeated over and over, to my Lady Lucy, and my Lady Arabella. Thus it continued till *Saturday*, my Lord Grey resolved to go to his Country-House at *Up-Park*, and took his Leave of my Lord Berkeley and his Family accordingly, and went that Night to *Guilford*, and there he lay, and rose the next Morning to go onwards of his Journey, but was pursued, it seems, by my Lady Lucy. For she tells you, When this young Lady had left her Father's Family, she immediately on the *Sunday* Morning came to *Guilford*, and sent after my Lord, who was newly gone on his Way, and was found on his Way to his House in *Suffex*. Having received my Lady Lucy's Commands, he returns to *Guilford*, and there he had the first Notice given him of my Lady *Harriett*'s Escape; says he to my Lady Lucy, This is no more than I have fairly warned you of before; had you taken my Counsel. Was she locked up? No, said she, she is gone away, and your Lordship must needs know where she is, and therefore pray get her to return Home again. Says my Lord Grey, I assure you I know nothing at all of it, and to give you all the Satisfaction I can in the World, I did not only warn you of it before, but I shall be as industrious as any of you all, you shall find, to recover her again. For that Purpose, I will see if she have crossed the River, or is gone any other Way; and if I can make any Discovery, by Letter or any other Way, I will send you Word immediately; and I am so sincere with you, that if any Letter come to your Family for me, I give free Liberty to my Lord and all his Family to open them themselves, and see what is in them; and if I do receive any from her any other Way, a true Copy of it shall be sent; and more than all this, if my Lord be not satisfied with what I have said, let my Lord or my Lady send, and set what Spy upon me and my Actions they please. And it seems he was taken at his Word, and they made Choice of a very proper Gentleman, and you heard what Discoveries he has made, and how he has worded the Matter. For first he makes my Lord Grey at one Time a very subtle Lover, full of all Intrigues, and one that could conceal all within himself, and yet (when it would do him so much Injury) so open, as absolutely to unbohem himself to one that was an absolute Spy upon him and his Actions, and tell him such Things, as no Man in the World sure is such a Fool as to tell another in his Circumstances. But that I leave to the Jury (as my Lord Cavendish has said) to consider of the Impertinency of his long Story. When he had parted from my Lady Lucy he comes to *London*, and useth all the Diligence he could to find her out. On *Wednesday* again he leaves *London*, when he could not find her, and goeth to his own House: Upon *Thursday* this Gentleman *Mr. Craven* comes thither to him. There he finds a Letter from my Lady *Harriett*, and because he would be exact to his Word, he keeps a Copy of the Letter, and sends the Original of it to my Lord Berkeley's. Now no Man will imagine, if he had such an Intrigue with this Lady, as they would make the World believe, that he would ever have sent such a Letter out of his Custody, which would have been a colourable Excuse for him. Nay, we do not rest here, but by the Way we produce this Letter to this Gentleman, who it seems, was our Guardian, and told him moreover, Here is my Answer to this Letter, and sends a Copy of his Answer with the Letter from her to my Lady Berkeley. Then there comes a second Letter, and he, according to his Word, discovers that, and there is not one Circumstance in all his Carriage that doth accuse him. After this second Letter was imparted to my Lord Berkeley's Family, he continued a while at *Suffex*, and afterwards, when he returned to *London*, he used all the Means imaginable, for a Person that was so near concerned in Point of Relation, and in regard of his own Reputation, to have found her out, but could not. These are the Circumstances of my Lord Grey's particular Interest in this Matter, and when we have made out these Circumstances, we hope the World will believe him not guilty. It seems the young Lady is now in Court; she is so just, it seems, as to come to do my Lord Right, and that one Thing will knock all their Conjectures on the Head; for she best knows what has been done, and the Jury will consider whether this be imaginable, that my Lord Grey should conceal her all this while, and produce her now, when if any Violence hath been offered her she may freely tell it. And as for the Man that could tell so very readily this was the very Lady that came to his House, when she had so hooded and muffled up herself, we must leave him and his Credit to the Jury. We shall therefore desire, when we come to the Clofe of our Evidence, that this young Lady may be here examined upon her Oath, and then, I hope, the Truth will come out.

*Mr. Thompson.* My Lord, because your Lordship seems to be somewhat satisfied that there is a direct Proof of the Matter charged against my Lord Grey, therefore I suppose it will not be amiss to open the Fact, and in three Words to state the Charge, and the Nature of their Evidence to maintain it.—

*L. C. J.* Come, come, call your Witnesses and make out your Defence.

*Mr. Just. Dolben.* If you can prove what *Mr. Williams* says, you do something, but do not think to make long Speeches; go on to the Evidence.

*L. C. J.* Pray, *Mr. Thompson*, do not you believe we want any of your Help



Help to recollect the Evidence given, or to direct the Jury about it, do you disprove it if you can.

Mr. Thompson, My Lord, the Course of Practice I always took to be so, to open and observe upon the Evidence given, and then answer it. But I submit to your Lordship for that; you may do as you please.

Lord Grey. Then, my Lord, I desire I may speak something myself. Certainly, my Lord, no Man ever lay under a more infamous Accusation, than I now do; and therefore, I hope, your Lordship will pardon me, if I defend myself as well as I can from it; and undoubtedly, if in any Case a Man be allowed to speak for himself, it must be allowed to me in this. My Honour lies here at Stake, and if my Life did so too, I am not, nor should be more concerned to save that, than I am to clear my Reputation, which is and ought to be very dear to me. My Lord, were I guilty of the Villainies that here are laid to my Charge, I certainly should need no other Punishment, I am sure, I could not have a worse, than the Reflections of my own Conscience for them, and I ought to be banish'd the Society of Mankind. My Lord, I must confess, I have been so unhappy (tho' it is more than they could else prove) as to have a very great Kindness for this unfortunate young Lady, my Lady Harriett Berkeley: but yet, not so criminal a one as the Witnesses that have been produc'd would have you to believe, nor as the Information would insinuate. I do here protest, I was no way assisting to her Escape, nor privy to it; nor have I ever at all since detained her from her Father, tho' I have suffer'd a Fortnight's close Confinement and Imprisonment for it; and all this I doubt not to make out to your Lordship's and the Jury's Satisfaction. I shall say no more of the Justice of my Cause, but endeavour to prove it; and, my Lord, this is that which I say to it. The Evidence that has been given consists most of such and such Discourses that have been between the Witnesses and myself, and those I shall give what Answer is fit to be given to them. A Negative, as your Lordship very well knows, is not to be proved. Particular Discourses we have had, of the same Nature as Mr. Williams has opened, about my cautioning them concerning her Attempts to go away; and I shall appeal to my Lady Berkeley herself, whether that be not so. If my Lady Berkeley own it to be true, I hope that is very good Proof. My Lord, about the time that they speak of, concerning the Letter, which I take to be in June or July, I was sent for by my Lady Berkeley into her Chamber; when I came there, my Lady told me there was a Letter, which, she said, was design'd to go from her Daughter to me. I asked her, If she had read the Contents of the Letter, she said, No. I asked her, whether the Direction of the Letter were to me, she could not tell that. But my Lady had told me, her Daughter had given her the Account of what had passed between us, that she was satisfied there was a Correspondence of Love between us. To remove all Fears, I proffer'd to absent myself. I desire my Lady may answer whether this be not so.

L. C. J. That will be to intricate the Business, to go on thus. Pray, my Lord, if you will ask any Question of any Body, tell them your Counsel, and let them ask them, but to make long Discourses all Day is not to be permitted.

Lord Grey. My Lord, I will ask then my Questions all together by and by. My Lady Berkeley going down with my Lord to Durdants, desired that my Wife might go down with her, to which I readily consented. Soon after that, I fell sick and kept my Bed a while. When I was well again, and going into Suffolk, I sent for my Wife to Town, and would not go fetch her, because I would keep my Word with her Ladyship. My Lady Berkeley thereupon wrote me a Letter, wherein she thank'd me for not coming according to my Promise, and commended my Modesty in it; and said, There would be no Apprehension of any Ill from me, if I did come thither for a short time. And thereupon being invited by her Ladyship, to take her House in my way to Suffolk, I did come down thither. And I urge this, to shew that there was no Conspiracy or Design of any such thing in me, for I had not gone to Durdants, if I had not been sent for, and so there was no design in my going. When I came thither it was the Tuesday, and on the Thursday my Lady Berkeley did acquaint me, She was under great Apprehensions and Fears; and I asked her the Reason of it. She told me, That she had been at some Ease, her Daughter having made a great Submission to her, and Promise of constant Obedience, and that she would do all as she would have her, if she would but give her Leave to go to Town with her; but yet, for all this, one Morning she puts on her Hoods and Scarfs, and was going away, and had done it, but that the French Woman and another prevented it. I told my Lady Berkeley then, Madam, said I, I have good reason to believe she may have some such Intention. I did not give my Reason at that time, but I shall by and by. But, said I, if she do go away, I cannot imagine but that it is possible she may send to me, and I will give your Ladyship notice as soon as ever I know; and tho' you seem to be satisfied, and to think your Daughter secure here, yet you do not think her so indeed; and you must needs use her ill, or she would have no Thoughts of going from you. For my Part, if she do go away and come to me, I will shun it as I would Death, and you have now fair warning; she is all Day in your Eye, pray be sure to lock her up safe at Night. Upon Friday following comes a Letter without a Name to it, and Mr. Williams has open'd to you the Contents of the Letter. She read the Letter when her Daughter was in the Room, who asked what the Letter was, and being denied to have any Account of it, was in the greatest Confusion in the World, and leaped and run down Stairs like a mad Thing, and my Lady herself was very much disturbed at it. When I saw the Letter, Madam, said I, this Letter ought to confirm you in the Resolution of taking my Advice; it can come from no Body, but some one that is to assist in the executing of this Design, but thinks it too dangerous to engage in, and gives you this warning to prevent it. You have sufficient Caution given you to make you careful. Whereas, my Lord, if I had been in any sort of Conspiracy of that Nature, to take her away, my Lady Berkeley certainly should have been the last Woman in the World that I would have communicated it to. My Lord, I went away from Durdants on the Saturday, and so to Guilford, where I lay that Night, and went on my Journey the next Morning, but was overtaken on the Road, by a Messenger from Lady Lucy, who was come to Guilford to speak with me; when I came back to her, she told me, My Lady Harriett was gone away that Night, and they did believe I knew

where she was. Said I, Madam, I have as great a Share in this Misfortune as any of you all, because of your Suspicion; but sure you must have used her very ill and make her do this; and you are much to blame, when you had all that warning from me; why did you not secure her, and lock her up as I advis'd you? Said she, She was lock'd up, but the Key was left in the Door. Upon this I went to London, and I had appointed my Lady Lucy to meet her on Monday Morning, to give an Account what I could learn; but I told her, that I had heard nothing of her, nor is there any Proof that I did see her at any time, till I own'd it before your Lordship at your Chamber. She seem'd not to believe me when I told her so. Madam, said I, It is certainly true; and to convince you that I have no hand in this Matter, I will go immediately into Suffolk, and there I will stay as long as you will have me; and if you please to go yourself with me, or send any Body else, to observe what I do. She thought it not fit for herself to go with me: But my Lady Berkeley and she afterwards pitched upon Mr. Craven, who had been a long time a Servant in the Family, and I agreed with my Lady in that, to have him, and receive him as a Spy upon me. Discourfing with my Lady Lucy, said I, Madam, Now I will tell you the Reason, which I forbore to tell my Lady Berkeley, why I had good Ground to suspect my Lady Harriett had a Design to go away, and it was this; My Lady Harriett came to me one Day, about six Weeks or more ago, in the Court-yard at St. John's, and says she to me, I am used like a Dog, I live the Life of a Slave here, I can endure it no longer; by the Eternal God that made me, I will not be alive long, unless I can set myself at Liberty. This I said to my Lady Lucy; and these, said I, were Reasons enough for me to warn you to look well after her. I did, according to Agreement, go into Suffolk immediately; and I then told my Lady Lucy, I believed I might have a Letter from my Lady Harriett, by the Wednesday Night's Post, because, said I, she cannot write sooner than that, and if I have, I will send you word. When I was there, Mr. Craven came the next Day to my House; and as soon as he came, said I, Here is a Letter I have received from my Lady Harriett, and if you will, you may take a Copy of it. I took a Copy of it myself, and sent the Original of it to my Lady Lucy, though they have not thought fit to produce the Letter now in Court, that your Lordship and the Jury might see it. But here is mine, which is the first Account what was become of her after she went away; that I received, except what Account I had from my Lady Lucy at Guilford; and this will shew to all the World, that I was not so much privy to her going away, as they say I was. I had denied to assist her in it, when she complained to me of her ill Usage; and when she attempted to go away before, I, upon my Lady's telling me of it, gave her sufficient Caution. And for the truth of all this, I appeal to those very Witnesses that have been produced against me. When I had shewn this Letter to Mr. Craven, I sent it away by a Servant of my own, to my Lord Berkeley's, and writ to my Lady Lucy, and desired her to pen whatever Answer she should think fit to send. My Lady Lucy did write to me back again, and told me the Substance of what I was to write, but the penning of it she did leave to me, for she believed I would do it effectually. I did write an Answer to my Lady Harriett's Letter, and that Answer I shewed to Mr. Craven, and asked him if it were sufficient, and he seem'd to approve of it. The Lady herself is in Court, I know not whether she can give an Account of the Letter, I suppose she can tell you what an one it was. I had afterwards another Letter from her in Answer to mine, and that I have here, and it will appear by both of those Letters, whether I had any interest in her going away. Tho' perhaps that would not have been such a Crime neither; and yet I think withal, that there is not a tittle of Proof that I had any hand in it, not one Proof of any Circumstance like it. And there be any Crime, it must be the taking her away, to such an Intent and Purpose as is charged in the Information. Before I came to Town, I was sent for about some other Business, yet I would not come till I had my Lady's Consent; for I sent her word, my Lady Harriett writ in her Letter, that she was going beyond Sea, and if I went to London I might prevent it, but I would not go without my Lady's or Mr. Craven's Consent and Approbation. When I came to Town, I was one Day at the Coffee-house in Covent-Garden, I was then sent to by this Lady, who was in an Hackney Coach at the Door, and when I came to the Coach-side to her, she gave me a tedious History of her ill Usage at home, which made her come away. And when your Lordship's Warrants were out to search for her, I came up to your Lordship, and I dare appeal to your Lordship, whether I did not acquaint you, that she only sought for Protection, and was willing to return home, so she should be satisfied she should not be ill treated again. You then told me, I could not protect her against her Father. I then told your Lordship and my Lady Berkeley, She was not in my House, nor in my Custody. They replied, She was in my Power; but how could she be in my Power, when she was not in my Custody, nor in my Lodging? But my Crime was, that I knew where she was. And if I do deserve Punishment for keeping my Word and Faith with her, which I gave her in a Letter, upon her Importunity not to betray her, I must submit to it, I could not in Honour do otherwise. My Lord, I desire this first Letter may be read, which was first sent by my Lady Harriett to me.

L. C. J. Surely, my Lord, for all your long Discourse, you cannot but apprehend yourself mistaken, when you say there is no Crime charged in the Information, but the taking her away to such an Intent and Purpose. Surely there are other Things besides that. And what you speak, not proved, your Lordship knows, must pass for nothing.

Mr. Williams. My Lord, your Lordship has made a right Distinction between Discourses and Proofs. Therefore Discourses between Strangers and third Persons, are not to be stood upon, but the Proofs are; and the Evidence together must be left to the Jury, to consider what is material and pertinent, and what not. We shall therefore go on to our Evidence; and shall begin with my Lady Berkeley first, and ask her Ladyship some Questions. And we desire to know whether she hath read this Letter?

L. C. J. But take notice, the Letter you propose, we cannot read it. Mr. Williams. But, my Lord, it was agreed between my Lady Lucy and my Lord Grey, that if he received any Letters from my Lady Harriett, he should communicate them to my Lady Berkeley.



and this Letter coming to him, he first shews it to *Craven*, this Man that was thus set as a Spy upon him, and after sent it to my Lady *Lucy*, and whatsoever Answer they would have sent, was promised should be, and accordingly was first shewn to *Craven*, and then sent. If this were the Agreement, and these Letters were thus written, then sure we may read them.

*L. C. J.* You may ask my Lady *Berkeley* any Questions, but must not read any such Letters.

*Mr. Serj. Jeff.* Pray, *Mr. Williams*, let us go according to the course of Law, and give no Evidence, but what is fit to be given as Evidence.

*Mr. Williams.* Then thus, Madam, pray can you remember the Discourse that past between my Lord *Grey* and your Ladyship in *June*, concerning your Daughter and him?

*Lady Berkeley.* Where?—*Mr. Williams.* At *St. John's*.

*Lady Berkeley.* I do not well know what Discourse you mean; but any particular Discourse that was there I will answer to.

*Mr. Williams.* That Discourse that past between you the first time that you acquainted my Lord *Grey* that you suspected there was too much Familiarity between him and your Daughter.

*Lady Berkeley.* The first time do you say?

*Mr. Williams.* Yes, Madam; I think you were pleased to say, that upon your first Discovery, you sent for him and talked with him.

*Lady Berkeley.* I did not say upon my first Discovery, but when I had discovered it, for I would be very punctual to the Truth in my Evidence.

*Mr. Williams.* You say, your Ladyship had some Discourse with him in *June*.—*Lady Berkeley.* I think it was in *June*.

*Mr. Williams.* Pray, Madam, can you remember what my Lord *Grey* promised your Ladyship then?

*Lady Berkeley.* He told me then, he would obey me in any thing, even if I would banish him my House.

*Mr. Williams.* Was there any Letter then produced by your Ladyship or my Lord *Grey*?—*Lady Berkeley.* Of what concern?

*Mr. Williams.* Any Letter that related to your Daughter?

*Lady Berkeley.* No; but I told him of a Letter that was found, that she had writ to him.

*Mr. Williams.* Madam, pray have you that Letter, or any Copy of it?

*Lady Berkeley.* No, it was torn to Pieces; I can bring the Pieces, I believe, if there were occasion.

*Mr. Thompson.* Your Ladyship read it, I suppose?

*Lady Berkeley.* No, my Daughter *Bell* read it, and tore it in Pieces.

*Mr. Williams.* Was there any Discourse between your Ladyship and my Lord *Grey*, about any other Letter?—*Lady Berkeley.* Not at that time.

*Mr. Williams.* Was there at any other time?

*Lady Berkeley.* Yes, at the *Charter-house* at my Lord's House, one Day my Lord *Grey* desired me to walk into the Gallery, for he had something to communicate to me, and the Discourse that past between us then was this; he shew'd me there a Letter of the passionate Love he had for her, with some good Counsel in it.

*Mr. Williams.* Did your Ladyship approve of the Counsel he gave her?

*Lady Berkeley.* Never when there was so much Love and Passion in the Letter.

*Mr. Williams.* Pray, Madam, recollect yourself, were you not pleased to like of that Letter?

*Lady Berkeley.* I could never like of the passionate Expressions in it; there might be something in it well said enough, but with the greatest Expressions of Passion and Love; inasmuch, that he himself said of it, Madam, I'm ashamed of that Part, and would have had me overlooked it.

*Mr. Williams.* Did your Ladyship say, Her Father could not give her better Advice?—*Lady Berkeley.* Not that I know of.

*Mr. Thompson.* Pray, Madam, did you ever say so?

*Lady Berkeley.* Surely I did not: For I could not but think he could give her a great deal better Advice.

*Mr. Williams.* Does your Ladyship, pray Madam, remember any Discourse between my Lord *Grey*, and you, upon the *Thursday* before your Daughter went away?—*Lady Berkeley.* I cannot tell for *Thursday*.

*Mr. Williams.* Does your Ladyship remember the Letter you received from an unknown Hand?—*Lady Berkeley.* Yes, I do.

*Mr. Williams.* Did you shew that Letter, or read it to my Lord *Grey*?

*Lady Berkeley.* My Lord *Grey* came up to me, and seem'd to be very careful of my Concerns; Madam, said he, Pray take care, for I saw a Letter directed to your Ladyship, without the Mark of the Post, or the Penny-Post upon it. And, said he, I give you this Caution about it before it comes to you. Because my Lord was by, I arose up and went to the other side of the Room, and my Lord *Grey* followed me, and when I took up the Letter, I saw something that I thought to be very odd and unusual in his Carriage, as if he were in great Disorder, as I was; and I went to my Chamber, thither my Lord *Grey* followed me, and that Letter he would not see it as then. I sent for my Daughter *Lucy* into my Closet, and shewed her, and she was in great Disorder about it too.

*Mr. Williams.* Pray, Madam, can you remember whether that Letter did Caution you to look well to your Daughter, or else you were not like to have her Company long?

*Lady Berkeley.* The Letter did say some such Thing, I must look after my Daughter, or I should lose her.

*Mr. Thompson.* And this was on the *Friday* before she left your Ladyship, was it not?—*Lady Berkeley.* Yes, it was so, I think.

*Mr. Williams.* Pray, Madam, what did my Lord *Grey* say upon that?

*Lady Berkeley.* He was extremely earnest to see the Letter, because, he said, it had so disordered me; and at last I was persuaded to let him see the Letter; he turned the Letter up-side down, and looked on the Subscription. Madam, says he, is this all that disorders you so much, I am used to see many such Letters by the Penny-Post; this is nothing but to amuse you. It is a very silly Letter, and written by some Woman, as you may see by the Spelling.

*Mr. Williams.* Did he caution you to lock up your Daughter a-Nights secure her?

*Lady Berkeley.* Not one Word upon this Letter; but the next Morning in talking about this Letter, he said, It was a foolish Letter, and what should I trouble myself about it for?

*Mr. Williams.* But, Madam, had you any Caution given you by my Lord *Grey* about this Time, to take care of your Daughter?

*Lady Berkeley.* Not that I remember, to lock her up.

*Mr. Williams.* What then did he say?

*Lady Berkeley.* I will tell you what he said to me once or twice. Madam, whatever you do, do not make her desperate. I asked him what he meant by that Word? Said he, It is not necessary to explain that Word to you; I meant nothing, but do not use her ill. Now, my Lord, I was so far from that, that I used her with all the Tenderness of a Mother, like a Sister rather than a Daughter; nay, he himself has confessed, she was better used than he imagined she was.

*Mr. Williams.* Did your Ladyship, at any time, intimate to my Lord *Grey*, that you had any apprehensions of her intending to go away?

*Lady Berkeley.* I did tell him, That when I was at *London*, my Woman that lay with her, did rise about Eight o'Clock, and left my Daughter alone in the Room, and when she came up again, my Daughter had put on her Hood and Scarf, and her Petticoat was pin'd up, as ready to go out, and the Woman being affrighted at this, called up my other Daughter, and so prevented it; and after came and told me she had pin'd up her Petticoat thus about her, and she did not know what she meant to do. Upon this I went to my Daughter, and, said I, What is the Reason that you pin'd up your Petticoat, and put on your Hood and Scarf? Says she, I had not my Scarf on. But says my Woman to me, when I came into the Room, you thrust something into your Gown. It is true, I did so, Madam, said she, but it was upon this Account, I had got a Sheet of Paper, upon which I intended to write, and seeing her come in, I put it in my Gown.

*Mr. Williams.* Pray, Madam, did my Lord *Grey* at any time caution your Ladyship about your Daughter, to lock her up, or tell you his Opinion that he thought she would leave you?

*Lady Berkeley.* I cannot positively say that; but he used to say to me, Madam, do not make her desperate; I do not know that ever he advised me, as to the locking her up.

*Mr. Thompson.* Did he desire you, Madam, to take care that she did not go away from you?—*Lady Berkeley.* I do not remember it.

*Mr. Williams.* Pray, Madam, can you tell who brought that Letter from an unknown Hand to you at *Durham's*?

*Lady Berkeley.* It came down with other Letters to my Lord's Steward.

*Mr. Serj. Jeff.* But your Ladyship says my Lord *Grey* was very solicitous about that Letter.

*Lady Berkeley.* Yes, Sir, he came to me, and very earnestly cautioned me about it: For, said he, I see there is neither the General-Post nor the Penny-Post Mark upon it. And knowing himself guilty of what he was guilty of, he might be afraid lest my Lord should see it, and so his Business come out.

*Mr. Williams.* Pray, my Lady *Lucy*, do you remember that ever my Lord *Grey* advised the locking her up?

*Lady Lucy.* Upon discoursing of the Letter that came from an unknown Hand, my Mother said to my Lord *Grey*, Sure that is such a horrid thing that it can never be done; my Lord *Grey* might then reply and say, If you fear it, you may lock her up: but I do deny that ever I heard him say any thing to caution my Mother, that he thought she was going.

*Mr. Williams.* Madam, the Question I ask your Ladyship is; whether my Lord *Grey* did or no direct or advise to lock her up?

*Lady Lucy.* Upon my Mother's Discourse concerning the unknown Letter, and how sad a Thing that would be, he might say, That if she feared that, she might lock her up; but he never did say that he did think she would go.

*Mr. Thompson.* Pray, when was this, Madam? how long before she left the Family?—*Lady Lucy.* The Day before.

*Mr. Williams.* Then, Madam, for the Discourse you had with him at *Guilford*, what said he he would do?

*Lady Lucy.* It was at *London*, that he passed his Word to go down into the Country.

*Mr. Williams.* What did he promise you to do there, Madam?

*Lady Lucy.* He said he would not stir from *Up-Park* till he heard from my Father.

*Mr. Williams.* What did my Lord say to you, Madam, about the Letters he should receive?

*Lady Lucy.* He did say he would send us all the Letters that came to him from her, and if any came to our Hands we were to open them.

*Mr. Williams.* Was my Lord *Grey* willing to receive a Spy, Madam, upon him?—*Lady Lucy.* Yes, he was.

*Mr. Williams.* Was there any Letter sent to your Ladyship from my Lord *Grey*?

*Lady Lucy.* Yes, there was a Letter with one in it from my Lady *Harriett*.

*Mr. Williams.* Have you those Letters by you, Madam?

*Lady Lucy.* No, I have neither of them here.

*Mr. Williams.* Can you tell the Contents of it?

*Lady Lucy.* I have told them already.

*Mr. Williams.* Pray, Madam, will you please to recollect yourself a little, when you were at *Guilford*, and told my Lord *Grey* that my Lady *Harriett* was gone away, did not my Lord tell you, you had not observed the Directions and Advice he gave about her, to lock her up; and did not you then answer him, Yes, the Door was lock'd, but the Key was left in?

*Lady Lucy.* I did reply, the Woman had not lock'd it carefully enough after her.

*Mr. Williams.* Did you not say, that the door was lock'd, but the Key was left in?—*Lady Lucy.* I do not remember a Word of that.

*Mr. Williams.* Madam, will you please to cast your Eye upon that Letter, and see if that Paper be a true Copy of the Letter you had?

*L. C. J.* What Paper is that you offer, *Mr. Williams*?

*Mr. Williams.* It is a Letter from the young Lady to my Lord *Grey*.

*L. C. J.* You know no use can be made of that Paper, why do you offer it? It is contended that my Lord had the Lady in his Power, and then would not she write any Thing?

*Mr. Williams.* Then, my Lord, there is the young Lady herself, we desire she may be examined.

*Mr. Serj. Jefferies.* But before we part with my Lady *Lucy*, if you have done, we desire to ask her a Question: It is here insinuated, as if there had been some Hardship put upon this young Lady, or some ill Usage in her Father's Family: Now for the Honour of that noble Family, I would have that Point clear'd; and therefore, pray Madam, did you ever observe



observe any Unkindness, any Severity or harsh Usage, that was used to this Lady, by my Lord or my Lady at any time?

Lady Lucy. So far from that, that all of us had a Jealousy that she was loved best.

Mr. Serj. Jefferies. Pray take Notice of that, Gentlemen.

L. C. J. Pray, Madam, let me ask you one Question. After my Lady had discovered this Evil Affection between my Lord Grey and this young Lady, did she then put any indecent Severities upon her, or use her very hardly?

Lady Lucy. My Lord, I came out of France but two Days before she went away. I saw no such thing.

Mr. Williams. We ask her about my Lord Grey, and you ask her about a third Person.

Mr. Serj. Jefferies. Oh good Mr. Williams, we know why we ask her that Question. It is an extraordinary Case. Pray my Lady Arabella, will you answer the same Question?

L. C. J. Ay, Madam, pray let me ask you; after this ill Business between my Lord and her was discovered, did my Lady Berkeley, (I cannot say my Lord, for he knew nothing of the Matter till she was gone away) use her ill or unkindly?

Lady Arabella. No, no, my Lord; no Mother in the World could be more indulgent and kind. She did indeed find it necessary to have a stricter Eye over her, and she did put a Woman about her to look after her, and did not permit her to write any Letters. She had, or expressed a greater Kindness for her, than any of us all besides.

Lady Berkeley. Ay, and that my Lord Grey knows to be true.

L. C. J. No, no, when my Lord Grey was in his Passion, he might say so, but he has no Proof to shew of it.

Mr. Serj. Jefferies. My Lady Lucy and my Lady Arabella, what Person did you fear should take her away, pray?

Lady Arabella. We were not afraid of any Body but my Lord Grey.

Lady Lucy. There was no Reason for fear of any Body but him.

Mr. Williams. My Lord, there is the young Lady, we desire she may be sworn.

Mr. Att. Gen. We oppose it, Sir, and have very good Reason so to do, and we think it is time to do it now, if ever.

L. C. J. Why should she not be sworn, Mr. Attorney?

Mr. Just. Dolben. If the Lady herself have the Confidence to be sworn, I see no Reason why she should not.

Mr. Att. Gen. This Case, my Lord, is in the Nature of a Ravishment of Ward, for it is for taking a young Lady out of the Tuition and Custody of her Father, who is her Guardian by Nature, and it is apparent in the Proofs, she is highly Criminal in this very Matter herself, in consenting to go away in such a Manner, and to such an evil Purpose; and now she comes to excuse one, that is not only a Partaker in her Fault, but the first Seducer. Now, my Lord, when we have proved this Matter of Love upon her, that is laid in the Information, sure she cannot be a Witness for them, she would be a Witness to excuse herself.

L. C. J. Mr. Attorney, I do think truly, that notwithstanding what you say, she may be a Witness, being no Party to the Information. But withal, I think there is very little Credit to be given to what she says.

Mr. Williams. Sure these Gentlemen forget themselves much in offering to hinder or oppose one's being a Witness, that is no Party in the Cause.

Mr. Serj. Jefferies. Truly, my Lord, we would prevent Perjury if we could.

[Then she was sworn.]

L. C. J. Brother Jefferies, we cannot oppose it, if they will press it, and she consent; but I tell you what I think of it.

Mr. Williams. If she be sworn, my Lord, we would ask her a Question or two. Madam, we would desire your Ladyship to answer whether my Lord Grey had any hand in your Escape?

Lady Henrietta. No, Sir.

Mr. Just. Dolben. You are upon your Oath, Madam; have a care what you say; consider with yourself.

Lady Henrietta. Yes, I know I am upon my Oath, and I do upon my Oath say it.

Mr. Williams. Did my Lord Grey advise you to it?

Lady Henrietta. No, I had no Advice from him, nor any Body about him, nor did he know any Thing of it, it was all my own Design.

Mr. Serj. Jefferies. Madam, I would ask you this Question, and pray consider well before you answer it. Did you see my Lord Grey on the Sunday after you went away from your Father's?

Lady Henrietta. No, I did not.

Mr. Serj. Jefferies. Did you see him on Monday?

Lady Henrietta. No.

Mr. Serj. Jefferies. Did you on Tuesday?—Lady Henrietta. No.

Mr. Serj. Jefferies. Did you on Wednesday?

Lady Henrietta. No.

Mr. Serj. Jefferies. Good God! Pray, Madam, how long afterwards was it that you saw him?

Lady Henrietta. Sir, it was a great while after.

Mr. Williams. How many Days or Weeks after was it?

Lady Henrietta. Sir, I cannot tell.

Mr. Serj. Jefferies. As near as you can, Madam, when was it?

Lady Henrietta. I can remember the first Place that I saw him at after, but the Time exactly I cannot.

Mr. Williams. Where was that, Madam?

Lady Henrietta. It was in a Hackney-Coach.

Mr. Williams. That was the Time, I suppose, that you sent for him out of the Coffee-House in Covent-Garden?

Lady Henrietta. Yes, I did so.

Mr. Williams. Pray, Madam, did you write any Letter to my Lord Grey after your going away?

Lady Henrietta. Yes, I did by the next Post.

Mr. Williams. When did you write that Letter, Madam?

Lady Henrietta. I did write it upon the Tuesday after I came away. I hope that is no Offence.

L. C. J. No? Is it not? You should have writ to some Body else sure.

Lady Henrietta. I thought him the fittest Person for me to write to, and I did not imagine it would be any ways scandalous for him, he being the nearest Relation I had in the World, except my own Brother, that could protect me.

Mr. Williams. Had you any Answer from my Lord Grey to that Matter, Madam?

Lady Henrietta. Yes; and a very harsh Letter it was.

Mr. Williams. Did you write him any other Letter?

Lady Henrietta. Yes; but I received no Answer of it at all.

Mr. Thompson. Pray, Madam, did my Lord Grey, at any time, persuade you to return to your Father's?

Lady Henrietta. Yes, he did so several times.

Mr. Serj. Jefferies. Pray, Madam, do you know Charnock, that was my Lord Grey's Gentleman?—Lady Henrietta. Yes, I do.

Mr. Serj. Jefferies. Upon your Oath, did not he carry you away from Durdant's?—Lady Henrietta. No.

Mr. Serj. Jefferies. Nor did not his Wife assist you in it?

Lady Henrietta. No.

Mr. Serj. Jefferies. Nor was she not with you on the Sunday Morning?

Lady Henrietta. No, nor was not with me.

Mr. Att. Gen. Were you not at Mrs. Hilton's then, Madam?

Lady Henrietta. No.

Mr. Att. Gen. Were you at Patten's?—Lady Henrietta. No.

Mr. Sol. Gen. Nor at Jones's?

Lady Henrietta. No, nor at Jones's upon my Oath.

Mr. Att. Gen. Pray, who did come with you from Durdant's?

Lady Henrietta. I shall not give any Account of that, for I will not betray any Body for their Kindness to me.

Mr. Wallop. If it be no Body in the Information, she is not bound to tell who it was.

Lady Henrietta. If I have vowed to them before, not to discover, I will not break my Vow to them.

Mr. Just. Dolben. If they ask you of any Body in the Information, you have heard their Names, you must tell if it were any of them, but you are not bound to tell if it were any one else.

Lady Henrietta. No, it was none of them. I went away upon another Account.

L. C. J. If you have no further Questions to ask her, pray, Madam, sit down again.

Lady Henrietta. Will you not give me leave to tell the Reason why I left my Father's House?

Mr. Just. Dolben. If they will ask you it they may. You are their Witness.

Mr. Williams. No, my Lord, we do not think fit to ask her any such Question; she acquits us, and that is enough.

Lady Henrietta. But I desire to tell it myself.

L. C. J. Truly, I see no Reason to permit it, except we saw you were a more indifferent Person to give Evidence than we find you.

Lady Henrietta. Will you not give me leave to speak for myself?

Mr. Just. Dolben. My Lord, let her speak what she has a Mind to, the Jury are Gentlemen of Discretion enough, to regard it no more than they ought. But, Madam, for God's sake consider you are upon your Oath, and do not add willful Perjury to your other Faults.

Lady Henrietta. I have been very much reflected upon here to Day, and my Reputation suffers much by the Censure of the World, and therefore—

L. C. J. You have injured your own Reputation, and prostituted both your Body and your Honour, and are not to be believed.

Mr. Just. Jones. You are, Madam, to answer only such Questions as are asked you pertinent to the Issue that the Jury are to try, and if the Counsel will ask you no Questions, you are not to tell any Story of yourself.

Mr. Ireton. My Lord, as to the Evidence of Patten, the Case is quite otherwise than they would represent it to be, about Charnock's coming thither for Lodgings, for Mrs. Patten is a Midwife, and used to lay Mrs. Charnock, and it was for her to lye in at Patten's House, because it would be inconvenient to lye in at my Lord Grey's.

L. C. J. What does that signify? But prove what you can.

Mr. Thompson. Where is Mrs. Patten, they would not produce her, because they knew it was against them? [She appearing was sworn.]

L. C. J. Well, what do you ask of this Woman now?

Mr. Ireton. I would ask her, my Lord, whether were there any Lodgings bespoke in your House against September?

Mrs. Patten. I know nothing of that.

Mr. Ireton. Was there any Body in June or July at your House to be speak Lodgings?

Mrs. Patten. I cannot tell the Month nor the Day.

Mr. Thompson. Pray Mistress speak what you do know.

Mrs. Patten. Mr. Charnock and his Wife did come to my House in Summer.

Mr. Williams. What was their Business?—Mrs. Patten. For Lodgings.

Mr. Thompson. Did they tell you who they were for? Did they say about Lying-in?

Mrs. Patten. They were only for his Wife.

Mr. Ireton. Did he tell you what time he should come?

Mrs. Patten. He did tell me they were not fit to come into yet, but they might at such a Time, but she did not know her own Reckoning.

But they were not taken.

Mr. Ireton. Are not you a Midwife?

Mrs. Patten. I was Mrs. Charnock's.

L. C. J. What is that to this Purpose?

Mr. Serj. Jefferies. Now you are sweetly brought to Bed.

Mr. Ireton. Pray, Woman, will you tell what they said to you.

Mrs. Patten. Mr. Charnock and his Wife came to our House for Lodgings. I asked her who they were for; she said they were for a Gentlewoman. I asked her who she was. Says she, For myself to lye in here. Said I, How comes that about? Says she, About the Time that I returned to my Lord's Family will be in Town, and I find it not convenient to be in at our own House; then my Father and Mother have sent for me to the Country, to lye in there, but I cannot think of going thither, because of changing my Midwife. Then, said I, truly, Mrs. Charnock, nothing in my House is at your Service. Said she, I think it convenient rather to be here than to go into the Country; but I do not desire that Lord's Family should know that I intend to lye-in here, for I would not inconvenience my Lady's House, and yet my Lady, it may be, will permit me to go out.

L. C.



L. C. J. But, Mistress, there came one to your House from Mrs. Hilton's, Who was that?

Mrs. Patten. I do not know; I was not at Home then.

L. C. J. Did you not come Home before they went away?

Mrs. Patten. No, Sir.

Mr. Serj. Jefferies. Was that Woman they brought to lye in in your House, Mistress?—Mrs. Patten. Who do you mean, Sir?

Mr. Serj. Jefferies. The other Gentlewoman that came with Mrs. Charnock and Mrs. Hilton. The Lady that spoke just now.

Mrs. Patten. I do not know; I never saw her Face in my Life, that I know of; what my Husband saw I cannot tell, I saw her not; it may be she, it may be not, for any thing I know.

L. C. J. Well, Gentlemen, have you done, will you call any more Witnesses?

Mr. Williams. We have done, unless they call any more.

Mr. Serj. Jefferies. We shall only call a noble Lord, my Lord of Ailebury, to testify what he knows, being very much conversant in the Family, of the Treatment he has observed of this Lady.

L. C. J. That needs not, for there is no Body that fixeth any thing of the Matter upon my Lord or my Lady.

Mr. Wallop. We do hope in your Lordship's Observations upon the Evidence to the Jury, you will please to take Notice, that there is no Colour of Evidence of any actual Force upon the Lady which is laid in the Information, that my Lord did *vi & armis abducere*, &c.

L. C. J. Oh, Mr. Wallop, fear not, I shall observe right to the Jury; but you have read the Book that is written concerning Juries lately, I perceive.

Mr. Serj. Jefferies. He has studied such Books no doubt, and has learned very good Counsel from *Whitacre*.

L. C. J. Look you, Gentlemen of the Jury, here is an Information on the behalf of the King, against my Lord Grey, and the other Defendants; and it doth set forth, that my Lord Grey having married one of the Daughters of the Earl of Berkeley, and having Opportunity thereby of coming to the Earl of Berkeley's House, he did unlawfully solicit the Lady Henrietta, another Daughter of the Earl of Berkeley's, a young Lady, to unlawful Love; and that he did entice her from her Father's House; and that he did cause her to be conveyed away from thence against her Father's Consent; and that he did unlawfully use her Company afterwards in a very ill Manner, an unjustifiable Manner; and this, Gentlemen, is the Substance of the Information; in truth, it is laid, that he did live in Fornication with her. Now, Gentlemen, to this, my Lord Grey, and the other Persons, the Charnocks and the Jones's have all pleaded not Guilty to it. Now then, the Question before you is, whether there were any such unlawful Solicitation of this Lady's Love; and whether there was any Inveiglement of her to withdraw herself and run away from her Father's House without his Consent; and whether my Lord Grey did at any Time frequent her Company afterwards. Gentlemen, the Evidence that has been given, you have heard what it is, and it is very plain, if you do believe these Witnesses that speak it from my Lord's own Mouth (that he hath a long time unlawfully solicited her to Lust. For there is nothing else in it, Gentlemen, (that is the plain English of it all) he has enticed her to unlawful Lust. My Lady she gives Evidence of it from his own Mouth, that there was an Intrigue of unlawful Love between them: She says my Lord Grey condemned himself for it several times, but yet prosecuted it; he own'd it was a most dishonourable and dishonourable thing in him, which indeed it was; he did herein in Truth make a right Estimate of the thing. He did own he had betrayed the Family, and brought it into great Scandal, and had abused both Father and Mother by this unlawful Solicitation of their Daughter to this unworthy wicked Affection; but he excused it all with the Greatness of his Passion, and that was all; he pray'd her to consider, it was a great and passionate Love, a Love that he could not resist; he loved her above all Women living, and many fair Promises of Amendment and doing he made, but you see how he has performed them. You hear my Lady Arabella tells you there was a Letter written by my Lady Harriett, his Lady that appears now in Court as a Witness for my Lord Grey, which she had out of her own Hand, and she tells you the Effect of it; it was to invite my Lord another Night, as he had been with her a former Night; and to shew the Greatness of her Longing for him, she desires it might be quickly, not to stay till Monday, for if he did, she should be mighty impatient, if he delayed so long; and withal she told him, her Sister Bell, which I take to be my Lady Arabella, had not discovered it, nor heard the Noise that was between them that Night they were together. My Lady Lucy, she tells you, he owned there was an unlawful Love between him and her Sister, it must needs then be true, if he owned to her, and he said that it put him upon mighty Inconveniencies, and he own'd he had done so much wrong to the Family, that he could never repair it. You hear my Lady tells you she forbid him the Family; and you hear likewise, what little Designs he had, and what he pretended that he might continue to come to the Family, if you believe my Lady. For he pretended that this would be the way to make it publick, if he were forbid the House altogether; but he would be under her Direction, he would do nothing but what she should approve of; that he would not apply himself to her Daughter to speak to her, nor write to her. And you hear that all this, he did, before my Lady Arabella, vent a great deal of Passion to her, that she was the only Person in the World he had any Love for; and my Lady Arabella tells you she heard him say, when he had seen her down like a dead Woman. When he had made my Lady a Promise that he would not come without Leave, he sends his own Wife thither first, that he might come down, and very earnest and importunate she was with her Mother, not knowing any thing of the Intrigue, but was instrumental to get Leave to come down. And at Length Leave was given him to dine there, as he went to *Sussex*; but he comes at Nine o'clock at Night, and then Excuses were made by him for it; and my Lord Berkeley desiring him to stay, who was not acquainted with the unlawful Affection that was between his Daughter and him, and accordingly did stay till Saturday. You hear, Gentlemen, what is said to you now, her carrying away, for all that has been hitherto observed to you, has only to the unlawful Solicitation of this Lady to unlawful Love. My Lady tells you, that that very Night that my Lord Grey went from

her House was her Daughter carried away. You see then, the Question will be, whether my Lord had any hand in carrying her away, and for that you must weigh these Circumstances. It is pretty manifest that this Coach-man, that is, Charnock did carry her away. Now the Chaplain, tells you, that my Lord was earnest in several Discourses that Day with Charnock, and under some great Trouble, he could discern that in his Countenance; and several times he was sent for to him, as tho' there was some mighty earnest Business imposed upon Charnock to do. Charnock made as tho' he went away, it seems with his Lord, who went away about Four o'clock; and the Lady was carried away in the Morning between Twelve and One, which is the Time spoken of. Now to prove that Charnock carried her away, you have these Circumstances: She was brought to the House of Hilton, there was a Lady brought in there that Morning about Nine o'clock by Charnock; Charnock was the Afternoon before going to Up-Park with his Lord, but it is manifest that he was back that Morning at London, and so brought the Lady thither that Morning. If you believe Hilton, the Witness, it is manifest she had been a Journey, and was very weary, so that she was fain to go to Bed at Nine o'clock. This Lady that was there brought by Charnock and his Wife, was afterwards carried to Patten's House, Mrs. Hilton swears it; and Mr. Patten swears they did come in there. There was a great deal of Policy used in the Case, and Care taken; and Mrs. Hilton tells you why; they saw some Men about the Door, which they were afraid might be Men that came to look after the Lady, and so they slid away thro' the Back-door, which proves something in that she was to be concealed. Then consider the Circumstances of the Clothes that do so exactly agree. There was a Gown with red and green Flowers striped, and there was Petticoat striped with red, and a white quilted Petticoat under that the Lady had on that came to Patten's; and the Lady's Woman who lay with her and look'd after her, describes to you her Gown and Petticoat to be the same as those were that the Lady had on, who was hurried away from Patten's House at Night to another Lodging. We cannot indeed discover where that was. Now then, after this, my Lord Grey, he undertakes to my Lady Berkeley, that he would go to Up-Park, and stay there till he had Leave to come to Town. Patten who saw the Lady, swears this is the very Lady that sits here, and who has been examined, but denies it. If she was the Lady that was brought to Patten's, she was the same that was brought to Hilton's, whither Charnock brought her; and so there is a full Evidence of the Guilt of Charnock and his Wife, who was the Solicitor about the Business, took Lodgings for her, help'd her away from Hilton's, and help'd her to Patten's, and from Patten's somewhere else. So that if you believe them, Charnock and his Wife are both Guilty. As to my Lord Grey, who went to Up-Park on the Wednesday, soon after he came to Town again, and it is positively sworn that he came to Jones's upon the Tuesday, and sent for Jones out to come to him, who was in a Hackney-Coach, where he discoursed with him a pretty while, and afterwards the Room is provided for the Lady up two Pair of Stairs in Jones's House. She is brought thither, my Lord Grey came twice to the House, and both Times without his Perriwig, as the Maid swears she knew him very well, and there he took Lodgings for a Lady, and that Lady came afterwards. Now if this falls out to be my Lord Berkeley's Daughter, then you have it push'd home upon my Lord Grey. That this was my Lord Berkeley's Daughter, you have this Evidence made up of Circumstances. First, The Policy used in the Case by my Lord, to have all so privately managed. Another Circumstance there is, tho' at first it seems but slight, yet if it be well consider'd will signify very much, and that is what the Maid does testify. She says her Linnen was brought down to be washed, and there was a Shift that was very remarkable, for it had the Body of one sort of Cloth, and the Sleeves of another, and that she took special Notice of it, and thence would have concluded that the Lady was not a Person of Quality; and another of those very Shifts that belonged to my Lady Harriett was brought to her afterwards, and she swears it was of the same Fashion and Make with that which the Lady had that lodged in their House; and it was, as all do agree, just in the same manner as this was, with the Body of one Cloth and the Sleeves of another. Then, there is Colonel Fitz-Gerrard was in those very Lodgings at that time; and he comes and tells you, that having heard of my Lord Berkeley's Daughter's Departure from her Father, and considering the Circumstances that he had heard the Maid say that it was my Lord Grey's Mistress that was brought in thither, and such other Circumstances concurring, he did conclude this to be the Lady, and he tells Jones his Suspicions concerning it (whose Wife was by the Way so very officious to conceal the Lady, that she would not suffer her Maids to come up Stairs, but would rather shut up the Shop-windows herself, than the Maids should come to see her.) Mr. Jones having Discourse with the Colonel about this, and finding the Lady was smoked, was angry at the Colonel's Curiosity, which increased the Colonel's Suspicion. He told Jones, This must needs be the Lady, and I will see her. Which he very much fearing, intreated him not to disturb his House at that time of Night, and upon Promise to let him see her the next Morning, he desisted, but told him, He knew not what he was doing, he did a very ill thing to conceal a young Lady from her Friends; her Father and Mother not knowing where she was, might give her over for Dead. But in the Morning the Lady was convey'd away. This, to me is a shrewd Circumstance that Jones knew her to be the Lady, and to conceal all the Matter, got so much time to send her away. To what Purpose else was she carried away, when the Colonel was to see her, that he might be satisfied about his Suspicion, and so acquaint her Father? But she was conveyed away presently. Gentlemen, it is manifest by all the Witnesses, and by what the Defendants Counsel themselves opened, that under this Absence of the Lady from her Father, he had an Intercourse of Letters with her, which is a great Circumstance to prove that she was carried away by his Contrivance. He could tell the Lady Lucy. That she should never be brought back again, without he might have leave to visit her. So that, it seems, he had full Power over her. There is another Gentleman, who has told you he was set as a Spy over him; and if you believe him, my Lord Grey has made a Confession to him as he would to his Ghostly Father; he has told you the Intrigue of all his unlawful Love, from the Beginning to the End; how long he was engaged in it before he had any Comfort from the Lady, when he had the first



first Demonstration of Kindness from her, and the whole Matter all along. There is another Gentleman that was sent to treat with my Lord (Mr. Smith) concerning this; he tells you my Lord Grey and he being in a long Discourse, he offered that he would deliver her to one Person, but not to another: She should be first sent to his Brother-in-law, Mr. Nevil's in *Berkshire*; afterwards to another Place, Mr. Pett's, so as he might have Access to her; but he tells you also, this was the Conclusion of all, He would never part with her, nor never deliver her, upon any other Terms, than that he might have Access to her whenever he would. Now lay all this together, and see what it amounts to. He that had so great a Passion for her, he that could not be without the Sight of her, but used such Ways to come to speak to her; he that had Letters from her all along; he that had such Power over her, that he could deliver her, as he said, or not, and would keep her in Spite of her Father, unless he might have Leave to visit her as often as he pleased; and consider then, I say, whether it is not more than probable, that he had a Hand in carrying her away. It is plain, beyond all Contradiction, she was carried away by his Man, who was in his Company that Night; he pretended to go to *Up-Park*, but was in *London* the next Morning by nine o'Clock. My Lord came afterwards to take Lodgings for her, two Days one after another. Whether then he be not as guilty as *Charnock*, or any of the rest, nay, indeed, the main Mover of this ill Thing, you are to consider upon the Evidence that has been given. But you must, withal, take into your Consideration, what my Lord Grey says for himself. He has asked several Questions of the Ladies that were examined, but truly never a one worth the remembrance, that I know of, or that made to his Purpose. He does indeed pretend that the young Lady was hardly used at Home, and that she fled to him as to a Sanctuary for Protection; and you hear the several Witnesses examined to that Point; and they all say she was used, notwithstanding the Discovery of this ill Business, with the greatest Kindness and Respect that a Child could be used with by her Mother, and no Hardship put upon her, but only she was forbid to write any Letters to my Lord Grey, and had a Maid put upon her, to keep her from running away, because once before she attempted it, as her Mother did believe. The Lady herself is here, she has been examined; she indeed denies this all along; she says that this Coach-man *Charnock* did not carry her away; she says she was not at *Hilton's*, nor at *Patten's*, nor at *Jones's*; that she never saw my Lord Grey till a long Time after she went from her Father's. But this is all disproved by the other Witnesses; and so whether you will believe her single Testimony, or their's, I must leave it to you. You must consider under what Circumstances she is, and truly she doth not seem to be any Way fit to be believed in this Matter. *Jones* and his Wife are as guilty as any of the rest, for their Contrivance to keep her secret, especially, after that he had promised *Fitz-Gerrard* to let him see her. Look you, as to the long Discourse my Lord Grey made, I must tell you, it is not to be believed further than it is proved. Now my Lord Grey did tell us, that he from Time to Time had given Caution to my Lady, that she should look to her Daughter, and lock her up, for else she would, as he believed, run away. My Lady denies it all, and so it goes all for nothing, and you are to take no Notice of it. I must leave it to you, whether you do believe what these Witnesses have sworn, if you do believe the Evidence produced for the King, most certainly they are all five guilty of the Charge in the Information.

Mr. Just. Dolben. There is no Evidence against *Rebecca Jones*.

L. C. J. No, there is not.

Mr. Serj. Jefferies. No, we cannot insist upon it that there is, you must find her not guilty.

Mr. Just. Jones. I must remember you of one Thing, Gentlemen, and that is, what drop'd from my Lord Grey's own Mouth, that when my Lord, as he says, gave his Advice that she should be looked after carefully, he would not give his Reason for it, but after he did, as he says, tell it my Lady Lucy, that she complained to him at St. John's, that she led the Life of a Dog, or a slave, and she would not endure it any longer, and desired him to assist her, or she would do herself a Mischief. Why was not this told before?

L. C. J. Ay, but Brother, my Lady Berkeley denies it all too.

[Then the Jury began to withdraw.]

Earl of Berkeley. My Lord Chief Justice, I desire I may have my Daughter delivered to me again.

L. C. J. My Lord Berkeley must have his Daughter again.

Lady Henrietta. I will not go to my Father again.

Mr. Just. Dolben. My Lord, she being now in Court, and there being a *Homine replegiando* against my Lord Grey, for her, upon which he was committed, we must now examine her. Are you under any Custody or Restraint, Madam?—Lady Henrietta. No, my Lord, I am not.

L. C. J. Then we cannot deny my Lord Berkeley the Custody of his own Daughter.

Lady Henrietta. My Lord, I am married.

L. C. J. To whom?—Lady Henrietta. To Mr. Turner.

L. C. J. What Turner? Where is he?

Lady Henrietta. He is here in Court.

[He being among the Crowd, Way was made for him to come in, and he stood by the Lady and the Judges.]

L. C. J. Let's see him that has married you. Are you married to this Lady?—Mr. Turner. Yes, I am so, my Lord.

L. C. J. What are you?—Mr. Turner. I am a Gentleman.

L. C. J. Where do you live?

Mr. Turner. Sometimes in Town, sometimes in the Country.

L. C. J. Where do you live when you are in the Country?

Mr. Turner. Sometimes in *Somersetshire*.

Mr. Just. Dolben. He is, I believe, the Son of Sir William Turner that was the Advocate, he is a little like him.

Mr. Serj. Jefferies. Ay, we all know Mr. Turner well enough. And to satisfy you this is all a Part of the same Design, and one of the foulest Practices that ever was used, we shall prove he was married to another Person before, that is now alive, and has Children by him.

Mr. Turner. Ay, do, Sir George, if you can, for there never was any such Thing.

Mr. Serj. Jefferies. Pray, Sir, did not you live at *Bromley* with a Woman as Man and Wife, and had divers Children, and living so intimately,

were you not questioned for it, and you and she owned yourselves to be Man and Wife?

Mr. Turner. My Lord, there is no such Thing; but this is my Wife I do acknowledge.

Mr. Att. Gen. We pray, my Lord, that he may have his Oath.

Mr. Turner. My Lord, here are the Witnesses ready to prove it that were by.

Earl of Berkeley. Truly as to that, to examine this Matter by Witnesses, I conceive this Court, though it be a great Court, yet has not the Cognizance of Marriages: And though here be a Pretence of a Marriage, yet I know you will not determine it, how ready soever he be to make it out by Witnesses, but I desire she may be delivered up to me, her Father, and let him take his Remedy.

L. C. J. I see no Reason but my Lord may take his Daughter.

Earl of Berkeley. I desire the Court will deliver her to me.

Mr. Just. Dolben. My Lord, we cannot dispose of any other Man's Wife, and they say they are married. We have nothing to do in it.

L. C. J. My Lord Berkeley, your Daughter is free for you to take her; as for Mr. Turner, if he thinks he has any Right to the Lady, let him take his Course. Are you at Liberty and under no Restraint?

Lady Henrietta. I will go with my Husband.

Earl of Berkeley. Hussy, you shall go with me Home.

Lady Henrietta. I will go with my Husband.

Earl of Berkeley. Hussy, you shall go with me, I say.

Lady Henrietta. I will go with my Husband.

Mr. Williams. Now the Lady is here, I suppose my Lord Grey must be discharged of his Imprisonment.

Mr. Serj. Jefferies. No, my Lord, we pray he may be continued in Custody.

L. C. J. How can we do that, Brother, the Commitment upon the Writ de *Homine replegiando* is but till the Body be produced, and here she is, and says, she is under no Restraint.

Mr. Serj. Jefferies. My Lord, if you please to take a little Time to consider of it, we hope we may satisfy you that he ought still to be in Custody.

L. C. J. That you can never do, Brother.

Mr. Serj. Jefferies. But your Lordship sees upon the Proofs to Day, this is a Cause of an extraordinary foul Nature, and what Verdict the Jury may give upon it we do not know.

Mr. Att. Gen. The Truth of it is, we would have my Lord Grey forthcoming, in Case he should be convicted, to receive the Judgment of the Court.

L. C. J. You cannot have Judgment this Term, Mr. Attorney, that is to be sure, for there are not four Days left. And my Lord Grey is to be found to be sure, there never yet, before this, was any Thing that reflected upon him, though this, indeed, is too much and too black if he be guilty.

Mr. Just. Dolben. Brother, you do ill to press us to what cannot be done; we, it may be, went further then ordinary in what we did, in committing him, being a Peer, but we did it to get the young Lady at Liberty; here she now appears, and says she is under no Restraint; What shall we do? She is properly the Plaintiff in the *Homine replegiando*, and must declare, if she please, but we cannot detain him in Custody.

L. C. J. My Lord shall give Security to answer her Suit upon the *Homine replegiando*.

Mr. Williams. We will do it immediately.

L. C. J. We did, when it was moved the other Day by my Brother *Maynard*, who told us of ancient Precedents, promise to look into them, and when we did so, we found them to be as much to the Purpose, as if he had cast his Cap into the Air, they signified nothing at all to his Point. But we did then tell him (as we did at first tell my Lord so) if he did produce the Lady, we would immediately bail him. And she being now produced, we are bound by Law to bail him. Take his Bail.

[And accordingly he was bailed at the Suit of the Lady Henrietta Berkeley, by Mr. Forrester, and Mr. Thomas Wharton.]

Earl of Berkeley. My Lord, I desire I may have my Daughter again.

L. C. J. My Lord, we do not hinder you, you may take her.

Lady Henrietta. I will go with my Husband.

Earl of Berkeley. Then all that are my Friends seize her I charge you.

L. C. J. Nay, let us have no breaking of the Peace in the Court. By my Lord *Cavendish*, the Court does perceive, you have apprehended yourself to be affronted by that Gentleman Mr. *Craven's* naming you in Evidence; and taking Notice of it, they think fit to let you know, they expect you should not think of righting yourself, as they have Thoughts you may intend. And therefore you must lay aside any Thoughts of any such Satisfaction. You would do yourself more Wrong by attempting to right yourself in any such Way.

Lord Cavendish. My Lord, I am satisfied that your Lordship does it was impertinently spoken by him, and shall not concern myself further, but only desire that the Court would give him some Reproof.

Then the Court broke up, and passing through the Hall there was great Scuffle about the Lady, and Swords drawn on both Sides, but Lord Chief Justice coming by, ordered the Tipstaff that attended him to take Charge of her, and carry her over to the King's Bench; and Mr. *Forrester* asking if he should be committed too, the Chief Justice told him, might go with her if he would, which he did, and as it is reported, lay together that Night in the *Marshal's House*, and she was released of Prison, by Order of the Court, the last Day of the Term.

On the Morning after the Trial, being Friday the 24th of November, the Jury that tried the Cause, having (as is usual in all Cases not tried at the Bar, where the Court do not sit long enough to take the Verdict) given in a private Verdict the Evening before, at a Judge's Chamber, and being now called over, all appeared, and being asked if they abide by the Verdict that they gave the Night before, they answered, which was read by the Clerk of the Crown to be, *That all the Defendants were guilty of the Matters charged in the Information, except Rebecca Jones who was not guilty*; which Verdict being recorded, was committed to the Court and the Kings Counsel, and the Jury discharged.

But in the next Vacation the Matter was compromised, and Judgment was ever prayed, or entered upon Record, but Mr. Attorney General was pleased, before the next *Hilary-Term*, to enter a Nisi Pro as to all the Defendants.



CXIV. *Proceedings between the King and the City of London, on an Information in nature of a Quo Warranto †, in the King's-Bench, 1687. Hil. 35 Car. II.*

Mich' 33 Car. II. in B. R. Rot. 137. Sir Robert Sawyer, Knight, His Majesty's Attorney General, against the Lord Mayor, and Commonalty, and Citizens of London.

The Information in nature of a Quo Warranto sets forth,

THAT the Mayor, and Commonalty, and Citizens of the City of London, by the space of a Month then last past, and more, used, and yet do claim to have and use, without any lawful Warrant, or regal Grant, within the City of London aforesaid, and the Liberties and Privileges of the same City, the Liberties and Privileges following, viz.

I. To be of themselves a Body Corporate and Politick, by the Name of Mayor and Commonalty, and Citizens of the City of London.

II. To have Sheriffs Civitat' & Com' London' & Com' Midd'. and to name, elect, make, and constitute them.

III. That the Mayor and Aldermen of the said City should be Justices of the Peace, and hold Sessions of the Peace.

All which Liberties, Privileges, and Franchises the said Mayor and Commonalty, and Citizens of London, upon the King did by the space aforesaid usurp, and yet do usurp.

Plea. THE Mayor and Commonalty, and Citizens, appear by their Attorney, and plead,

I. As to their being a Body Politick and Corporate, they prescribe, and say,

1. That the City of London is, and time out of mind hath been, an ancient City, and that the Citizens of that City are, and by all that time have been, a Body Corporate and Politick, by Name of Mayor and Commonalty, and Citizens of the City of London.

That in Magna Charta de libertatib' Angliæ, in the Parliament holden 9 Hen. III. it was enacted, *Quod civitas London' habeat omnes libertates suas antiquas, & consuetudines suas.*

That in the Parliament 1 Ed. III. that King by his Charter *De assensu Prelatorum, Comitum, Baronum, & totius communis regni sui*, and by Authority of the same Parliament, having recited that the same Citizens, at the time of the making Magna Charta, and also in the time of Edward the Confessor, William the Conqueror, and other his Progenitors, had divers Liberties and Customs, Wills and Grants by Authority aforesaid, That the same Citizens shall have their Liberties according to Magna Charta—And that for any personal Trespass alicujus ministri ejusdem civitatis, libertas civitatis illius in manus ejusdem Domini Regis Ed. III. vel heredum suorum, non caperetur, sed hujusmodi minister prout qualitatem transgressionis puniretur.

They plead also,

That in the Parliament holden 7 R. II. *Omnes consuetudines, libertates, franchises, & privilegia civitatis predictæ tunc civibus civitatis illius, & eorum successoribus, licet usi non fuerint, vel abusi fuerint, autoritate ejusdem Parliamenti ratificat' fuerunt.*

Then they plead the Confirmation of several later Kings by their Charters; as of

King Henry VI. by his Charter, dated 26 Octob. 23 H. VI.

King Edward IV. by his Charter, dated 9 Novem. 2 Ed. IV.

King Henry VII. by his Charter, dated 23 July, 20 H. VII.

King James I. by his Charter, dated 25 Sept. 6 Jac. I.

King Charles I. by his Charter, dated 18 Oct. 14 C. I.

King Charles II. by his Charter, dated 24 Jan. 15 C. II.

Ac eo Warranto they claim to be, and are a Body Politick, &c. and averse their usurping upon the King.

II. As to the having, electing, making, and constituting Sheriffs of London and Middlesex, they plead,

That they are, and time out of mind were, a Body Politick and Corporate, as well by the Name of Mayor and Commonalty, and Citizens, quam nomen Civium London. And that King John, by his Letters Patents under the Great Seal of England, in Court produced, dated 5 Julii, anno regni sui primo, granted to the Citizens of London, that they should have electing, making, and constituting Sheriffs of London and Middlesex perpetuum.

Then they plead this Liberty and Franchise confirmed to them by all the aforesaid Statutes and Charters, ac eo Warranto they claim to elect and constitute Sheriffs.

III. As to the Mayors and Aldermen being Justices of the Peace, and holding Sessions, they plead,

That the City is, and time out of mind was, an ancient City and County, and the Citizens a Body Politick.

That King Charles the First, by his Letters Patents, dated 18 Octob. 14

Car. I. granted to the Mayor and Commonalty, and Citizens of the City of London, That the Mayor and Aldermen of London, such of them as had been Mayors, should be Justices of the Peace, and should hold Sessions. Et eo Warranto they claim to be Justices, and hold Sessions.

Respons. TO this Plea the Attorney General replies. And as to the Mayor, and Commonalty, and Citizens of London, being a Body Politick and Corporate,

First takes issue, that they never were a Body Corporate, and for this puts himself upon the Country. And then goes over and pleads.

That the Mayor, Commonalty, and Citizens, assuming upon themselves to be a Body Politick and Corporate, and by reason thereof to have Power and Authority to convocate and assemble, and make Laws and Ordinances, not contrary to the Laws of the Kingdom, for the better Government of the City and Citizens, and for preserving the King's Peace—Under Colour and Pretext thereof, but respecting only their private Gain and Profit, and against the Trust in a Body Corporate by the Laws of this Kingdom reposed, assumed an unlawful and unjust Authority to levy Money upon the King's Subjects, to their own proper Use, by colour of Laws and Ordinances by them *de facto* ordained or established; and in prosecution and execution of such illegal and unjust Power and Authority by them usurped, 17 of Septemb. 26 Car. II. in their Common Council assembled, made, constituted, and published a certain Law, by them *de facto* enacted, for the levying of several Sums of Money of all the King's Subjects, coming to the publick Markets within the City to sell their Provisions, viz. Of every Person for every Horse-load of Provisions into any publick Market within the said City, brought to sell, 2d. per Day. For every Dorser of Provisions, 6d. per Day. For every Cart-load not drawn with more than three Horses, 4d. per Day. If drawn with more than three Horses, 6d. per Day. And that these Sums of Money should be paid to the Use of the Mayor, Commonalty, and Citizens: and if any refused to pay, then to be removed from his Place in the Market. And that by colour of this Law, the Mayor, Commonalty, and Citizens, for their own private Gain, had illegally, by the space of seven Years next after the making this Ordinance, received divers great Sums of Money, in all amounting to 5000l. per Annum, in Oppression of the King's Subjects.

And further, That whereas a Session of Parliament was holden by Prorogation, and continued to the 10th of January, 32 Car. II. and then prorogued to the 20th of January then next:

The Mayor, Commonalty, and Citizens, 13 Jan. 32 Car. II. in their Common Council assembled, unlawfully, maliciously, advisedly, and seditiously, and without any lawful Authority, assumed upon themselves *ad censendum & judicandum dictum Dominum Regem, & prorogationem Parliamenti per Dominum Regem sic facti*. And then and there in Common Council assembled, did give their Votes and Order, that a certain Petition under the name of the Mayor, Aldermen, and Commons of the City of London, in Common Council assembled, to the King should be exhibited; in which said Petition was contained,

That by the Prorogation, the Prosecution of the publick Justice of the Kingdom, and the making necessary Provision for the Preservation of the King, and of his Protestant Subjects, had received Interruption. And that the Mayor and Commonalty, and Citizens in the same Common Council assembled, did unlawfully, maliciously, advisedly, and seditiously, and with Intention that the said Petition should be dispers'd amongst the King's Subjects, to induce an Opinion in them, that the said King by proroguing the Parliament, had obstructed the publick Justice, and to incite the King's Subjects to Hatred of the King's Person and Government, and to disturb the Peace of the Kingdom, did order that the said Petition should be printed, and the same was printed accordingly to the Intent and Purpose aforesaid.

By which the Mayor, Commonalty, and Citizens aforesaid, the Privilege, Liberty, and Franchise of being a Body Politick and Corporate did forfeit, and afterwards, by the time in the Information, that Liberty and Franchise of being a Body Politick did usurp upon the King. Et hoc, &c.

And as to the other two Pleas, viz. The making and having Sheriffs and Justices of the Peace, the Attorney General imparles to Mich. Term.

Rejoinder. THE Mayor, Commonalty, and Citizens, as to the Plea of the Attorney General, pleaded in assigning a Forfeiture of their being a Body Politick and Corporate,

Protestando, That those Pleas, by the Attorney pleaded, and the matter in the same contained, are insufficient in the Law to forejudge or exclude the Mayor and Commonalty, and Citizens from being a Corporation.

Protestando etiam, That no Act or Deed, or By-Law made by the Mayor, Aldermen, and Common Council is the Act or Deed of the Body Corporate.

Protestando etiam, That they, the Mayor and Commonalty, and Citizens of London, never took upon them any unlawful or unjust Authority to tax the King's Subjects for their own private Gain, or did ever levy or exact from the King's Subjects, coming to Markets, such yearly Sums as in the Replication are alledged—For Plea say,



That London is the Metropolis of England, and very populous, & *Celeberrimum Emporium totius Europæ.*

That there are, and Time out of mind, have been divers public Markets for Provision and Merchandise within the said City to be sold.

That the Mayor and Commonalty, and Citizens have been, time out of mind, and yet are, seiz'd of these Markets in Fee, and by all the said time at their own Costs and Expences have provided and have accustomed, and ought to provide at their own costs Places for the holding the said Markets and Stalls, and Standings, and other Accommodations for Persons bringing Provisions and Merchandizes to the said Markets and Supervisors and other Officers for the better preserving and ordering the said Markets; and of the great concourse of Persons coming to the same; and for the sustaining and supporting of the said Costs and Expences, by all the time aforesaid have had, and ought to have reasonable Tolls, Rates, or Sums of Money, of Persons coming to the said Markets for their Stalls, Standings and other Accommodations by them for the better exposing their Commodities had and enjoyed.

They further say, That the Citizens and Freemen of London are very numerous, (*viz.*) 50000 and more.

That within the said City there hath been, time out of mind, a Common Council assembled, as often as necessary, consisting of the Mayor, Aldermen, and of certain of the Citizens, not exceeding 250 Persons thereto annually elected, called the Commons of the said City.

That there is a Custom within the said City for the Mayor, Aldermen, and Common Council, to make By-Laws and Ordinances for the Regulation and Government of the publick Markets within the City.

That these Liberties and Customs of the City were confirmed by *Magna Charta*, and the other Statutes in the Plea abovementioned.

That by reason of the burning of the City in Sept. 1666. and the Alterations in the Market-Houses and Places thereby occasioned, for the establishing and resettling the Markets within the City, 17 Sept. 26 Car. II. the then Mayor, Aldermen, and Commons, in Common Council assembled, according to the said Custom, for the better Regulation of the said Market, did make and publish an Ordinance, entituled, *An Act for the Settlement and Well-ordering the publick Markets within the City of London*, by which said Ordinance reciting that for the accommodation of the Market-people with Stalls, Shelters, and other Necessaries for their standing in the Markets, and for the amendment, paving, and cleansing the Market-places, and for the support and defraying the incident Charges thereof, there have been always certain reasonable Rates and Duties paid for the same. And to the intent that the said Rates may be ascertained and made publick to all Market-people, and the Collectors restrained from exacting—It was enacted and ordained by the said Common Council, that the Rates and Sums in the Replication should be paid to the use of the Mayor and Commonalty and Citizens; or upon refusal, to be removed out of the Market. And they aver, that these are all the Rates or Duties paid, and were reasonable Sums to be paid; and these they have demanded and received for the Use and Purpose aforesaid, as was lawful for them to do.

As to the other matter alledged by the Attorney General in assigning the Forfeiture, they say,

That within this Kingdom (*viz.*) at the Parish of St. Michael Bassishaw, London, there was an execrable Plot and Conspiracy profecuted by Papists to destroy the King, and to subvert the ancient Government, and suppress the true Religion in this Kingdom established.

That Sir Edmundbury Godfrey took Examinations of Witnesses, and Informations of the same; and also of the burning of London by the Papists.

That divers of these Conspirators had lain in wait for him, and murdered him, to the intent to suppress his Examinations, and to deter other Magistrates from acting in the Discovery.

That Green and others were try'd, and hang'd for this Murder.

That Coleman, and others were also try'd, and executed for the same Conspiracy.

That William Lord Powis, Lord Arundel of Warder, Lord Petre, Lord Bellasis, were impeached by the Commons in Parliament of High Treason for the same Conspiracies, and sent to the Tower.

That the King in his Speech to that Parliament had recommended to them the further pursuit and examination of that Conspiracy, declaring

he thought not himself nor them safe, till that matter were gone through with; and therefore that it was necessary that the said Lords in the Tower should be brought to their Trials, that Justice might be done; and the Parliament having made an Address to the King, wherein both Lords and Commons declared their being deeply sensible of the sad condition of the Realm, occasioned chiefly by the Conspiracies of a Popish Party, who had plotted and intended the Destruction of the King, and Subversion of the Government and Religion of the Kingdom; and thereupon a Solemn Fast kept pursuant to the King's Proclamation, grounded upon the said Address, and divers Bills prepared to be pass'd into Laws for Preservation of his Protestant Subjects.

These Impeachments and Bills being thus depending, and the Lords in the Tower not tried, the Parliament was upon the 10th of January prorogued, as the Attorney General above in his Replication hath alledged, by reason whereof the Citizens and Inhabitants of the said City, being faithful Subjects to the King, were much disquieted with the Sense and Apprehensions of the Danger threatening the Person of the King, His Government and Realm, by reason of the Conspiracies aforesaid, as is by both King and Parliament affirmed and declared; and conceiving no better means to prevent, than by the Sitting of the Parliament; and having received a Petition from divers faithful Subjects, Citizens of London, to the same effect: And it being lawful to petition, the Mayor Sir Patience Ward, and the Aldermen and Commons, in Common Council assembled, for the preservation of the King and His Government, did cause to be written the Petition in the Replication mentioned, which is set forth in *hæc verba*; and did Order, that after the same was presented to the King, it should be printed for the satisfaction of the troubled Minds of the said Citizens; and traverse the writing or making any other Petition, or making this to any other end or intent than they have pleaded.

THE Attorney General as to the Plea of the Mayor, and Commonalty, and Citizens pleaded to the the making and publishing the Ordinance about the Markets.

*Protestando*, That the Mayor, and Commonalty, and Citizens were not seiz'd of the Markets, nor at their charges provided Stalls and Necessaries, or Market-places.

*Protestando etiam*, That the said Rates and Sums were not reasonable. For Plea faith, That by a Statute made 22 Car. II. it was enacted, that Places for Markets should be set out, and 2d. per Chaldron upon Coals for the Charge of that, and many other things, was given; and that they received a great Sum out of that Duty for the Purpose aforesaid; and yet for their own private Lucre took the Money by the Ordinance.

And traverseth, That the Mayor, and Commonalty and Citizens, time out of mind, *habuerunt & habere consueverunt Tolnetas, Ratas, five denariorum summas per ipsos Majorem, Communitatem, & Civis superius suppositas per prefatam Legem, five Ordinationem predictam Affess. & in certitudinem reduci. prout per placitum suum superius rejuvendo placitum supponitur.*

And to the Plea of the Mayor, and Commonalty, and Citizens, pleaded to the Residue of the Attorney's matter assigned for a Forfeiture, as aforesaid.

The Attorney *Protestando*, That the aforesaid Prorogation of the Parliament was for urgent Causes concerning the good of the Kingdom, and thereby the prosecution of publick Justice not interrupted.

And demurs to the said Plea of the Mayor, and Commonalty, and Citizens by them pleaded as to the Petition.

THE Mayor, and Commonalty, and Citizens, as to the making and publishing the Ordinance for the Payment of Monies by those that come to the said Markets, say as before.

That the Mayor and Commonalty, and Citizens have, time out of Mind, had, and accustomed to have, reasonable Tolls, Rates, or Sums of Money of all Persons coming to these Markets with Victuals and Provisions there to be sold, for Stalls, Standings, and other Accommodations, by them had for exposing their Victuals and Provisions to Sale. And of this they put themselves upon the Country, &c. To this the Attorney demurs.

And as to the Plea by the Mayor, and Commonalty, and Citizens pleaded to the Residue of the Matter by the Attorney General, assigned for a Forfeiture, they join in Demurrer †.

This great Case was only twice argued at the Bar: First, by Mr. Finch, the King's Solicitor, for the King; and Sir George Trevelyan, Recorder of London, for the City. And next by Sir Robert Sawyer, the King's Attorney General, for the King; and Henry Pollock, for the City.

The First Argument was in Hilary Term on Wednesday, Febr. 7.

Mr. Sol- THE Questions in this Case, as I think, will be, licitor.

I. Whether any Corporation can be forfeited?

II. Whether the City of London differ from other Corporations as to point of Forfeiture?

III. Whether any Act of the Mayor, Aldermen, and Common Council, in Common Council assembled, be so much the Act of the Corporation, as can make a Forfeiture?

IV. Whether the Acts by them done in making the By-Law, and receiving Money by it; or in making the Petition, and causing it to be printed and published, be such Acts, as if done by the Corporation, will make a Forfeiture of the Corporation?

I. The First of these Questions truly I should not make any Question

† When the Demurrer in this Case was joined (*viz.* Mich. Term, 34 Car. II.) Mr. Serjeant Pemberton was Chief Justice of the King's Bench. But before Hilary Term when it came to be argued, he was removed, and made Chief Justice of the Common-Bench; and Sir Edmund Saunders, who had been Counsel for the King, in drawing advising the Pleadings, was made Chief Justice of the King's Bench.

at all, but that this Case has been a Case of so great Expectation, that man hath discoursed about it, and the prejudice that some have entertained concerning it, have drawn them to assert the Negative Proposition. Therefore, my Lord, because this strikes to the whole, though I have it hath no Foundation in Law, I will beg leave to remove this Objection out of the Case.

1. First of all, No Corporation hath any other Creation than any other Franchises have, and subsist upon the same Terms that other Franchises do.

2. There is a Trust or a Condition in Law, that is annexed to, and grows upon all Franchises, that they be not abused, and the Breach of them is a Forfeiture of the very being of the Franchise.

3. And as there is no Foundation of that Opinion in Law, the Mischiefs would be great, if the Law were otherwise. For,



1. First, that no Corporation hath any other Creation than other Franchises have; 'tis undoubtedly true that the King is the Original and Commencement of all Franchises; they have their beginning from him, the Books are clear and full in it: I need not quote them, though there are many, *Kelway* 138. 17 *Ed. II.* 530. in the Reports of those times set forth by Mr. Serjeant *Maynard*. Now, my Lord, there can be no Corporation, but by the King's Letters Patents; for even the Prescription doth suppose there was the King's Patent to create it at first. And therefore the proper inquiry will be about the Second thing.

2. How far the Breach of Trust that is annexed to a Franchise, is a Forfeiture of that Franchise.

First of all, There is no Rule in Law more certain, than that the Mischief of a Franchise is a Forfeiture of that Franchise. This the Statute of 18 *Ed. II.* does very well prove, which was an Act of Grace to restore Franchises to those that had lost and forfeited them. There it was restrained *Ita quod libertat' non sint abusa*. And my Lord *Coke* 2 *Inst.* in his Observations upon the Statute of *Westm.* 1. that Chapter of it that concerns Towns that exacted more Murage than was granted, fol. 223. says, They shall lose that Grant for ever; says the *Mirror of Just.* which my Lord *Coke* there quotes, that is no more than the Common Law; for the Law wills that every Man should lose his Franchise, that does misuse it: So the Abbot of St. Albans Case, 8 *Hen. IV.* 18. The King seized the Franchise into his hand, because the Abbot, who had the Gaol, would not give Pledges to make Deliverance, and for detaining his Prisoners a long time without making a lawful Deliverance. And so 20 *Ed. IV.* 6. The Abbot of *Crowland's* Case for detaining Prisoners acquitted after fees paid, the King seized the Gaol for ever. These two are cited by my Lord *Coke* 2 *Inst.* 43. And in Sir *George Reynel's* Case, 9 *Report*, Fitzherbert's *Abridgment*, Titl' *coron' placit'* 233. a Layman was taken in Robbery, the Ordinary challenges him as a Clerk, whereas he was a Layman: It was ruled, that for his false challenge the Ordinary should lose his Temporalities to the King, and lose his Franchise to challenge Clerks, for him and his Successors for ever. Thus far is plain, That Franchises, if misused, are forfeited; and that though enjoyed by Persons as a corporate capacity, as appears by the Cases put. And then as a Corporation may forfeit any Franchise they are seized of in right of the Corporation, so may a Corporation forfeit the Franchise of the Corporation itself, upon the same ground and reason in Law: unless any one will say, The Franchise of being a Corporation cannot be misused; and that could be very strange matter to assert.

Every Corporation is entrusted with a Franchise to make Laws for governing the Subject within it's Jurisdiction. If that Power be exercised to the Subjects prejudice, as it may be, it were an hard matter if there were no Law to redress that Grievance. Suppose a Corporation under their common Seal should authorise a Rebellion, would any Man say that were a Forfeiture? 'Tis said indeed by *Pigott*, 21 *Ed. IV.* f. 13. *Arguendo* upon a Case (where the Question is, *Whether a Corporation should avoid a writ entered into by the Mayor by Duress*.) That a Corporation can neither commit Treason or Felony; but upon the same Reason that he urges, that a Corporation cannot act at all, that is, abstractedly from all the members of it; for so this Notion is, that a Corporation is a Body in consideration of Law only, and not Reality; and therefore the particular act even of the head of that Body shall affect him personally only. But this is only a Notion of his arguing; but it is the best Opinion of that Book, that *Durefs* to the Members did so affect the Corporation, that it could avoid the Bond.

Now, my Lord, a Corporation may be surrendered; and surely that may be surrendered, may be forfeited; and I shall offer you some authorities in this case, 12 *E. III.* rot. claus. memb. 36. a Writ is directed to the Constable of *Dover*, reciting, That the Cinque-Ports had seized the Goods of several Merchant Strangers *Portugueses*, and others; and the Writ commands that Right should be done, or else the Franchise should be seized into the King's Hands, 6 *Ed. II.* rot. claus. No. 5. The Liberties of the City of *Bristol* were seized, and the Custody of it granted for divers Contempts and Injuries done *per Regem, Balivos, & Communitat'* to the King; and so the close Rolls *R. II. m. 6.*

There is another Case that comes further, *Pasc.* 9 *Ed. I.* *Majus* rot. 25. and it likewise among my Lord Chief Justice *Hales* Collections, that has given to *Lincoln's Inn* Library; I took it out of that Book: 'Tis in Collection of the *Adjudicata* in the time of *Ed. I.* fol. 28. a. Thus it is: There was the Abbot of St. *Austlin* in *Canterbury* had made an Agreement with the Men of *Sandwich*, about paying Ten Hogheads of Wine yearly to the Abbot; and there was due to the Abbot some Thirty Marks, he had Judgment, and Execution went out; and thus 'tis in the Book, *Vic. de—mandatur, quod levare fac'* 30 *Marcas de bonis ipsius, pro pretio 10 Doleorum Vini annuatim solvend'*. And they were rescued when the Sheriff came to execute the Writ, and they were for that; and the Judgment of the King and his Council, which was by Parliament, for it was adjourned into Parliament, was, *Quod lib' de Sandwich forisfact'* sit. And there is this Observation, tho' it be taken with the same Hand, which is not his, but the Clerk's that transcribed it, *Judicium illud extendit contra Barones 5 Portuum, & eorum lib'as, ut mili videtur*. These are the Words of that Book: And this goes a great way with the City of *London*, as to their Confirmation of *Magna Charta*; for the Cinque-Ports are confirmed by Act of Parliament, as well as they.

Now, my Lord, there are many Cases of like nature, and that even in the Case of the City of *London* too, as I shall shew you by and by. Now these are not Judgments in *Quo Warranto's*, to oust a Corporation of Franchise of being a Corporation, yet it shews, that these things were forfeitures of all the Franchises of a Corporation; for a Seizure is never where there is Matter for Forfeiture found upon Record, as in Sir

*George Reynel's* Case; or to ground a Forfeiture, upon which to bring a *Quo Warranto*, as in our Case. But in the Case of 9 *Ed. I.* there it does appear Judgment was given by the Parliament, that the Liberty should be forfeited, not that it should be seized into the King's Hands only.

Now, my Lord, where all the Franchises of a Corporation are forfeited, what is the Corporation? Truly, 'tis nothing, 'tis but a Name; a Corporation without a Power to act, is nothing at all. Indeed, I do not find any Judgment in a *Quo Warranto* of a Corporation being forfeited; yet, my Lord, it doth not follow from thence that this cannot be by Law; for many *Quo Warranto's* have been brought against *London*, and other Places too, to oust Corporations of their Franchises, but it hath always ended in Submission to the King, and so they have been at quiet. All the *Quo Warranto's* in Mr. Attorney *Palmer's* time, after the King's Restoration, against the several Corporations, they all submitted; and yet that was to question the very being of their Corporations.

Now, my Lord, pray consider a little upon the Rule of Law. It should seem very strange, if a Corporation should neglect to come into Eyre, or into the King's Bench, the same Term that a *Quo Warranto* is brought against them, they must be ousted of their Franchise for ever, as 'tis said 15 *Ed. IV.* 6 & 7. And yet, when all the Contempts and Oppositions imaginable are found upon Record, that this should not be a Forfeiture, that seems absurd that a Neglect in Eyre should do it, but all the Oppressions and Offences in the World, when found upon Record, should not do it.

3. But, my Lord, the Mischief that would follow from hence are very great. How many Oppressions and Offences would be daily committed, if every Corporation were a Franchise and Jurisdiction independent upon the Crown? and the Punishment truly of some particular Men for those Offences would not be adequate, where the Power of offending and misgoverning should still remain; sure that were no adequate Redress of such an Inconvenience. And to this purpose my Lord, I shall humbly offer a Case, and 'tis that great Case between the Earls of *Gloucester* and *Hereford*, Hil' 20 *Ed. I.* in *B. R.* rot. *Wallie* 14. 'Tis likewise in *Riley's Placita Parliamenti*, 83, 86. The Case is this in short: They both claimed the Liberty of *Returna Brevium*, and they had incurred great Contempts in refusing to obey the King's Writs; and Judgment was given against them, that the Liberty should be seized for this Reason, which, I think, will go a great way in this Case, and for which I offer it, *Quia puniendus est Dominus libertatis in eo quo deliquit*. I think, my Lord, as I said, that will go a great way in this Case to shew the Reason of the Law.

My Lord, if the granting of too many and too large Franchises were a Mischief, as certainly it was by the Law, and as appears by the Commons Petitions 21 *Ed. III.* rot. *Parl.* No. 17. where they pray, That new and large Franchises may not be granted, because it tended to the overthrowing the Common Law, and great Oppression of the People. And the King's Answer was, That Care should be taken for the time to come. I say then, if this were such a Mischief, that there ought not to be granted new and large Franchises, much more would it be a Mischief, if these Franchises should not be under the Controul of the Law, when they exercise such Oppression. And so, my Lord, I shall leave that Point; for I think it will be pretty clear, that a Corporation may forfeit their Being of a Corporation.

II. I shall next consider, *Whether the City of London be in any other Plight than any other Corporations*. I think, truly, there is no Difference at all. Now this Question doth depend upon what they have set forth by their Plea; and that is, the Confirmation of *Magna Charta*, cap. 9. *Civitas London' habeat omnes libertates suas antiquas, & consuetudines suas*. And then the Act of 1 *E. III.* upon which my Lord *Coke*, in his 4 *Inst.* 253. says, that the Franchise of this City shall not for any Cause be seized into the King's Hands. And then that of 7 *R. II.* which says, that the City shall enjoy it's whole Liberties, *licet non usi vel abusi*. This is their Foundation, upon which they would distinguish this City from all other Corporations. Now as to these things, I give these Answers:

First for *Magna Charta*, That plainly is no more a Confirmation to them, than 'tis to other Cities and Corporations. For not only the City of *London* is named to have it's ancient Liberties and Customs preserved, but 'tis likewise *omnes alie Civitat' &c.* and all Cities, Burroughs, and Towns, and the Barons of Cinque-Ports, and all other Ports, should have all their Liberties and free Customs. So my Lord *Coke* agrees it in his Comment. And in what he cites out of the *Mirror of Justice*, and other ancient Authors of our Law, they should enjoy their Franchises which they had Right to by lawful Title of the Gift and Confirmation of the King, and which they had not forfeited by any Abuse. So that the Act which confirmed them, did not purge former Forfeitures, much less did it license other Abuses.

Then for their Acts of 1 *E. III.* and 7 *R. II.* I shall humbly offer this, That as they are in truth no Acts of Parliament at all, so they will not concern this Question, whatsoever my Lord *Coke* says concerning them. But I shall give some instances before these Acts, to shew that they never had such an unquestionable Power as they now dream of, and then some Instances in after times, that there either were no such Acts, or no such Sense at least is to be put upon them, as they have strained to make.

First, it appears 15 *E. I.* that the Franchise of the City of *London* was seized into the King's Hand, and *Johannes de Britton* was made *Custos Civitatis London'*, who was no Freeman; and this implies, that the Franchise was seized into the King's Hands, for they had a Power to choose *de seipfis*, by Charter from King *John*, a Citizen to be Mayor or chief Governor; but here was another Governor appointed them.

Then *Rot' Pat'* 26 *E. I.* *Rex pro bono servicio civit' London' reddit eis civit' suam London' habend' dict' civibus ad volunt' Regis. Teste Rege*. So that both the City, and all its Franchises, were seized at that time; for he restored the very City of *London* to the Citizens *habend'* during his Will



Will and Pleasure. Thus, my Lord, it stood in the time of E. I. Then in the time of E. II. seized again; 14 E. II. memb. 21. of the Pat. Rolls, in 21. *Rex dimisit civibus London' officium Major' civitat' London.* 15 E. II. *Rex dedit licentiam eligendi Major' London.* And in the second part of Pat' Rolls 15 E. II. m. 5. the King recites, That whereas in the Fourteenth Year of his Reign he had replevied to them the Office of Mayor, *usque quindenam Sancti Martini*, and also recites, which Office was seized into the King's Hands by the Justice of Eyre in the Tower of London, and he was willing to continue it longer to them, *ex gratia speciali* he did grant them the said Office, *quandiu, &c.*

Then the second part of Pat' Rolls in 20 E. II. it is recited, That the King had seized the Office of the Mayoralty, and had replevied it from time to time; and that one *Hammond de Chigwell* was made Mayor, the King had accepted of him for Mayor, *Et Rex volens eis gratiam uberiores facere*, grants him the Office of Mayor.

Now, my Lord, these Seizures shew plainly, that the Franchises of the City were forfeitable; for either they were seized upon Matter of Record found for a Forfeiture, or else upon some Matter which was to be a Ground of a Forfeiture. So then they were absolutely gone, and I do not find that these were ever taken out of the King's Hands by Process of Law, but were restored by Grace and Favour; for till the 20 E. II. it appears, that they so long continued in the King's Hands, and he absolutely disposed of them.

Here is now a Favour to them, and a plenary Restitution. Thus it stood in the Reigns of E. I. and E. II.

Now the next thing will be for their Act of 1 E. III. which they back with my Lord Coke's Observation upon it, that it was *Authoritate Parliamenti*. Now, truly My Lord, there is no such Act of Parliament that is any where extant. For it is not in Print, neither are there any Parliament Rolls of E. III's time till 4 E. III. And he that cites it, my Lord Coke himself, cites no Roll at all for it; so that where we shall find this Act of Parliament, truly I do not know. But this Act at best amounts to no more, than that for any personal Trespas of Officers the Liberties of the City should not be seized: but that signifies nothing, for that is not our Case. There are Acts of the Corporations, not of particular Officers; though I cannot but observe how the Law was taken to be at that time, before this their pretended Act, even for the Offence of private Officers; and that appears to be the Law too in the Case of 9. E. I. which I cited before, which was only the Offence of the Mayor of *Sandwich*, who refused to answer for a Trespas, and a Rescue was committed, and the whole Liberty seized.

Now this Act of 1 E. III. be it what it will, though they would take it in that Sense, that no Forfeiture should be incurred for the Trespas of an Officer, yet I find quite the contrary thereunto, and that it hath not prevailed even in that Sense. For 5 E. III. rot. claus. 14. there the King did discharge one from the Office of Mayor, and commands the Aldermen and Commonalty to choose another. Now this, my Lord, I take to be not so much a punishment of the Officer, as a breaking in upon the Franchise itself. But I shall shew more fully in the Reign of R. II. that this was done.

Yet I will first take notice of the Statute of R. II. which is the next thing that they rely upon; and this, with Submission, is no Act of Parliament neither; for though my Lord Coke, in his 5th Inst. 205. says, this is the Statute mentioned in our Books, which supports the Customs in *London* to devise in *Mortmain*, and other Customs against Acts of Parliament and cites Authorities in the Margin; yet my Lord, I have looked, and can find none of them to speak to the purpose for which they are cited, but the Book of 7. H. VI. fol. 1. where the Custom of *London* to devise in *Mortmain* is in Question; and there it was ruled a good Custom, because of the Statute that confirms it after the Statute of *Mortmain*, but says the Book, *Quere the Statute*; so that they were not well apprized of the Statute in those Days, though this were the Foundation of all these Resolutions of that kind.

It appears by the Roll, that it is no Act of Parliament in the Nature of it, for it is 7 R. II. N<sup>o</sup>. 37. 'tis a Prayer of the Commons, That there might be a Patent granted to the City confirming their Liberties, *licet non usi vel abusi fuerint*. And the Answer was, *Le Roy le veult*; but this is no Act of Parliament, it is no more than a Confirmation of the Letters Patents, which had been *Primo*, R. II. Besides further, there never was any Patent granted in Pursuance of this Act: And yet 'tis plain, that if it had been so, it would only have extended to Forfeitures that were past, but could never amount to a Dispensation or License for the future. And my Lord, this appears by these Authorities and Records that I shall now cite. The first part of Pat' Rolls 16 R. II. membr. 36, 37. whereby it fully appears, That notwithstanding these pretended Statutes, there was no such Privilege in the City, but that for the Offences of their Officers, or themselves, the Franchise should be seized.

But, my Lord, I must a little observe, that truly the City have attempted to raise themselves above the Fear of any Judgment in any of the King's Courts; for in *Primo* R. II. Parl. Roll 126. there they petition for a Confirmation of their Character, with a Clause of *licet non usi vel abusi*, which was that they then would have to be done in Parliament for them. But they do likewise desire in their Petition, that notwithstanding any Statute, Privilege, Charters, Judgment made, or to be made to the contrary, their Liberties might be confirmed; of this, 'tis said, The King will advise. There is in 1 R. II. Parliament Rolls 121. as pleasant a Petition as the other; they there do desire, that the Interpretation of their Charter may be left to themselves; and where it is doubting, such Meaning as they should put upon it should be allowable. But to that the King's Answer was, That he would make the Interpretation of his own Charters, according as his Council should advise. So that I observe, they would fain have been absolute, but they could never do it; it hath always been denied them. So that from what was done at this time, and after 7 R. II. it does appear plainly, that there was no Difference between the City of *London* and any other Corporation, only this is really the greatest. But as all Greatness is the King's Favour; so when Men forget their Duty,

in abusing the King's Favour, this great Court is the Place to put them in Mind of it. I come then to the Third Question:

III. *Whether the Act of the Mayor, Aldermen, and Commonalty, in Common Council assembled, be an Act of the Corporation, so as to make a Forfeiture of the whole?* And with Submission, my Lord, that will be pretty clear too upon these Reasons:

1. First of all, the whole Corporation is fully represented by them, notwithstanding the Disparity of Number set forth in their Rejoinder.

2. Again, All By-laws and Ordinances made for the good Government and Order of the City, are certainly the Acts of the Corporation; but the sole Power of making those Laws is in the Mayor, Aldermen, and Common Council; and therefore sure the whole Power of the Corporation is in the Common Council.

3. They have the sole Power of the Corporation-Seal. They can bind all the whole Corporation by any Alienation to, or Charge upon their Inheritance; and by Consequence they may surrender all or any of their Franchises, and then as I said, they may forfeit them.

4. They have pleaded that there hath been Time out of mind a Common Council, consisting of the Mayor, Aldermen, and Two hundred and fifty Citizens, who are called the Commons of the City. So that it shall be intended now, that as they have prescribed for it as incident to their Corporation, it was part of their Original Constitution to be thus represented by them, and ruled and governed by their Laws: But there is another reason for it, and that is, that it is an inseparable incident to a Corporation, implied in Law without grant, that they have a power to make By-Laws to bind the Corporation, without which there were no Government in a Corporation; and therefore a misfure of that Power must be a Forfeiture of their Corporation, because 'tis a breach of their Original Trust: 22 Affis. pl. 34. there is this Rule given, and a true one it is, Where there are many Franchises granted, which do not depend one upon another, there the misfure of one is a Forfeiture of that one which was misfured; but where there are several parts of a Franchise depending all upon the said Franchise, if any part be misfured, the entire Franchise shall be forfeited. As for instance, if a Man have a Fair, a Court of Pypowers is incident to it, the misfure of that Court of Pypowers is a Forfeiture of the whole Fair itself; for where any Part is abused that is incident to an entire Franchise, that Abuse forfeits the whole.

And this is the Opinion of *Palmer's Reports* in the Case of the Corporation of *Maidenhead*, where 'tis doubted whether the Market was forfeited for taking too much Toll, because the Toll was not inseparably incident to the Market, and so was not dependent upon the entire Franchise, and there the rule is taken, as I have said before, that the misfure of a part of an entire Franchise: or a power that is incident to it, is a Forfeiture of the Franchise.

Then, my Lord, if they cannot forfeit here, the whole power of the Trust of the Corporation is reposed in them, and may be misfured by them, to the Oppression of the King's Subjects, and there is no remedy, if they shall not be punished at all. For it is much harder to say, that several Acts of all the particular Persons should forfeit the Corporation, than that their joint Act should do it. But this, my Lord, is an Act contrary to the trust upon creating the Corporation, and may be a misfure to the prejudice and oppression of all people; and if this should not forfeit the Corporation, there is no remedy at all, but the power remains of oppressing as it did before.

Now, my Lord, I think, with submission, I have made it pretty plain, and as they are not distinguished from other Corporations in Point of Privilege as to Forfeitures, so this is their Act, and shall bind them, being done by their Representatives.

IV. Then the fourth Point will be, *Whether these Offences set forth in the Replication are Forfeitures?*

1. The first is the making of that Law in the Common Council for the levying of Sums of Money upon the King's Subjects, and the actual levying of those Sums accordingly; and this they justify under their Prescription to have reasonable Tolls, as they set forth in their Pleadings, from all Persons that come to their Markets to sell Provision there, and power to reduce their Tolls to a certainty by an Act of Common Council. That is their Justification; so that, my Lord, the first thing to be considered is,

(1.) What right they have to these Tolls or Sums of Money assessed by the By-law? and then,

(2.) Whether if they have no right, their taking upon them to make a Law be a Forfeiture?

(1.) For their Right, that depends upon a prescription to have reasonable Toll, as they set it forth, and this, as they have pleaded it, appears to be no right at all; for a prescription to have Toll and Tollage, shewing how much in certain, is void; for reasonable Toll is not incident to a Market, but the Party has it by the King's Grant, and so 'twas judged in this Court, *Mich. 39 & 40 Eliz.* cited by my Lord Coke in the *Second Inst.* 220. So if the King grant a Toll, if he do not in the Grant ascertain how much shall be taken for Toll, that Grant is void, and so is the Prescription too, as you may see in the Corporation of *Maidenhead* in *Palmer's Reports*, fol. 79. grounded upon 9 H. VI. 45. 11 H. VI. 19. and so he cites the Opinion of *Popham* in the Case of *Weldhouse*, for no Subject can prescribe to have Toll, but by the Grant of the King.

But, my Lord, this is not properly a Toll neither, nor in the nature of a Toll; for that is always paid by the Buyer, and never paid by the Seller; but here all that comes to the Market, whether they buy or sell, buy, sell or not sell, they must pay by this Law. My Lord, I cannot see there may be a custom for Persons to pay for Standings in a Fair or Market, as that Cafe was 9 H. VI. 45. but yet that must be prescribed in a certain Sum, which is not done here. And this customary payment is in the same nature as a Toll traverse, or a Toll through, which cannot be in an uncertain Sum; for they are all by Prescription and a Grant of them now uncertain would not be



But, my Lord, however, Judgment upon these Pleadings must be given against the City; for either the Prescription, as they have set it forth, is good, or it is not good; if it be good, then the Traverse that is taken is well taken, *to wit*, that they have no such Custom, and they ought to have taken Issue upon that which they have not done; for, my Lord, they have taken Issue thus, That, Time out of Mind, they have had reasonable Toll of all Persons coming to the Market to sell their Provision, without tying of it to the reasonable Toll assessed and reduced to Certainty by the Law; and this is naught: For though they had a reasonable Toll in general, taking the Prescription to be good, yet if either that reasonable Toll in the use of it were not taken in that Manner, or to that Value that they assess by their By-law, then have they done Wrong; and therefore our Traverse is proper to their reasonable Toll, that they had not, Time out of Mind, such a Toll as they set forth; for it must be such a reasonable Toll as may answer to that which is assessed in the By-law; and that they have not put in Issue. For the King, when once he hath granted a Market, cannot after grant Toll to that Market, because it is a free Market, and the People have Right to come to it as a free Market; neither can they, when once by Custom they have exercised their Power of assessing reasonable Toll, alter that at their Pleasure; for it being once set, all People have Right to come upon such Terms: And if they increase the Toll, under Pretence to reduce it to Certainty, it will be void; for they may lower their Price if they will, but they can never come to increase the Penalty. If, therefore, they have done Ill in not taking Issue upon the Traverse, which does take in the full Substance of their Rejoinder; if it be good, then Judgment must be given against them upon that Reason; so then, my Lord, the Question will be,

(2.) *Whether the making of a Law to raise Money at large upon the Subject be a Forfeiture of the Charter?* And truly, my Lord, that it is. For, First, It is the usurping of a Power that they neither can have, nor have by Law.

Secondly, It is a Breach of the Trust annexed to the Corporation; for 'tis a Misuse of the Franchise, to the Oppression of the King's Subjects; and therefore the Charter must be forfeited, and not the other Franchise; not the Franchise of a Toll, for they have none; not the Franchise of the Market, for that would be nothing. If the Market be forfeited, it must either be extinguished or kept, if it be extinguished, 'tis a Punishment to others that did not offend; and if it be kept, though it be forfeited, 'tis no Punishment to them that do offend: And 'tis a Question whether a Market may be forfeited for taking unreasonable Toll; and that appears in the Case of *Maidenhead*. And, as my Lord Coke says upon the Statute about taking outrageous Toll, the Franchise should be seized only till it be redeemed by them.

But, my Lord, however, without going far into that Matter, this Offence lies not only in taking the Money, but in taking upon them, and usurping a Power to make Laws to raise Money. They have taken upon them a legislative Power to oppress their Fellow Subjects, that is their Offence, and that is a Misuse of their Franchise. My Lord, in the Case of Ship-money it was not the *Quantum* of Money that was raised, that was complained or quarrelled at, but it was the Manner of levying it without an Act of Parliament. The Logick and Consequence of that was it, which was so much debated and stood upon. So here, the Abuse and the Offence is the making the Law, and the Consequence of that; for by the same Reason that they have a Prescription to lay so much, they may have a Prescription to lay ten Times as much. So that upon what I offer upon this Point, I conceive it ought to amount to a Forfeiture of their Charter, and the Loss of their Corporation.

Then the next Thing will be that which is the last Matter, that is the Petition, and that is of a strange nature; where the Offence is not only presenting, but in printing and dispersing of it; it charges the King with interrupting the publick Justice of the Nation, and the making the necessary Provisions for the Security of his Protestant Subjects; for, my Lord, to say, that the Prorogation of the Parliament, which is the King's Act, who surely has alone, and none but he, the undoubted Prerogative calling, proroguing, and dissolving Parliaments; to say that Act of his was an Interruption of Justice, is all one as to say, the King did interrupt: And 'tis done by them as a Corporation; 'tis the Act of the City in their Common Council in the Name of the Corporation; and, as they have pleaded it, the Mayor, Citizens, and Commonalty, in Common Council did do it, which sure is the Corporation, as they would have it. And that I rely upon for the Reasons I offered before upon that Point.

Then the Matter of this Petition is the taking upon them to censure the King and his Government by this Petition. The printing and dispersing is now publickly scandalizing and libelling the King; for 'tis in the Nature of an Appeal to the People: 'tis unlawful to print any Man's private Case, while it is depending in any Court of Judicature, before it comes to Judgment, because 'tis an Appeal to the People. And that was Lord Chief Justice Hale's Opinion in Colonel King's Case. And the Consequences of such Proceedings are so many, and the Danger so great in these licentious Days, that I do not know indeed whether it will tend.

The Fact is confessed by them in their Rejoinder; but they say they do it to alleviate Men's Fears, and quiet their Minds *absq; hoc*, that they do it *aliter vel alio modo*. Surely, my Lord, this is no sort of Excuse in the World, nor is it capable of any. They have owned the Thing, but they have excused it in the Manner of doing thereof. And I may venture to say the Traverse is impertinent: Suppose a Man be indicted for publishing a Libel, and he owns the Fact, but doth traverse *absq; hoc*, that he did it *maliciose*, or with an intent to defame, that surely would be an Answer; for those are Constructions that the Law puts upon it, and not Matters traversable, or to be put in Issue. But if the Fact be done Lawfully, 'tis maliciously done, and with such an Intention. Therefore a Confession of the Fact is a Confession of all the Consequences that the Law puts upon the Fact.

My Lord, this can Amount to no less than the Forfeiture of their Charter, not only for the greatness of the Offence, but because otherwise the Law would be unequal; for if this were the Case of a private common

Person, he must be fined and imprisoned during the King's Pleasure, as was the Case of *Harrison* in I. Cr. 503. for Words spoken of Justice *Hutton*. Now, my Lord, a Corporation is not capable of suffering this Imprisonment; and therefore 'tis a much greater Offence in them, as the Body is greater than any particular Member: And then, that which is a greater Offence would have a less Punishment, if the Charter itself were not forfeited, than it would if a particular Person were punished. And give me leave to apply here the Reason of the Earl of Gloucester's Case, that I cited before, *Quia Dominus Libertatis puniretur in eo quo deliquit*. So they shall lose their Charter for the Abuse of that Power that was intrusted with them by their Charter: Therefore, upon the whole Matter, I do humbly pray your Judgment for the King, that they may be outed of their Franchise of being a Corporation.

May it please your Lordships;

Sir George I AM of Counsel in this Case for the Mayor, Commonalty, and Citizens of London.

The Record hath been truly opened by Mr. Solicitor in all Particulars, except an Omission of one or two, which I shall mention.

The Information sets forth and charges, That the Mayor, Commonalty, and Citizens of London, had, by the space of a Month before the Information, used, or claimed to use, without any Warrant or Royal Grant, the Liberties therein set forth; that is to say; to be of themselves a Body Politick and Corporate with such a Name, and by that Name to plead and be impleaded, to answer and be answered; and likewise to make Sheriffs and Justices of the Peace: But as to these there are only Imparances, and I suppose Continuances. But as to the first Article, the Defendants plead and prescribe, That they are a Body politick Time out of Mind; and then they set forth, indeed, several Acts of Parliament, and Charters of Confirmation: To this Mr. Attorney General doth reply two Things:

First, He takes Issue upon the Prescription, That they are not Time out of Mind a Body politick with such a Name; and then he assigns a Forfeiture, which Mr. Solicitor, indeed, does call two Causes; but they rather seem to be but one joint Cause; but yet take them to be two.

The first is, That the City did assume upon themselves a Power to meet and make Laws for the Government of the City, and thereupon did make the Law which is now in Question; and thereby did levy, and order to be levied, for one Horse Load of Provision so much, &c. and that this should be paid to the Use of the City, and for Default of paying, the Persons denying to pay this Rate, should be removed from their Standings in the Market.

The second Branch is, *The Petition*, and therein are those Words which Mr. Solicitor hath repeated about the Prorogation of the Parliament.

And to all this the Defendants do rejoin, That the City of London has, Time out of Mind, been seized of these Markets; and they say, That the City of London is the Metropolis of the Kingdom, and consists of above fifty thousand Citizens and Inhabitants; and that (at their proper Costs and Charges) they are to provide, and always have provided a Market-place to sell Provision in, and also Officers for the Preservation of good Order, and Regulation of that great Concourse of People that comes thither, and that they have always amended and cleansed the Markets; and for these Charges of the Market-places, and Officers, and cleansing of the Markets, they have always received, and ought to receive reasonable Tolls. They say that Time out of Mind there has been a Common Council in the City, and that, for the like Time there has been a Custom, that they should make By-laws for the better Regulation of the Markets, for the ordering where such and such Markets should be held, and for the assessing and reducing to Certainty the Tolls and Rates that are to be paid by Persons coming to the Markets, so as such Laws be profitable to the King and his People, and agreeable to the Laws of the Kingdom; and then again they set forth the several Confirmations of their Customs and Privileges by Acts of Parliaments and Charters.

And then, as to the second Branch of their Forfeitures, they set forth, That there was such a Plot, and such Proceedings in the Courts of Justice against the Conspirators, and that there were several Judgments and Executions upon it; and they set forth several of the King's gracious Speeches to his People in Parliament: amongst other Things, that he did there, in his Speech therein mentioned, recommend to the Lords and Commons in Parliament assembled, to pursue the further Examination of the Plot; adding, That he thought not himself nor them safe, till that Matter was gone through with, and that the Lords in the Tower might be brought to their speedy Trial, that Justice might be done. They set forth likewise an Address of both Houses for a Fast, wherein they desire that the King would issue forth his Proclamation, which Proclamation is accordingly issued; and in that it is expressed (I cannot repeat the Words, but to this Purpose), *That the Dangers impending could not be prevented, but by the Blessing of God upon the Councils of his Majesty and the Parliament*. Then they set forth, That the Parliament was preparing several Bills for the Preservation of his Majesty's Person and the Protestant Religion, and the Peace of the Kingdom; and those Bills could not be enacted elsewhere, and that they were then depending: And they set forth further, that the Parliament was prorogued before those Bills were enacted: And they set forth also, that the Lords impeached could not be tried, but in Parliament; and that by the Law of the Land it is lawful for the King's Subjects in their Distresses, and for Redress of Grievances, humbly to petition the King for Remedy in that Behalf; and that for Satisfaction of the Citizens, who had made their Applications to the Common Council, and for the alleviating of their Fears; and out of their Zeal for the Preservation of the King's Person, and the Protestant Religion, they did give their Votes to this Petition, as is charged; and they give their Reasons for it; that is, it was ordered to be printed, to the Intent that false Rumours (concerning the Citizens petitioning of the King) might be prevented, and the Enemies of our Lord the King from proceeding in their Conspiracy be deterred, and the Fears and Perturbations in the Minds of the King's Subjects might be allayed, and that the Citizens and Inhabitants of the said



City might better know what was done upon their Application to the Common Council.

My Lord, I have taken some Notes of what Mr. Solicitor has said; but I beg your Lordship's Leave, that I may first deliver what I have prepared upon the Argument; and afterwards I will talk upon my Notes, and give particular Answers to the particular Things he has insisted upon, for so much of them as I shall not answer in my Discourse, which I must beg your Lordship's Patience in; for I fear I shall be pretty long.

I shall go on upon the same Points Mr. Solicitor has done, and endeavour to meet him, and give an answer in all Particulars, and shall add a Point or two which he has not mentioned; as particularly, that this Information (as it is here laid upon this *Quo Warranto*) is not brought against right Persons; for it is brought against the Mayor, Commonalty, and Citizens of the City of London. Whereas it ought to be brought against particular Persons for usurping such a Corporation, if it can be brought at all.

The first thing that I shall go upon, is, *That a Corporation cannot be forfeited*; for now we must begin as it were from the Replication; for there is disclosed all the Matter, upon which the Stress of this Point lies.

And that a Corporation cannot be forfeited, I think will appear by opening the Notion and Nature of a Corporation, which you may find in my Lord Coke's 1st Inst. fol. 202. 250. he says, It is a Body to take in Succession, framed as to that Capacity by the Policy of Man, and called a Corporation, because the Persons are made into a Body, and so are of Capacity to take or grant, &c. And he says, *That Persons capable of purchasing are of two sorts; Persons Natural created of God, such as private Men, as J. S. and J. N. and Persons created by the Policy of Man, as Persons incorporated into Bodies Politick.* So then if this be the true Notion of a Corporation, then all the Question is, Whether there shall remain such a Person in the World as this Corporation of the Mayor, Commonalty, and Citizens of London?

And that this is a meer Personality and Capacity will further appear even by this *Quo Warranto* itself, which says, *That we did claim and usurp to be a Corporation under such a Name, and thereby to plead and be impleaded, to answer and to be answered*: So that there is no more now can be considered in this Record, but whether we have or can have the Capacity of being Plaintiff and Defendant.

My Lord, in *Brook's Abridg.* tit. Corporation (I cite not what is said there as an Authority, but only as an Opinion), he joins the Titles Corporations and Capacities together: I say, it is only the Judgment and Notion of the Man, who your Lordship knows never uses to join any Words as Titles, but what are synonymous; and there he joins Corporations and Capacities, to shew the Nature of a Corporation is a Capacity. And suitable to this is what Justice Windham says in Dr. Patrick's Case; *A Corporation is a mere Capacity, a civil Capacity*, says he, *I do call it an Ens rationis*; whether he did affect that Word because it was in the Case of a Man in the University, I cannot tell; but the Meaning was, that this was the Notion of a Corporation, that it was an invisible Person and Capacity only.

Now, my Lord, I do not love to litigate about Words: I must confess that Mr. Solicitor does not speak without some Authority, when he calls a Corporation a Franchise; but I say it is not properly a Franchise to have a Power to be impleaded and to plead; for as to that they are Consequents, which belong to the Person rather than a Liberty or Franchise that is superadded to it. Therefore in *Hobart* 210. *Norris and Stap's Case*, the Case of the Wardens and Fellowship of the Weavers of *Newbury*; I think it unnecessary to cite the whole Case, but there my Lord Hobart says, *Though Licence or Power to make Law is given to a Corporation by a special Clause, yet it is needless, for I hold it to be included by Law in the very Act of incorporating; and so is also the Power to sue and to be sued: Such Body is a Person that must answer the Law as a Defendant, and sue as a Plaintiff.*

But I do agree, I say, that there is one Case, and yet but one in all the World, wherein a Corporation is called a Franchise; and it is in *Coke's Entries*, tit. *Quo Warranto, Placito primo*; a *Quo Warranto* is brought against several Persons, to shew by what Warrant they claim divers Liberties, Privileges, and Franchises, as to be of themselves a Body Politick and Corporate, by the Name of the Burgesses of *Helmefley* in the County of *York*. So that under that general Word I confess it may be called a Franchise; and the rather, because Mr. *Noy* (a Man of great Learning) in his great Argument of *Fulcher and Haywood's Case* in Mr. Justice *Jones* Reports, says it is a Franchise, for it was called so in such a Plea.

But now, my Lord, that it is not in it's own Nature forfeitable, is made plain by all those qualifications that have been attributed to it, and Expressions in our Law Books about it: As that a Mayor and Commonalty, or Body Corporate, can never die, 1st Inst. fol. 9. b. 3 *Coke* 60. a. 2 *Bulstr.* 233. 21 *Edw IV.* fol. 13. a Mayor and all the Officers; but the Commonalty have Succession in perpetuum, and can never be said to die: And this Notion, my Lord, has gone further than *England*: I beg your Lordship's Pardon if I take the Liberty to cite a very learned Author *Grotius*, in his Book *De jure Belli & Pacis*, lib. 2. cap. 9. he says, *Cities are Immortal*; and a City does not therefore cease to be a City, though all the Citizens of it should die.

But the dissolving of a Corporation by a Judgment in Law, as is here sought, I believe is a Thing that never came within the Compass of any Man's Imagination till now, no, not so much as in the putting of a Case. For in all my Search (and upon this Occasion I have bestowed a great deal of Time in searching) I cannot find that it ever so much as entered into the Conception of any Man before; and I am the more confirmed in it, because so learned a Gentleman as Mr. Solicitor, has not cited any one such Case, wherein it has been (I do not say adjudged, but) even so much as questioned or attempted; and therefore I may very boldly call this a Case *primæ impressionis*.

1 Inst. fol. 13. b. there it is said, If Lands holden of J. S. be given to an Abbot and his Successors; in this Case, if the Abbot and all the Convent die, so that the Body Politick is dissolved, the Donor shall have again his Land, and not the Lord, by Escheat. So that he does allow

a Body Politick may be dissolved indeed; but it is not properly a dissolving, nor a dying of that Body, but a taking away of the Subjects in which it did subsist, or to which it did adhere. And therefore unless it be by such an Accident, as all of them dying, or by Violence, as in the Case of the Monks of *Bangor*, I never heard before that a Corporation was dissolved; to be sure not by a Judgment in Law. My Lord *Roll*, in his Abridgment, Part 1. fol. 514. tit. Corporation, at the Letter I, makes it a Head of one of his Titles, *How a Corporation can be dissolved*; and therefore was led very properly to enquire into all Things that might dissolve a Corporation; for that Book is in the Nature of a Common Place Book. Now under that Head he cites not only the common Case, if all the Members die, then 'tis a Dissolution; but he says further, and he cites an Authority for it, If a Corporation consists of so many *Confratres*, and so many Sisters, and all the Sisters die, this Corporation is dissolved; for both the Brothers and Sisters are integral Parts of the Corporation, and it cannot subsist by halves. But he does not go further, he does not say, If they shall levy too much Money upon the Market, nay, he does not say, if they should commit Treason (if it were possible they could do so) which had been more proper to have instanced in, he being naturally led to it under that Title; for that is a thing that happens a thousand times oftener than the Death of all the Members. And, under Favour, if the Law be so as they would have it, every Penalty levied upon a By-Law does endanger the Corporation every whit as much as this of the Rates upon the Markets.

*Littleton*, my Lord, in his *Seet.* 108. (it is a general Rule, but commonly taken Notice of, and may be in this Case) says there, upon the Statute of *Merton*, An Action will not lie against a Guardian for the Disparagement of his Ward, because it was never heard of from the time of the making of that Statute, that such an Action was brought; and yet he adds, that the Words of the Statute might very properly ground such an Action. Now, my Lord, that was a matter of two hundred Years before *Littleton* wrote, that that Statute was made; and 'tis possible such an Action might have been brought, but not remembered, and that is an Action brought by an Inferior against a Superior, the Ward against his Guardian; but here this Suit, if it can be brought, is brought by the King, who is Supreme, and therefore there can be no Reason to think, but he would have brought many of these Suits to have dissolved Corporations, if by Law it might have been done.

Besides, my Lord, Acts of Parliament can never be antiquated, because a Statute is a Law in Writing; but the Common Law is not a Law unless it be repeated and practised. And so is *Davis's* Opinion in the Preface to his Book, and in the Body of his Reports too: He says, *That when People have tried and used such an Act, and found it useful and profitable to the Publick, and fit to be practised, that Act of Repeating begets a Custom, and so becomes in it's Name and Nature the Common Law of the Land.* But now, my Lord, if I can challenge all the Times, and all the Precedents that ever were in this Kingdom, to shew me where ever there was a forfeiture of a Corporation, or a Judgment given against a Corporation to forfeit it; no, nor ever thought of till this last Year, I think I may assert 'tis not Law: And if it extend to this Corporation of *London*, it must have extended to all Corporations formerly, and it must do so to all still.

In the Case of Ecclesiastical Leases, in the fifth Report, and in several other Places, there is a large Discourse of what Bishops and other Spiritual Corporations might do at Common Law; 'tis said, They might grant for Years, for Life, in Tail, or in Fee. But what might they grant? their Lands and Tenements, their Possessions and Revenues; but never one Word, that they could grant away themselves, or Politick Capacity; still that which was their very Being, was not in their own Power to grant away; and, if it were not to grant, much less were it in their own Power to forfeit: For if it should be so, there is never an Hospital in *England*, but if it have taken too much Toll, were to be destroyed; and never a Bishoprick, Deanry, and Chapter (nay, almost particular Parsonages, for they are Spiritual Corporations too, and all the Corporations of *England* are under the same Rule of Law) if they have transgressed in any of the Kinds assigned here for a Forfeiture, but were to lose their very Being.

That these were in the Power of these Spiritual Corporations at the Common Law, no Man doubts; and if any Man does tell me, that the restraining Statutes do extend to the Corporation, truly I must deny it for it is Lands, Tenements, and such Things, that are mentioned, and there is Provision made only against Grants, and not against Forfeitures. A Forfeiture, Mr. Solicitor says, must be a great Breach of Trust; and so it must indeed! and how then should they answer for it? If a Bishop or a Dean and Chapter, have Lands in Fee upon Condition, and they break the Condition, their Lands are gone: But if that Breach of Condition should amount to a Forfeiture of their being a Corporation, that were very strange; this would dissolve and destroy all the Colleges in the Universities, and all the Charity in the Kingdom; for every Breach of such Condition would be a Breach of Trust.

My Lord, there was a very proper Time when this might have been thought of, if it could have been maintained for Law, and that was in the Time of *H. VIII.* He sent out Dr. *London* and others with a Commission of Inquiry, to examine into all the Misdemeanors of the Monasteries, Convents, and Colleges. To what Purpose was all this done? Could he have brought *Quo Warranto's* against them? He needed not have inquired much for Misdemeanors and Offences; if they had but raised five Pence, nay, for ought I know, if they had but raised five Pence upon a Market, or the like, they had all been dissolved; and 'twas so much the more in this Case then, for this Reason: In those Regular, Religious Houses and Corporations, the Body of them was dead, and the Abbot or Prior was only to appear for them, and plead and defend for them. There 'tis said in the 1 Inst. 103. a. that in a *Quo Warranto* against an Abbot, Bishop, or a Prior, for Franchises and Liberties, if the Abbot or Prior disclaim alone, this shall bind their Successors; and if it were possible there might have been a Forfeiture, yet without so much as troubling himself to assign that Forfeiture, he might have gone that way by *Quo Warranto* to get a Disclaimer.



And 'tis very well known, there were Men put in those Houses to be Heads of them, on purpose to try if they could surrender them: And that they needed not to have done, nor have asked the Consent of the Members to have surrendered; for they needed only to have brought a *Quo Warranto*; for after the Renunciation of the Pope's Power and Supremacy, King H. VIII. did grant his *Conge d'asire* to choose the Heads of those Corporations; and when they were once there, and a *Quo Warranto* issued, the Abbot or Prior might say, This Corporation is but a Liberty or a Franchise, and I am the King's Creature, I will disclaim the Liberties, and there is an end of the Franchise: But this was not thought of in *diebus illis*.

I think, my Lord, that in case of a Town the Law is clear; though I shall not at present much contend with Mr. Solicitor upon that Point, that London stands upon greater and better Circumstances than other Corporations and Towns. It is all one as to the main Points, whether it do, or not; though I shall say enough as to the particular Reason, to answer what he says to the contrary, by and by. But yet this I will say, a Corporation in a Town is more protected in Law, than others are: For, says my Lord Coke, if a Town or Borough does decay, yet it shall remain a Town or Borough; as is plain in the Instance of the Burgeses of *Old Sarum*, and the like. So that it seems, that though the Death of the Abbot and his Convent does destroy that Corporation, yet the Dilapidations and Decays of a Town does not destroy it, but it remains a Town still; nor is the Liberty of sending Burgeses to Parliament destroyed, or forfeited.

I confess, my Lord, I do not see but that at this rate a *Quo Warranto* may be brought against a particular Man, to know by what Authority he claims to have the Liberty of a Subject, to sue and be sued, to plead and be impleaded: 'Tis a Capacity that's born with him, and belongs to him as he is born in England, or as he is by Act of Parliament naturalized, and made a Subject; especially in the case of Denization it comes home to the Point. Why should not a *Quo Warranto* be brought against a Man, to know by what Warrant he claims to be a Denizen, and in that respect to plead and be impleaded, to sue and be sued? These are relative Capacities, that stick and adhere to the Person; and if you once constitute the Person, you shall never say he shall not have the Incidents to such a Person.

This Case indeed, my Lord, that I put last, is so gross a Thing, that it was never drawn in question, though some others have, as Dignities, Lordships, and the like; and yet no *Quo Warranto* was ever brought, or can lie in these Cases. And that is the Opinion upon that great and solemn Argument of the Case of the Earl of Oxford, in Mr. Justice Jones's Reports; where it was held, that an Earldom, or the like, is a personal Dignity, and such a one is in the nature of a publick Person, and by no means can part with or surrender that Capacity. And so your Lordship knows it was adjudged lately in the House of Lords in Parliament, upon the Petition of the Lord *Purbeck*: They all voted there, that Peerage could not be determined, nor surrendered; no, although there was a fine levied, and all the Instruments of Law that could be contrived to annul it; and I cannot see, but that if this Capacity of a Corporation be able to a Forfeiture, all others must be so too.

There is one Capacity indeed, and a small one, that a Feme Covert has by the Custom of London, That she shall trade without her Husband, sole Merchant, and be sued so, and shall sue: The Husband indeed is named, but only for Conformity; the Action is against her, and the judgment against her severally, and the Debt must be levied of her Estate; and it be thought that a *Quo Warranto* lies for such a meer Capacity? No more than it can lie to know, by what Warrant such an one claims to be an Executor, or Administrator, or an Overseer of a Will; and yet there is no Action brought against them in such a Capacity, and as such they are and are sued, though perhaps they would be glad to be rid of that Capacity too.

My Lord, 'tis true what my Lord Coke says in his 2 *Inst.* 664. there was Custom to take Tithes of Marriage Goods within the Dominion of Wales, which is taken away by a Statute; and there he says, If a Custom, that was once reasonable and tolerable become grievous, and not answerable to the Reason whereon it was grounded, yet it cannot be taken away but by Act of Parliament; for an Inheritance once fixed cannot be taken away but by Parliament. If this be so of a little Custom in Wales, how much more is it so of this great Corporation of London, and, which is more yet, of all the Corporations in England?

My Lord, Mr. Solicitor was pleased to say that a Corporation might surrender. I must confess, I should not willingly have meddled with that Point at this Time; but since it has been mentioned, I will only endeavour to say so much as may answer him in what he intended it for, as Ground for the better proving the Point of Forfeitures. I believe Mr. Solicitor (because he cited no Authority for it) might rest very much upon the supposed surrenders in the Time of H. VIII. the Surrenders that were made of the Monasteries then; and I do believe he does presume, as others have thought, that those were Surrenders of their Corporations: Truly, my Lord, I believe they were not; and to prove that they were not, I shall rely upon the Dean and Chapter of *Norwich's* Case, 3 *Coke* 120. which is also reported in 2 *Anderson* 120. and I shall at the same Time mention another Case, and that is the Case cited before of *Fulcher* and *Wood*, in *Jones* 166. and in *Palmer* 491. where the same Question was to be debated, *Whether the Deanry and Chapter of Norwich was given and destroyed by their Surrender?*

My Lord, in the Report of that Case in *Palmer*, I will first remember your Lordship of what is said by *Whitlock* in his Argument of that Case; fol. 501. of that Book; there *Whitlock* sitting in this very Court, says, That although the King can create and grant a Corporation, yet he cannot dissolve a Corporation; and a Dean and Chapter being a settled Corporation, by their own Act cannot dissolve themselves; being once a settled Corporation cannot be *felo de se*. But I say further, those Acts of Parliament made in H. VIII.'s Time (they are all in your Lordship's Memory) that of 27 H. VI. I. gave all the Monasteries under two hundred Pounds a year to the King; that of the 30 H. VIII. cap. 13. recites, that several

other Monasteries had been granted, surrendered, and forfeited to the King; and it says, that the King shall have them, &c. I do allow there are the words *surrendered* and *forfeited*, and I mention them on purpose to answer them; and this is the Answer I give them.

First, for the Word *Surrender*. When the Monasteries were surrendered, that was only a Grant of the Lands, and nothing else; the word *Monastery* can carry nothing else in it. And so is *Wortly* and *Adams's* Case in *Plowden's Com.* 194. where there is a great Discourse of the Surrenders of the Monasteries, and the Acts of Parliament about them, and what ensued upon them; but in all that Book it was not by any Means admitted; that the Corporation, or any of that, was by these Surrenders dissolved: And, my Lord, as to the word *Surrender*, it is fully satisfied by the words *Lands and Tenements*.

Secondly, as to the word *forfeited*, my Answer is this: The Corporation is not named in the Surrender, and therefore cannot be presumed to be intended to be surrendered; and then there are other Things, as Leets, Liberties, and Franchises, which are named, and are capable of being forfeited, and so the word *forfeited* may be applied to them, and very properly; for they are liable to a Forfeiture, but the word *Corporation* is not at all mentioned.

But for another understanding of the word *forfeited*, I desire your Lordship would give me leave to cite a Case in the 2d Part of *Roll's* Reports; fol. 101. (which is called the *Continuation* of his Reports) and it agreeth exactly with the History of those Times: There were some Abbots; as the Abbot of *Glastenbury*, the Abbot of *Reading*, and the Abbot of *Colchester*, that were stiff Men, and would not surrender; thereupon the King gets them indicted of Treason, (the Story is well known how he handled those Men) and thereupon they did graft a Kind of Opinion, that their Land was forfeited by this means; for a small Pretence would serve them to put People into an Act of Parliament of Attainder; and he tells you, that was the Reason why they put the word *forfeited* into the Act of Parliament; and then disbottom themselves upon the Statute 26 H. VIII. cap. 13. that Statute that gives to the King any Estate of Inheritance, whereof any one is seized that commits Treason. Though I do not by any Means allow it to be Law, that those Clergymen by their own Acts could forfeit so much as the Lands of their Corporation; but it was taken for a Pretence, and so they put in the word *forfeited*.

Besides, another Thing is this, the same Statute says, *The King shall have and enjoy the Things there given him, in the same manner as they the Abbots, Priors, &c. should have enjoyed them*. Now if the King shall enjoy all as they did, and in the same manner, what then must he enjoy? It may well extend to Lands, to Leets, and to Markets, and particular Franchises; all those Things the King may have: But shall the King have their very Corporate Capacity? Shall the King have and enjoy the Liberty of suing, and being sued, by the Name of the Abbot and Prior, or the like? That Office, sure, he cannot execute; it is inconsistent with Sense or Reason to say, that he shall have it, or can have it. And in these Statutes they did doubtless accumulate Words to make them look the bigger, because they were to make a great Present to H. VIII. by these Means.

Then comes 32 H. VIII. cap. 24. that relates to the Corporation of the Knights of St. *John at Jerusalem*; and it seems by the penning of that Statute, that this very Question had been taken notice of since the Time of the making of the last Statute in 30; for there it is declared, That that Corporation of St. *John at Jerusalem* shall be dissolved, and that the King shall have their Lands. So that their taking notice, and providing directly to dissolve it, shews, that they had by that time considered, that neither the Surrender of their Lands, nor the vesting of them in the King, had done any Thing to the Corporation, save only they had deserted their House, and fancied themselves dissolved, because they were turned out of their Possessions.

My Lord, in the great Case of *Haywood* and *Fulcher*, 'tis again and again said there, That the Surrender of the Dean and Chapter, (where they surrendered all their Church, and all their Franchises and Hereditaments) was no Surrender of the Corporation, no, though the King did take it to be a Surrender, for he accepted it as a Surrender, and granted them a new Incorporation of the same Name, only adding, *Ex fundatione Regis Edwardi Sexti*. So that he did take it to be a good Surrender, but it was adjudged that it was not a good one; and so it is held in 3 *Coke* 73. And so says the Dean of *Wells's* Case in *Dyer* 273. the Surrender is, *Diaconatus Ecclesie Cathedralis de Wells*: One would think it impossible to have surrendered any Thing by a stronger Word; but yet there they say, 'tis not good without an Act of Parliament.

And whereas it hath been sometimes said, as it is there, they were dissolved, and they have been dissolved by the Surrenders, and the like; there is a very good Answer given to all that Discourse in *Palmer* 495. where 'tis said, When they speak of a Dissolution by Surrender, 'tis a Relation of Fact only, and not of Law; that is, they were dissolved in Fact, so as that they did desert their House, and did demean themselves as if they were disincorporated, but they were not so in Law; for they fancied a Corporation could not be without Lands, and so, when their Lands and Church were given up, they thought all was gone and dissolved: For (said they) a Dean and Chapter must be a Dean and Chapter of some Place, and when the Land is gone, how can they be said to be of such a Place? No, said the Judges there, that is no Reason at all; for the Corporation was before they had any Lands; and if those Lands were all evicted, or they all disseized of them, yet they are a Corporation still. 'And in *Roll's Abr.* 2. Part 185. 'tis said, the Abbies came to the King by the Statutes of Dissolution; so that they had no Opinion that the Surrender did carry even their Lands, though I do admit they did carry their Lands; but I may say they could carry no more, they could not carry their Being of the Corporation.

There is a Case in *Dyer* 282. and 'tis the only Case that seems against us in this Point; there were two Deans and Chapters of St. *Patrick* and *Christ Church* in *Dublin*, in *Ireland*; and these both, and not one of them, were together one Chapter of the Archbishop of *Dublin*, Time out of Mind, and one of these surrendered, and then their House



House was used for a Place for the Courts of Justice, and continued so; and then a Lease is made by the Bishop, and that confirmed by the only remaining Dean and Chapter, which was that of *Christ Church*: And whether that Lease was good or no was the Question, and truly that was the only Question that is made there in that Book; and so 'tis of little Authority as to any Thing else; but 'tis true, that that Book does say in the End of the Case, that the Lease was held good, *quia Corporatio & Capitulum Sancti Patricii prædicti fuit per donum & sursum redditionem Decani & Capituli prædicti legitime dissolutum & determinatum*. My Lord, to that I answer:

First, There was no Occasion for this Reason, because it did digress from the main Point in the Case, as it is truly observed in *Palmer, fol. 502. next*.

Secondly, It was a private extrajudicial Opinion; it was the Opinion of but five Judges, and for ought appears seven might be of another Opinion, and yet the Case was sent for the Opinion of all the Judges here, because the Lawyers in *Ireland*, it seems, did make a great Doubt of it. And it was also an Opinion and Judgment of the favourable Side, for it was to confirm a Predecessor's Lease. But,

Thirdly, Certainly, my Lord, the Case is mistaken, for the Surrender could not be good without the Consent of the Bishop, which is also added in the End of the Case there: He is the Patron, and must necessarily confirm their Acts to make them valid, especially they being instituted, and given to him for his Advice in the Government of the Church, and the Disposal of its Lands.

Fourthly, my Lord, I have this further Answer to give it, that my Lord Coke says in 1 *Leon. 234.* (and 'tis not denied) that this Surrender was by Act of Parliament, or else it had not been good. And beyond that,

Fifthly, I have by me a Manuscript of my Lord Dyer's Reports, the most authentick one, which was my Lord Coke's, and has his own Hand to it in sundry places; and by that he does often correct the Prints of Dyer, and so also he might have done in this Case; for there all these *Latin Words* are left out, there is not one of them, nor any Space left to put them in, nor any Blot for their being rased out, it is an Addition of the Publisher, and printed in another Letter than the rest of the Case is; 'tis not in that Book, which I take to be the truest Original of Dyer: Besides, my Lord Coke's Answer, that it was by Act of Parliament makes an End of all. And truly, my Lord, that the Determination of such Things should be by Act of Parliament I shall cite you one Authority, and I borrow it from Mr. Solicitor, who has mentioned it before 'tis *Rot. Par. 8 R. II. num. 11.* and it is taken Notice of by my Lord Coke, who cites it in his 4 *Inst. 228.* To which I add also, that the Liberties were seized, and the Case determined in Parliament: There the Case was this, the Mayor, Bailiffs, and Commonalty of *Cambridge*, had committed a notorious Uproar and Tumult; they had assaulted the Colleges of the University, they had imprisoned the Vice-Chancellor, and some of the Scholars, they had extorted from them two Releases, and a Bond of 3000 Pounds; and after all this great Uproar and Tumult a Writ went out, but whence? From the Parliament, and there they are summoned to appear, and there they are to shew Cause why the Liberties should not be seized, as forfeited; and there upon full hearing it was adjudged by the King, with the full Consent of the Lords and Commons in Parliament, that the Liberties should be seized as forfeited: All this is taken Notice of by my Lord Coke. But yet, as if he thought it not enough to have said all this in the Body of the Book, he puts down in the Margin of that Book these Words, *Nota*, It was done by Act of Parliament. And that it was taken, that a Corporation cannot be dissolved but by Parliament, I shall cite your Lordship Davis's Reports, *fol. 1. b.* where he says, that neither by the Surrenders, nor by the Acts of Parliament that gave their Possessions to the Crown, were those Corporations dissolved; the Surrenders did not do it, and the Acts of Parliament did not intend it.

But, my Lord, I shall dismiss this Point, for indeed it will not conduce to the Question, which is not, *Whether a Corporation be surrenderable, or no?* but, *Whether it be forfeitable?*

Now there are many Things that are renounceable, that yet are not forfeitable; an Annuity *pro Consilio impenso & impendendo* may be surrendered, and so is *Empson's Case* in Dyer, *fol. 2.* but it cannot be forfeited for Treason, 'tis a Thing that adheres to the Person, and there is a Privy in it that makes it not forfeitable; so a Guardianship in Socage, a Man may renounce it as well as he may Executorship, but they are neither of them forfeitable; and so is the Trust of a Freehold, and several other like Things.

My Lord, as to what Mr. Solicitor has said, *That a Corporation may be seized, and therefore it may be forfeited*; I think certainly that is no good Conclusion at all. Those Words of Seizures of the Liberties, and seizing into the King's Hands, he has with great Learning collected a great many Records about them, and they make a great Sound at first, but when they are narrowly looked into, they make nothing of Argument at all; they have slept a long Time, and are but imperfectly remembered; they may serve to amuse People, but when they are considered they will signify very little. *Vet. Nat. Br. fol. 161.* He distinguishes there (and every Body must) between the Causes of the Seizure of a Franchise into the King's Hands, and the Causes of a Forfeiture; and there he sets down several Things, and then adds *stude differentiam istorum*: so that there is a Difference, and that Difference ought well to be advised upon. In 2 *Edw. III. 28 & 29. Scrape* gives the Rule, says he, in some Cases a Franchise ought to be taken into the King's Hands, and in some Cases it ought to be seized till a Fine be made to the King; and in some Cases it ought to be fore-judged; and so he makes three Distinctions. Now, my Lord, this will answer (as I shall observe by and by) all that Mr. Solicitor has produced about Seizures, either by Act of Parliament, or for a Fine, or for a Distress for want of an Appearance. If a real Action, there goes out a *Grand Cape*, and there the Lands shall be seized into the King's Hands, and that look big upon Record; but if you come to know the meaning of it, 'tis only that the Sheriff should return Issues upon it, and that is a very little Thing; the King has no Pretence to the Title of the Land, nor is the Suit his Suit, but the Party's: So the Seizing of a Bishop's Temporal-

ties, and the Lands of Priors Aliens, and the like. But Words must have a reasonable and legal construction; as when a Statute is made, that if a Man does so and so his Body shall be at the King's Will, and he shall do with him at his Pleasure, as in the Statute of Maintenance, and the Statute against transporting of Money, that is nothing but that he shall forfeit the Use of his Body, and the Liberty of his Body, and shall be imprisoned for the Offences.

All this I shew, to distinguish about this Word Seizure, and by that distinction to answer the Weight of all the Records that Mr. Solicitor has cited. Those Seizures that were of any Towns, I say, they were only till they had made a Fine to the King; and when the King had so seized them, what did he do? He put in a *Custos* upon them, which was to keep them in good Order; he put them into a safe Hand, but it was never intended to suspend or destroy the Corporation: For the Corporation went on as it did before, it might sue as it did before, and was as liable to be sued as before; it was to put a Guard upon them, not for their Destruction, but for their Preservation; to quell Insurrections, to keep peace and good Order among them; the Seizure of the Liberties was not a seizing of the Corporation, because a Corporation is not a Liberty, it cannot be seized; for the King cannot exercise the Liberty of a Corporation; the King may seize the Mayoralty, and the King may put in such a Deputy, that may be a *Custos*, he may seize the Sheriffalty, he may seize a Leet, or a Market, or he may receive the Profits of them, and execute by Deputy the Purport of them: But what can he do when he has seized the Corporation? Can he himself be the Mayor, Commonalty, and Citizens of the City of *London*? or can he put in any one to be such Corporation? It is not a Thing manurable, 'tis not a Thing seizable, nor ever was seized; for the King can seize nothing, but what he can have and use when he has seized it. And therefore all those *Custodes* that were put into *London*, upon the seizing of the Liberties, were only in the Nature of the Lord Lieutenants, that were to keep Order in the City, and prevent Breaches of the Peace; but still the Customs, the Courts, and the Usages of the City went on as they did before; I cite not any Record indeed for it, because there is no need, 'tis so well known; but if there be any doubt of it, we will make it appear, that during all those times Mr. Solicitor speaks of, who has cited a great many Records, and if he can find as many more, yet still all along the City was in *Statu quo*, as to their being a Corporation; they did sue and were sued, and they did all manner of Acts as a Corporation, which shews that it was not so much as suspended, much less forfeited. This is without Contradiction very plain, during all the time of those Seizures. If it had been forfeited at all, it must have been extinct; and if there could have been a Judgment given against it, it could not have been taken into the King's Hands, but it must have been an *Ouster* of the Liberties.

In *Yelverton* there is a Case of the King against *Staverton*, a *Quo Warranto* is brought against *Staverton* for keeping a Court Leet, and a Court Baron, within the Hundred and Manor of *Warfield*; the Defendant disclaims the Court Leet; as to the Court Baron, the great Doubt is whether a *Quo Warranto* can be brought for it, it appearing that he had a Manor; for that is inseparable to a Manor. For he that has the Demesnes and Copyholds, must call his Tenants together to do Suit and Service; and 'tis agreed indeed a *Quo Warranto* will lie. But *Plumier*, Chief Justice, and *Fenner* doubted of it. And in that case Judgment must be, that he shall be ousted of the Liberty, and not that it shall be seized; for the King cannot use it, and therefore 'tis impossible, that it should be taken into his Hands: And so 'tis, as I said, of a Bishop's Temporalities, and the Lands of Priors Aliens, and the like; it is a meer Personality, and cannot be seized.

But Mr. Solicitor says a Corporation can commit a Crime: Truly I do very much question that, nay, I shall deny it by and by: But if they do commit a Crime, the Punishment must be by other means than a Forfeiture; and I will cite your Lordship a parallel Case: For as I said before, a Corporation is an Ability or Capacity like that of a Denizen, and so can no more be forfeited than a Denizenship can. There is *Verseline Manning's Case* in *Lane's Reports*, 58. and the same Case is in *Rolls 1. Abr. 195.* in an Office of Intrusion, it is there found, that *Verseline Manning* was a Denizen by Letters Patents, and in the Letters Patents there was a Clause, as is usual in Patents of Denization, *Provisum*, that *Verseline Manning* the Denizen should do liege Homage, and that he should be obedient and observe the Laws of this Realm. The office finds that he never did Homage, nor was obedient to all the Laws of the Realm; and it was urged that consequently he had lost his Denization, for Breach of the Condition. No, says the Court there, by no means, this must have a reasonable Construction, not to take away his Capacity of being used as a Subject, and so suing and being sued; but the Promise is to be interpreted thus, for his Non obedience of the Law he shall forfeit the Penalties appointed by the Law: So, I say, a Corporation, if it do offend the Laws, shall forfeit and undergo the Penalties appointed by the Law, but not be incorporated, any more than a Denizen underdenized.

My Lord, the next Point that I go upon is, what I at first mentioned, and that is this, That this *Quo Warranto* is not well brought, and that can be no Judgment given against us upon it, if we should admit (which I do not) that a Corporation is forfeitable; or if I should grant (which I do not neither, but shall come to that afterwards) that the Particular assigned are Causes of a Forfeiture.

Now this *Quo Warranto* is brought against the Mayor, Commonalty, and Citizens, of the City of *London*, that is to say, against the Corporation (for that is the corporate Name, and no Man sure is so vain to think that can be the Christian Name or Surname of any natural Person) therefore I say 'tis brought against us as a Corporation, and charges us, that we have usurped the Liberty of being a Corporation, under a Name, for a Month before the Information brought. Now, my Lord, I say this is impossible, and this is repugnant; for the Question is, whether we are a Corporation, and that is a Liberty to be Plaintiff and Defendant? And then comes Mr. Attorney, and admits us to be Defendants; for he sues by that Name, and yet the very Question that he brings us to dispute on is, whether we are capable of being Defendants.



or no: That is just as if he should have said, I have brought you into Court, and you must be Defendants, or else I have brought you here for nothing; for there is no Cause depending without Parties, Plaintiff and Defendant; and then I will assign for the Cause of my Suit, that you are no Defendants; nor is it possible for you to be Defendants.

My Lord, this is plain Reason; but I shall strengthen it with great Authority, and that is the Case upon a Writ of Error, out of Ireland, to reverse a Judgment given in a *Quo Warranto* against the Corporation of Dublin: It is in *Palmer* the first Case, and 2 *Rolls* fol. 113 & 125. A *Quo Warranto* is brought against *Cusack*, and other Aldermen of Dublin, who pretended to have Privileges, and a Guild, and to be a Corporation, and this I presume is for their being a Corporation; for there is a *Curia advisare vult* as to the Corporation, and so 'tis not put in the Case, but 'tis also brought for several Liberties that they did pretend to claim; as that they only, and none others, should sell and buy all Merchandizes, and nobody should buy of another, or sell to another, but to them; that all Merchandizes should be brought to their Common-hall, &c. Now, as to these Liberties, they are forejudged, that the Liberties should be seized, and they ousted; as to their being a Corporation, *Curia advisare vult*; so the Case is in *Palmer*: But in the other Book in 2 *Rolls* 115. it is agreed, if a *Quo Warranto* be brought to dissolve the Being of a Corporation, it ought to be brought against particular Persons; for the Writ supposes, that they are not a Corporation; and 'tis to falsify the Supposal of the Writ to name them as a Corporation. Now here this Writ, it supposes them to be a Corporation, or else they could not be Defendants; and then it comes and falsifies that Supposal, by assigning that they are no Corporation, nor ever were, or if they had been, they had forfeited it; and so all the Foundation that this Writ stands upon is destroyed.

In this Case of *Cusack* I am assisted further with a Report of it in my Lord Chief Justice *Hales's* Book; a Report of very great Authority with all Men of our Profession: And there he says expressly, If a *Quo Warranto* be brought for the usurping a Corporation, it must be brought against particular Persons, because it goes in Disaffirmance of the Corporation; and Judgment shall be given, that they be ousted of the Corporation; but if it be for Liberties claimed by a Corporation, then it must be brought against them as a Corporation.

Lord Chief Justice. What Folio is it in my Lord *Hales's* Book, Mr. Recorder?

Mr. Recorder. It is my Lord *Hales's* Common-place Book, which is in *Lincoln's-Inn* Library, fol. 168. *placito* 7. and this is our Case directly. If you go about to say, our Corporation is forfeited, or must be dissolved, nay more, (as you say here) we never have been a Corporation; or by Forfeiture our Corporation is lost long ago, then there is nothing can come before the Court properly, but that *J. S.* and *J. N.* particular Persons, have usurped to be a Corporation, when they are none. This Information is brought in Disaffirmance of their being a Corporation; and therefore there must be set up somebody capable of being a Defendant in such a Suit; and who can that be but particular Persons, which ought to have been named, as they are in that Case of *Cusack*? For as Judgment of Ouster of particular Liberties, given against particular Persons, will not bind the Body of the Corporation; so the Judgment, that they are not a Corporation, will not be good, unless it be given against those particular Persons that usurp the Corporation. And I do say further, that individual Freemen of London cannot possibly be bound by this Judgment: For they are not here before you, nor were they ever so; for it is the Corporation here that is made the Defendant. And I do not now consider the Number that make up that Body (London's being so populous doth not alter the Case;) for the Case is the same, if it were the Corporation of *Queenborough*, or any other petty Corporation. Suppose twenty Men be a Corporation, or pretend to be a Corporation, and you come to enquire by what particular Means these Twenty Men pretend to be a Corporation, or, as the Words of this *Quo Warranto* are, *usurped* to be a Corporation; you must not say that they are one, and then say, that they usurped it; for 'tis not the Corporation that usurps to be a Corporation, that is impossible; but it is the particular Persons that usurp to be a Corporation, when indeed they are not one. A Corporation may usurp a Market, they may usurp a Leet, but they cannot usurp themselves. In *Townsend's* Book of printed Precedents (which is a laborious Thing, and wherein he has collected all the Precedents he could meet with of *Quo Warranto's*) there is but one in all the Collection, that was brought against any Persons upon the Score of being a Corporation: And what is that? How was it brought? Not against a Corporation that was, but against a Corporation that never was, that is to say, a Parcel of People, that took upon themselves to be a Corporation, when they were not; and that is the same single Precedent in *Coke's Entries* 527. tit. *Quo Warranto*. The King against *Helden*, and other Burgesses of *Helmsley*, for usurping to be a Corporation by the Name of the Burgesses of *Helmsley*. And how does the Attorney General there bring the Writ? He brings it against particular Persons. My Lord *Hobart*, who was then Attorney General, never thought he could have maintained his *Quo Warranto*, or expected Judgment against them, if he had brought it against the Burgesses of *Helmsley* generally, and then have said, that they were no Corporation; but he brings it against those particular Persons, and thereupon they come in and disclaim their being such a Corporation, and the having the other Liberties; and the Judgment is, That of those Liberties those particular People should be ousted, and should not intermeddle with them.

Now, my Lord, what Judgment can be given in this Case, that the Mayor, Commonalty, and Citizens, shall not intermeddle with the being of Mayor, Commonalty, and Citizens? 'Tis a very reasonable Judgment, that *Helden* and those particular Persons should not intermeddle with such a Liberty, or be in such a Corporation; but if such a Judgment be given against the City here, that would be as much as to say, That you have never been what you are, or you shall never be what you are, that is the *English* of it.

And, my Lord, I am sure, as there never was but one *Quo Warranto*, that we can find any printed Precedent of against the Being of a Corpora-

tion, so that very Precedent is not against those that really were so, but particular Persons that usurped to be so. And if you search all the Records of this Kingdom, and all the Books in all the Offices, you will never find any that is brought against a Corporation, for being a Corporation, upon Pretence that they might be made none by a Forfeiture; and no Prerogative of the King shall extend to excuse this, but his Action shall abate, if it be not right brought, as well as the Subjects, and so is *Plowd' Com.* fol. 85.

Further, my Lord, I have another Authority in this Point; and that is in the Case of the Corporation of *Maidenhead*, which hath been so often cited by Mr. Solicitor, and it is in *Palmer* 80, 81. where it is said, When the Attorney General hath supposed them to be a Corporation, it is not usual to plead them to be a Corporation; otherwise, if he had questioned them as Inhabitants of such a Town, then they ought to enable themselves: Those are the Words of that Book; and what can be more plain? Here the Attorney General supposes us to be a Corporation, his Replication flies in his own Face; and he having supposed it at first, he is bound not to question us for our being a Corporation at any time after. As to the Business of *forfeiture*, it is a strange and a new Word, that never came into any *Quo Warranto* before, that I know of; but we will accept the new Word, but not the Thing, and that they have forfeited by such and such Acts: This sure sure will be very hard upon us; for if it be a Forfeiture, it must relate to the Time of the Thing done, to the Time of the making the Act of the Common Council, to the Time of the Toll levied; or to the Time of the Petition; and if it do so, it must relate like a Forfeiture for Treason; it must reach all mean Acts, all the Leases that we have made since, are gone; all the Judgments that we have given in any Cause, are *coram non Judge*, and void; all the Acts of the Corporation are overturned by this Forfeiture; and we have been under a vast Mistake all this while. We have had no Mayors nor Sheriffs, no kind of Officers, no manner of regular and legal Proceedings; but we have been under a great Mistake ever since this Money was ordained or levied. We have forfeited all; and that it is so, is plain, because in all *Quo Warranto's*, wherein Persons are convicted for usurping of Liberties, there is a Fine set upon them for continuing that Usurpation, and Reason good; then if it be an Offence for continuing the Liberty, we must be fined for doing it ever since the Forfeiture, when, if Mr. Attorney General's Rule be right, there has been no such Corporation; but we ought to have discontinued all our acting as a Corporation, and laid it down; and so every Step that we have taken since hath been irregular, and every Act void.

If so be an Action be brought against Baron and Feme, and the Plaintiff should in his Replication say, they were divorced several Years before, has he not undone all his Pleading? Here then is our Case: Mr. Attorney General admits us to be sueable, and yet charges us to have no Capacity to be sued: I do implead you, but you have no right to be impleaded; here he brings us into Court, and when he has brought us here, he quarrels with us for being here. He makes us Defendants, and then questions whether we ought to be so; and so his great Charge against us is, that we are what he would have us to be, and what he hath made us to be; for if a Month before the Information, the Corporation was not, but the very Being of the Corporation was usurped, how come we at the Month's End to be Defendants? Here comes a new Creation interposed in that Time, and makes Parties sueable in the Court, when by the Charge in the Information we were not so a Month before.

And then, my Lord, the Information is not quite so bad, but the Replication is worse: First, he takes Issue, that we never were a Corporation, at all; and the next Thing is, if ever you were a Corporation, you have ceased so to be, because you have forfeited it so and so several Years ago. This is just then to put a common Case, (and I confess, a very familiar one it is) if I should bring an Action against a Man, and when he hath pleaded, I should by way of Replication set forth, there never was any such Man as the Defendant, and take issue upon it; or, if there were, that he was dead Ten Years ago: And yet this is the Substance of Mr. Attorney's Issue, and his Replication.

My Lord, the Authorities before cited in *Palmer*, *Coke's Entries*, *Rolls*, and my Lord *Hales's* Common-place Book, are not all; for I have some other that never saw the Light in Print yet; and that is the Case of the King against *Bradwell* and others, *Trin.* 18. of this King. A *Quo Warranto* was brought against them for usurping to be a Corporation or Company of Musicians; it had been a strange Thing, if the *Quo Warranto* had been brought against that Corporation, and then the Attorney General had said they were no Corporation, nor ever were; there they did think best and fittest to go against *Bradwell*, and the rest, and that by Name; and only so, not against the Body Corporate. So in that Case of the Corporation of *Worcester*, which was lately tried before your Lordship in this Court; when the *Quo Warranto* was brought against such Men for usurping to be all Aldermen and Common Council-men; if the Attorney General had once called them Common Council-men, it had been a great Repugnancy for him afterwards to say, that they were none; or if they were, that that Privilege of theirs was lost so long ago. So in the Case of the *Quo Warranto* against the *Bermudas* Company; it was against a Corporation, and against particular Persons by Name both. These Things have been considered, and doubtless they have gone on in an ordinary way. I must confess, I was not privy to that particular Case; but by the Report of that Case, which I have seen, I have been informed, that the Corporation never appeared; for they said, 'tis not Sense for us to appear; for it being a Question by what Warrant we are a Corporation, it is not we, supposing us a Corporation, that do usurp, but the particular Persons that do usurp, if it be at all usurped. Now, my Lord, if that had been a regular Suit, no doubt but there would have been Judgment against the Corporation, which there was not; and certainly the Replication of Forfeitures was not good against the Corporation, but against the particular Persons only.

All Mr. Solicitor's Authorities for seising, hold true, if the Corporation would never appear: And what is the Reason it should be brought against *J. S.* and *J. N.* but because Corporations do never appear in such a Case, in regard it were not congruous they should appear? for the *Quo Warranto*



*Warranto* must intend it so, that they were not a Corporation in Being, by implying a Forfeiture. Then say I, no Judgment at all can be given upon this Score; *Non admittitur exceptio ejusdem rei, cujus petitur dissolutio*; a Man shall never be admitted to controvert that to be in Being, which he himself desires should be destroyed, and so has allowed it to be. Shall Mr. Attorney be admitted to deny the Supposal of his own Writ? And truly I think I might very well leave this Part of the Case, and this Point, to Mr. Attorney General himself; for if he will have any thing to be answered by us, he must maintain us to be a Corporation capable of answering; and so I have Reason to expect, that against his own Replication he will be pleased to support the Being of our Corporation, and so dismiss us hence.

My Lord, I have done with this Point, and now I come to the Replication, which indeed is a Kind of a new *Quo Warranto*; for it brings in new Matter, and therein they do charge Two Forfeitures; the one is, by reason of the Abuse of the Market, the other is, by reason of the Petition. My Lord, I shall answer both of them. That we were seised of the Market, that is pleaded, and that is agreed: That we were seised of Tolls, and were to have reasonable Tolls, that is agreed too: That there is a Custom in London to have Common Councils, and that this was by Common Council, is agreed; all this is agreed by the Demurrer: That this Toll (though by the way I must confess, and will agree with Mr. Solicitor, that it is not properly to be called a Toll; for a Toll is only for Goods sold; and when they are sold, in Recompence for the Officer's Attendance for the Testification of the Contracts, and the entering them in their Books; but I agree, this is not such a Duty for Goods bought and sold, but it) is for the Accommodation of Persons repairing thereunto for their Stalls; and, if I would call it by any particular Word, I had rather call it Stallage than any thing else; it is for those Accommodations, which we have been at vast Charge in preparing and providing, and for the Maintenance of requisite Officers, and for the cleaning of the Markets. Now Mr. Solicitor objects, That we cannot prescribe for a Toll uncertain, and he cites the Case of Murage, and the like; and so I must confess, where Murage is granted, 'tis commonly a Thing uncertain; so is Pontage, and the like; but I believe (if I had thought, that it would have been a Point insisted upon) I could have brought you Instances where Murage, and such-like Things, have been granted in general, and they would have been ancient ones indeed: And there is a Necessity for it in some Cases; for when a Town will repair its Walls, the Charge may be greater or less, as the particular Accidents may be, and so perhaps a certain Duty would not do it. When a Wall is to be built, there the Duty may be certain; but when it is built, to keep it in Repair, the Duty of Murage may be uncertain, according to the Charge; and if the Case be not so, it will come little to our Purpose, which is a Duty upon a great and a continuing Charge. I will name him some Things that he must agree, and I know he will grant, are uncertain, as Pickage and Stallage, which are Duties for picking in my Earth to dig Holes for the Posts of Stalls to be fixed in: Now there can never be, nor ever was, any circumscribing in those Matters; for Circumstances in every of those Cases must govern it. If I have Occasion for my Stall to use a Foot of Ground, one sort of Sum is necessary; if ten Feet, another Sum; it ought to be equal indeed, but it could never be good, if it were limited to a Sum certain; and in all Grants that ever were of Pickage and Stallage, they were never reduced to a Certainty; and those are Things too that relate to a Market.

And so I take it to be for Keyage, Anchorage, and the like; for when there are Ports or Places for Ships, to which they may be fixed, the Owner of the Port may have a Compensation for that; but that must needs be uncertain, according to the Circumstances; if a Ship be bigger or lesser, if a Ship stay a Month or a Day, it is not fit the same Rate should be paid; nor is it usually granted by particular Words, *Co. Entr.* 535 & 526, *Placit.* 4. the King against the City of London for the Water-Bailage, and other Things. They pleaded only a Right in general, and do not say what the Particulars were; and yet one of the Things demanded in the *Quo Warranto*, was, as I said, the Water-Bailage; which, sure, if any thing ought to be certain, that ought. In that Case it was good Pleading; though I think I could say more against it than this Thing, that is in the Nature of Stallage; so that all that Mr. Solicitor hath built upon that must, I think, needs vanish.

My Lord, I do not think but London ought to be, and is as much under the Obedience and Correction of the King, as any City; but yet I believe, in these Cases of their Customs, you will give that Allowance and Indulgence to it, that all your Predecessors have done, which is greater than they have given to any other Corporations in the Kingdom, and that because it was London. That there should be such a Thing as a Foreign Attachment, I think, is hardly allowed in other Places; I am sure, I have known it denied in some, that a Contract in Writing should be equal to a Book-Debt; that a Feme Merchant should sue or be sued without her Husband; or if he be named, he should only be named for Conformity. You take Notice, that London is a Port Town, and that Men that trade there, sometimes go beyond Seas, and in their Absence their Wives trade by themselves, and perhaps carry on distinct Trades while they are here; and so they may do in other Places, may be; but only for the sake of London do you take Notice of these Things there, and not elsewhere. Their Penalties, that are sued for in their Courts, a great many of them are such as would not be well maintained in other Courts, or in any other Place; and yet they are maintained there, as namely, That their Penalties should be sued for before the Mayor and Aldermen, when the Benefit of them goes to their Use; and yet that is allowed in the Eighth Report, notwithstanding the grand Objection, that they are in some sort Judges and Parties, *Rolls* 2 p. *Abr.* Tit. *Prescription*, Letter H. Fol. 266. No. 2. & 3. The City of London may prescribe to have a Court of Chancery in London, of Matters tried in the Sheriffs Court, though such a Court cannot be granted by the King's Letters Patents; but the Mayor and Citizens of York cannot prescribe for such a Court, because it were very dangerous, that such petty Corporations should have such Courts.

And, whatsoever is said by my Lord Hobart in his Reports, 63. I do affirm, there is no Act of Parliament that erects a Court of Chancery in London or the Cinque-Ports. If Mr. Solicitor had struggled with me about the being, or not being of that Act of Parliament, I would have agreed with him, that there was no such, sooner than some that he says are none. The Customs of London have been upheld, and, I must confess, I think that is very strange, even against the general Words of an Act of Parliament, 2 *Inst.* 20. A Gaoler in London may permit his Prisoner, that is in Execution, to go at large with a Batoon in any Place within their Jurisdiction, and it is no Escape. And so is *Plowden's Com.* 36. A Citizen of London may set up one Retail Trade, though he was bred to another, notwithstanding of the Statute 5<sup>th</sup> of the Queen. And for a general Rule take that that is said in *Palmer* 542. Those of London may prescribe against a Statute; and the Reason is, because their Liberties are confirmed by Statute, and other Towns are not. In *Rolls Rep.* 1 P. 105. *Sprake* against *Tenant*, my Lord Coke being then Chief Justice, says, We take notice of the Customs in our Courts, and other Courts in *Westminster Hall*, and in London. *Fleetwood*, Recorder of London, says a very strange thing in 1 *Leon* 284. *Hollingshead's* and *King's Case*, and in 4 *Leon* 182. that the King's Courts ought to take Notice, that those of London have a Court of Record; for if a *Quo Warranto* issues to the Justices in Eyre, it does not belong to them of London to claim their Liberties; for all the King's Courts have Notice of them. And truly I have been informed, I mean by Copies of Records, that when the Justices in Eyre came to the Tower, this was a Privilege allowed to them, they were not bound to set forth their Liberties, as others were.

My Lord, I think this, as it is pleaded, is a Duty very justifiable, and very well payable, by virtue of this Custom. I do agree, as I said, a Toll is properly for Goods sold, and this is a Custom for the Accommodation of those that brought Goods to be sold; and it is like that 1 *Leonard* 218. my Lord Cobham's Case, a Duty paid for the Standing in the Cellar; and there that is held to be good. In *Rolls* 2 p. of the *Abridgment*, 123. Letter B. *Hickman's Case*, the Lord of a Manor may prescribe to have the Eighth Part of a Bushel of Corn in Four Bushels that are brought to the Market within the Manor, in the Name of the Toll, and that is for Stallage only; for it is said there, Whether it be sold or not. And in the same Book, fol. 265. the City of Dublin set forth, that they are Owners of the Port of Dublin, and that they maintained Perches in the said River, to direct the Ships in the deep Channel, and that they kept the Key and the Crane; and therefore, in Consideration of that, they prescribed and demanded Three Pence in the Pound for all Merchandizes in the said Port, and it was held good. Now I agree Toll-through, that cannot be prescribed for simply and generally; but by Toll-through I mean, as you know, for passing and repassing through only, and not for staying. But yet even that may be prescribed for too, in Consideration of repairing a great Highway, or a very foul Way, or maintaining a Bridge, and the like. And therefore, if our Considerations here be as good, then we maintaining those great Places may prescribe for this Duty, as for passing through the Streets, though it were no Market.

There is a famous Case reported in *Rolls* 1 p. Fol. 1. & 44. and it is in 2 *Bulstrode*, and also in *Moor*; it was the Case of the Bell-man of *Litchfield*: A Prescription is made, that the Corporation of *Litchfield* hath a Market, and they ought to repair the Way to it, and to appoint a Bell-man that should sweep the Market-place; and that for this the said Bell-man, time out of mind, had taken of those that brought Corn to the said Market, and opened their Sacks to sell, a Pint of Corn, if but a Bushel or under; if more, a Quart. So that if it were opened and not sold, yet he was to have that Duty, and that Prescription was adjudged to them by all the Judges; and yet it does not appear there, whether the repairing that Way cost them 5s. or 5000l. and yet by Intendment they would not account it unreasonable, though it might have been urged it was very unequal; if they could take a Pint for that which was under a Bushel, perhaps they would take, by that Means, half of what the Party bought; but if there were Fifteen Bushels, they had but a Quart, and that was objected as to the Inequality of it; and yet they all passed over that by a reasonable Intendment, and would not deny the Prescription to be good. And the Case of Cranage in *Dyer*, and the Case of 21 *H. viii.* are admitted to be good Law, where the Town of *Gloucester* prescribed for a Toll of Boats passing by the River near the Town.

Now, my Lord, for ours, there was very great Reason to induce it, the great Alterations that were made in London by the Fire; and it was the first Time that London was burnt: And if there should be War, and so great Alterations and Confusions, there were great Cause, that the City, that lays out great Sums, and must be at such a publick Charge, should not be Losers by it.

And we do set forth more than they do in the Case of *Litchfield*, that we provided the Market-places at our own Charge; and if they will alter them, they must expect to pay some Compensation for it; that we do keep Officers, and pay them for cleansing and keeping Order in the Markets: And above all that, we provide Standings and Stalls, and such Accommodations, and that I am sure is a Provision no Lord of a Market is bound to make, unless he will; and therefore the Market-people, that are accommodated by it, have great Reason to pay for it; and we pay all the Taxes for the Market-places, for the Ground is ours; and that is not alledged in the Pleading indeed, but it must be implied, because we pay the Taxes, and they that have the Standings are liable to pay the Taxes: And so is the Judgment in *Rolls*, 2 p. 239. and the second *Abr.* 289. And in the Case of *Cusack* Justice *Doddridge* says, that the redeeming of one Fair from the Abbot of *Westminster* cost the city of London 8000l. for he had a Fair at *Westminster*, and that during that Time no Sale should be made in London, or the Places adjacent; and a great Rate it was, if it were the Measure of a Toll is according to my Lord Coke 2 *Inst.* 58. where the Thing demanded for Wares or Merchandises does so burden the Commodity, that the Merchant cannot have a convenient Gain by Trading therewith; and thereby Trade is lost or hindred, then it is



evil Toll. But here indeed the Market-people are better accommodated than ever they were; and Trade is so far from being discouraged, as that it is increased, as is implied in the Replication; for it is said we receive 5000*l.* a Year, which if it were so unequal, would not certainly be paid, nor could be, if there were not great Trade there. So that the Increase of Trade is the thing complained of in this *Quo Warranto*. And the Truth of it is, I have examined and looked into the Fact of these Things, and there is nothing in this By-law, but what was really anciently paid, except only in one Instance, whether it were 6*d.* or no, that was paid when a Cart was drawn by Two Horses, which now is but 4*d.* and if we have increased the Toll, which I doubt whether it be so or no, it is only in a very Trifle.

Now, my Lord, this Case, I think, is a stronger Case than that in *Rep.* the Chamberlain of London's Case; there is no Consideration of Stalls, or cleansing the Place, but only they had an Officer to search and view, and that was a new Appointment of their own; they could not prescribe for it, but it was thought a Penny was a reasonable Recompence, and the Subject had a Benefit by it; and if he would bring his Cloth to London to be sold, he should come thither to have it viewed, and give a Recompence for it. Now London is all Market indeed, every Shop is a Market; and it hath been well said of the Judges several times in *Westminster-Hall*, that London is the Market of all England; and there is never an Acre in England, but is the better for that.

As to the Imposition upon Coals, that is but an Inducement; and an Inducement is never to be relied upon; it is not to be stood upon; and Mr. Solicitor did very honourably decline it, and did not make any thing of it, nor trouble the Case with it.

When the City did make this Act of Common Council, they did consult with their Counsel for Matter of Law, and with their Officers and Fellow Citizens for Matter of Fact, and did adjust these Rates, and enacted them to be paid, they being reasonable ones, and according to the ancient Usage; but if they were mistaken, it will be no Cause for you to give Judgment against them, for many other Reasons: As first, you cannot judge this to be unreasonable. I have not heard one Word said, that this is an unreasonable oppressive Toll. Here is Money levied; What then? If it be a reasonable Sum, it is not so great; it does not deserve the Name of Oppression. I say, it is not so great an Oppression, if they should have been mistaken in the Form of instituting the levying of it; if they might have done it under their Common Seal, and now they have done it without that by Act of Common Council. Nay, it does not deserve that you should judge it unreasonable; you cannot do it here, for the Considerations are meritorious, and equivalent to it the great Charge they were at in building, and they still daily are at in cleansing and repairing, and providing Stalls. But, however, the Case is not so disclosed here, that you can judicially determine this to be an unreasonable Toll; according to the Rule in *Coke's Magna Charta* 222. the Toll of a Market need not be certain, only it must be reasonable; and what shall be deemed reasonable the Judges must determine, if it come judicially before them. So shall reasonable Customs, and reasonable Fines, and reasonable Services, and reasonable Time to remove Goods, and the like, they must be judged by the Discretion of the Justices upon the true State of the Case before them. Now this Case must have all its Circumstances stated and agreed by Demurrer, or found by Verdict. And so is *4 Rep.* 27. *b.* and *Hobart* 135. and 174. as in the Case of Copyholders Fines, the Quality and yearly Value of the Land must appear, or else there cannot be Judgment whether it be reasonable or no. In the 13th Report. fol. 3. & *Croke Car.* 196. Where the Question was, Whether the Lord of a Manor might affect two Years and an half Value of Copyhold Lands, according to the Rack-rents for a Fine upon Surrender and Admittance, and upon Nonpayment to enter for the Forfeiture; as suppose Land, it be rented at 20*l.* a Year, here is 50*l.* demanded for Admittance; there it appeared judicially that it was unreasonable; and so it was adjudged, because the Value was certain. But who can here say, Whether the providing of Markets costs 5*s.* or 500*l.*? It is not estimable. Perhaps we have overbought all these Tolls that they call unreasonable; we aver it to be reasonable, the Demurrer agrees it to be so, and you must intend it to be so, unless the contrary be set forth clearly in its Circumstances; for that will have a Forfeiture, must shew the Circumstances to make it out.

My Lord, another Thing is this, to answer Mr. Solicitor in that Point: I say, an unreasonable By-law is no reasonable Cause or Colour for forfeiting a Corporation, admitting it to be unreasonable, though I grant it not. My Lord *Hobart* in *Norris* and *Stap's* Case, *Hob.* 211. says, that though Power to make Laws is given by special Clauses in all incorporations, yet it is needless; for that is included by Law in the very Act of Incorporating. For as Reason is given for the natural Body or the governing of it, so Bodies Corporate must have Laws as a politick Reason to govern them. Reason is a Faculty in them as 'tis in a Man, and may err; and therefore, says he, If the King do grant Letters Patents of Incorporation to Persons, and he doth thereby make Ordinances and By-laws himself, they are subject to the same Construction and Rule of Law, as if they were made afterwards by the Corporation. For the King can no more make an unreasonable By-law than a Corporation; but if the King do, shall that affect the Corporation, and make the Corporation void by way of Repugnancy, or an instantaneous Breach of Condition? No, it shall not. And therefore as they may receive unreasonable Rules from the King, without defeating of the Corporation, or having their Being thereby vacated; so they may make unreasonable By-laws without the same Danger of destroying the Corporation. The Cases are very many, wherein By-laws have been judged unreasonable; the Truth of it is, there is a great Misfortune in the penning and making of those By-laws; by some means or other there is something discerned that still proves an Exception to it, as we see in the Case of the Carmen and the Woodmongers; their By-law was made and re-made, and corrected again and again, before it could be made to hold Water in this Court. So in the Taylors of *Ipworth's* Case, the *Bradnox's* Case, which was here lately. All these have been adjudged void; but what then? In all these Cases it was never said,

Hereby your Corporation is destroyed, you have erred in making a By-law, and therefore you have lost your being of a Corporation. Besides, if there were but a Colour for it, and it were any thing tolerable, surely that were enough to make us excusable in such a matter. If it has been received, as we agree it has, the Officers are Trespassers, every Individual of them are sueable, and any Man may bring his Action against them. But they that come to the Market, think not fit to complain; if they did not like the Market, they would not come at all; and if they did not like the Payment, they would not come neither; and there is no levying of any thing unless they do come.

Now, my Lord, I will admit the levying and the receiving, and yet I say this is no Forfeiture; for here is a Mistake of Law, or a Mistake of Fact, by Colour whereof Money is received: This by no means will work a Forfeiture of a Corporation; for at that rate, every Penalty that has been levied by a By-law will be adjudged a Levying of Money without Law, and so forfeit the Corporation; which has not been done in other Cases of By-laws, and those much worse than this; because most of those By-laws were made for levying Money upon Men for exercising a Trade; and 'tis much more to say that you should levy such Sums of Money upon every Stroke of honest Industry, whereby a Man gets his Livelihood, than that you shall pay so much for your Accommodation in my Ground for the better vending your Goods. This hath been held good in some Cases, but in others it hath been held naught; and this hath been all received and levied to the Use of the City too, and so 'tis a levying of Money, whereby they have a great Advantage; nay, 'tis worse still, because it is imposed by Force, and recovered by Force: but here 'tis a voluntary Penalty, no Force, no Compulsion, only their being removed from their Standings, no other Penalty, no Imprisonment, or the like; but if you do not like the Conditions, you may be gone: I desire you to walk out of this Market, if you don't like the Price of the Provisions; and to be gone from the Stall, if you don't like the Price of the Standing. We were not bound to provide these Stalls for you, but having provided them, if you don't like them, you may leave them; in other Cases, the Man is imprisoned, and sued by Action for the Penalty; here at any time, if you don't like, you may be gone.

My Lord, I am very confident, if this be so, that all Monies levied by a Corporation without Law are Forfeitures, or where the Law is mistaken; then I dare boldly affirm, that we never were a Corporation two Months since London was London; but by virtue of some old sleeping By-law or other, that has been set on foot, Monies have been levied, which perhaps will not be in Strictness allowed good: And if all these had been Forfeitures, we had been in a strange Condition, not one Month or two should pass over us, but we had forfeited it; and never can there be perhaps a Month to the End of the World, but we should still be forfeiting. And what is said of us, may be said of any other Corporation that happens to make By-laws. And I am sure in former Times there were Monies levied with a Witness, I mean not the late Times of Rebellion only, but an hundred Years ago, strange Exorbitances of that nature were committed by London and other Corporations; then they went by way of Information, but never was it thought that it could affect the Being of a Corporation: If it should do so, I do not know whether it will go at last. The greater or the lesser Sum is not that that will difference the Law. Is it a Forfeiture to receive 5000*l.*? Why is it not a Forfeiture to receive 500*l.*? Why not to receive 5*s.*? Why not to receive 5*d.*? No Bounds can be set for that, if it be a Transgression of the law; here is a Tort and a Wrong done by your By-law, that you have levied 5*d.* and therefore all this great Inheritance of London, this, that is the greatest Inheritance of the Kingdom, is forfeited for a Trifle, upon Three Halfpence, or a Basket of Eggs.

Nay, my Lord, to go further, I say, If this be a Forfeiture, I say it is only a Forfeiture of the Market; nay, not so much neither, 'tis only a Forfeiture of the Toll: My Lord, I cannot but once more mention that excellent Notion of my Lord *Hobart*, That the Power of making By-laws is included in the Act of the Corporation; for as Reason, says he, is given to a natural Body to govern it, so a politick Body must have Laws, as its Reason, to govern it. Now then the making of these Laws is but the Exercise of that Reason, declaring the Mind of the Corporation, for the Direction of the Officers of it, what to do, and what to take; and 'tis but like the Mind of a Man that directs his Hand what to do. For this is not like the Duty of Stallage, that relates to the Publick, and relates also to something that before they had no Interest in; but only relates to the Administration of a private Property, and directs the Manner of that Administration. They are Lords of the Market, and that is casual to them, it is not necessary for them so to be. If any Corporation bid their Officers levy so much Money; suppose they bid them take more Toll than is due, or levy more Money for Rent than is due for the Land, why this might be looked upon as a great Breach of Trust and Encroachment: They should have had but 6*d.* and they took 7*d.* and this done by Act of Common Council, which is their way of expressing their Mind; yet surely it would be no Forfeiture, because the Land is their own, and the Administration of it belongs to them only in point of Interest and Property. Suppose a Gentleman has a Market, and his Reason, which is his By-law, as my Lord *Hobart* says, puts him upon taking of Toll; but he does a little mistake the Law or the Custom, he bids his Servant take so much, which perhaps may be too much for Toll; does this destroy his Capacity of suing and being sued? You may as well say such a particular Person shall not plead, or be impleaded, if he do so and so. Nay this, if he were a Denizen, does not forfeit his Denization, and yet a Denizen is as perfectly a Creature of the King's as a Corporation is. It is *Basilicon Doron*, it is the Bounty and Kindness of the King to one born out of his Dominions, to give him the Capacity of a Subject, to sue and be sued, and the like, which cannot be forfeited, even for Breach of Conditions in the Letters Patents of Denization. For this is within *Verfellin Manning's* Case; if he does not observe the Laws of the Land, 'tis true, he must be punished for it, but he shall not be undenizen'd.

My Lord, there is a Statute, which I think is a most plain Declaration of the Law in this Case, and 'tis the Stat. of *West.* 1. cap. 31. Some call it



it the 30th, because they differ in the numerating and heading of the Chapters. 'Tis the Statute concerning those that take outrageous Tolls in Market Towns. The Statute says, *Le Roy prendra la Franchise del' March en sa Maine*. The King shall seize the Franchise into his own Hands. My Lord Coke in his Comment upon that Statute says, he shall seize the Franchise of the Fair or Market, till it be redeemed by the Owner, that's all. But this is intended, says he, upon an Office to be found; for in Statutes all Incidents shall be supplied by Intendment.

Now in the *Quo Warranto* that was brought against the Corporation of Maidenhead in *Palmer's Reports*, there is this very Case. That Corporation took an outrageous Toll, too much Toll, or that that was not justifiable, for going over their Bridge. Yet it was so far from being imagined, that this should be a Forfeiture, (and yet the Case is the same, let any Man distinguish it that can) that it was a Question whether the Market was forfeited, or no, as you may see in that Book, fol. 82. And there 'tis said by *Dodderidge*, and at last it was agreed by all the Court, that it should be a Forfeiture only of the Toll, and not of the Market. And I desire that that *Folio* may be noted by your Lordship, and that you will please to look into what is said in that Case; for 'tis debated before, and it seemed as if they would have forfeited the Market by it, but not the Corporation; and yet that was not forfeited neither. And to this I will apply that Rule that Mr. Solicitor himself did mention, *Puniatur in eo quo peccat*. You have offended in the Toll, therefore you shall suffer in the Toll, not in the Market, to be sure not in the Corporation. For if it were that, it should affect the Market, it would be because it hath some relation to a Market as a Toll hath; but how can this possibly affect or touch the Corporation? The Statute indeed goes thus far, and says, Whosoever shall take outrageous Toll shall forfeit the Market; but then shall we come and add, Whosoever shall take outrageous Toll, shall forfeit his Capacity of holding a Market, or any thing else? Do they complain of us for taking the Legislative Power upon us, and therefore we shall forfeit our Corporation, when the Statute itself has appointed the Punishment, and says only, the Market shall be forfeited, and so make a new Law themselves? Statutes are supposed to be penal enough of themselves, and all penal Statutes are to be taken equitably as to the Penalty, and not stretch'd beyond the Letter. And where-ever a Statute inflicts a Penalty, and says you shall forfeit so much, as my Lord *Hobart* says, the Common Law shuts up the Negative, that you shall forfeit no more. How then is it possible we should forfeit that, which if it were forfeitable at all, is not within the Provision of this Law?

'Tis true, as Mr. Solicitor hath said in the Book of Assises that he cited in *Vet. Nat. Brev* 161. it is said you shall forfeit in the Case of a Misuser (where the Liberties are not depending one upon another) only the Liberty that is abused; but how that can be applied for him I understand not; for nothing can be more flat and plain against him: If so be we should forfeit our Toll or our Market, be it so; nay, if we should forfeit our Liberty of having a Common Council, what then? How is it possible to bring it up to a Forfeiture of the Corporation? You shall forfeit a Court of Pypowders, if you forfeit your Market, because 'tis incident to it, and dependent upon it, and subject to what Dangers the Market itself is subject to; but the Being of a Corporation, nothing can transcend that. To be sure what is incident to it, cannot transcend it; 'tis but a Subject to that which is superior.

For Example sake, my Lord, I will cite you a Case, which is the Case of the City of London too about the Measurage of Coals. It is Sir *Julius Cesar's* Case, 1 Leon' 106. And I chuse to cite that Book; for though it did not come out with your Lordship's Authority, yet my late Lord Chancellor gave this just Account of it, That it was one of the best of our later Reports. Sir *Julius Cesar* libelled in the Admiralty against the Officer of the City for measuring Coals upon the *Thames*. *Fleetwood* came to the Bar, and prayed a Prohibition, and *Edgerton* the Solicitor on the other Side complained, that the Mayor of London did take a Fine for this Measurage, and made an Office of it; and this he conceived was Extortion (which is the Thing complained of here in so many Words;) and being upon the *Thames*, should be punished in the Admiralty. As to that the Judges replied, by no means, and *Wrey* and *Gawdey* said, If it be Extortion in the Mayor, there is no Remedy for it in the Court of Admiralty, but in the King's Courts: And it shall be redressed here in a *Quo Warranto*, says *Gawdey*. 'Tis true, a *Quo Warranto* might well have been brought for redressing that Extortion; but it could not mean thereby, that the Corporation should be dissolved: And that it was so understood, is most plain; for accordingly a *Quo Warranto* is brought. You have it in *Coke's Entries* fol. 535. and 536. placit' 4. And the City of London appeared and pleaded, and prescribed to it; and thereupon the Attorney General that then was, my Lord *Coke* himself, was satisfied, and confessed their Title, and Judgment was given for them; and since it hath been held good and they have enjoyed it in Peace; and this I hope is a good Example for Mr. Attorney to follow in this Case.

My Lord, I come now to that Part which I come least willingly to, I mean that of the Petition; and that which I have to say in it, is this, my Lord: First I say, That this Petition is justified in the Pleading, and I hope it is very justifiable; if it were but excusable, 'tis enough. That it is justifiable to petition the King in our Necessities and Extremities, is plain from what my Lord *Hobart* says, fol. 220. He says it was resolved by the Court in *Renham's* Case, that it was lawful for any Subject to petition to the King for a Redress, in an humble and modest manner: For, as 'tis there said, Access to the Sovereign must not be shut up in case of the Subjects Distresses. Now the Common Council are not less privileged than any other sure, but rather more in this kind of Addressing and Petitioning: I cannot tell what Crime to make of this, there is so much alledged against us.

I did very well observe truly, and would always observe and remember in all such Cases, what my Lord Keeper here said to your Lordship, *That Council should not so much speak, as if they would abet the Guilt of their Client, rather than advocate for their Innocency*.

My Lord, if the Words themselves that are alledged are not Words that

are unlawful to be delivered or spoken, then all this that they are dressed up with of the Intention to censure the King, and to bring him into Dislike with his People, all that must go for nothing, and are not to weigh in the Case. Now the Words are these: *That there was a Prorogation, and by means of this, there being depending so many Impeachments of Lords and others, and Bills in the Parliament in both Houses, which could not be perfected any where but there, the Prosecution of the publick Justice, and the making Provisions necessary for the Preservation of his Majesty and his Protestant Subjects, received an Interruption*. Now, my Lord, I conceive these Words are not Words that in themselves are unlawful, and for that your Lordship will be pleased to consider our Plea; I need not repeat it, you have it before you: If they are in Sense and Substance the same Words that have been spoken by the King, and the Lords and Commons in Parliament; he that will not be satisfied with that Authority, will not be satisfied with any. Then what do we say? We say, that the Prosecution of the publick Justice received an Interruption: Does not the King say so, and more, in his Speech we have set forth, wherein he recommends it to both Houses, that Justice may be done? What is the Meaning then but this? If the further Prosecution of the Offenders goes not on, Justice is not done. And so we speak but the King's Words. We say, they are not tried, or they were not tried; they themselves complain of it to this Day; and therefore Justice did receive an Interruption. I am confident, without Reflection, that honourable Person my Lord *Danby*, in this Point, hath said Words much more liable to Exception, though truly Words, that I believe deserve no Rebuke. He has complained, that Justice was not done in his Case, because he was not tried, and that when he desired to be tried too; but his Liberty taken away, and he forfeited that which was dearer to him than Lands or Honours, his Health, whereby he endangered his Life, and lost all the Comforts of Life. If it were lawful for him to say, as certainly it was, That Justice was not done in his Case, why might not the City say so? Either these Lords ought to be condemned, or they ought to be acquitted: 'Tis hard to say Justice is done, when they lie so long in Prison, and are not either acquitted or condemned.

Then we say this, That the making Provision for the Preservation of the King's Person, and of his Protestant Subjects, received an Interruption. To this Part we give this Answer: We set forth, That there were Bills depending in the Parliament for this Purpose, and that is agreed to us by the Demurrer; and that these Bills could not pass into Laws, any more than the Lords could be tried but in Parliament. Why then if it be so, that the Matter cannot be done, nor Provision made, but (as that Proclamation, that issued for the Fast, said, and as the Addresses of both Houses for the Fast do say) by the Blessing of God upon the Counsels of King and Parliament; if these Counsels, or the King and his Parliament are interrupted, this is not done. To make such an high Crime of this I do not understand; I would not be thought to speak anything to justify that which is really a Crime; but this is that I say, 'Tis not in Law unlawful for us to petition the King, or address to him: But, my Lord, to take off the Edge of this Business, I shall beg Leave to read to your Lordship a Speech of the King's, made the 6th of March following, and therein there are these Words, *The further Prosecution of the Plot*.

My Lord, let any Man read, and spell, and see how in Substance the Words in our Petition differ from the Words of the King, making those Laws necessary for the Security of himself and the Kingdom, and this spoken the 6th of March, when this very Petition now complained of was presented in January or February before, and there was no Parliament between. No Man will say, that there were Laws sufficient for the Security of the King and Kingdom, when the King himself speaks of the Necessity of making such: So then, those Laws that were preparing received an Interruption. The Lords were not tried: Is not that an Interruption of Justice? Since they could be tried no-where else, as must be granted; and the King recommends it to them as not done, but necessary to be done. So the King said before, and so it is implied here. There is no such thing said in the Petition, *That the King did interrupt Justice, and the Proceedings of the Parliament*: It is an Inference and a Consequence made by Wit and Art: not that the King did interrupt, or intend to interrupt Justice; but it says, *By the Prorogation of the Parliament the publick Justice received an Interruption*.

My Lord, suppose at that Time there had been a Pestilence here, and the King had been as much resolved to meet his Two Houses as they here, but by reason of the Pestilence he were necessitated and forced to make a Prorogation; then there comes such a Petition from the City, and says, That by reason of this Prorogation those Bills that were depending did not pass, and the publick Justice received an Interruption: What is the Offence of this? 'Tis all true. If there be Bills depending, and Impeachments, that can no other where be tried, they do receive Interruption by a Prorogation. Can any Man say this is false? The Charge in the Application is, *That we did falsely and maliciously say*, what? that which is true, and that which the King had said before, and that which the Lords and Commons said after him, *That till those Things were done they were not safe*; and those Things as yet were not done.

My Lord, there is this further in it, the Petition is set forth in *verba*; and therefore I may take any thing out of it to explain it, and store it to itself; for this indeed is a very restrained Construction of the Petition.

It says, when this interruption by the Prorogation was received, *That the King for urgent Causes, and very good Reasons, did prorogue the Parliament*. It is his Prerogative to do so? and God forbid but he should have it. I think, without doubt, we should be more at a Loss for want of that Prerogative, than we can be by the Use of it. It is mine, and I believe every good Man's Opinion, that that Prerogative is very necessary and profitable for us all; but it is the Consequence of it, that this Interruption of Justice is received; nay, we are so far from saying, that the King did interrupt Justice, or intending it, that we say, we do hope the King's gracious Intentions were only to make way for the better Concurrence of his Majesty and his Parliament. The King does, for great Causes, and known to himself, who has the Prerogative, *prorogue the Parliament*; and



by, as a mere Consequence, not as the King's Intention, the publick Justice is interrupted: Nay, this we affirm was with a good Intention in the King, that he might the better be enabled to concur with his Parliament, as is set forth in the Petition. Can there be any thing more properly said? 'Tis the greatest Justification of the Prorogation that can be. The King has prorogued the Parliament: What to do? Why Justice hath in View received an Interruption, but not in the Intention of the King. We know what the Meaning of it is, and so we set forth in our very Petition, it is to gain Time, that he may the better concur with his Parliament. It is a great Commendation of the King's Purpose, instead of charging him with Injustice, that he did resolve to concur with his Parliament for such Ends, and accordingly did prorogue the Parliament.

Now the Attorney General hath put in, that it was *ea intentione*; there is the Sting of the Business to put in those Words, to make that which we may lawfully speak, of itself to be an Offence. But truly that signifies just nothing: It can never hurt a Thing that is true, it has great Authority in it, if it be applied to a Thing that is unlawful; but if in Substance it be true, and the Thing itself justifiable, those Words make nothing in the Case; and I think I need not argue that Point, but refer myself to the great Case that was in *Westminster-hall*; and that is the Reversal of the Judgment given in this Court against my Lord *Hollis*, which was a Reversal in Parliament; and is printed in the last Impression of Mr. Justice *Coke's* Reports by Order of Parliament; and there they explode all the Notion of *ea intentione*, and this Business. A Man speaks Words that he might speak in Parliament (though I know not whether he might, or no, but the great Thing is, if Words, that in themselves are tolerable to be spoken, be spoken, you shall not come and say they were spoken with an ill Intention; though, as I shall shew by-and-by, this hath a kind of Fatality in it, and that is this, that it is done with an ill Mind by a Corporation that hath no Mind at all.

Mr. Att. Gen. Just now you said it had a Mind, and Reason was its Mind.

Mr. Recorder. I said as my Lord *Hobart* says, that a By-law to it is a Mind, as Reason is to a Man, but it hath no moral Mind. My Lord, then I say, the Citizens of *London* were indeed at that Time under great Consternation, by reason of the Conspiracies that had been discovered in Parliament, and in the Courts of Justice; and it had been declared by the late Lord Chancellor, at the Trial of the Lord *Stafford*, which your Lordship may very well remember, That *London* was burnt by the Papists; and therefore it was no Wonder, that they were desirous, that themselves and the Kingdom should be put into great Security against those Enemies. This, my Lord, I confess is a tender Point, and I would not speak a Word in it without a Law-book to back me. I remember that my Lord *Hobart* says, that Zeal and Indignation are fervent Passions. The City of *London* had great Indignation against the Papists for this Conspiracy against the King and Kingdom, and the Religion established by Law. There was no Disaffection in the City at this Time, when this Petition was made, sure; and I wonder, that any Man should say, that knows *London*, and was acquainted with it then, and looks upon this Petition which passed *nemine contradicente*, that they had such an Intention as is insinuated; and pray let him read the Names of the worthy Aldermen that then sat upon the Bench, and the other Names of the Common Council-men then present, and then let him say, if, without Reflection, the King have more loyal Subjects in the City of *London* than these Men were. And do you think, if there had been in it any Sedition, or any of those ill Qualities that make up the ill Adverbs, which are joined to it in the Replication, not one of all those loyally disposed Men would have spoken against it? But alas! all of it passed *nemine contradicente*.

My Lord, I say, that if the Matter of it be justifiable, as I think it is, then all these Words will signify nothing, if there were never so many more of them: And the presenting and carrying of it to the King, that is no Offence, that is not so much as pretended to be one. And, my Lord, I think it a very harsh Translation of the Word into *Latin*, when the Petition says, That the Parliament's Proceedings, or the publick Justice, received an Interruption, to put that Word of *Obstructionem* in; truly I think a better Word might have been found to express the soft Expression in the Petition: and they need not have put that hard violent Word *Obstructionem*, when to make *English* of it they translated it *Interruption*.

But, my Lord, they do admit, I say, that the making and presenting of it to the King is not the Offence, so much as the Publishing of it, by which it is exposed to many others besides. Now to excuse that, the Answer we give is this; and 'tis that which will carry a very reasonable Ground of Justification in it: Certain Citizens, that were private Men, had petitioned the Common Council, and thereby they were importuned to make known the Desires of the City to the King, and it was reasonable to make known to those Citizens what the Common Council had done, to prevent false Rumours, which we knew were rife enough in those Days; and to shew, that there was nothing ill in it, we did print it. And 'tis also all driving at the common Interest, at the King's Safety, the Preservation of the Church and the Government established: All this they did desire might be known to these Citizens, and all others that inquired about it; and therefore they printed it, to evidence that there was nothing of ill intended in it. And I do wonder, I must confess, that this Objection of the publishing of this Petition should be so much insisted upon; for they say, that the Mayor, Commonalty, and Citizens of the City of *London* did it; and say not any thing of the Common Council, that they did print it: Now they that did vote it, knew it without printing; and 'tis alledged in the Pleadings, and confessed by the Demurrer, that the Mayor, Commonalty, and Citizens of *London*, that is, the Corporation, consists of above 50,000 Men, which cannot well be intended otherwise. Why then, here is a Petition that is agreed to be well enough lodged as to the Persons that voted it, being the Liberty of the Subject to petition; and if this had been only presented to the King, though it had been by those 50,000 Men, say, if it had been by 10,000 Men, who had been the Corporation, it had been well enough, so it had not been printed, but only kept private to themselves: Why then 'tis very strange, that what is known to all *London*, so great a Part of the Kingdom, should be lawful, but it

should be heinously unlawful to send the News of it further. It went further than the City of *London*; and therefore 'tis such an Offence as shall be a Forfeiture of the Corporation. My Lord, there is the Case of *Lake and King*, the Petition to the Parliament was scandalous in itself, yet it stood protected, being presented to the Parliament; and it was lawful to print it, provided it were delivered to a Committee of Parliament, or only to those that were Members; though 'tis said there, that the Printing of it is a great Publishing; for the Composers, Correctors, and other Persons, that are concerned in the Press, read every Letter of it. But it was answered, that Printing is but a more expeditious Way of Writing; and if he had employed 20 Clerks, it had been a greater Publishing than three or four Printers. Possibly the Printers might not read it, or not be able to read it well, or not all of them read it at that Time.

Now here, my Lord, sure it was lawful to acquaint the Citizens what they had done, if you take it to be the Act of the Common Council, and the Common Council to be the Representative of the City. It was always agreed by the House of Commons, that any Member might send the Votes to those that sent them thither, and whom they represented; they have blamed indeed Men for sending the Debates, but never for communicating the Votes: And what they may do by Writing, that they may do by Printing. Why then might not the Citizens of *London*, who by Custom choose those Common Council-men, well desire to know, and might well know, what they had done? And then what they might do by Writing, they might by Printing; for that is but another Way, though a more suitable and compendious Way, of exhibiting any thing that you would have go to many. And if it be lawful to impart it to all the City, and all the City does know it, though it does go further, 'tis no Matter; for what is known to *London*, may very well be known to all the Nation besides, without Offence, if it did go further. Besides, it shall never be intended it was published further, or that any others knew of it; for 'tis said to be published in the Parish of *St. Michael Bassishaw*, in the Ward of *Bassishaw*, and that is in *London*, to the Citizens of *London*; and so they only talked of it amongst themselves. Besides, the main Thing which I go upon, is, if there be no Ill in the Thing itself, the *ea intentione* can make no Crime by a bare Affirmation, which we deny; and if it might be well said or done, it is lawful to print it, and the Publication is no Offence neither.

My Lord, the next Point I come to is this, That a Corporation cannot possibly commit a capital Crime, or any other Crime against the Peace: And I shall offer this Dilemma, Either it was done seditiously, or not; if not, then there is no sufficient Assignment of a Cause of Forfeiture; if it were, then 'tis a Crime for which the Offender is indictable; and that, I say, is absolutely impossible for a Corporation to be guilty of. And here I will throw in also that Business of the Toll; and I will, for Argument's sake, admit the Taking of a wrongful Toll to be Robbery, and then let the Argument go on. I have heard it said within the Bar occasionally, that a Corporation is intrusted with the Government; and that they may commit Treason, and raise Sedition, as Mr. Solicitor hath said; I suppose it must be under their Great Seal: But I confess, I believe it is rather spoken to amuse, than to satisfy: But I really think it is no ill nor unjustly Thing for me to say, nor against the Government to affirm, That 'tis impossible a Corporation can commit Treason, or that it is intrusted with the Government in any such Kind.

But first, my Lord, I shall shew you what Opinion former Times had, and that because such an Opinion as this hath been broached of late Days.

L. C. J. Mr. Recorder, will you be much longer? Because I must sit here at *Nisi prius* this Afternoon, and yet I would fain hear the Argument, if it would not be too long.

Mr. Recorder. No, my Lord: I have almost done, and will cut short.

In 21 E. 4. fol. 13. b. 'tis said by *Pigott*, That a Mayor has two Abilities; the one to his own Use, to make and to grant, and to do as another natural Person does; and then the Mayor, as Mayor and Commonalty, hath another Capacity to their common Use and Profit; and that is but a Name, an *Ens rationis*, a Thing that cannot be seen, and is no Substance; and for this Name or Corporation, 'tis impossible they can do or suffer any Wrong, as to beat or be beaten, as such a Body; but the Wrong is made to every Member of the Body, as to his own proper Person, and not as to the Name of Corporation; nor can the Corporation do a personal Wrong to another; nor can they commit Treason or Felony as to the Corporation, nor against any other Person. And if a Writ of Debt be brought against the Mayor and Commonalty, or other such Body, upon an Obligation, and they plead it is not their Deed, and it is found their Deed, they shall not be imprisoned as another single Person shall. The same Law is, if they are found Disseisers with Force, they shall not be imprisoned, nor in a Writ of Ravishment of Ward shall they either be imprisoned, or abjure the Realm; for such a Body is but a Name, to which such an Act cannot be done. So says *Catesby* in the same Book; In a Writ brought against them no *Capias* shall issue, because they are but as a dead Person in Law; and the Appearance upon a *Capias* cannot be otherwise than personal. And so to this Purpose says the Chief Justice there; If this Body will do any thing, it must be done by Writing. And all along it is the Tenor of the whole Case, that a Corporation cannot commit Treason, or any other Crime. But the Reason of the Thing is above any Authority. Suppose, that they under their common Seal should commit Treason, and you bring an Indictment of Treason against the Mayor, Commonalty, and Citizens of the City of *London*, what Judgment shall be given against them in their Corporate Capacity? What? It shall be, that *Suspendatur per collum Corpus politicum*. And then, what Execution shall be done upon that Sentence? What? must they hang up the Common Seal? Nothing else you can do can affect them; but in their private Capacity, there they may be punished as single Persons.

A Penal Statute says, that he or she, that offends against the Law, shall forfeit so much, or incur such a Penalty: Is a Corporation Male, or Female, that it should come under such a Provision? But the real Reason of the Law is this, it is a Civil Being, it is *Ens civile*, it is *Corpus politicum*;



*liticum*; it hath civil Qualities, but it hath no moral Qualities; and all Offences consist in the Immorality of them, and there must be Malice to make that Immorality. No Words or Acts are Treason or Felony, unless there be a traitorous Mind, or a felonious Mind; and therefore a Mad-man cannot be guilty of Treason or Felony. Serjeant brought an Action for these Words, that he had spoken Treason; it was moved in Arrest of Judgment, that this cannot be actionable; for he might speak Treason in putting a Case: Ay! that were well, said they, if it could be understood so; but we must intend it, that he spoke Treason, as his own Words *ex corde suo*, which makes it Treason; for Treason consists in the Immorality of the Mind.

Another Reason is what *Pigott* said, as I said before, That a Corporation is but a Name, an *Ens rationis*, a Thing, that cannot see or be seen, and indeed is no Substance, nor can do or suffer Wrong, nor any thing where a corporal Appearance is requisite. What my Lord *Dyer* says in *Moor* 68. that he never saw, is, I believe, true in general, what no Man ever did see, that a Corporation could be bound in a Recognisance or Statute Merchant; and why? because it must be acknowledged in Person: And so in this Case, the Guilt follows the Person, but cannot a mere Capacity. In all Crimes the Offender must appear in Person, and plead in Person, and suffer in Person; but you can never bring the Mayor, Commonalty, and Citizens into Gaol, to appear and plead to an Indictment, to receive a Judgment, or suffer Execution. Can a Body Politick, that is invisible, appear in Person; But then there is this great Objection: By this Means, they say, if there be no Punishing of them, there is no Government, and they may commit Treason under the Great Seal, they may raise Armies, and instigate a Rebellion, and all with Impunity. My Lord, I say no, and I give two Answers to it, that are not to be replied to; and the first is this:

1. All these Persons, that are met together, though they are met *corporaliter*, in their corporate Capacity, for the Acts of the Corporation at that Time; yet when they go out of their corporate Business, and commit Treason or Felony, the Crime does not *egredi personas*, every one of them is a Traitor or a Felon; and notwithstanding they appeared there under the Pretence of a Corporation, yet they are all liable in their private several Capacities, every one of them must be indicted personally, and suffer personally: For when they go about to do such a Thing, it is out of the Business of the Corporation; and they must answer for their own particular Offences. But,

2. I have another Answer to give to it. This Objection is to be retorted on the other Side, that if a Corporation authorize the levying of War under their common Seal, they shall be affected by it in their politick Capacity, and are liable to the Law in that Capacity only, and must suffer in that Capacity only: And the Consequence of that is, they are discharged in their private Capacity; and this is a Law of Indemnity and Protection for all Crimes; for a Man cannot be liable two Ways for Treason, or Felony, or any other Crimes: If he be not liable in his private, he is in his publick Capacity; if not in his publick, he is in his private. And what is the Consequence of that? This is a Dispensation for a Corporation met together in a Body, to do any illegal Thing, or to commit any enormous Crime; for the King's Counsel say this, We are responsible for it in our politick Capacity; and what Execution can then be done to punish that Corporation with such a Punishment as the Law inflicts, that is, Imprisonment, or Death, any more than upon an Action of Debt brought against them upon a Bond, and *Non est factum* pleaded, and found for the Plaintiff? Can they be imprisoned? and the like. So that this shall protect and shelter them in the Commission of any capital Offence; for if they are to suffer for it as a Corporation, you must take Judgment against them, as the Law gives it; and how will that be done against an invisible Body? What will be the Execution against the *Corpus Politicum*, that can neither see nor be seen?

I think this mighty plain; and I must confess, I wonder how it could ever enter into the Mind of any Man, that a Corporation could commit a corporate Crime. I have, as it became me, in regard of the Duty of my Place, and before that, for my own Learning, read *Stamford's Pleas of the Crown*, my Lord *Coke's 4th Institutes*, *Poulton de Pace Regni*, my Lord *Hales's Pleas of the Crown*, *Dalton's Justice of the Peace*, and other Books on that Subject; but I defy any Man to shew me in any of those Treatises concerning criminal Matters, any Resolution, that ever a Corporation could be so concerned, that they should be brought before a Justice of Peace, or proceeded against upon any Law for Treason or Felony, or be hanged in their political Capacity.

My Lord, I shall conclude all my Discourse of this Kind (and I have almost done, because I perceive I incroach upon your Patience) with an Observation I have made upon the 19 H. 7. c. 7. and it is the Statute, that makes Provision against Corporations, that made By-laws against the Prerogative. That Statute says, That some Corporations did so; now an higher Offence than that, sure, cannot well be described; and there that Law says, that those that do so, that make such By-laws against the Prerogative, shall forfeit for so doing, for every Offence, forty Pounds, unless they are confirmed by the Chancellor and the Treasurer, and Chief Justices, or any Three of them. Now to what Purpose was this Statute made; if the making of an ill By-law (and worse cannot be than a By-law against the King's Prerogative) should be a Forfeiture of the Being of a Corporation? How vainly did the King and Parliament employ themselves to make a Statute, that a Corporation should forfeit 40 Pounds for such an Offence? No Man will say they had rather take that Penalty than another, when they might have a greater, if a greater could be had by Law. If they might have had a *Quo Warranto*, and thereby destroy the Corporation, surely they would not have stood for the Penalty of 40 l. for they might easily have got more Money: No, they might have said, We will never pass it by, unless you will give us 4000 l. or a far greater Sum; nor shall you have your Corporation again, without you give us a considerable Recompence for it. And when the Process and the Proceedings were so expeditious and easy to come at in a *Quo Warranto*, as it was easy in those Days, why should they put the King to the Delays, in an Action of Debt for so small a Penalty as 40 l.? So that I take it to be a direct

Judgment of the Parliament in that Case, that no Corporation should or could be forfeited for the making of any By-law that was irregular, though it were even against the King's Prerogative.

But to hasten to a Conclusion, I have all this while, my Lord, supposed, that the Mayor, Commonalty, and Citizens of London have done this: But it is not so; this is not the Act of the Mayor, Commonalty, and Citizens, 'tis not the two hundredth part of the Corporation, 'tis but the Act of the Common Council; and we have distinguished ourselves by pleading, that it does not consist of above 250, when the City contains above 50,000. I must confess the Council is not taken notice of much in Law; as is seen in *Warren's Case*, 2 Crook 540. & 2 Rolls 112. *Warren*, being one of the Common Council of *Coventry*, and displaced, sued out a Writ of Restitution; and upon that Writ it was returned, that by Custom the City might place and displace *ad libitum*; they there held, that the Custom was good: But it is not so of a Freeman or Alderman, because he hath a Freehold; but a Common Council is a thing collateral to a Corporation, and the Office of a Common Council is nothing but only to give Assistance and Advice, which they may refuse at their Pleasure. In *Bywick's Case* in *Style* 32. & 2 Rolls 456. it is said, That 'tis a Place merely by Custom, and that the Common Council is properly but only a Court of Advice; and, my Lord, you shall never intend more than that they were a Court of Advice: All the Rise of their Power is but by Custom, and that Custom is pleaded to give Advice for the Benefit of the City, and make By-laws for the Good of the Corporation; and that is confessed by the Demurrer, and you shall intend no more than what is opened in the Pleading.

And then 'tis evident this was done by a very small Part of the Citizens of London; and that does no way affect the whole Corporation. In *James Bagg's Case*, 1 Rolls fol. 226. it is said, That if a Patent be procured by some Persons of a Corporation, and the greater Part do not assent to it, that shall not bind a Corporation. And if so be a Charter sealed, and sent by the King, because not accepted *in pais*, by the greater Party, bind not, shall an Act done by a few; and an Act done, that tends to a Forfeiture, bind the Whole in point of their Being? There is no Ground to say, that the Common Council represents the City, no more than a Counsel does his Client, or an Attorney his Master; only as far as is for the Benefit of the City, they are chosen and intrusted to make By-laws; if they offend, they are but Ministers and Officers, and so they are within the Statute of *Edw. III.* which I mention, though I think we have no Need of that in the Case to help us; if they make an unreasonable By-law, it is void, and every Man that is aggrieved by it may have his Remedy, may bring his Action. Shall you supply this by an Intendment, that they have such a Relation? that they are the Representatives of the City of London? that they have a Power to forfeit the Corporation? No, my Lord, by Law they are Part of the Corporation, but they have no such Power to forfeit the Corporation: A Custom shall never be construed to enable a Man to do a Wrong; and a great Wrong it is, that they that are trusted, and trusted but for a Year, and trusted but for the Good of the Corporation of which they are Part, should give up the Being, or, what is worse, forfeit the Being of that Corporation. The Custom of *Kent*, that makes an Infant capable of making a Feoffment, shall never enable an Infant Tenant in Tail to make a Feoffment, so as to work a Discontinuance of the Estate Tail, and put the Heir to his *Formedon*. Every illegal Act of theirs is beyond their Commission, and a Nullity of that is all in respect of themselves; and it is as if they had never done it as to the Corporation, for they are by no means the Corporation; for tho' they use the Common Seal in some Cases, at some Times, so do the Court of Aldermen in other Cases; but it is only in other Cases wherein they are particularly intrusted. If an Act of Common Council say, that I shall have such and such Lands of the City, that Act signifies nothing, but as a Direction and Advice; when it is under the Common Seal, it is an Act of Corporation, and proceeding by Advice of Common Council, it binds.

Now, my Lord, this is the more unreasonable, because we know, that the Practice of the Common Council in London being to advise for all the Inhabitants, they are chosen by the Unfreemen as well as others; and it is a strange Thing, that they should have a Capacity to give away the Liberty of the Citizens, when they are chosen by others as well as them. They had no such Trust for them; nay, all Trust they had was to keep their Liberties, and not to destroy them. Has any Man a Trust to destroy himself? Sure no Man is trusted by God himself to be *Falsus deus*. And certainly then you can never understand it to be in the Nature of a Trust to destroy another; and the least Citizen, my Lord, has as much as as true an Interest in the Corporation of the City of London, as the greatest: And therefore 250, if they had been much the greater Number of the Citizens, would signify nothing to the rest of the Body.

My Lord, I shall only say this little more: Here is no Crime charged relating to them as a Corporation: Here is indeed a fine Word used, that we did this *contra fiduciam in corpore politico repositam*; but all this is but an imaginary Trust, the King never gave them a Power or Authority, or intrusted them to make By-laws that were unreasonable; he gave them Power to make reasonable By-laws, and so he does every Corporation. And the same Law that gave them the Power, limits that Power, and says, if they go beyond that Power, it is a Nullity. And these Acts relate not to them as a Corporation; the Petition is not so much as said to be against any Trust reposed in the Corporation; certainly there never was any such Trust. Did ever the King intrust them to advise him about the Matters contained in the Petition? And if not, then it is not *contra fiduciam*; therefore it relates to particular Persons: If it be an Offence, I hope it is none of the Corporation's.

But then the levying of Money, that is *contra fiduciam*; they took upon them an illegal and unjust Power in the Common Council. Suppose it is, how does this belong to the Corporation? It is an Incroachment upon Property, it is the most arbitrary Thing in the World. Whether they have the Market, and the Dominion of it, or not, is matter of Fact, and being pleaded, is confessed by the Demurrer: And then for the Power of making By-laws, that is a Thing that cannot possibly be taken from



them while they are a Corporation; it is that which must be in them as a Corporation, like the Faculty of Reason in a Man, to express his Resolutions by. And it is no more, than if a Man, that has a Market, bid his Servant go and remove such as have Stalls there, unless they will pay so much. That Direction is as good a Law as this, and as bad a Law as this, and no more. There is nothing else in it but the Direction of the Officers, what they shall do in the ordering of the Markets, and disposing of the City's Property.

Then as to the formal Method of expressing themselves, whether it be by Act of Common Council, or under the Common Seal, or by their natural Voice, it is all one, it is not a Thing that concerns them as a Body Politick: But if it were illegal and mistaken, I say, the Penalty is only, that it shall be void. What the Common Council, nay, what the Corporation does within the Limits of its Authority, is good; what beyond that it does, is void. If I command my Servant to distrain for Rent, and he kills a Man in the doing of it, this, as to me, is void; but as to himself, that is chargeable upon him. And what I say of the Common Council, I say of the Corporation itself, that it is a Capacity, and a limited Capacity; it is the Act of the Members, not of the Corporation, if they do wrong. The Common Council can act for the Good of the City, and the City can do no more, if they themselves should meet. *Crooke, Eliz. fol. 85.* the Queen makes a Lease for Years of Lands to the Men of *Chesterfield*, by the Name of Aldermen, and they by that Name grant all their Interest to *Clerk*; says that Book, This is void: for the Queen granting them a Lease as to the Aldermen of *Chesterfield*, this makes them a Corporation, and gives them a Capacity to take, but not to grant. And so *Rolls Abr. 1. p. 513.* And therefore no Corporation is to be considered as a Corporation, but only when it acts according to the Capacity allowed to it; and as to the rest, it all turns into their private Capacity, but it affects not the Body, nor hath any such Relation as to bind it.

My Lord, all the Question here is, Whether there shall be such a Person in esse as this Corporation? Whether the City of London shall subsist as such a Person, to sue and be sued, to plead and be impleaded? There is nothing of Government or Misgovernment in the Case; but it is all about our Capacity, and nothing else, whether we shall be Defendant or Plaintiff in any Court.

My Lord, *Magna Charta*, and all the other Acts, that have gone in Confirmation of it, shew the great Care of the Government in all Ages to preserve the City of London; and I look upon them as so many Declarations of the Immortality of it, and of all other Corporations. I shall use a strange Argument perhaps at first Hearing, but it is to me a great Evidence for us, that *Magna Charta* does not confirm our Being, but our Liberties and Privileges; it says, That the City of London shall have all its Liberties, it confirms its Leets, its Markets, and all those Things, that is, it confirms all that it has; it has not saved indeed, if a Corporation indeed be built upon a Corporation; but that particular Liberty may be destroyed, as that of *Bridewell*, and the like; but it does more than confirm its Being, for it does implicitly declare, that that was impossible to be forfeited: They confirm what needed Confirmation; but for their Being there was no Need of that; it only confirmed the supervenient Liberties, without which it might be a Corporation; but as to its Being, it meddled not with that. And if it were not so, it were an unreasonable Thing, that we should have so many Acts of Parliament, that give such particular Powers to the Mayor and Commonalty of London; and scarce any Act of Parliament, that relates to the Publick, but London is mentioned, and taken care of in it. Are not all these Declarations, that London should stand for ever? Would not any one have said else, Pray what do you put such Confidence in London for? There is not such a fickle Thing upon the Earth as the Being of the Corporation of London. If they lay but 6d. upon a Joyn of Meat, they are gone, and there is not a Month in the Year but they forfeit their Being.

The Act for Administration hath a Proviso, that says, it shall not extend to London: Why does any Man think, that this Law was not intended to be as perpetual for London, as for other Parts of the Kingdom? They did not question but London would be a Corporation as long as England was England. It would be a strange Thing in the Example of it, that the World should be taught by one Instance, that a Corporation can be ruined, when so many People put their Trusts in those Corporations, and so many vast Inheritances depend upon them. And I think the King and the Government, or those you call so, are more concerned to preserve London, than all the Persons that are in it. I would not speak it in this Place by way of Argument for my Client, but I think I could maintain it in all Places; only I hope and believe I shall have no Need for it.

My Lord, all Innovations (as this must certainly be a very great one) are dangerous; this Frame of Government has lasted and been preserved for many Hundreds of Years, and I hope will be so as long as the World endures.

My Lord, I am sensible I need your Patience; but I have just done. There is a Charge that has very little, indeed there is nothing in the Matter; but the Weight and Consequences are fitter to be meditated upon, than spoken of. And therefore for these Reasons I do pray, that these Liberties may be adjudged to us, and we may be dismissed out of this Court.

Now, my Lord, if your Lordship please, I will give an Answer to Mr. Solicitor's Authorities.

*Lord Chief Justice.* I suppose you do intend to argue it again, and therefore there will not be so much Need of that now; besides, it is late, and cannot stay.

*Mr. Attorney General.* My Lord, I think it may be very proper to have the other Argument, the first Week in Easter Term.

*Lord Chief Justice.* Take what Day you will, Mr. Attorney.

*Mr. Attorney General.* Let it be the first Friday in the Term, if you please, my Lord.

*Lord Chief Justice.* Let it be so. Look you, Mr. Recorder, I perceive you do agree, that the Petition, setting forth, that the King having prorogued the Parliament, and thereby that Common Justice had received Interruption; you have justified in your Plea, (I took it always to be so) now at the Bar, That the King by the Prorogation did interrupt the Justice of the Kingdom.

*Mr. Recorder.* No, no, my Lord: Then I have Reason to speak again, to make myself rightly understood.

*Lord Chief Justice.* Why, look you, you do agree, that the King had prorogued the Parliament, and thereby that publick Justice was interrupted; if that were so, by whose Means, and by whom did the publick Justice receive Interruption, if not by the King? I did take it to be so really, and that you had justified it.

*Mr. Recorder.* My Lord, I do agree, as we say, and the King himself said, that these Acts were not passed, nor the Lords tried; and so Justice was not done: And I would ask your Lordship, or any other indifferent Person, whether Justice were done, or necessary Provision for these Things made, if those Bills were unpassed? If it were so, it is a natural Truth, that thereby the Trial, and Acquittal, or Condemnation of the Lords was interrupted; and so was the Security of the King's Person, and the Protestant Religion, the Bills not being passed. For the King calls upon the Parliament to pass them the next Session, therefore they were not passed in the former Session. This is by no means a charging of the Interruption of Justice upon the King; every great Thing, that is done by the King, may have a prejudicial Influence, it may be, as to some Particulars; but to say, that thereby Justice is interrupted, is not to charge any Blame upon the King; because, though it may be prejudicial in one Particular, yet it may be useful to the Publick. No doubt, if the King do prorogue the Parliament for never so great Ends, and necessary Causes, yet if I have but one Bill passing there, suppose it be a private Bill about Naturalization, or the like, if a Prorogation comes, it is naturally true, that that is interrupted; but that is not laying a Blame upon the King.

*Lord Chief Justice.* May it be said, that the publick Justice is interrupted, if a Bill for Naturalization, or the like, pass not before the Prorogation? I speak it for this only, that they that argue next may think upon it. The Petition does say, that the publick Justice was interrupted: Did they mean it was true? or did they mean it was not true? If they did mean it was true, then you have done well to justify it, to say it was so, and the King had done amiss in proroguing the Parliament. Yet it seems, the Common Council of London, neither by Charter nor Prescription, had any Right to controul the King, nor to be of the King's Council neither; and therefore it was a Matter purely *dehors*. If the Matter were not true, why do you put in your Petition? If it be true, justify it, if you can. But here is the Matter; I would have a good Answer given me to this Point: The Petition was to the King; if so be the Petition had been delivered to the King, (as it may be it was) it was but one single Petition to the King; that might be well enough, if there had been no more in the Case, it is very possible it might not have been a Question at this Time: But pray, I would know of them that argue next, by what Law or Authority it was, and what was the Meaning of it, that that which did not require two Clerks to write, in order to its being presented to the King, must be printed? By what Law is it to be justified? the Printing and Publishing of this Petition, and sending it all over the Nation, whereby the Mayor, Aldermen, and Common Council of the City of London, do let all the Nation know, that they do look upon the King as one, that by the Prorogation of the Parliament had given the publick Justice of the Nation an Interruption? Pray by what Custom or Law is this published? In the Case of *Lebellis fam-fis* (even in the Case of a Subject) it is adjudged, that if you print a Libel, though the Matter of it be true, you shall be punished for it: Now when it is argued again, I would desire some good Satisfaction in that, what Reason or Ground there was for printing or publishing this Petition, unless it be to that Intent which is set forth by Mr. Attorney General in his Replication?

Now for the other Point, as you have ordered the Matter, you hold, that a Corporation cannot be forfeited. Mr. Solicitor did take some Pains to argue, that there was no Statute, that did protect you from a Forfeiture; he was not aware of what you did insist upon: You say, that by the Common Law Corporations cannot forfeit their Being; if so be they cannot, there is an End of the Question. But I pray you do you take it, that a Corporation can commit any corporate Act, or no? For according to your Definition of the Matter, if nothing will serve but the Act of the Mayor, Aldermen, and all the Citizens, I believe I may safely say, and so will every one else, that never any corporate Act was done by the City of London since it was a City.

We know on the other Side, and you, when it makes for your Turn, told us, that the Mayor, Aldermen, and Common Council could make By-laws, and they were good, and binding, that is, when it lay in your Way. For you make a Prescription in your Plea, and so also you have said at the Bar, that they may make By-laws to bind the Corporation, so that it seems when it is for your Convenience, then the Mayor, Aldermen, and Common Council can do as much as all the Corporation; but when you come to be touched with something, that you have done, in which you have gone beyond what you should have done, then the Citizens are 50,000 Men, and these are but 250 Persons, that have done these Things. Either the Mayor, Aldermen, and Common Council are the governing Part of the Corporation, or else they signify just Nothing: If they be, then whatsoever they agree upon binds the Whole, and must be taken as a corporate Act; or otherwise you will bring it to this Pass, that the Corporation can do Nothing at all. For if the whole Corporation be not bound by such an Act, then it is impossible for you ever to do an Act that shall be an Act of the Corporation; so that that will be pretty hard for you, that are for the City, I think, to maintain. Then I have but one Word more (I give no Opinion, but only tell you what I would have you apply yourselves to): Is the Trust of making By-laws annexed to the Lord of the Market? or it is annexed to the Lord Mayor? or it is annexed to the Corporation? Surely the Power of making By-laws is annexed to the Corporation; and I cannot see how, as Owners of the Markets, they have that Power. Now by your Distinction, where there is a Franchise that does necessarily depend upon another, there the Abuse of any Part does forfeit the whole Franchise. If then this Power be annexed to the Corporation, as sure I think it is, (but I reserve myself till I have heard a further Argument about it) then consider, whether or no, when they have abused that



that Power, in making this By-law, that is knit to them as a Corporation, it does not affect the Being of a Corporation? For it is strange a Corporation should commit a Fault, and not be punished for it. I tell you, I deliver no Opinion in any thing now, but these Things I would have you give me some Satisfaction in; and there are indeed several other Things, that will require Consideration: I only hint these now.

The Second Argument was in Easter Term, on Friday, April 27.

**Attor. Gen.** THIS Case between the King and the City must be acknowledged to be a Case of Importance, both as it refers to the general Government of the Kingdom, and that of the City in particular. As it concerns the Particular of the City, it doth not bode such dismal Consequences, as some Men endeavour to frighten their Neighbours with; as if it were hereby designed to demolish at once all their Liberties, and to lay waste and open the City of London, and to reduce it to the Condition of a Country Village; than which nothing could be more maliciously suggested of so excellent a Prince, who hath given such large Demonstrations, not only of his general Care of all his People's Welfare, but of his more especial and particular Kindness to this City of London. This *Quo Warranto* is not brought to destroy, but to reform and amend the Government of the City, by running off those Excesses and Exorbitances of Power, which some Men (contrary to their Duty, and the known Laws of the Land) have assumed to themselves under Colour of their Corporate Capacity, to the Reviling of their Prince, the Oppression of their Fellow Subjects, and to the infinite Disquiet of their Fellow Citizens. I shall not recount the Mischiefs which those Exorbitances have of late wrought within the City, both as to its Peace and Profit, as likewise to the Obstruction of the free Course of Justice, that few Causes escaped the Crime of Maintenance from a divided Party. These Exorbitances committed by the City, casting so great an Influence over the whole Kingdom, make the King's Interposition in a Course of Law necessary, by gently laying his Hands upon them for their Cure. Herein the Politick Body of his Subjects resembles the Natural, that the disaffected Members are best cured by laying on the King's Hands upon the Body. It hath been observed, that the City of London was never better governed, nor flourished more, than after it came from under the King's Hands. The Reason given by *Edw. I.* at his Parliament in 18 *Edw. I.* of Denial of the Petitions of the Citizens of London, to be restored to their former State, *scil.* To have a Mayor and their ancient Liberties, is this: *Quia sunt in bono Statu, & omnia bene, & in pace, & nullum Commodum apparet to change it then.* The City was in as good Plight, both as to its Quiet, and good Government and Profits too, whilst in the Hands of the King, under the Common Law Government, as it would be in the Hands of the Corporation. Neither did the City suffer by being in the Hands of the Crown, as it was in the Reigns of *Edw. I.* *Edw. II.* *Edw. III.* and *Richard II.* nor their ancient Customs and Privileges destroyed; but they were thereby indeed restrained and held within the modest Rules of Government, in Subordination to the general Government of the Kingdom: And therefore the Danger threatened by this Suit will not be so fatal to the Being or Well-being of the City, as was suggested. Nay, I may with great Assurance say, That if the City receive the least Harm hereby, their, or their Managers, obdurate and final Impenitence must draw it upon themselves. For though the Conclusion of the Replication upon the Assignment of the Forfeiture be, That the Liberties be seized, and they *ab iisdem penitus excludantur*, that is but the formal Conclusion upon Assignment of Forfeitures; it shews what the Judgment of the Law may be, if demanded by the King's Attorney, and necessitated by the City's Obstinacy, but doth not exclude the King's Grace. But the Importance of this Case, to the general Government of the Kingdom, is of another Nature; and the Consequences thereof, both to the King, and his Subjects in general, appear now far greater than before, from the Manner and Grounds of the Defence made for the City at the Bar: *viz.* from the general Topicks of Corporations, That they are immortal and indissoluble; that no Treasons or Seditions against their Prince can be committed by the Members of a Corporation, even though those Members meet, and act jointly in the same Manner and Method, as they do all other Corporate Acts; no, though they should vote Raising of Men against their Prince; and should give Authority (under their Common Seal) to levy Money for that Purpose; that Murders, Felonies, and Oppressions of their Fellow Subjects, either by unjust Imprisonments, or levying Money upon them; that none of these Crimes committed by the Majority of the Members of any Corporation, and authorized under the Common Seal, will affect the Corporation, or the Government thereof, in point of Forfeiture: But a Corporation once constituted, is out of the Reach of the Common Law, to determine its Being, or its Governments, for any Causes whatsoever. If such Notions as these could be true, or should receive the least Countenance in a Court of Law, it would be unsafe, either for the King or any of his Subjects, to live in or near a Corporation. And the Complaint made by the Commons in Parliament 21 *Edw. III.* that the Increase of Franchises tended to the Extinction and Overthrow of the Common Law, would soon be made good to the Purpose, when such great Bodies of Men, as the Corporations within England consist of, shall jointly have a Power allowed them, *Quilibet impune audendi*, without being capable of Separation. The Distinction between the Politick Capacity and the Natural, to subject the one to Punishment, and not the other, was framed in the *Jesuits* School, to encourage Subjects to rebel against their Princes; but never yet so far improved the Distinction to apply it to Corporations, which (if they had thought of it) would have been more efficacious to their Purpose, than as they applied it; Assurance of Impunity being the strongest Argument for a Commission of any Crime. The Case being of such Consequence both to the King, and his Subjects in general, I shall endeavour to examine it by the Rules and Precedents of Law, that I may sever what is mere notional, from what is of Substance in it. I forbear to trouble the Court again with opening the whole Pleadings, but shall take the Case as it hath been opened: Wherein the general Question is, *Whether by any thing disclosed upon the*

Pleadings, it appear to the Court, that the Mayor, Citizens, and Commonalty of London, have forfeited their Right of being and acting as a Body Politick, and subjected that Right to be seized into the King's Hands?

In stating of the Question, I forbear to style it a Franchise or Liberty, that I may not by anticipating preclude the Force of Mr. Recorder's Argument, That it is no Liberty or Franchise; but may reserve the entire Consideration thereof to its proper Place. And therefore I shall call it a Right, for such most certainly it is; and it includes both *Jus agendi, & Jus habendi*. Before we can arrive at the main Question, certainly preliminary Points have been moved and debated; some to the Form of the Suit and Pleadings, others relating to the Matter thereof.

To the Form Mr. Recorder took three Exceptions:

1. That the Information is not well laid, because not brought against particular Members by Name, which ought to be in all Cases, where the Right of Corporations is questioned or struck at.
2. That the Replication is worse, importing a Contradiction both to the Supposal of the Information, and to itself; because it denieth London to be a Corporation, which the Information allowed, and admitted it too, to be a Corporation, by assigning Causes of Forfeiture.
3. That no Judgment can be given upon these Pleadings, either of *Seizure* or *Ouster*; not of *Seizure*, because the King cannot seize what he cannot hold when seized: And the Body Politick, by which Name it is sued, cannot be ousted of itself.

The great Triumph Mr. Recorder erected upon the Strength of these Exceptions, as for an assured Victory already obtained, makes it necessary for me to give a more particular Answer to them, than their Weight would otherwise require. For the Authorities cited by him argue very little to this Purpose: And indeed he hath been so unfortunate in quoting of Authorities, that how little soever they seem to make for him, as to the Point he produceth them; yet they flatly make against him in some other material Point, not only by his Authorities, but his Objections themselves, to the Form of the Information, admit, that a Corporation is in its Nature separable by Judgment of *Ouster* against the particular Members by their Natural Names. The Opinion of my Lord *Hales*, in his Common-place Book, *Quo Warranto*, fol. 168. pl. 7. argues, *Quo Warranto* 168. pl. 7. he did not think of the Indissolubility of Corporations; but it is no Opinion, that the only Way to impeach them was by a Suit against particular Persons; for it is only a short Reference to the Cases of *Cusack*, and others of *Ireland*; and *Farrer* and others of the *Virginia* Company: Which Cases (as also that of *Fisher*, *Helden*, and others of the Borough of *Hebmerley*; the Case of the *Musicians*, and the *Bermudas* Company; and the other Cases cited by Mr. Recorder) do fully prove, that Corporations are Franchises, and may be questioned and impeached in the very Point of being Corporations, by Suits of *Quo Warranto*. And they do prove, that the Suit may be brought against some particular Members by Name: And against the rest of the Corporations by the general Words, as, *Et alios Liberos homines, & alios Burgenses, & alios de Fraternitate*. And these general Words are material and operative; for a Judgment thereupon binds the Whole. In the Case of *Cusack* against particular Members by Name, *cum diversis aliis Civibus Civitat' Dublin'*, Judgment was given to out not only the particular Men, but *alios Cives, & Successores suos*. Upon the Writ of Error, it was assigned upon Record as one of the Causes of Error, that Judgment was given to out the Corporation of those Liberties; yet no parties by their Names of incorporation; but Judgment was affirmed. And the *Quere* that is made in *Rolls 2* Report, in the Case of *Ferrars*, and others of the *Virginia* Company; Whether Mich. 21. Jac. I. Rot. 9. the Corporation were barred? probably did arise from the Non-observance of the Records, where Judgment was given, as well against the *alios Plantatores*, as the particular Men made Parties. In both these Cases the Suit was as well against the rest of the Corporation as the particular Men: The Appearance by Attorney was entered for both, and the Plea as well in the Name of the rest, as the particular Men, and Judgment against both. And the Judgment against the *Virginia* Company discharged that Company.

These, and the other Precedents produced by Mr. Recorder, do prove, that the King's Suit may be brought against particular Persons by Name, and against the Residue of the Corporation, by a general Name of *& alios homines*; or against particular Persons, and also against the Corporation, by the very Name of Incorporation, as the Case of *Bermudas* Company: But they do not argue the King hath not a further Election, either to bring his Suit for questioning the Corporation, by the proper Name of Incorporation, without naming of particular Person, or by some other general Name, which sufficiently describes the Persons. I shall therefore apply these Answers to the Objection warranted by Precedents of Law, that where-ever many Persons are jointly concerned in Charge or Discharge, and the King hath Cause of Suit against them, he may sue them either by naming some particular Persons, with a general Reference to others; or he may sue only by a common Name of Description, without admitting them to be a Corporation, especially where the general Name sufficiently describes the Persons, who took this Corporation; and this well for Offences at Common Law, as against Statute Laws. When Murder is committed in the Day-time in a walled Town, *totâ Villâ munita*; and so for Repair of Highways, or Nuisances in Highways, Repair of Bridges, and for levying of the Hue and Cry. The King's Suit, either by Indictment or information, hath been used both ways, either naming some few particular Inhabitants, but then always with a general Reference *& alios Inhabitantes*, which is essential, otherwise both Indictment and information would be naught; or they are frequently only by the general Name of Inhabitants, within a Parish, Hundred, or County, as the Case of *Denbigh*, for using several Liberties, as to hold a Court of Pleas before the Bailiff, and choosing two Aldermen, &c. upon Plea and Demurrer, Judgment of *Seizure* is given, Mich. 21. Jac. I. Rot. 23. R. a *Quo Warranto* against the Inhabitants of *Denbigh*, for using several Liberties, as to hold a Court of Pleas before the Bailiff, and choosing two Aldermen, &c. upon Plea and Demurrer, Judgment of *Seizure* is given, Mich. 21. Jac. I. Rot. 23. 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*quod Inhabitantes capiantur.* A Quo Warranto brought by Gerard the Queen's Attorney, against *Homines & tenentes Manerii de Kings Haurston in Com. Bedford*, for claiming to be discharged of Knights Wages, &c. they

pleaded the Manor to be ancient Demefne; and their Plea was confessed, and Judgment for the Tenants, without naming any particular Tenant. These general Names of Inhabitants and Tenants were sufficient Descriptions of the Persons whom the King sued; and yet this Suit, by those Names, works no Conclusion that they were a Corporation. So *Cives, Burgeses, & Communitas* of such a Place, are general Names to describe the Inhabitants of the Place by, antecedent to their being a Corporation. The like of *Mayor, Bailiff and Burgeses, Mayor and Citizens, and Pontenarii*; where *Burgeses* is but an Addition of the Name of an Officer to the common Name of the Inhabitants, and properly describes the Persons whom the King sueth. By these Names of general Description, they are capable to take this Right of Incorporation by the King's Grant. The Grant doth not enable them to take this Right; and if by such general Names in the King's Grant they may take, there can no Reason be assigned, why they may not be sued by the same Name they took, when they are questioned for this Right, be the Name of Corporation the same, or any other. Upon Pleadings in the Case of a common Person, *Mayor & Cives* shall not necessarily be intended a Corporation, without it be especially set forth.

*Inter Jerom & Neal 20 Eliz. B. R. 1 Leonard 106.* in Trespass and Battery, the Defendant pleads *Salisbury* an ancient City, and a Custom there, that if any Affray be committed upon any Officer, upon Complaint to the Mayor, he, as a Justice of Peace, might send for the Offender, and justifies, under the Commandment of the Mayor, to bring the Plaintiff before him: And on Demurrer joined, and Judgment against the Defendant, one of the Grounds thereof was, that it did not appear that *Salisbury* was a Corporation, although it did appear that *Salisbury* was a City, and had a Mayor; much less shall it conclude the King, who is not so strictly bound in his Suites as common Persons are. It is true, that in the Case of *Maidenhead* there are three Judges against *Mountague*, of Opinion, that they need not set forth they are a Corporation, because they are not questioned for it by their Information, but supposed to be one, and questioned only for a Market, which they claimed by the King's Grant. In the same Case it is agreed, if they had been sued by any other general Name, but the very Name of Incorporation, they should not be intended a Corporation, according to the Case of the King against the Corporation of *Denbigh*. And whoever looks into the Record, must conclude *Mountague's* Opinion to outweigh that of the other three Judges. The Suit against them was by the Name of the *Pontenarii*; the Grants which they plead, recite the Corporation of the *Pontenarii* to be dissolved, and the Grant is a new Grant to the Bridge-masters: So that there was no room for any Intendment, that it was a Corporation before the Grant, against their own Plea; but that which seems in the Case to have preserved the Bridgemasters, is, that the Judges inclined to an Opinion, that it being for Maintenance of a Bridge, which was of necessary and publick Use, the Grant itself might amount to a new Incorporation, which was a plain Waver of the former Opinion; and if the three Judges had continued their Opinion, Judgment would have been entered for the Defendant; but no Judgment was ever given in that Case: So that *Mayor, Citizens, and Commonalty of London* being a general Name, sufficiently describing the Persons against whom the Suit is brought, may be used in the King's Suites without any manner of Conclusion to the King. But in the next place, it is yet stronger, where one of the Articles of the Suit is for usurping the Corporate Right, that prevents all Colour of Pretence for any Conclusion; herein this Case differs much from that of *Maidenhead*, as to the Form of the Information. And in such Cases, where the questioning the Right is a special Article, the Form of the Information is the same against all Corporations, whether by just Title, or altogether usurped, and by Wrong; the Suit supposeth them all to be by Wrong, and usurped; and whether by Right or Wrong, cannot be known, till the Title by Pleading be disclosed and disputed; and many times not then neither, because the Liberty may be lost by Default of Pleading, upon *Nihil dicit*, or Mispleader, by pleading a wrong Title, or insufficiently pleading a right Title.

A Quo Warranto contra *Præpositum & Burgeses burgi five villæ de Card*, for claiming to be a Corporation, and divers other Liberties: They plead, that they claim nothing but under the Bishop of *Bath and Wells*. It appears by the Plea, that they had no good Incorporation, and Judgment might have been entered against them: But the Bishop obtained a Grant from the King of a new Incorporation, which I have seen and perused, and thereupon a *Noli prosequi* was entered.

A Quo Warranto against the Commonalty of the City of *Canterbury*, for claiming to be a Corporation, and divers other Liberties: They plead to all, and several Issues taken in several Parts of the Plea, and Breaches assigned to others for a Forfeiture. Quo Warranto against the Bailiff and Aldermen of *New Radnor* is of the same Nature; and Multitudes of others I could produce, where the Suit is brought in the same Form as our's, to question the Right of a Corporation against them by their Corporate Name.

My last Answer is, That where the King proceeds for a Forfeiture upon breach of Condition, the Right is not determined till Judgment of Seizure; for it is a mistaken Ground, that Forfeitures to all Purposes relate to the Time of the Forfeiture: For as to Copyhold Estates, Offices, and Liberties, in Case of the King, which may be determined by Breaches of Fact, they are not avoided till the Fact, which causes the Forfeiture, found upon Record: So that the Suit is well grounded against them, the Name of *Mayor, Citizens, and Commonalty*: for they continue such Seizure, and till then are a Corporation *de facto*.

I shall be short in my Answers to the Objections to the Replication, cause they are in Effect already answered by what I have said. The averie of the Title by Prescription is pursuant to the Supposal of the Information, which supposeth they have usurped that very Liberty, and puts them upon shewing their Title by that Name; even put the Case they have a good Title by that Name, by this Patent, or by Act of Parliament, and they will waive it, and set up a Title by Prescription. And this was done in the Case of *Canterbury* before, and in the Case of *New Malton*; where, upon the very same Information as our's against the Bailiff and Burgeses of *New Malton* in *Rot. 3. Com. Ebor.* they pleaded their Title to their Corporation by Prescription, and Issue taken; and it proved fatal to them; for Verdict and Judgment went against them.

Then for the Contrariety of the Replication to itself, none appears; for the Traversing of the Prescription by such Name, is no Denial; but it may be a Corporation by Prescription by another Name, or it may have that Name also by Grant. And the farther Replication is, That assuming upon themselves to be a Corporation by that Name, they committed the several Acts, which are assigned for Breaches. And that is the only Advantage the King hath. By Informations of Quo Warranto he may go upon the Title, and take Advantage of any Defect therein, or of the Pleading thereof, and may also assign Breaches for a Forfeiture, as is held in the Case of *Maidenhead* Bridge. In the Case of *Canterbury*, Issue was taken upon some Liberties, Breaches assigned to others. The King may plead several Pleas, and take several Issues, and demur to part, as he shall be advised.

3. The Objection, that no Judgment can be given upon these Pleadings, ariseth principally upon two notable Errors, against plain and express Authorities of Law.

(1) That nothing can be seized into the King's Hand, which the King cannot hold and enjoy when it is there.

(2) That every Judgment upon a Forfeiture ought to be a Judgment of Ouster.

These mistaken Grounds having been so often made use of by Mr. Recorder in other Parts of this Argument, for supporting a Supposition, That a Corporation cannot be forfeited, I shall (to avoid Repetition) leave them to be considered when I come to his main Argument; and therefore shall proceed to consider the preliminary Points moved relating to the Matter; viz.

*First*, Whether the Right of Incorporation of being a Body Politick may be forfeited, or seized into the King's Hands?

Admitting it may be, then,

*Secondly*, Whether the Acts of Common Council, or the Members assembled in Common Council, which is all one, may work such Forfeiture, or Cause of Seizure?

*First*, As to the first Point, I must confess the Weakness of my Understanding, that upon what hath been offered from Reason or Authorities of Law, I cannot apprehend it rendered in the least doubtful to a Court of Law, whatever it may be in a Common Hall, and Publick Assemblies of the City, where strong Lungs have a Preference before a rational Head, but that the Right of being a Body Politick may be forfeited, or suspended.

It was moved as a Doubt by Mr. Solicitor, but as a vulgar Error obtruded from publick Prints upon the unthinking and unwary Citizens; which possibly gave Encouragement to the many Exorbitances committed within the City, and particularly to those now laid to their Charge; and, I thought, sufficient had been spoken by Mr. Solicitor to have prevented the Growth of so mischievous an Error. But for that Mr. Recorder did *ex animo* espouse that Opinion, as if no Man were in his right Wits, that did not concur with him in Opinion, and as if there were something in it indeed, hath laid his main Stress upon it, and erected it as his *Palladium* to defend the City by. And probably this Image (for, if examined, I fear it will prove no other than a Work of Imagination) may make that Impression upon some Men, that, conceiving themselves to be Citizens and Aldermen of an invincible and immortal City, incapable of Dissolution, they may dream of being an independant Commonwealth within a Kingdom, and unaccountable to the King, or his Laws. It is therefore made necessary for me (with your Leave) to mispend some of your Time in speaking again to this Point; which I shall do.

1. By briefly stating what this Right is, whence it ariseth, and for what Purpose it was framed or introduced?

2. I will examine the Reasons and Grounds produced by Mr. Recorder, why it cannot be forfeited?

3. Then I shall offer the Reasons and Authorities of Law, that it may and hath been forfeited and seized into the King's Hands.

In speaking to all which I will not so far distrust the Memory of the Court, as to repeat what hath been so well urged by Mr. Solicitor from Reason and Authorities, but shall endeavour to avoid it what I can.

1. As to the first Thing proposed, This Right of a Corporation, aggregate of many, (to which I shall confine my Discourses, being the only thing under Consideration) is a Right granted to many natural Persons to be, have, enjoy, and act as one Body and Person. It confers *jus Personæ*, & *Personam efficit*, which our Law Books express by the Names of *Persona Politica*, and *Corpus Politicum*, and, as such, is capable of all Civil Rights, both *habendi & agendi*. The Instruments of Creation of this Right, and the Claims thereof upon Pleadings, do best declare the Nature of it, viz. *Quod homines Inhabitantes, Cives, Burgeses*, or such other general Name, describing the Persons who are to take, *sint unum Corpus Corporatum re, factis, & nomine*. And when Prescription is made for a Body Politick, &c. *Quod Homines & Cives, or Homines & Burgeses sunt, & a tempore cujus, &c. fuerunt unum Corpus Corporatum re & facto per nomen* — So that it is something more than a Notion, or mere Name, *Corpus Corporatum* fully expresseth it, a Body made up of several visible Bodies in unum collecta, & *vinculo juris unita*. And a Corporation is every whit as visible a Body, as an Army: For though the Commission or Authority be not seen by every one; yet the Body united by that Authority, is seen by all but the Blind; and if the King or the Law demand the Authority, it must be produced and shewn and is as visible in the Eye of the Law, as any other Right whatsoever, whereof natural Persons are capable. It seems strange,



and almost beyond all Excuse, that the Recorder of London should never have seen that great Body Politick assembled; unless he will excuse himself, that he is the Mouth of the City, and not the Eyes.

Co. 11. b. f. 29. Sir James Bagg's Case, Co. 11. b. allows it to be such a Right, that every Member, separately considered, hath a Freehold therein; and all, jointly considered, have an Inheritance which may go in Succession. It is the same Right which the Civilians style *Collegium*, or *Universitas*, and so styled here in Bracton's time; scil. *Si Rex concesserit alicui—Universitati sicut Civibus vel Burgensibus*.

Natural Persons, as such, are capable of taking and holding this Right. It is neither taken nor held in their Politick Capacity, but their Natural; for many Men, as Men, are capable of Union, which is evident by the Charters of Creation, and the Pleadings in all such Cases; it is *Homines & Burgenses, Homines & Cives*, who are constituted *unum Corpus Corporatum*. And as the Natural Persons are an essential Part constituting the Body Politick; so all the Operations and Exercise of this Right are only performed by the Natural Persons, 21 Ed. 4.

31 Ed. 4. fol. 14. fol. 14. That Book and other Authorities, are express in the Point; though in a Case so evident, there needed no Authority. And therefore when the Question is of *Non user* or *Abuser* of Franchises by a Corporation, it must of Necessity be intended for some Acts or Negligence of the Natural Persons, or those Officers that are employed by them. And the Question will rest only upon this, What Acts, or what Omissions of the Natural Persons, will affect this Right, wherein all the Members of the Body have an Interest?

This Right is merely of human Institution; and therefore as to its Birth, Form, Extent, or Limits, is directed and supported by the municipal Laws of each Country, and therefore for that Reason is styled by our Books *Political*. By the Constitution of our Laws, this Right, as all Jurisdictions and Franchises, is lodged in the Crown, and thence only is derived. Bracton upon the Question, *Quis concedere possit libertates, & quibus & qualiter transferuntur?* thus resolves it: *Dominus Rex habet omnia Jura in manu sua, quæ ad Coronam & Regalem pertinent potestatem, & Regni gubernaculum; habet etiam Justitiam & Judicium, quæ sunt Jurisdictiones; habet etiam ea quæ ad Pacem pertinent. Ea quæ dicuntur Privilegia, licet pertineant ad Coronam, possunt ad Privatas Personas transferri, sed de gratia ipsius Regis specialiter.* And then sheweth, that such Grantees as *Usufructuaries* may enjoy them, *donec amiserint per abusum vel non usum*. The

49 Ed. 3. 3. this ancient Author in this Point, That none can make a Corporation but the King; such Power cannot be prescribed for, it is so inherent to the Crown. The principal Case was of the Whitelawers in London, who prescribed, That by the Custom of London, the Men of any Art or Mystery might act as a Guild or Fraternity, and were capable of a Devisé; and plead their Custom confirmed by several Charters; and, no doubt, would have pleaded some of the Acts of Parliament now pleaded, if the learned Counsel had then thought there had been any thing of Force in them. Judgment was given against them, for that none had such Power but the King. In that Case it appears, that the Abbot and Prior of *Westminster* were one entire Corporation, and divided by the King, and, after the Severance, a *Quare impedit* maintained by the Prior against the Abbot.

Some Corporations are by the King alone, as Dean and Chapter, Mayor and Commonalty; some by the Pope alone; some mixt, by the King for their Temporal Possessions, by the Pope for their Spiritualties. Whether the King grant them by Charter out of Parliament, or in Parliament, or by Act of Parliament, the King is still the Donor, and the Fountain and Spring from which this and all other Liberties flow. A Title by Prescription always supposeth a Grant in or out of Parliament, and is allowed by Law for supporting long Possessions, grounded upon ancient Grants before, time out of Memory; but by what Title soever these or any other Rights are derived down, whether Grant or Prescription, their Natures remain the same, and they are governed by the same Rules of Law, and are equally subject to the like Civil Accidents, the one as well as the other.

The last thing inquirable into this Head is, To what End and Purpose such Corporations were elected, and allowed by the Policy of our Laws.

The general Intent and End of all Civil Incorporations is in order to better Government. Government relates principally either to Persons or Things: That which relates principally to Persons may be properly called General Government; because, properly speaking, Persons only are the Subjects of Government. That which relates to Things is called Special Government, because limited to the Managery of particular Things, as Trade, Charity, and such-like; for the Government whereof several Companies and Corporations for Trade were erected, and several Hospitals and Houses for Charities. Of this Nature are the *Trinity-Houses* for regulating Navigation; and so the College of *Physicians*, the Corporation of *Parish-Clerks*, and a Multitude of other Special Corporations in England. The only End of erecting these Special Corporations was, for the better Order and Government of the several Matters specially committed to their Care.

The Corporations for General Government only, are those of Cities and Towns, Mayor and Citizens, Mayor and Burgesses, Mayor and Commonalty, and such-like. The Corporations, as they are for the Government of Men only, having nothing specially committed to their Care upon the Incorporation, so they are erected for no other End or Purpose than Government. And if either at the Time of the Incorporation, which very few are, or afterwards, they have any Special Matter committed to their Care, it is purely collateral to the Ends and Design of erecting these sort of Incorporations within Cities and Towns. This appears by the Charters of Creation both ancient and modern; the Form is much the same, which is after this manner: *Nos volentes, quod de cetero imperpetuum in eadem Civitate, Burgo, aut Villa [as the Case is] Libertas & Privilegium ejusdem habeatur unus certus & indubitatus modus pro custodia pacis nostræ, ac pro bono regimine & gubernatione Civitatis, Burgi, & Villæ, ac Populi ibidem inhabitantium, & aliorum illie confluentium; & quod Civitas,*

*Burgus, aut Villa, pace concordia, & quiete sint, ad formidinem & terrorem malorum delinquentium, & in præmium bonorum; ac etiam ut pax nostra ceteraque facta justitia & bono regimine ibidem melius custodiri valeant & possint.* These are the Grounds upon which Corporations are erected.

The Limits and Extents of their Corporations, and Jurisdiction, are limited by their Characters; and there is a plain Difference made in many Charters between this and other Liberties, as to the End of granting; this being erected only *pro bono regimine*, being a Burden, and chargeable in the Execution of that publick Trust. Many other Liberties and Privileges, both of Ease and Profit, are granted to them *pro meliore sustentatione* of those Charges, which the Government would necessarily require. Since the Statute of *Mortmain* they cannot purchase without a special *Non obstante*. They cannot engross Trade, by excluding Foreigners; *Norris and Stap's Case, Hob. 211.* So that no private Benefit can be assigned to be the End of erecting them. The Power of making By-laws, which is incident to a Corporation, is only for better Government; and by that Rule they must be judged.

Having considered the Nature of a Body Politick aggregate, whence it flows, and for what Purpose it was erected.

2. I proceed to examine the Grounds and Reasons produced, why it cannot be forfeited, or seized into the King's Hands?

Many things were produced by Mr. Recorder, to make good his Assertion, more *ad captandum populum*, than to persuade a Court of Law. I will not mispend your Time in perusing the jocular Part of the Argument, which may make the Citizens smile one way, and the Learned in the Law another way; but I shall collect together what seems to have any Force of Argument. The Grounds the Argument went upon seem to be these:

- (1) That a Corporation is no Liberty or Franchise, but a mere Capacity of suing, and being sued.
- (2) That a Corporation, in its Nature, is not capable of being forfeited or dissolved.
- (3) That it cannot be surrendered.
- (4) That the Forfeiting or Dissolving of any Corporation was never put in Practice, nor so much as ever came within the Compass of any Man's Imagination.

(1) As to the first, *A Corporation is no Liberty, but a Capacity*. Now it is proved, even just as all the rest will appear to be proved, by strong Averments, and Quotations of Books that prove no such thing. The Authorities were 1 *Inst.* 250. *Bro. Title Corporation and Capacities*. In the Institutes the Words are, *A Body Politick is a Body to take in Succession, framed as to that Capacity by Policy*. The Authority is express against him, that a Body or Person Politick hath a Capacity to take in Succession, and is not a mere Capacity; and the other Words of the same Author, are, *And made into a Body and Capacity to take and grant*: So that this Authority fails; it neither proves it no Liberty, nor to be a mere Capacity.

That of *Bro. Tit. Corporation*, proves less, for *Capacity* is of larger Signification, and incident to Natural Persons, as well as Corporate Persons; and such Instances are set down under that Title of *Alienees, &c.* and it is a great Imputation to the Memory of so learned a Person, that he should think, that *Corporations* and *Capacities* were synonymous, or that he should tautologize in a Title in an Abridgment.

The Definition Mr. Recorder gives of a Corporation, that it is a *Capacity of suing and being sued*, which served him for many a Jest in his Discourse, is no better than to define a Man to be *Animal bipes*, or, which is nearer, a mere Capacity of walking with two Feet. Although the Authorities fail, and prove not the Matter, yet it is of that Importance to the Cause, that a Corporation be no Liberty, that something must be thought upon to make it out. For if it be admitted to be a Liberty, the Authorities will be too strong, that every Liberty and Franchise carries with it a Condition, that it be used, and well used, the Breach of which will amount to a Forfeiture. And therefore, when nothing else can be found to prove it no Liberty, recourse must be had to the negative Argument, backed with strong Averments, that it was never so styled in any Authority of Law, except in one Case, in the *Co. Ent. Q. W. Town of Helmsly, Co. Ent. Quo Warranto*, and Mr. Noy's Opinion in *Hayward and Fulcher's Case*, grounded only upon the Case of *Helmsly*. But one Swallow makes no Spring; and it was well Mr. Recorder spied it in that Case, otherwise the Averment had been without any Exception.

If the Point had rested upon that Precedent, and Mr. Noy's Opinion, it would have better Authorities for it, than any could be produced against it. But there are Multitudes of Authorities, whereby Corporations are not only called, but appear to be Liberties and Franchises; several have been cited by Mr. Recorder, but not seen, or overlook'd by him.

In the Case of *Cusack* and others, in all the Parts of the Record it is styled a Franchise or Liberty; and particularly in the Continuance, *Curia advisare vult*, and time taken to advise upon it as a Liberty. So in the Case of *Farrer*, and others of the *Virginia Company* throughout the Record styled a Liberty and Franchise, even in the Judgment itself. Mr. Noy knew of these Cases, and many more before this time; but knew it to be the Guise of learned Men, in clear Cases and of daily Experience, not to repeat many Authorities.

The Records of the Cases cited by Mr. Recorder of the Borough of *Hebmerly*, the Case of the *Musicians*, and *Bermudas Company*, &c. do all call it a Franchise or Liberty. The Cases I have already cited do so too; Against the Bailiff and Burgesses of *New Malton*; against the Mayor and Commonalty of *Canterbury*; against the Portreve and Burgesses of *Chard*. Many more I have perused, but conceive it too much to trouble the Court with them at present.

It is certainly true in all the Records of *Quo Warranto*, where-ever there is a special Article against a Corporation for being a Body Politick, it is always impeached by the Name of a Franchise and Liberty; and Mr.

(3) Tho



tures there are of that Nature. And in so clear a Case I omit to mention the Writs of *Non emittas*, for entering into Corporations, and the Returns of their Bailiffs; which make out evidently, that Corporations are Franchises, and the Limits of the Corporation, and Limits of the Franchises are all one.

(2) The next Argument is drawn from the Nature and Qualities of Bodies Politick, That they are invisible, immortal, impeccable, and therefore impatible, with a large Jargon of *non ens*, & *ens rationis*. Certainly this Argument was fetched from the Clouds at the City's Charge; and it cost them dear: For I cannot believe it could enter into the Reason of any Man, much less of learned Men, that a Body framed by the Policy of Man can be immortal; or that a Body, compacted of many bulky visible Bodies, can be invisible; or a Body, whose very Parts and Members are mortal, is in its own Nature immortal. Mr. Recorder admits, that the Death of all ends the Corporation; and therefore if any learned Men have used such hyperbolical Expressions, most certainly they never intended the Citizens of London, or other populous Town or City within England, of whom the Question is, but of some Corporation in Utopia, where the Citizens neither eat, drink, nor die, or at least of some Corporation that never had other Existence but in the Brain.

The Authorities cited were *Co. 1. Inst. 9. Bulstrode 233. 21 Edw. 4. 13.* and many others; and many more might have been cited, and to as much Purpose; as *Co. 10. fol. 32. Sutton's Hospital*, brings in a whole Regiment of Authorities speaking to the same Purpose. I do not remember that Book was cited, and there was Reason for it; for in Conclusion it spoils the Argument, viz. that these Expressions are of Corporations in Abstracts, not coupled with particular Men of this or that Town, where the Men act all, and the Corporation doth nothing otherwise than what the Men do. If it be considered abstracted from particular Men, it is but a bare Right, and coupled in the Notion of it with Men in general, who are the proper Subjects of Government, and remains only in Notion, and may well enough sustain these Epithets which have been given it, as all other Rights and Notions may; but whilst it remains such, it can no more sue or be sued, than commit Treasons, Felonies, Riots, or other Trespases, either against the Government or particular Men; neither hath it any Existence *in re & facto*, but in the Brain.

The Case indeed that is cited *1 Inst. 9.* is applicable to any particular Corporation; the Case is thus put: If a Man gives Lands to a Mayor and Commonalty, or other Body aggregate, consisting of many capable Persons, without naming Successors, the Law construes it a Fee Simple, because in Judgment of Law they never die. If this be any Authority, it is from the Immortality of many Persons capable, for they are the Persons who are said in Judgment of Law not to die. Where my Lord Coke's Sense is plain, that these natural Persons, though capable to take in their natural Capacities jointly, which the Law would adjudge an Estate for Lives; yet the Grant being made to them by their Corporate Name, they take in that Capacity, and the Grant is not determinable upon their Death, but shall continue with the Corporation whilst it continueth. That my Lord Coke never dreamt of Immortality of a Body Politick, fully appears in his Writings: *1 Inst. 13.* where he puts the Case insisted on by Mr. Recorder of a Dissolution by Death of Abbot and Monk. He after puts the Case generally of other Corporations, as Dean and Chapter, Mayor and Commonalty: If Lands be given to them, and the Corporation be dissolved, the Lands shall escheat to the Donors, upon a Condition in Law: in the first Grant, if the Law raise such Condition upon Grant of Lands, much rather doth it upon the Grant of the Incorporation, where the Intent of the Donor is as special, and upon a greater Tyult. That my Lord Coke understood it of other Dissolutions than by Death only, he refers in the Margin to the Case of the Knights Templars, which was not dissolved by the Death of the Members. That Corporations were dissolved many Years before the Statute *De terris Templariorum*, *17 Ed. 2.* the Statute recites, the Corporation was dissolved, and that the King and several other Lords had entered upon all their Lands and Escheats: The Judgment of the Parliament was, they were well dissolved, and the Lords well intitled by Escheat, as the Law stood; and therefore by Act settles them upon the Hospitallers. This Corporation was dissolved by the Pope, and upon the Ground of *Non user*. The End of their Corporation was for guiding Christian Pilgrims to the Holy Land and Jerusalem, which the Saracens and Turks having over-run, and possessed themselves thereof, the Members of the Order never came there, but disposed of themselves in several Parts of Christendom. The Order was erected by Pope Honorius, *21 H. 1. Anno 1120.* and was dissolved by *Clemens Quintus*, *4 Ed. 2. Anno 1311.* thirteen Years before the Statute: and their Spiritual Corporation, which was the Principal, being dissolved, the Power of holding Lands, conferred by Temporal Princes, determined, *2 Inst. 431. & H. 432.*

*1 Inst. fol. 102.* the Case is put where the Tenant held by *Homage Antient* of a Body Politick dissolved; the Homage is gone, though a new Corporation be founded by the same Name. That my Lord Coke never entertained such an Opinion, appears by his Argument in the Case of the Dean and Chapter of Norwich, when Attorney General. His Mistress's Heart was much upon that Case to preserve their Lands; and it was well argued by Mr. Attorney, and no doubt well studied; but this Topick, from the Indissolubility of Corporations, never came into his Head. Besides the Statutes of Confirmation, he insisted upon these things: *First*, That the Words of the Surrender were not sufficient to surrender the Corporation; *Secondly*, That they were the Bishop's Council, and in some sort one Corporation with him; *Thirdly*, From the great Mischiefs which would ensue. This new Invention alone would have done the Business, if he had been so fortunate to have found it out; or if any of the Judges had thought of it, they would not have gone about it so long, as at length to ground their Resolutions only upon the Points which did arise upon the Statutes. *Fitzherbert* is of the same Opinion, That if an Abbey be dissolved, a Presentation shall escheat to the Lord of whom it was held.

(3) The next Argument produced by Mr. Recorder was, That a Cor-

poration could not be surrendered; upon which Head I will not entertain your Time, for these Reasons: *First*, Because it was not to the Question, and that Mr. Recorder admits, that many things may be forfeited, which cannot be surrendered; *Secondly*, Because the Point may come judicially into Debate, some Dislike having been taken to Surrenders lately made; and I choose to refer myself to that Question which comes properly in Judgment; *Thirdly*, But my last and principal Reason is, that he hath produced no Authority of Law to make good his Assertion.

The Authorities of the Cases of the Dean and Chapter of Norwich. *Mich. 40 & 41 Eliz. and Hayward and Fulcher's Case, Hil. 3 Car. 1.* which both relate to the same Surrender, and are in effect the same Case, only in the latter Case the Surrender is disclosed to the Court to be larger than did appear in the former Case; and though many Books are cited, yet they all contain but these two Cases, which make strongly against him. For throughout these Cases, both in stating the Question, Arguments of Counsel, and Resolutions of the Judges, it is plainly admitted, that a Corporation might be surrendered. Otherwise the stating of the Question in the first Case, upon the Effect of the Words in the Surrender of *all their Possessions and Cathedral Church*, Whether sufficient to surrender the Corporation? and the Arguments thereupon, and the Resolution of the Judges was needless; but it was plainly admitted, that a Corporation may be dissolved; and it was the Common Law Point they did resolve, that they were all idle and illusory. And so in the second Case, Whether the Dean and Chapter, without the Bishop, could surrender the Corporation? it is all along admitted, both by the Counsel upon the Grounds they went upon, and by the Judges in their Resolutions, that it might be surrendered, *concurrentibus his quæ in jure requiruntur*; and therefore, by the Resolution of the Judges, it could not not be done without the Bishop, because he had an Interest in them. And when *Whitlock* in his Argument had recourse to a more general Reason, which was, That the Surrender could not be good, because then they should be *Felo de se*, which is against Nature; *Jones* takes him up, and flatly denies it, and saith, That a Dean and Chapter might dissolve themselves by *Cesser*; or if all die, or resign, the Corporation is dissolved; but concurred with him, that the Surrender did not dissolve it, because the Bishop was no Party, nor consenting; and in the End *Whitlock* concludes his Argument, that it could not be done without the Bishop. And the Saying of *Whitlock* in that Case, *That the King may grant, but not dissolve a Corporation*, is certainly true in the same Sense as it is of Lands, and all other Rights whatsoever; the King may grant, but cannot refuse without Cause; yet all may be forfeited upon due Cause, and by Judgment of Law returned to the King.

(4) The last Topick of Argument, by which Mr. Recorder concluded a Corporation cannot be forfeited, is a *Non user*; because never any Corporation was forfeited, nor did it ever enter into any Man's Imagination, that it could be forfeited. This indeed doth put the Proof upon me; and Mr. Solicitor hath already made it out with great Learning by several Instances of Corporations seized into the King's Hands for Forfeitures committed by them; some by Judgments, others by Inquisitions finding those Forfeitures. But Mr. Recorder with one Blast hath blown them all away, that they are but mere Sounds, and look big with Seizure, and seizing of Liberties into the King's Hands, but, when strictly examined, they are of no Substance; and the Fruit of all the Examination ends in a Difference he hath found out between *Seizures* and *Forfeitures*; much such another Difference as was that between a *Liberty* and a *Capacity*, upon which the whole Weight of the Argument turned, *That a Corporation was no Liberty, but a Capacity*. And if so little a Distinction be enough to answer the Weight of Mr. Solicitor's Arguments, it will be in vain for me to attempt further Instances, unless I can reconcile this little Difference, and shew it to be as ineffectual as that between a *Liberty* and a *Capacity* was before; and therefore I crave leave, in the first place, to examine this short Answer to so many and so great Authorities.

It is objected, That those are Precedents of Seizures, but not of Forfeitures; for Seizures in the Case of the King's Suits, and of the Bishop's Temporalities, are of the same Nature as Seizures upon the Grand Cape's and *Distingas* in Suits between Party and Party, only to answer Issues. And when Liberties of Towns are mentioned to be seized, the Towns only are seized, and not the Corporation, which remains *in statu quo*; but where a Forfeiture is, there must be Judgment of *Ouster*. Every Sentence almost of this Answer is contrary to all the Books and Records of Law, that I know of. The Authorities cited to prove the Differences are *Nat. Brev. fol. 161, 162.* which saith, Inquire into the Causes of Seizures, and Causes of Forfeiture; but what these Causes are, which may be Causes of one, and not of the other, are not disclosed. But my Lord Coke, in the Countess of Shewsbury's Case, determines the Difference, and makes them all one. There are, saith he, three Causes of Forfeiture or Seizure of Offices for Matter of Fact, *Abuser, Non user, and Refuser*. He makes the Causes of both to be the same: Forfeiture is but the Fact upon which the Seizure is grounded, where the Subject hath Title of Entry for a Forfeiture, in the Causes of the Entry, different from the Causes of the Forfeiture. So in the King's Case, where Liberties are seized for an *Abuser*, whether it be by Judgment, or upon an Inquisition, or Presentment, finding the Abuse; can it be a Question with any learned Man, but the Seizure is for the Forfeiture? The King cannot seize without Cause, and the Cause must be some Fact in Breach of the Condition in Law annexed to the Liberty. The other Authority produced is of the *Quo Warranto* against *Roger Mortimer*, cited *2 Ed. 3. 29. in Strata Marcella, Co. 9. fol. 28.* where upon Denial of Aid, and the Defendants not answering over, Judgment was given of fore-judger of the Liberty, and Error brought; where *Scroop* saith, That in some Cases Franchise shall be put into the King's Hands, in some Cases seized in the Right of the King until Fine; and in some Cases it shall be fore-judged, which holds for ever. I do admit this Case to be good Law, but it makes nothing to the Purpose to prove the Difference; or that Seizures by the King for Misusers are not for Forfeitures, or that Judgment of *Ouster* are only Evidence of Forfeitures.

Palmer 501.

Jones 168.

Palmer 503.



Seizures, or to prove a Seizure in the King's Suit, is of the same Nature as the *Grand Cape* or *Distingas*, upon mean Process in the Suits of common Persons. And because neither the Book Cases, nor Mr. Recorder have given any Light into the Cases, which may vary the Judgment in a *Quo Warranto*, I will endeavour to state the Matter, how it stands upon Seizures of Liberties:

(1.) Liberties may be seized into the King's Hands by the Award of the Court, which, in that Book, is styled, *Put into the King's Hands*; and that in two Cases principally:

Where the Defendants are summoned to appear at the King's Suit, and make Defaults.

Where a Contempt appears upon Record, in returning or executing the King's Process.

I shall give Instances of each. For the latter, 2 *Ed. 4. fol. 5.* in case of Bailiffs, upon Error, the Bailiff appeared, and prayed a Day to bring in the Record; they failed at the Day: The better Opinion is, their Franchise shall be re-seized. And *Vavasor* there saith, If a Lord of a Franchise do any Trespas, or Contempt to the King's Court, it is Cause in the same Court to re-seize the Franchise. For the former, 15 *Ed. 4. 6.* in *Quo Warranto*, if the Defendant appear not at the Day, the Liberties shall be seized; and if he doth not replevin them, as in *Eyre*, they shall be absolutely forfeited; for the Statute of *Quo Warranto* directs the King's Courts to proceed in *Quo Warranto* as in the *Eyre*.

*Trin. 16. Jac. 1. Brigg's Case*, in *Quo Warranto*, the Defendant appeared not at the Day; the Liberties were seized, *Roll. Rep. 2 part, fol. 46.*

*Trin. 17 Jac. 1. Roll. 2. part, 92. Quo Warranto* against the Mayor and Burgesses of *Wigmore in Com. Lancast.* upon Default made at the Day, it was agreed by the Court, That if they shewed not good Cause to excuse their Default, their Liberties should be seized into the King's Hands; This being in the Case of a Corporation, the *Capias in manus* should be of the Politick Person which made the Default. Where Seizure is by Award of the Court for a Contempt in Court, the Court may admit the Parties to affix and order Restitution; so where by Award of the Court, on Default of Appearance at the King's Suit, a Seizure is made, which is in Nature of a Distress, to bring in the Party, by putting him out of the Possession of the Liberty, till he appear and replevy; the Court, if the Defendants come in time, and pray it, may deliver them the Possession upon Replevin; and this by the new Statute of *Quo Warranto*, 30 *Edw. 1.* Before that Statute the general Writ of Summons to answer to Liberties, as also the particular Writs of Summons upon the Kings Special Suits, superseded the Use of any Liberty till the Justices met on the Day of Return. Which Mischief was remedied by that Statute; if they appeared not at the Day, the Liberties were to be seized in Nature of a Distress, to enforce their Appearance. And upon Appearance, if they demanded to replevy them, the Judges might deliver back the Possession of the Liberties upon Security to prosecute their Claim, and answer the mean Profits, if any, in case Judgment were against them; much in the same manner as the Practice is in the Court of *Exchequer* upon all Seizures to this Day, by the Seizures the King is in Possession: But if the Party appear and plead, and put in Security, he is by Rule of Court permitted to receive the Profits. But this Statute not limiting any Time for his Appearance, or to reply, that remained as it did before upon the old Statute of *Quo Warranto*, 18 *E. 1.* which refers to the Practice in *Eyre*: So that if the Party did not Replevin in Time, the former Seizure would amount to a Seizure after Judgment by Default, which is final.

(2.) Again, Liberties are seized into the King's Hands by Judgment of Court in the King's Suits, whether the Judgment be by Default, or *Nihil dicit*; upon Demurrer, or Issue tried, this Judgment is final, and the Court cannot admit to a Fine, or award Restitution, unless upon Error brought. This Court is to set the Fine upon the *Capiatur*, but not the Fine for Redemption: that is purely in the King's Breast, *Et ex gratia Regis*. There is no such formal Judgment of Seizure until Fine; but this upon Judgment and another Seizure upon Inquisition, or Presentment, which I shall mention, are the Seizures in the King's Right, represented in *Mortimer's Case*, but frequently entered *quousque Dominus Rex aliud preceperit*. What was intended by a Judgment of Ouster in that Book, and in what Cases by the Course of the King's Courts it ought to be, will best appear by an ancient Rule, taken and agreed by the Judges in *Edward the Fourth's Time*, before they were promiscuously used. The Rule is thus: Where it clearly appears to the Court, that where a Liberty is usurped by Wrong, and upon no Title, either by the King's Grant, or otherwise, there Judgment only of Ouster shall be entered: But where it appears, that the King or his Ancestors have once granted a Liberty, and the Liberty be misused, Judgment of Seizure into the King's Hands shall be given. These Rules carry their own Light with them: That which came out of the King's Hands, as *Bracton* useth the Word, is properly returned there again by Seizure, or (as our ancient Books phrase it) by Re-seizure. But that which never came thence, but merely usurped upon him, shall be vacated, and by Judgment of Law declared null and void.

There is another Case, which is there likewise resolved, and that is, where it is doubtful to the Court, whether the Liberty commenced by Grant, or by Wrong; that for the Uncertainty the best and safest Course is, that Judgment be given of Seizure. This last Case was the principal Case in that Book, the Question arising upon a Default, What Judgment should be given? and by that Rule Judgment was given of Seizure, not of Ouster. And agreeable to these Rules, all the Judgments which I have met with have been given; and this Course hath been found most beneficial to the Subject, who, though by Forfeiture, Misdemeanor, or Default, he may lose his Liberty, may have recourse to the King's Mercy for Restitution.

In the Case of the Bailiffs and Aldermen of *New Radnor*, which was by Default, Judgment of Seizure only was given.

In the Case of *New Malton*, though the Issue, that the Corporation was by Prescription, was tried against them; yet having long acted as a Corporation, they might have mispleaded their Title, as the City of *Lon-*

*don* hath done, in claiming that, by Prescription, which commenced by Grant within Time of Memory, Judgment only of Seizure was given, and not of Ouster. In all Cases of Disclaimer, Judgment only of Ouster shall be given; upon the same Rule Judgment only of Ouster was given in the Case of *Staverton*, reported in *Yelverton and Crook*: But the Entry there is mistaken; for it is entered *Mich. 8. Jac. 1. Rot. 2.* for it appeared to the Court, that it was a mere Usurpation without Title; for that no such Court, as he claimed, could be gained by Prescription, nor indeed by Grant, through the Meanness of his Estate. Mr. Recorder insisted upon this Judgment, as a Measure for all Judgments upon Forfeitures of Liberties, but plainly mistook the Reason of it. Upon the Reason of these Rules, in such Cases where Grants do appear, but either the Parties are not capable of taking, or the Liberty granted, not allowable by Law, the Courts hath been to enter a mixed Judgment both of Seizure and of Ouster.

In the Case of the Inhabitants of *Denbigh*, who claimed by Charter several Liberties; but it appearing they had no Capacity to take, yet the Usurpation being by Colour of Letters Patents, the Judgment was mixed both of Seizure and Ouster; for there was no possibility of Restitution, because they were not capable.

And in the Case of *Cusack* it appearing to the Court, that the Liberties granted did not pass, nor could be lawfully used; yet the Usurpation being by Colour of a Grant, Judgment of Seizure was given, as well as Ouster, in these Cases, as likewise in *Sir George Reynell's Case*; and by Multitudes of Cases of Offices seized, it appears how vain the Objection was, that the King cannot seize a Corporation, because he cannot have it, or be the Mayor and Commonalty; for not only what the King may have or hold, but what he may dispose of, are in Judgment of Law, said to be in his Hands; and it is the proper Office of the Hand *disponere*, as well as *tenere*. And what but colourably came out of the Crown, though it cannot subsist by Law in a Subject, shall be seized, as in *Cusack's Case*.

3.) In the last Place there are other Seizures, which are by Process by Commission of Inquiry upon Inquisition found, or upon Presentment; and such are always for Forfeitures, upon Faults found in Breach of Conditions annexed by Law. That the King is in Possession of all incorporeal Rights by such Seizures upon Inquisition, appears by the Resolution in *Sir George Reynell's Case*. In these Cases of Seizure for Forfeitures, no Court, or the Lord of the Liberty, whether Body Politick, or Natural, can admit to a Fine, and thereupon make Restitution; neither is there any other way by Law to take off the King's Hands, but by direct Traverse of the Fact, if the Fact found be not true; or by Demurrer, if the Fact found be not in Law sufficient Cause of Forfeiture. The Facts upon which such Seizures have been made, have been generally so notorious, and the Consequence of Law upon them, taken to be so evident, that I never met with any such Inquisition ever traversed or demurred to; but the Application for Restitution hath still been to the King's Grace. And these Inquisitions have been taken either *ex officio* by the Sheriff, or by special Commissions. The Sheriff by his general Commission is intrusted with the Preservation of the whole County, and the publick Peace thereof.

And though in the Grant of Corporations and other Liberties, there be special Clauses exclusive, *Ita quod, &c.* Yet these Clauses, as the Grants themselves, have another *Ita quod* annexed to them by Law, that they preserve good Government, and do not abuse the Franchise, by committing or permitting Riots and great Disorders in Breach of the publick Peace; which if they do, is by Law a *Non omittas* to the Sheriff, to inquire and take care of the publick Peace within the Liberty.

The Town of *Hereford* was seized into the King's Hands by the Sheriff of the County, for holding of a Market contrary to the King's Prohibition. Upon Certificate thereof into Chancery, the King's Writ issues to the Sheriff, approving thereof, and commanding him to keep it in the King's Hands, *Donec dominus Rex aliud inde preceperit. Rot. Clauso. 15 H. 3. memb. 7. Hales lib. K. fol. 41.*

Of Seizures made upon Presentments, and Inquisitions taken by Commissions, there are many Instances, some whereof I shall mention when I come to the Precedents. The Seizures upon Judgment, or for a Forfeiture, which are always in the King's Right, do as effectually put the King into Possession, and oust the natural Persons from using the Right, as any Judgment of Ouster whatsoever. And the Difference between such Seizures, and those upon the *Grand Cape*, which are only upon Mean Process, and in Right of the Subject, and in his Aid, is too apparent to be further enlarged upon. There is some Resemblance between this Seizure upon the *Grand Cape*, and that in the King's Suit for Default, that Appearance for both are upon Mean Process, and both repleviable, if the Defendant or Tenant come in Time.

There is also a further Resemblance between them, which makes not for Mr. Recorder's Purpose; and that is, in that both are lost for ever, if the Parties come not in Time. For at Common Law, if upon a *preceptum quod reddat*, and the Lands seized into the King's Hands upon the *Grand Cape*, the Tenant makes Default, and comes not within forty Days, he could not wage his Law to excuse his Default, but the Demandant should have Judgment to recover the Land presently, 15 *Ed. 4. fol. 7.*

The Difference that it was not the Franchise or Liberty of the Corporation, but the Towns themselves were seized into the King's Hands, is as void of Authority as of Law. Sometimes indeed *Civitas & villa*, in Records, are used promiscuously for the Franchise and Freedom, which is jointly used and enjoyed by the Inhabitants, exempt from the Common Law Jurisdiction: And in such Case, the Seizure of the City or Village, and of the Franchise, is all one; and the Inhabitants thereby put under the Government of the Common Law, discharged of the Franchise. But if the Town or City be taken for the natural Persons who are the Inhabitants, or for the Houses wherein they inhabited, which they must be upon Mr. Recorder's Distinction, otherwise it will be a Distinction without a Difference; neither the Inhabitants nor Houses were ever seized, or could be seized, into the King's Hands upon such Inquisitions as have been found, and Judgments of Seizure that have been given. The only Proof for this Difference was a strong Averment, that whilst the City of *London*

*Mich. 20. Jac. 1. Rot. 17.*

*Trin. 6. Jac. 1. Rot. 3.*

*Hil. 27. Eliz. Rot. 15. Co. Ent. 337.*

*Pasch. 17. Jac. 1. Rot. 11.*

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London lay under the several Seizures, sometimes of the Mayoralty only, at other times of the whole Franchise, the Corporation was as vigorous as ever, and in *Statu quo*; not so much as suspended, but did exercise all Corporate Acts as before. An Averment against the express Sense of all the Citizens when under those Seizures, and against many Authorities of Law.

At the Parliament, 18 Ed. 1. the Citizens (for they had then no Mayor) petitioned the King in Parliament, *Quod Rex velit eis concedere pristinum Statum, sc. Majorem et antiquas Libertates*. They petitioned not for their Houses, or the Liberty of their Persons, those were never seized; but to be restored to the Mayoralty, and their ancient Liberties, which were under Seizure in the King's Hands. If the Corporation had been in *Statu quo*, they would not have troubled the Commons to present such a Petition, nor the King to grant so idle a Petition, as *eis concedere pristinum statum*; but they, who knew their Condition better than Mr. Recorder, could admit themselves out of Possession both of their Mayoralty, and their ancient Liberties, and pray to be restored to them. And the King's Answer was, he was not at present advised *statum mutare*. My Lord Coke's Opinion is,

that the Chapter, when no Dean or Commonalty, when no Mayor, have not Capacity so much as to make continual Claim, nor to take by Purchase, nor sue any Action.

If the Commons of London meet on Michaelmas-day, and choose a Mayor, the old Mayor not present, the Election is void; and so any other Act without the Mayor. If the Commonalty in the Vacancy of a Mayor make Obligation under their Common Seal, it is void; how much stronger will the Case be, when the whole Franchise is seized?

I have now removed the Objections which lay in my Way, by opening the Nature and Effect of Seizures of Liberties into the King's Hands, and where Judgment of Seizure, and whereof Ouster are properly given; whereby it may appear, that this special *Capias* of *Capias in manus Regis* is as proper an Execution against the Body Politick, as the common *Capias* against the Body Natural; and in Judgment of Law the Politick Person is as properly said *civilliter mortua* by Judgment of Seizure, as the Natural Person is said *civilliter mortua* by Judgment of any Attainder for any Capital Offence. Mr. Recorder acknowledges, that in case of Natural Persons, when the Law gives Forfeiture of the Body, or of the Liberty of the Body, it is all one in Judgment of Law; the Law is the same when it speaks of Bodies Politick, to forfeit the Liberty of the Body Politick, and to forfeit the Body Politick.

3. My Way thus cleared, I will lay down the Grounds and Reasons of Law, upon which I conceive, with some Clearness, that Corporations may be forfeited and seized into the King's Hands, as well as Offices, or any other Liberties whatsoever; and then shall instance in some further Precedents, whereby it will appear they have been forfeited and seized. My Grounds are principally these:

(1) That there is a Condition in Law annexed to the Franchise of a Corporation, upon its first Erection, as strong, if not stronger, than to any other Franchise or Liberty whatsoever.

(2) That there is nothing extraordinary or peculiar in the Nature of a Corporation, to hinder taking Advantage of the Condition broken, or to exempt it from the common Condition of other Liberties in Consideration of Law.

(1) As to the first, Where-ever the Law introduceth or alloweth any Right upon a Trust, or for the Benefit of the Publick, it implies a Condition, that the Trust be discharged, and the Ends of its Creation complied with. This Condition implied by Law is of stricter Obligation than Conditions express; it shall bind Infants and Females Covert, 8 Co. 44. The principal Case is of Offices; but the Book saith, *So it is of all Liberties and Franchises*. And indeed throughout our Books, the Cases of Offices of Publick Trusts and Franchises run parallel; and the greater the Trust is, or of greater Necessity to be performed, the Condition is still the stricter. And therefore in Franchises, as well as Liberties, if the Franchise be for the better Administration of Justice, and of Necessity. *Non user* will be adjudged a Breach of Condition; but where not of Necessity, *Non user* will not be a Breach; yet *Refuser*, which is an obstinate and wilful *Non user*, may be a Breach; but in case of all Liberties and Franchises whatsoever, *Abuser* was ever judged a Breach of the Condition. This Matter, upon the Question of Forfeiture of an Office, is well stated in the Countess of Shrewsbury's Case, 9 Co. 50. Now this Franchise of a Corporation is granted upon a far greater Trust and Confidence than any other Liberty whatsoever, as I have already shewn; viz. For the Government and Peace of the Inhabitants, and others coming within the Liberty of the Franchise, in Subordination to the general Government of the King; and that they are intrusted therewith by the King upon the publick Account of Government only, and not for any private Respect or Benefit whatsoever. Other Franchises are either subordinate and auxiliary to this, as to hold Courts, have Gaols, and such like, for the better Administration of the several Parts of Government; or else are of Profit or Use, *pro meliori sustentatione* of the Charge and Burden of this subordinate Government. And therefore Banks, in the Argument of Hayward and Fulcher's Case, Palmer 495. calls it the *Principal Liberty*, and other Liberties the *Accessories*.

In the Case of Knights Templars, the Corporation was dissolved upon the Account of *Non user*, though without their Default; but the End of their Institution ceased. The Case is much stronger where it is a voluntary *Cesser*, as where the Abbots and Monks quit their Habit, and leave their Houses; this *Non user* will be a good Cause of discharging the Order. Where the Commonalty have Power to choose every Year a Mayor, if they do not choose a Mayor, their Franchise shall be forfeited, or they may be fined, upon this Reason, that common Justice fails for want of such an Officer, which was a Breach of the Condition annexed to their Liberty by *Non user*, 21 E. 4. 14. It appears in this Case, That the Commonalty, in the Vacancy of a Mayor, are by this Purpose a Corporation, to choose a Mayor to perfect the Body; and 'tis the only Corporate Act, that they are by Law enabled to do without.

out a Mayor; and this Right may be forfeited too. And as by never choosing a Mayor, they themselves would dissolve the Corporation; so by forfeiting their Right, it is in the Power of the Law to dissolve them. It also appears expressly by this Case, that the King may proceed either for a Fine, or upon a Forfeiture, as he may do in the Cases of all Offices and Franchises whatsoever, as he shall be advised.

If *Non user* in some Cases (as I have shewn) will forfeit a Corporate Right, no Shadow of Reason can be offered, why *Misuser* or *Abuser* will not do it as well as in all other Liberties. For as greater the Trust is, or stronger the Condition, so an *Abuser* of that Trust is a far greater Breach of the Condition, than a simple *Non user*. Single Bodies Politick have indisputably such Conditions annexed to them upon the Trust of their Creation; and the Breach of the Condition is in Law good Cause of separating the politick Person from the natural, by Deprivation, which in the Civil Law is of the same Effect as Judgment of Ouster by the Common Law; and their Suspension hath some Resemblance with our Seizures into the King's Hands. If Mr. Recorder had but observed the different Laws that Spiritual Corporations and Civil Corporations are guided by, he would not have raised his Wonder to that Height, that *Quo Warranto's* were never brought against Monasteries, Bishops, Deans and Chapters, Parsons and Vicars, and that bringing it now against the City of London threatened the whole Hierarchy of the Church; when, with his Leave all these, if they offend, may by Law lose their Corporate Right, which may be severed from them by a certain Instrument called *Deprivation*, the Edge of which is no sharper than Judgment of Seizure, or Ouster in our Law. And certainly the Union between the politick and natural Body is as close and as strong in single Corporations, as in aggregate; and the same Authors have bestowed upon them the same Epithet, and that they cannot commit Treason and Felony; and the Body Corporate of the Bishop, Parson, Prior, Alien, &c. is as invisible, immortal, and as politick as that of aggregate Bodies. Yet not only Treason and Felony, but far less Misdemeanours committed by the natural Persons will forfeit the Corporate Right, and amount to a Breach of the Condition annexed by Law. So little Crimes, as Waste, and wilful Dilapidations, will be Causes of Forfeitures; many of the Cases thereof are put in Sir James Bagg's Case, to which I refer, 11 Co. 98. For I do take that Case to be an express Judgment in Point, That there is a Condition annexed by Law to every Corporation, and that the Breach thereof is a Forfeiture. The Resolution there is, that any Member of the Body may forfeit his Corporate Right, and may by Law be divested of it, which Right is there called his *Freedom* and *Liberty*. And it is the same Right or Liberty, in which all, jointly considered, have an Inheritance, wherein each Member hath a Freehold; for they are not seized of this Right in their Corporate Capacity, but as Natural Persons, the Question being of that Right which gives them the Corporate Capacity. And what any Member may forfeit, every Member may; and the same Acts which will forfeit the Right of every Member, separately considered, if done jointly by all the Members, will have the same Effect. What Act will amount to a Forfeiture, that Case generally determines, whatsoever is contrary to the Duty and Trust of a Member; especially if the Fact be contrary to his Oath, the Oath of Allegiance by the Statute 7 Jac. cap. 6. is made a Part of the Freeman's Oath. The Case goes further, and assigns many Particulars, which will be Breaches of the Condition, viz. Attainders, Forgery, Perjury, Conspiracy, or any other infamous Crimes, at the King's Suit; if these will be sufficient Cause, there can be no doubt but Treasons, Felonies, and Oppressions, Seditions, and other Attempts in disturbing the Government, will be good Causes of Disfranchisement of any or many of the Members who commit such Crimes; and this upon the Trust and Condition implied by Law, upon the first Erection of the Corporation; for the present Members are under no other Trust or Condition as to this Matter, than what the Law imposed upon the first Members.

I cannot see how the Counsel for the City can evade the Force of Sir James Bagg's Case, unless it be by a Distinction or two:

1.) Between every Man, and all Men; every Man may forfeit his Part, but all Men cannot forfeit the whole: Just such another Distinction as was made to all the Precedents between Seizures and Forfeitures.

2.) The other Distinction seems to have a little more Colour, and it is between the King and the Corporation.

The Corporation, say they, are intrusted by Law with Power over their Members to remove them for acting against their Duty; but the King cannot disfranchise any particular Member; and if he cannot disfranchise any one Member, much less can he all Members, or seize their Liberties into his Hands, which in Law amounts to a Disfranchisement of all the Members.

I answer, The King may do both the one and the other; and in saying the King can do it, I mean in Course of Law.

1.] The King doth it, when the subordinate Ministers and Governors within the Corporation do it; for they do it as his Ministers in Execution of his Laws; and it is their Duty to do it, according to the Trust he hath reposed in them, and the Power he gave them; and this Authority is greater or lesser, as he is pleased to grant it, as it appears by Sir James Bagg's Case. If the King grant them express Authority to remove, they may remove the Offender before Conviction at Law. But if no express Power be granted, a Conviction at Law must be first had; and the Judgment of the Law directs their Duty, and they are accountable herein to the King in his Courts of Law: If they mistake the Law, and displace a Member convicted of an Offence, which amounts not to a Forfeiture, the Party shall be restored by *Mandamus*; an excellent Precedent of Restitution, if they do not their Duty, to disfranchise where the Offence requires it.

2.] The King may do it, by commanding them to do it by his Writ out of the Court where the Conviction remains, or out of the Chancery, as he may the Coroner of the County, Mayor, and other Officers, as the Precedents have been. A Writ to remove the Mayor of Berwick. So where an Alderman is dead, the King may send his *Mandamus* to choose

Dier 333.

the County,

13 Co.

9 Car. 1.

Membr. 29.

another,



another, as done in the Case of *Lanceston*, P. 8. Car. 1. P. 3. Car. 1. 23 R. Hale, Corporat. Pl. 5. If they yield not Obedience, they may be fined, or may incur the Forfeiture of their Liberties, as the Case may require.

3.] In case the Corporation cannot do Justice in punishing and displacing the Offenders, either because the Majority are Offenders, or favouring, or abetting the Offenders, there being a Failure of Justice in the Franchise, which the Law will not permit, by Judgment of Law the City or *Ville* shall be restored to the Government and Jurisdiction of the Common Law, by Seizure of the Franchise into the King's Hands.

4.] Failure of Justice, and the not suppressing and punishing of notorious Riots and Tumults, have been adjudged good Causes of Forfeiture of Liberties: and the Plea of *Non Ability* to suppress them, disallowed as any Cause of Excuse, as to the Point of Forfeitures of the Liberties, which doth and will appear by the Precedents insisted on by Mr. Solicitor, and what I shall superadd. So that I conceive the Authority of Sir *James Bagg's* Case remains unshaken, that there is a Condition annexed to the Franchise of a Corporation, the Breach whereof will be a Forfeiture. The greater the Trust of any Member of a Corporation is, the stricter is the Condition; as where any of the Members are chosen into any Places, which more immediately concern the good Government of the Corporation, a less Crime will be the Cause of his Removal, than will be a Disfranchisement of a private Member, as in the Case of an Alderman.

*Taylor's Case*,  
Trin. 14.  
Jac. 1. B. R. Roll.  
Restitution 455.  
pl. 1.

It was resolved, for being a Drunkard and Haunter of Taverns, he being a Magistrate more immediately intrusted with the Government, was Cause of Removal; though he have Freehold in the Place, yet it is upon special Trust and Confidence. The Law will be the same, if the Magistrate gives the least En-

couragement to popular Tumults, or frequent Conventicles, and unlawful Assemblies. And it is no Objection to say, that some Statute Laws have laid a Penalty for the Offences, as it is in the Case of Drunkenness, and many Offences of Officers; and in Common Law Offences, the Law provides a Penalty against the Offender by Fine or Imprisonment; and yet the same Offence, if a Breach of Condition, will be Cause of Disfranchisement, as appears in Sir *James Bagg's* Case. The Penalties inflicted by Statutes or Common Law, are for the Breaches of particular laws; but the displacing of a Magistrate is for Breach of the general Trust of his Place, wherewith he is intrusted for the Publick; and having broken that Trust and Condition, the Law adjudgeth him unfit to be intrusted, *ne quicquam detrimenti capiat Respublica*. The Question, What Acts of a Member will forfeit his Corporate Right? is no-where in our Books so distinctly put as in Sir *James Bagg's* Case. But the Question, What Acts of the Members, and of what Number of the Members, will forfeit the whole Franchise? I know no-where distinctly put in our Books, but as they lie scattered in the Instances of Forfeitures taken, and Franchises seized; otherwise than upon the general Rules of *non user* & *abuser* of the Trust committed to them. But the Civilians do largely treat upon these Questions; Whether the Cities, Colleges, and Universities may be forfeited and dissolved, and what Acts of the Members will be Causes of such Forfeitures? And therefore I crave Leave,

*Oldradus de*  
*Pont. fol. 29.*

before I conclude this Head, from the Condition annexed by Law to all Corporations, only to mention one of them. It is *Oldradus de Ponte*, in his Book intitled, *Consilia sive Responsa, & Aurea Quaestiones*: Where he debates the Point at large *Pro* and *Con.* and puts the Objections of some Authors, which are much the same enthusiastick Raptures, as have been made use of in this Case; viz. that they have no Souls, but are immortal Bodies, and such-like Stuff. But he resolves the Question thus; I will repeat his own Words: *Sed licet non habent veram personam, tamen habent personam fictam fitione Juris. Et ideo dicit Lex, quod Municipium Civitas & Societatem personae sustinent: Et sic eadem fitione animam habent, & delinquere possunt, & puniri, ea tamen poena quae possit cadere in eas, scilicet, quod privetur Privilegiis, & sic Capite minuitur. Et sic sicut vera persona per mortem naturalem definit esse quod erat, sic ista persona ficta per mortem Civilem, quae est, ut privetur Privilegiis, definit esse quod erat, quia amodo non erit Universitas.* And then assigns the Causes generally: *Et quod Privilegia possint revocari, cum incipiunt esse iniqua vel damnoisa. Et non potest esse magis iniquum, si utatur eo in contumeliam concedentis.* Though this be a full Opinion of a learned Man, as to the Case in question, both as to the general Question of Forfeiture, and the particular Breaches assigned; yet I use it not as an Authority; but only to shew the Concordance of other Laws with the Law and Practice within this Kingdom; and that learned Men have before now not only dreamt of such a thing, but have concluded the Point upon Debate and Reason of Law, That Corporations may be forfeited and dissolved, when their Privileges, as used by the Members *incipiunt esse iniqua vel damnoisa*.

(2.) My other Ground is, that there is nothing extraordinary or particular in the Nature of Corporations aggregate, to exempt them from the Condition of single Corporations, or of other Liberties: If there be, it hath not yet been shewn. It must arise either from the Number of the Persons who take, and are the Subjects of this Liberty, because they are many; or from the Right conferred upon them. The Number of the Persons constituting this Body contributes nothing towards the Indissolubility thereof, pleaded for. They were several natural Persons before the Union, and remain so many natural Persons; and by retaining their natural Capacities, are as capable of being separated, as they were before capable to be united by taking this Right. And as to the Number of the Persons, a Corporation differs nothing from other Communities, which may assemble and act in a Body: As the voluntary Societies in Inns of Court and Chancery, and Armies, which act under Commissions, to some Persons to collect and assemble, others to act jointly under them. These Societies have their peculiar Rules and Laws to act by, and act jointly, and in a Body, as Corporations do: But yet, in the one Case, if the Members so agree; or in the other Case, the Commission be revoked, they are all separated, and the Union dissolved. So as to the Nature or Numbers of the Persons collected, a Corporation differs nothing from other Societies not

incorporated. From Number may be presumed a greater Duration, and it is most probable many may outlive one; but it is certain that many shall die as one Man, and probable, that all may die before others elected, which was admitted to be a Dissolution of the Body Politick: but ingeniously distinguished, that this was rather a Separation of the Persons from the Body, than of the Politick Body from the Persons. Be it so, it is admitted then they are separable, and that Number cannot protect the Natural Persons from being severed from the Body Politick by natural Death. And I have already shewn, that Number contributes nothing to the Indissolubility of a Corporation, by Separation of the Members one from the other, which is called a Civil Death; and in Cases of Civil Death, the separating the Liberty from the Person, or the Persons from the Liberty, is all one. To take the Office from the Officer, or remove the Officer from the Office, is all one; and so in Disfranchisement, to take away the Freedom of a Member, or to remove him from his Freedom, is all one: And so in Forfeiture of Franchises, the Judgment of *Ouster* is formally putting the Persons from the Franchise, and Judgment of Seizure taking the Franchise from the Persons; but in effect they are the same viz. a Separation between the Persons and the Franchise. And this Separation being wrought by a Condition in Law annexed upon the Union, the Number of Persons can no more prevent it, than where Lands, or incorporate Inheritances, are granted to many and their Heirs, upon an express Condition that no Advantage could be taken of the Condition broken, because the Grant is to many Men.

From the Nature of the Right or Franchise, as little can be inferred for this inseparable Union pretended.

1.) In its Creation, it is merely by the Policy of Man, and the Rule is taken in *Calvin's Case*, 7 Co. fo. 25. That what is by the Law of Man, may be altered. And divers other Books speaking of the Effects of human Constitutions, laying down as a certain Rule, *Quicquid colligitur dissolvi potest*; mortal Beings cannot confer Immortality.

All Rights whatsoever are incorporate, and sometimes *abusively* are styled immortal, which by Intendment of Law is only, that they have continuance so long as any Persons subsist capable of having them: And in this Sense the Right to Lands and Corporate Inheritances are of greater Duration than many Liberties, and particularly those of Corporations; because they subsist when they return to the Crown, which many Liberties do not, but are then extinct. *Strata Marcella*, 9 Co. & 15 Ed. 4. fo. 6.

2.) As to the Nature of this Right, whether it be considered as a Right of taking and holding in another Capacity than that of natural Persons, or as a Right of taking in Succession, under neither Consideration can it import any inseparable Quality. In the former, it is both the same with that of single Corporations, and plainly implies a Trust. In all the Cases of our Law, where-ever any Persons take in another's Capacity than their own, it is always upon Trust, as Executors or Administrators, Churchwardens, &c. and all single Corporations: And where the Law creates the Trust, the Law provides Remedy, if the Trust be broken, for putting the Trust into safer Hands. And likewise, if considered as a Right framed by Policy, to take in Succession, it is in Substance the very same with that of single Corporations, and if any Advantage be in point of Duration, it inclines to the Side of single Corporations; as better framed by Policy to have Continuance, than the other of aggregate Corporations.

1.] Because the Choice of the Successions, whether elective, donating, or presentative, is placed elsewhere, and not in the Person himself, that it cannot be in his Power to prevent the Succession.

2.] Because the Law leaves it not in his Power to determine the Corporation, either by Surrender or Forfeiture, but during his Life; and so cannot prejudice his Succession.

But in Lay Corporations the Power of Succession being intrusted with them by Elections to continue it, the whole Right is in them, and consequently in their Power to determine it, either by not electing, or electing those the Law incapacitates, which is the Case of *Worcester*; or every Man of them may for good Cause be disfranchised, or the Franchise for Cause seized, and consequently, for want of Succession, the Goods may go in Succession, as to Churchwardens. A Chattel Lease may go in Succession. The King grants Lands for Years, rendering Rent to the Aldermen of *Chesterfield*; they take in Possession as a Corporation, *Cro. Eliz. 35. (Mich. 26)*. The same Case, *Hales, Corporat. pl. 25*. Upon these Grounds that there is a Condition annexed to all Corporations as well as other Liberties, and that there is nothing peculiar in the Nature of Corporations aggregate, to exempt them from being liable to Seizure for Breaches of that Condition, I conclude, Corporations may be taken into the King's Hands by Seizure; which is a Separation of the Liberty of being a Body Politick from the Natural Persons who (as *Bracon* phraseth it) were but *Usufructuarii*, and had not *Proprietum Dominium*. And by this Separation the Natural Persons are restored to the Government of the Common Law.

The Mischiefs that would inevitably follow, were the Law otherwise have been insisted on by Mr. Solicitor. It were to set up independent Commonwealths within the Kingdom; and according to the Judgment of the Parliament 21 Ed. 3. would certainly tend to the utter Overthrow of the Common Law, and the Crown too, in which all sovereign Power to do Right both to itself and the Subjects, is only lodged by the Common Law in this Realm.

The Answer Mr. Recorder applied to the Mischiefs, that they might be otherwise punished, is of little avail. Though he did not express in what Manner they might be punished, yet it must be intended by Fine, or at the Suit of the Persons injured by their Offences. The same Answer may be applied to the Oppressions by Officers and the Abuses of all Liberties whatsoever, and likewise to exclude Disfranchisement of any one Member of a Corporation: But there is no sufficient Remedy to cure the Mischiefs, whilst the Cause still remains and is in as great Power to oppress, as before; which nothing can sufficiently restrain, but the Loss, at the least, the



the Loss of that Power. To put the Subjects grieved to contend with Corporations for their Relief by their several Actions, were for the Common Law to lay a greater Burden upon them, than what they suffered from the Corporation; as was sufficiently experimented in the Case of the Duty of Water-bailage of London, before the Quo Warranto was brought to rescue them: And if they recover Damages, those Damages can only be levied upon the common Goods and Estate of

the Corporation, 8 H. 6. 1. And many Corporations have little or nothing in Common Stock, and few Corporations sufficient to make Satisfaction for all their Oppressions. And to prosecute for a Fine is no Satisfaction to those who are injured, nor doth remove the Cause of the Oppression. And the Law would be deficient, if such inferior Jurisdictions, or Corporations, were not subject to the Common Law upon the like Conditions as other Liberties, Franchises, and inferior Jurisdictions are.

Mr. Recorder hath affirmed it with great Assurance; That never any till this Suit ever so much as thought of refusing Corporations, which are subordinate Governments. I shall only request of him, and of the other Gentlemen of the City's Counsel, to shew me the Opinion of one learned Man of this Kingdom, or any other Nation, deliberately delivered upon the Question, That sedatory and subordinate Governments cannot, for any Cause whatsoever, be forfeited or refused. That *de facto* they have been refused in other Nations, is testified by many Authors, with their Opinions, that *de jure* they may so be; which I forbear to trouble the Court with. Within this Kingdom of that Nature are Counties Palatine, the Cinque Ports, the Liberties of Ely, Lordships, Marches, and such-like, and the Corporations of Cities and Towns; which are all held of the Crown of England. What the Practice and judicial Opinions have been concerning these Liberties, according to the Law of this Land, Mr. Solicitor hath shewn in several Instances; which I shall not repeat, but shall produce some others to prove the same Matter. I beg Leave to rescue a very considerable Precedent produced by Mr. Solicitor, from the Gloss Mr. Recorder was pleased to put upon it, That it was an Act of Parliament; when 'tis no such Matter, but a Judgment of the King's Bench in Point upon a Forfeiture. It is the Case of Sandwich, cited p. 9. Ed. 1. Rot. majus 35. Kan. The Record is amongst the Plea Rolls, in the Treasury or Tally Office.

It was upon an Information at the King's Suit, presented by the Sheriff of the County against the Mayor of Sandwich, and Three others, for assaulting the Sheriff's Bailiff upon Execution of the King's Writ within Stanore, beating the Officer, and taking the Writ from him, and tearing it, and stamping it under his Feet. They plead to the Jurisdiction, that Stanore was within the Liberty of Sandwich, within the Cinque Ports; and that *De aliqua seductione fac' corporis Regis, non tenentur respondere alibi, tamen at the Court at Shepway.* The Plea was over-ruled upon this Ground, That none could claim such a Liberty without express Grant; and they shew no Charter for it, and were ruled to answer over. They insist upon that Exemption, and refuse to give any farther Answer; whereupon Judgment was given, that they be committed to Prison: And the Judgment goes farther, *Et quia Johannes Dennis Major de Sandwich convictus est de transgressionibus predictis; & factum Majoratus in his quae tangunt Comitatum est factum ipsius Communitatis, consideratum est, quod Communitas de Sandwico amittat Libertatem suam.* This is an express Judgment of this Court upon the Forfeiture of the Liberty, for a Crime committed by the Mayor and others, in a Matter relating to the whole Liberty. Before this, the Franchise of Sandwich was seized, as forfeited into the King's Hands for a notorious Riot committed by the Inhabitants, in Obstruction of Justice, 3 Ed. 1.

The Case upon that Record was thus: Upon an Inquisition found of Purprestures within the King's Warren of Dover, by stopping a Water-course, whereby the Warren was overflowed, a Writ issued from the

Court of Dover, to distrain the Offender by his Goods, to amend and remove the Purpresture: The Officer distrains the Cattle of Simon Erchebston, who was the Offender, and lived at Sandwich, within the Cinque Port. Some of the Men of Sandwich make Rescous; and when the Constable of Dover sent Messengers to complain to the Mayor of Sandwich of this Rescous, and to require Redress; after the Complaint made, and no Redress had, several of the Men of Sandwich fell upon the Messengers, and severely beat them. Then the Constable sent more Officers to see Right done, against whom the Town was barrocaded and chained, and his Officers kept out by the Townsmen in hostile Manner. Then the Constable went in Person, and after some time suppressed the Tumult, and upon their Submission, the Commonalty prayed the Constable would deliver their Submission to the King, which they then delivered to him under their Common Seal; and accordingly was delivered by the Constable to the King and Council, and adjourned into Parliament: And the Mayor, Bailiffs, and Commonalty ordered to be there at a certain Day, before the King and his Counsel in Parliament. Upon hearing thereof in the Presence of the Mayor and Bailiffs for the whole Commonalty, Judgment is thus entered upon that Record; *Consideratum fuit per Dominum Regem & concilium suum in Parlamento, quod Majoratus & Libertas de Sandwich pro predictis Transgressionibus in manus Regis capiatur, & tradatur in custodia Constabulario de Dover, ad disponendum de predicta Villa secundum communem Legem & Consuetudinem Regni, non obstante aliqua Libertate.* It evidently appears, both by the Form and Matter of it, that that Form was judicial, and not legislative, and agreeable to the Forms of Judgment in the other Common Law Courts, and in our Law Books. Here is a Judgment only of Seizure upon a Forfeiture, and it amounted to a real Ouster; for the Town was actually divested of the Liberty, and delivered up to the Government of the Common Law. For *copiatur Majoratus & Libertas de Sandwich in the Singular Number, in manus Regis tradatur in custodia Constabulario suo*, who is the Common Law Officer, within the Cinque Ports, is no more than leaving the Town to the Government of the Common Law; which is fuller explained by the subsequent Words of *disponendum de Villa secundum Legem & Consuetudinem Regni.* And it appears by this Record, that there is a Difference between the Liberty and the Ville, though sometimes

Ville is used for the Liberty of the Ville; but here the Mayoralty and the Liberty are seized, and the Ville delivered over to the Common Law Officer.

The next Precedent I insist upon, is that recited by Mr. Recorder, the Case of the Town of Cambridge, but lamentably defaced by my Lord Coke's marginal Note, and Mr. Recorder's Averment, that by the Record it appears to have been by common Consent of Parliament. I rather insist upon this, for that Mr. Recorder hath acknowledged its Force, that it worked upon the Corporate Right, and was upon a Forfeiture; but lays the Force of it in its being an Act of Parliament, when in Truth it is a plain Judgment of a Court of Law, and it appears by the Record it was no Act of Parliament. 5 R. 2. N. 45. Mr. Recorder cited the Record 8 R. 2. No. 11. 4. In 1. to 66.

228. and it is probable Mr. Recorder looked no further than that Book for it: In the Margin it is so cited, but miscited; yet in the Body of the Book, in putting the Case, it is truly cited; for the Record is 5 R. 2. 45. to 66. and it is evident by the marginal Note; and my Lord Coke's saying it was the common Consent, misguided Mr. Recorder, to affirm it to be an Act of Parliament, when the contrary appears by the Record. The Complaint to the King and his Council in Parliament against the Town of Cambridge was for a great Riot committed, and an Assault upon the University; and the Fact in Substance is the same as related in the Fourth Institute. It was prosecuted at two Suits, the one against the late Mayor and Bailiffs, who were at the Time of the Riot in their Natural Capacity; the other against the Mayor, Bailiffs, and Commonalty, in their Corporate Capacity; the Writs returnable *coram nobis & concilio nostro*. The former Mayor and Bailiffs appear, and plead in their Natural Capacity, that they were neither assenting nor aiding to the Riot; neither did or said any thing, that might turn to the Damage of the University, unless only by Coaction, and outrageous Compulsion: And there seems to have been no further Proceedings in that Suit. Upon the other Writ, the Mayor, Bailiffs, and Commonalty appear, and pray they may have a Copy of the Articles, which were read to them, and Counsel allowed to them, and Time to answer; and such Answer was returned, as is mentioned in the 4th Inst. But in the Record it is said, it was answered by the Court; and that the Court told them, that at present they should not be put to answer to the Crime, (which must be in order to a Fine) but only touching their Liberties.

Then touching their Liberties, they put in a Plea by Cotton's Researcher Counsel, to the Jurisdiction of the Court, which cords is omitted in my Lord Coke; only he saith, after many dilatory Shifts and Subterfuges following therein, the Court over-ruled the Plea to the Jurisdiction, and ruled them to answer in chief; and if not, Judgment should be entered by *Nihil dicit*. They then pleaded a frivolous Plea, partly Not guilty, partly in Excuse; and the King's Sergeant replied, and the Plea was held naught. Thereupon they submitted, as to the Franchise, to the King's Grace, saving that it might be no Conclusion to them, if they should be called in Question for the Crime. Whereupon Judgment of Seizure was only given. The Words of the Record say thus: *Nostre Seigneur le Roy de Assent des Prelates & Seigneurs en cest Parlement fist seiser la dit Franchise en sa maine come forfait pur la ditz Causes.* Throughout the Record it appears by all the Proceedings they were judicial; but the Plea to the Jurisdiction of the Court, and the Judgment by the King and Lords, only are Demonstrations it was no Act of Parliament, nor adjudged by the legislative Power, but by a Court of Law.

It appears upon the same Record, that the King granted several of the Particulars which were seized, to the University, who enjoy them to this Day. *Et la Remnante de la Franchis de la dit Ville* the King granted to the Mayor and Bailiffs, to hold of him and his Heirs, at the ancient Rent of 101 Marks.

33 Ed. 1. Plac. parl. 277. The Liberty of the City of Winchester seized into the King's Hands by Judgment of the King and Lords, for suffering a Hostage of Baion, who was committed to their Charge by the King for safe Custody, to escape, to the King's great Damage. The Writ of Seizure is directed to the Sheriff of the County, *quod predictam Civitatem Wintoniae, & Libertatem ejusdem Civitatis, cum omnibus ad eas tangentibus sine dilatione capiat in manus Regis, & eas salvas custodiat, donec Rex aliud praeceperit.* Whereby the Franchise being seized, the Men of the City are put under the Government of the common Law Officer. Afterwards the City compounded with the King for 500 Marks, and then the King reddidit eisdem Majori & Civibus Civitat. & Libertat. predictam habendam in forma qua eas tenuerunt ante captionem earundem in manus Regis, and Letters Patents of Restitution were granted, and a Writ of Restitution directed to the Sheriff.

These were Judgments by the King and Lords in Parliament, upon Forfeitures, and were Judgments of Seizure only, according to the settled Rule and Practice in the Common Law Courts.

Mich. 18. Ed. 3. Rot. 161. B. R. in the Treasury or Tally Office. A Judgment of the King's Bench against the Town of Ipswich, upon a Forfeiture. The Bailiffs of Ipswich are impleaded by the King, upon a special Information, reciting that in the King's Bench, sitting there, several Malefactors were indicted for the Death of one John Holby; and that many of the said Town, *tam de majoribus quam de mediocribus*, did comfort and encourage the Felons after the Felony committed, and treated and entertained them with Viands and great Joy. And, after the Departure of the Justices, kept a mock Court publicly, and summoned the Justices, and the Officers of the Court, to appear under several Pains. To which the Bailiffs appeared, and were opposed, by the Court, Why they did not attach and stay the Malefactors? They answered, The Malefactors flew to Sanctuary. Being further opposed, that they did not attach those of the Town, that furnished the Malefactors with *esculenta & poculenta*, they pleaded, *quod non ausi fuerunt, eo quod tanta fuit multitudo gaudentium, & plures eorum fuere e parentela Malefactorum*: Whereupon Judgment was given *contra Balivos & Communitat. quod custodia ejusdem Villa seisiatur in manus Regis, & quod aliquis ex Parte Domini Regis, qui sit ausus ad pacem Domini Regis manutenendam, se intromittat in eadem Villa, quousque Dominus Rex aliud inde dixerit.* Which the Record



Record shews, is the Bailiff of the County, the common Law Officer. And the Mayor and Bailiffs in open Court surrendered their Staffs of Office. This Judgment is agreeable to those in Parliament, and of Seizure only.

R. Claus. 7. Johan' Memb. 24. Civitas & Libertas Norwici was seized into the King's Hands, for hanging Approvers without the License of the King or his Justices; and the Mayor was summoned to answer for the Damage done to the King. Rot. Fin' Memb. 10. (13 Ed. 1.) the Liberties of Norwich seized for a great Riot, and burning the Church: The Case is mentioned Roll. Prerogative, fol. 204. The Liberties of Norwich were again seized, 21 H. 6. upon a Presentment of a great Riot taken before Fortescue, and afterwards regranted to them, 27 H. 6. Patt. Roll. Memb. 19. The Case is cited by Mr. Noy, in the Case of the City of London, concerning the Death of Dr. Lamb, Cro. Car. 252.

The Liberties of Oxford were seized, 32 H. 3. for a great Riot committed by the Townsmen, when the King's Brother was there, and killing of his Brother's Baker. The Writ to the Sheriff runs thus; *Quod capiat in manus Regis villam de Oxon. ut eam salvam custodiat ad opus Regis, ita quod Major & homines ejusdem nullam inde habeant administrationem*; the King in the same Year pardons them, and grants them Restitution, and a Writ to the Sheriff to put them into Possession, 32 H. 3. Memb. 13. Hal. Lib. L. f. 326.

Again the Liberties of Oxford were seized 29 Ed. 3. and Part of their Liberties granted to the University, which are enjoyed by them to this Day, and the Residue restored to the Town; the Seizure was for a Riot committed, Rot. Claus. 29 Ed. 3. M. 21.

20 H. 3. The Liberties of Evesham, for using false Measures, when the King was there, and afterwards, upon Submission of the Abbots and Monks, the King makes Restitution to them, R. Cl. 20 H. 3. M. 8.

18 Ed. 1. The Town of Southampton was seized into the King's Hands, for wounding, even to Death, an Officer in serving the King's Writ: They after submitted to a Fine, and took a new Grant, and raised their Fee-farm Rent to 20l. per Ann. Roll. Prerog. fol. 204.

It would be too great a Trouble to the Court, to cite more Precedents of Seizures for Forfeitures. In all these Instances Restitution was never made by the Court, but by the special Grace of the King, after Submission to him, and upon such Terms as he was pleased to accept; and in some Cases was pleased to restore them to the Whole; in other Cases, but to the Part of the Liberties. That this Liberty of being a Body Politick may be seized into the King's Hands by *Quo Warranto*, Mr. Recorder in Effect hath admitted it, if the Suit be brought against particular Members, and the Cases produced by him prove it. For in the Case of *Cusack*, the *Curia advisare vult* was upon that very Point of being a Body Politick: And the Case of the *Virginia Company*, the very Liberty of being a Body Politick is by the Judgment seized into the King's Hands.

I will give some Instances where it hath been done, in Cases of *Quo Warranto*, against them by the incorporate Name.

Fitz. Avoctury 129. In the *Iter of Lancaster*, a *Quo Warranto* against the Bailiffs and Commonalty of *Lancaster*: They appear, and claim by a Charter of King *John*, whereby the King grants to them all such Franchises, which the Borough of *Northampton* had; but do not set forth upon Record what Franchises *Northampton* had; nor do make Title to the Franchise by Prescription: And for that Reason Judgment was given, their Franchise be seized into the King's Hands as forfeited.

In the Case I before cited, a *Quo Warranto* against the Bailiffs and Aldermen of *New Radnor*, and Judgment against them by Default, that the Liberty should be taken and seized into the King's Hands, though afterwards it was reversed, because in *miseria* was entered instead of a *Capiatur pro fine*; yet it is a Judgment in Point, that a Corporation might be forfeited and seized by Default in Pleading.

The Case of *New Malton*, Trin. 6. Jac. 1. R. 3. is an express Authority, that this Liberty may be seized by Judgment in a *Quo Warranto* against the Inhabitants of a Town, by their Corporate Name. It is brought against the Bailiffs and Burgesses of *New Malton*; and the Form of the Information is the very same with this against the City of *London*. They plead by their Corporate Name, and intitle themselves to the Liberty by Prescription; and Verdict and Judgment against them by their Corporate Name of Seizure only, that the Liberty be taken and seized into the King's Hands; and which is more, the *Capiatur pro fine* against them is entered against them by the Corporate Name of *Bailivi & Burgenses*, though the Corporation by the Seizure was dissolved; and the Reason no doubt was, that that general Name was a sufficient Description of the Persons who were liable to the Fine for their Usurpation. And no Doubt can be made, but that the true Liberty may be forfeited and lost, by insisting upon a wrong Title, as well as by Default, or any other Forfeiture whatsoever. This Town lies under the Weight of that Judgment to this Day; and are no Corporation; and being opposed by the Interest of the Lord *Eure*, who prosecuted that *Quo Warranto*, did never obtain any Restitution or Regrant.

A *Quo Warranto* against the Bailiffs and Burgesses of Mich. 15 Car. 2. *Berkhamstead in Com. Hertford*: They appeared, and Judgment *pro defectu responsi* given of Seizure, Pasch. 16.

Car. 2. and they are no Corporation at this Day. In the ancient Eyres, the Justices in Eyre, when upon Claims put in, the Liberties were lost, either upon some Defect in Pleading, or for some small Abuser or Mistake, the Justices were intrusted with the King's Mercy, to admit to a Fine for Redemption, and make Restitution: But Judgment first passed for Seizure. And regularly upon the general Summons of *Quo Warranto* in Eyre, or special Suit of *Quo Warranto*, which are all founded in the same Right, no other Judgment can be given, if for the King, but a *Capias in manus*, or of *Ouster*; if for the Defendants, a Judgment of Allowance, or *Eat sine die*. The *Capias pro fine* is collateral, and for the Usurpation, not for the Cause of Forfeiture or Seizure. It was one of the Articles of Inquiry in Eyre, how they had used their Liberties? If an Abuse was found, though never so small, Judgment of Seizure was

given; though afterwards redeemed by Fine upon Submission. *Quo Warranto* upon a Claim of View of Frank-pledge in Eyre. It was demanded of the Defendant, If he had any Pillory or Tumbrel? He answered, He had not. Judgment was prayed on the Behalf of the King; for that amounted to a Forfeiture; and if that were not sufficient, that then it might be inquired on Behalf of the King, how they had used the Liberty? The Jury find, that the Defendants and their Ancestors had View of Frank-pledge, but find that the Defendants had taken Amerciaments of Offenders against the Assize for Bread and Beer, amounting to two Shillings, in such Cases where the Offenders should have been punished by the Pillory and Tumbrel. *Idea consideratum est, quod Visus capiatur in manus Regis*. And then they pray they may have their Liberty again upon a Fine, which is granted to them, upon Pledges for well using of their Liberties. And there is no Difference where the Liberty is lost upon a defective Claim or Mispleading, or for a Forfeiture in *Quo Warranto*; the Judgment is the same of *Capias in manus*; and it is all one, whether the Cause of Forfeiture be found by a Jury, or confessed upon the Pleadings, in a *Quo Warranto*.

The next preliminary Point which was moved, is, Whether the Acts of Common Council be the Acts of the Corporation, and do oblige them?

It seems a strange Question, that when to assemble, consult, determine, and to make Orders and By-laws for the Rule and Government incident to every Corporation, without special Clauses of Grant, and that herein only consists the Exercise of the Politick Reason of the whole Body, it should be doubted, Whether what they determine and resolve upon, being so jointly assembled, be a Corporation Act, or may affect the Corporation? Upon the Erection of all Corporations, this Power of assembling, deliberating, and determining for the Corporation, is either intrusted with a few particular Members, whose Continuance in that Trust (both as to the present Members, and the Succession of them) is directed by the several Charters: Or else it is intrusted with the whole Body, and that either expressly in plain Words, or by Implication of Law, when the Charters are altogether silent therein: The Law in such Case lodgeth the Power of assembling, debating, and determining for the Corporation, in all the Members; and the Whole, jointly assembled, (or so many of them as upon Notice shall appear) constitute the Common Council: And such Assembly is not styled the Common Council from being retained and giving of Counsel, as Mr. Recorder would have it, in which Sense he only, and the Common Serjeant, are the Common Council of the City; but they are so called from their joint assembling and consulting for themselves, who constitute the Body Politick. In the same Sense, the Parliaments of *England*, by many Authorities, are called *Communia Regni Concilia*. This Power, thus lodged in the Whole, may be the Whole, or the major Part, which always binds the Whole, being lodged or delegated to a certain Number, which may represent the Whole. In such Case, where the Power is transferred, those Members to whom it is transferred constitute the Common Council in the same manner, and their Acts are of the same Obligation, as where all meet, unless the Delegation were not general, but certain Cases reserved for the Determination of the Whole, as hath been done in several Corporations; but in all Cases not excepted, their Acts are the Acts of the whole Body. Where the Common Council is constituted of the whole Body, or of all the Members who will meet upon Notice, there is no room left for Doubt, but their Acts, and the Acts of the whole Corporation are the same. Mr. Recorder seems the only Person that ever doubted it, and is not to be beaten from his Holds:

First, That the Common Council consist only of particular Members, and their Acts bind only the Members; & *Actio non egreditur Personam*.

Secondly, That no Corporation Act can be without the Common Seal.

Thirdly, That the Acts of the Common Council of *London* are under the Protection of the Statute or Charter in Parliament of 1 Ed. 3. their Acts are personal, and they but Ministers of the City; and that the Charter provides, that the Liberty of the City shall not be taken into the King's Hands for any personal Trespass of any Minister of the City.

For the first, I have already demonstrated, that there are no Acts of the Corporation, but what are performed by the particular Members; I will not repeat. I have produced many Instances, that in point of Crime the Acts of particular Members do affect the Corporation, touching their Liberty. That they do so in point of Wrong between Subject and Subject, the Cases are infinite; I will only mention the Authorities: 9 H. 6. 36. b. 8 H. 6. 1. a. & 14. b. 45 Ed. 3. 2. b. 15 Ed. 4. 1. b. 5 H. 7. 26. a. 4 H. 7. 13. a. 32 H. 6. 9. a. 7. I shall add one Case more, that absolutely destroys Mr. Recorder's Hypothesis, upon which he relies, That a Corporation cannot do or suffer any Wrong; it is 48 Ed. 3. 17. b. The Mayor and Commonalty of *Lincoln* bring Covenant against the Mayor and Commonalty of *Derby*, upon a Deed of Covenants made by the Predecessors of those of *Derby* to the Predecessors of *Lincoln*, that those of the Town of *Lincoln* should be discharged from Toll for their Merchandize brought to *Derby*. In their Count they assign for Breach, that two of the Burgesses of *Derby* by Name did exact and take Toll of several of the Burgesses of *Lincoln*. The Defendants first take Exception to the Count for Variance from the Writ; that the Writ supposeth and alledgeth the Breach to have been committed by the Mayor and Commonalty, and the Count assigns the Breach by two Burgesses: The Exception is over-ruled, and the Court held pursuant to the Writ for the Breach of Covenant, which binds the Whole, and must be made by Members. Then it was insisted upon, in point of Law, That the Act of the two Burgesses did not oblige the Corporation. It was admitted, that the Act of all the Members met together would oblige the Corporation: But it was resolved, that it was a Breach, and obliged the Corporation; and that the taking of Toll by their Officers was a taking of Toll by the Corporation; and the Reason given is, that all the Members of the Corporation cannot, by any common Intendment, be understood to meet together to take Toll. Here is an express Judgment



ment, that *Crimen egreditur Personam*, and shall render the Corporation liable for Wrongs done to a particular Member of another Corporation. Much stronger is the Case of the King upon Breaches of the Condition in Law, as I have shewn, where the Acts of the particular Members, committed against the Kings Officers, are adjudged done against the King, and render the Corporation liable; but when all meet together, and do not act, I may say it was never yet doubted but the Corporation was obliged.

The Case of *Warren*, which was cited, of the Place of Common Council-Man of *Coventry*, is nothing to this Purpose; nor the Reason given, That such Place was collateral to a Corporation; which was no more, than that the Court could not *ex Officio* take Notice of it as a fixed Place or Office, but must take it upon the Return; it being variously used in several Corporations, as I have shewed; and the Custom being returned to choose and remove them *ad libitum*, the Court could not judge otherwise, as they may of the Freedom of any Member, which is the same in all Corporations. And therefore in the Case of *Estwick* and *Bret*, Common Council-men of *London*, where the Court could take notice, they were chosen for a Time certain, the Court adjudged they could not be removed without Cause, and granted Restitution. That the Members of a Corporation

can be punished only in one Capacity, and not in both Capacities, and impeaching them for Treasons and Felonies in their Corporate Capacities, will be licensing them, or at least giving them an Exemption and Encouragement

to commit these Crimes *impune* in their Natural Capacities, is a Strain so much above *Ela*, that I cannot understand it. Sir *James Bagg's* Case teacheth other Doctrine, That the punishing of any of the Members criminally for infamous Offences, by Fine, Imprisonment, or Pillory, at the King's Suit, doth not exempt the Criminal from Disfranchisement.

The many Precedents I have produced do prove, that the Rioters or Members, who committed the Cause of Forfeiture, were not discharged by proceeding against their Liberties. In the Case of *Norwich*, for hanging the Approvers, the Liberty was seized for Misgovernment, and Process issued against the Mayor to answer it at *Westminster*, criminaliter. And in the Case of *Cambridge*, the Court told them, they did not then put it upon them to answer criminally, but as to their Liberties. And they themselves knew, that by Seizure of their Liberties they were not discharged of their Crime: And therefore in the Plea of Submission they insert a Saving, that it might be no Conclusion to them, in case they were impeached criminally. Mr. Recorder doth admit, that if all the Members commit Treason, and be executed, the Politick Person is destroyed as well as the Natural Persons, and that justly too for so great an Offence; and therefore the Extent of Forfeitures doth not encourage, but deter Offenders from Commission of the Crimes. And the Citizens, when they know that their Riots, Oppressions, and Libelling of the Government, do not only subject their Persons to Punishment, who are the immediate Actors, but also subject the Constitution and Government of their City to be questioned, will look upon themselves under stricter Bonds for discharging their Duties, than common Subjects are. And therefore the Nobility, who have so great a Share in the Government, for Treasons, do not only forfeit their Lands and Lives, but their Right of Peerage, which is a special Trust for Government; and that was forfeited in Cases where their Lands were not forfeited, but only during their Lives, upon the Condition annexed to that special Trust; as before the Statute of 26 H. 8. if a Nobleman (to him and the Heirs Males of his Body) having entailed Lands, commit Treason, his Lands are not forfeited from his Heir in Tail; but the Dignity is forfeited and extinct, and not supported by the Statute of *Donis*, by reason of the Condition annexed, *Nevil's Case*, 7 Co. fo. 34. The Law is the same, where the Dignity is granted in Parliament, or by Act of Parliament, it is no less forfeitable in one Case than in the other; the Condition the Law annexed is still the same. If when the Members of a Corporation, corporally assembled, commit Treason against their Prince, it must certainly be acknowledged to be against their Duty, in whatever Capacity they be considered; especially since the Statute of King *James*, which makes the Oath of Allegiance to be Part of every Freeman's Oath; and the Corporate Right is held of the King. If the Law allowed no other Way of taking Advantage of Forfeiture of the corporate Right, but by executing of all the Members, the Law itself might be accused of as great Tyranny as ever was practised by the greatest of Tyrants. And to this, and nothing else, the Principle laid down by Mr. Recorder, that Treasons, Murders, and Felonies of the Members do not affect the Corporation in Law, doth directly tend, viz. to introduce Cruelty.

The Objection that no Acts are Corporate Acts, or can affect the Corporation, but what are under the Common Seal, nothing certainly can be more vain than such an Assertion. Then no Mayor, Sheriffs, or other Officers, ever acted legally in their Choice by the Corporation, because not under the Common Seal: Then no By-laws are valid as Corporate Acts, because not under the Common Seal: The same may be said by most of the Corporate Acts in Cities and Towns.

In the Case of *Cambridge* before the King and Lords, 5 R. 2. *Birdfield* and other Burgesses appeared on the Behalf of the Commonalty. The Court demanded of them, If they had Authority under the Common Seal of the Town? They answer, the Town had no Common Seal, but that they were chosen at a common Assembly of the Town summoned for that Purpose, which is the Common Council, to appear for the Commonalty, to answer and receive *ce queux la ley velt*, and the Authority was adjudged sufficient. The Common Council, say they, are but Ministers of the City, and the Liberty of the City hath a special Protection against the personal Acts of their Ministers by their Charter in *Parl. 1 E. 3.* I have a Copy of that Charter by me from the Records in the Tower. The King's Grant indeed is, *de offensu Prælatorum, Comitum, Baronum, & totius Communitatis Regni in instanti Parlamento.* The Considerations of the Charter are *pro melioratione Civitatis*, and for the laudable Services of the Mayor, Aldermen, and Commonalty, performed to the King and his Successors; but the Grant is only *Civ. Civitatis prædictæ habendum sibi &*

*successoribus suis.* The Words of the Grant are: *Quod pro aliqua personalis transgressionem vel judicio personali alicujus ministri ejusdem Civitatis non capiatur libertas illius in manum nostram vel heredum nostrorum, nec custodiam in eadem Civitate ea occasione deputetur; sed hujusmodi Minister, prent qualitas transgressionis requirit, puniatur.* These are all the Words in that Charter, which refer to this Matter; and the same were granted to them in some former Charters out of Parliament. This appears by this Charter in Parliament, that *Libertas Civitatis*, which is the Franchise or Corporation, had been seized, and might be seized, for some personal Miscarriages of the Ministers; for it is merely the King's Grant that exempts them from it for the time to come. I do agree, that every personal Miscarriage of their Ministers was never any Cause of Forfeiture; but it must be Miscarriages of Omission or Commission, which amounted to a Misgovernment within the Corporation. As 20 H. 2. *Rot. Cl. memb. 5.* The City of *London* was taken into the King's Hands, for not levying a Hue and Cry upon the Death of Persons who were slain, *Hale Lib. L. fo. 269. H. 3. memb. 2.* Their Liberty seized for giving of false Judgment in the Hustings, *Lib. L. 3. 9.* These are sufficient to shew what are the *personalis Transgressio*, and *personale Judicium* intended to the Charter; though many the like Instances may be produced. Who are the Ministers intended, partly appears by the Charter; but fuller by other Authorities, viz. Mayor, and Aldermen, and Sheriffs, who are in that Charter expressly mentioned. But this Charter did not prove of any great or long Advantage to the City, in differing them as to this Privilege from other Corporations; for they were met with, either by excessive Fines set upon their Officers for personal Defaults, and false Judgments; or that it excused the City only upon the first Offence; and if again they committed the like Offence, it was no longer personal, but become their Offence, because they did not displace their Officer to provide against his reiterated Crimes. And therefore, as Mr. Solicitor hath shewn, the Liberty of the City of *London* was after this seized into the King's Hands for Misgovernment; besides the Punishment of their Ministers became difficult, because the Offences being committed in *London*, the Inquiry of them must be by Men of the same, who favoured these Officers. And thereupon, to settle this Matter, an Act of Parliament was made by the same King, which is in Print. The principal Grounds of the Act, as the Act recites, 28 Ed. 3. c. 10. were that the notorious Errors, Defaults, and Misprisions for Default of good Governance of the Mayor, Sheriffs, and Aldermen of *London*, could not be enquired of, nor found by Men of the same City. The Act settles the Rule, that for the first Default of the Mayor, Sheriffs, and Aldermen, they shall forfeit 1000 Marks; for the second Offence 2000 Marks; and for the third Default, the Franchise and Liberties of the City shall be taken into the King's Hands, and this for the Defaults of their Ministers; which is a plain Judgment in Parliament, that the Franchise of *London* may be forfeited; and explains the Charter of the 1st Ed. 3. And to make the Remedy effectual, these Defaults are omitted to be enquired after by the Juries of Foreign Counties; and so shut the Door against all Pretences for the Charter, 1 E. 3. and former Charters. It is enacted, that the Ordinance shall be held firm and stable, notwithstanding any Franchises, Privileges, or Customs. By this Law the Fines of their Ministers for their first and second Offences, in Breach of good Government, are ascertained, which by the former Charters were at Discretion; but for the third Offence of their Ministers, their Franchise might be seized as before 1 E. 3. and their other Charters might, for the Offence of Misgovernment, and from thence till this Statute for the second Offence. But neither the Charter 1 E. 3. or this Law, did extend to any outrageous Acts of their Members, as Breach of their Duty and good Government, but only to the personal Acts of the Mayor, Sheriffs, and Aldermen, in their several Trusts committed to their Managery. Under this Law the City of *London* stood till 1 H. 4. from which King the City expected greater Favours than ordinary, as having merited them by being the chief Instruments of his Promotion to the Crown; but the manner wherein they were instrumental, I forbear to mention. Yet from that King they could obtain no more, as to the Forfeitures for the personal Offences of their Ministers and Officers, than to be put into equal Condition with other Cities and Boroughs. The Statute, after Recital of 28 Edw. 3. that our Lord the King considered the good and lawful Behaviour of the Mayor, Sheriffs, and Aldermen, and of the Commonalty of *London* towards him, and therefore willing to ease and mitigate the Penalty aforesaid, by Assent of Lords and Commons hath ordained and established, that the Penalty aforesaid, as well of the 1000 and 2000 Marks, and the Seizure of the Franchise, shall not be limited in a certainty; but the Penalty in the Case shall be by the Advice and Discretion of the Justices, as other Cities and Boroughs be within this Realm; and that the Remnant of the Statutes stand in their Force: So that from 1 H. 4. the City of *London* never could pretend to any other Exemption from Forfeiture of their Franchise than other Cities and Boroughs may.

Here I crave leave to join some other Records to those produced by Mr. Solicitor, particularly relating to the City of *London*.

2 Pat. Roll. pars 2. memb. 9. The King appoints *John Lord Breat n* Custos of the City, with Commission to amerce and punish the Aldermen and others of the City, according to their Demerits.

8 Ed. 2. Memb. 3. doct. A Writ issues for the orderly choosing of the Mayor and Sheriffs, which began then to be tumultuous, and, as the Record saith, *Quod quidem populares & plebes, conspiratione inter eas habita, diffidia innumeraque facinora in dicta civitate nocte dieque perpetrantes, conventiculaque clandestina in locis privatis facientes, non vocati & summoniti, hujusmodi Electionibus se immiscerent communicationibus & clamoribus.* The Writ recites the Elections to have been *per Aldermanos & alios viros discretiores & potentiores*; and commands that they be so done, *prout in eadem civitate antiquit' fieri consuevit*: Otherwise, that the King would not admit them, when presented to him, or his Exchequer.

14 Ed. 2. pars 2. memb. 22. The King grants the Office of Mayor, seized into his Hands at the Iter in the Tower, to *Robert Kendall*, during beneplacito.



15 Ed. 2. pars 1. memb. 2. The King first replevins to the Aldermen, Sheriffs, and Citizens the Office of Mayor, who present to the King *Hamond de Chigwel* for the Office, and the King admits him; and then the King grants to the Aldermen, Sheriffs, and Citizens, the Mayoralty to hold at the King's Pleasure.

26 Ed. 2. memb. 5. The King absolutely restores to them the Mayoralty, to choose as before the Seizure into his Hands.

16 R. 2. pars 1. memb. 28. dorfo. A Commission issueth to the Duke of Gloucester, and several Lords and Judges, to inquire of the Defaults of the Mayor, Aldermen, and Sheriffs, upon the Statute of 28 Ed. 3.

16 R. 2. memb. 2. dorfo. The Commissioners sat at *Eaton*, in *Com. Bucks*, and the Mayor, Sheriffs, and Aldermen, were convicted of several Miscarriages, and the Liberty of the City (by the Judgment of the Court) seized into the King's Hands; and the King (by the Advice of his Council at *Windsor*) constituted *Baldwyn Badington* Mayor in the Room of *William Venner*, and two other Sheriffs, and 24 Aldermen, to hold during the King's Pleasure; and they all took their Oaths before the King and his Privy Council: And in that Record the Prior of *Christ-Church* was sworn an Alderman.

16 R. 2. pars 2. memb. 31. In the same Year the King, at the Intercession of the Queen, grants to the Aldermen, Sheriffs, and Citizens, that they might use their Franchises as they did before the Seizure; but with this Clause of Restriction, *Quousque aliter ordinaverimus*. Upon which the City chose *John Hend* Mayor, and *John Shadworth* and *Henry Venner* Sheriffs, who were removed the same Year by the King, and *Henry Dalington* appointed Mayor, to hold during the King's Pleasure.

16 R. 2. pars 1. memb. 36. The Record assigns the Cause, *Pro minus discreta & insufficienti gubernatione & regimine civitatis nostrae*.

20 R. 2. The King makes full Restitution to them of their Liberties; in Print, and in the Charter pleaded.

22 H. 6. memb. 25. dorfo. Elections of Mayor and Sheriff beginning again to be tumultuous, a Writ in the nature of that in *Edward* the Second's Time issued, commanding the Choice to be *per Aldermannos, necnon discretiores dictae civitatis, adhuc specialiter summonitos*, according to the ancient Custom: And after, in *Edward* the Fourth's Time, the Choice was settled upon the Livery-men by Act of Common-council.

So then there can remain no Question, but that the Mayor, Sheriffs, Aldermen, and all the Commons in Council assembled, may commit Acts for which their Franchise may be seized; And though there may be no real Difference where all the Commons assemble, and where only a certain Number elected by the rest; yet I shall not farther discuss that Point at this Time, because that Question doth not arise upon this Record. For the Offences wherewith they are charged are both laid, in the Replication, to be committed by the Mayor, Citizens, and Commonalty of *London*, by which must be intended the whole Body.

The whole Body plead to it; but in the Rejoinder they do not traverse; and deny they did the Facts: So that as to the Actors, it must be intended they are the same Persons, who are sued and defend upon Record, which are all the Members of the Corporation.

There are two Branches of the first Offence laid in the Replication:

1. That the Mayor, Citizens, and Commonalty in Common Council assembled, did make and publish a Law for levying of Money.
2. That the Mayor, Citizens, and Commonalty, by Colour of that illegal By-law, did exact and levy upon the King's Subjects divers great Sums of Money.

In the Rejoinder they take it by Protestation, that no Act or Fact of the Mayor, Aldermen, and Common Council, is an Act or Fact of the Body Corporate, or Politick; which is *Protestatio Juris, non Facti*, and is that Error I have endeavoured to refute, that the Acts of all the Members of the Corporation assembled in Common Council, are not the Acts of the Corporation. But yet by this Protestation of Matter of Law they would insinuate a Not Guilty as to making of the Law, and seem afraid to own it, and do not barefacedly own it. But after they have intitled themselves to the Markets, in such a manner as I afterwards consider, then they proceed to number the People, which surely was not done upon any legal Ground to move your Judgments. Then say they, that Time out of Mind there hath been a Common Council not exceeding 250 Persons, elected out of the Freemen; but do not say of what Number it doth consist, nor by whom elected, whether by Citizens or Foreigners, by the Mayor, Aldermen, or by whom chosen, so as the Court may judge of the Matter of law so strongly protested, whether they were the Representatives of the whole Body, or no. Then they say, Sir *William Hooker* Mayor, and the Aldermen of the City, *ac communarii, sive cives de Communi Concilio ejusdem Civitatis*; which may as well be intended of Mr. Recorder and the Common Serjeant, who are *de Communi Concilio civitatis*, as of any other; for the Persons are not named, nor is it said they were elected, nor by whom, nor any Words of Reference to the Custom alledged; but generally, that they met in *Communi Concilio secundum consuetudinem civitatis*, not referring to the former Custom alledged. But being met, they made the By-law for the several Sums of Money, to be received for the Use of the Mayor, Citizens, and Commonalty. Which Rates, and no other, the Mayor, Citizens, and Commonalty, *exegerunt & perceperunt*, according to the By-law. *Qui quidem Actus sive Ordinatio est eadem Lex* supposed, by the Replication, to be made by them the Mayor, Citizens, and Commonalty. And traverse *absque hoc*, that any Law was made for Monies of Persons coming to the Markets *aliter vel alio modo* than they had before set forth. I know those learned Gentlemen who signed this Plea, and the other to the Charge of the Petition, if they could have found sufficient Matter of Justification to either, they would not have suffered them to appear upon Record in such uncouth Dresses; and therefore Deficiency of Matter may excuse the Insufficiency of Pleading; for there is Skill shewed in the Contrivance to have drawn on a Demurrer; for nothing was dreaded more than an open Examination of the Facts upon a Publick Trial, which would have fallen very little short in both Cases, as to the Aggravation laid in the Replication.

Upon this Pleading the Mayor, Citizens, and Commonalty have confessed, that the By-law was made for them, and the Monies to be levied for their Use. They have also confessed, that by Force of that By-law they exacted and received the Monies; and their Justification will be considered

by-and-by. But as to the making the Law, they neither confess it made by themselves, nor by any deriving Authority under them; neither do they traverse, or deny it. For the Averment, that it is the same Law, and the Traverse, that any Law was made *aliter vel alio modo*, is no legal Denial, that the whole Corporation (consisting of Mayor, Citizens, and Commonalty) did not make that Law upon which an Issue could be taken. Besides, if Mr. Recorder would have the Court intend, that the Common Council, set forth in the Rejoinder, is a distinct Body of Men from the Politick Body of the whole City, the whole Plea amounts but to the General Issue. What the Consequence thereof will be, I will consider upon the Point of the Crimes set forth; but at present the Court cannot otherwise intend, but that they that made this Law and this Petition, were the same Mayor, Citizens, and Commonalty, who are expressly charged therewith, and in their Pleas they do not traverse or deny it. It is just such another Plea, as where an Information is brought against several Persons for killing and taking away of the King's Deer; the Defendants should plead, that certain Persons (not naming them, nor from whence they come, nor by whom sent) pretended a Custom to kill the King's Deer, and according to that Custom they killed the King's Deer, for the Defendants Use, and the Defendants carried away the Deer. Who (I pray) shall the Court intend killed the Deer, but the Defendants, or some by their Authority?

I now come to the main Point of the Case:

Whether by any thing disclosed upon those Pleadings, there appears a sufficient Title to the King, for the Court to give Judgment of Seizure of the Franchise of the City of London? The Title I insist upon for the King, is for a Forfeiture by Acts done by the Mayor, Citizens, and Commonalty, in Breach of their Duty, and the Publick Trust reposed in them upon their first Erection. It is my part to maintain, that the Causes assigned are sufficient in themselves, and sufficiently disclosed to the Court, for the Court to give Judgment upon. I shall consider them,

First, As they stand upon the Replication, as Crimes laid to their Charge, which will amount to a Forfeiture of the Franchise.

Secondly, How they stand upon the Rejoinder and other Pleadings, whether sufficiently traversed or denied, confessed and avoided, or in the least extenuated?

First, The Crimes laid in the Replication, are two in general:

1. Oppression of the King's Subjects by Colour of Law: And,
2. Stirring up Seditions by Libelling their Prince, and his Government.

These two only are laid in the Replication, but collected out of many sufficient Causes for Seizure of any Franchise. The notorious Riots committed in the Face of Justice, to the Comforting and Abetting of Criminals, and Terror of the Judges; and those not only not suppressed or punished by the Magistrates, but countenanced and encouraged by them. The Tumults of many Thousands, exposing and burning in Effigy several of the King's Protestant Subjects, not suppressed or punished by the Magistrates, but by some encouraged, and by Contributions supported. The Encouragement of Libels and Libellers of the King and Government, by and within the City. These and many more I could enumerate, are common Offences to the City of *London*, with other Cities, and populous Corporations; but these are such as have been in the Cases produced adjudged Causes of Forfeiture of the Franchises for Misgovernment.

And in these *London* hath but imitated itself in former Times, and other Cities and Boroughs.

But in the Cases insisted upon, *London* hath out-done itself, and all other Cities and Boroughs too, by assuming a Power to make Laws for levying of Money upon Foreigners for their own Use; and to deliberate, adjudge and condemn their Prince's publick Actions, and publicly libelling of them to his Subjects. Never did *London* before now, or any other City or Borough, (in Times of Peace, and not under an actual Rebellion) commit the like Breaches upon the Government, to assume a Power superior to any the King hath in like Cases, to lay Burdens upon his People, and to levy Money, and to invade the King's Prerogative by deliberating and determining of his publick Actions to the Consequences thereof, and publicly libelling them to the rest of his Subjects. And in Execution of such unjust Power, that the Mayor, Citizens, and Commonalty, did make and publish a Law for levying of Money upon the King's Subjects, as well Foreigners, as others, coming to the publick Markets with Provisions. And chargeth several Particulars, and divers other Sums imposed upon all Comers to the Markets, whether they sell or no; and that if any Person refused to pay, he should be put out of the Market.

Again, That the Mayor, Citizens, and Commonalty, by Pretext of this Law, made by themselves, and for their own private Lucre) did exact and levy yearly, of the King's Subjects, Sums of Money amounting to Five thousand Pounds *per Annum*, and converted and disposed the same to their own Use, in Subversion of the good Government of the City; in Oppression and Depauperating the King's Subjects coming to the Markets; in Raising the Prices of Provisions in Markets, to the Damage of the King's Subjects; to the manifest Disherison of the King and his Crown, contrary to the Trust reposed in them as a Body Politick.

In the first Branch of their levying Money, there is this Crime laid to their Charge: An Abusion of the Liberty of a Body Politick in it's highest Point of Trust, viz. of making Laws for the better Government of its Members, and other the King's Subjects repairing to the City. This is no distinct Liberty from the Body Politick, but incident to it, as hath been shewn; and therefore cannot for any Abuse be singly lost, or severed from their Body Politick, no more than the Body Politick can subsist, or attain the Ends of good Government, without such a Power, which the Law raiseth for a better Discharge of that Trust. But the Law entrusteth no Corporation with a Power to levy Money for their private Profit, be the Colour what it will; nor can such Power be derived from the Crown to any Corporation; neither can any Authority be produced, that gives the least Countenance to such an Authority: The Case of *Blackwell-Hall* is express against it; that was ruled good, because it was *pro bono publico*, and not *pro privato lucro*; it was but a small Reward for the Officer who attended that Business; the City got nothing thereby. Corporations, as well as other Communities not incorporate, are by Law entrusted with Power to raise



Money for Uses public to the Community; but such Power is confined to the Precincts of the Community; they cannot lay their Charge upon Foreigners; as for Reparation of Churches, Highways, Bridges, and such-like public Charges. These Crimes, at Common Law, came the nearest Treason of any. Sir Thomas Halley, 20 R. 2. for preferring a scandalous Bill, was adjudged to die as a Traitor; his Life spared at the Instance of the Bishops; and after 1 H. 4. N. 9. upon his Petition, the Judgment was reversed. To lay Impositions upon the King's Subjects was not only an Incroachment on Royal Power, but of the Power of Parliaments. And what Incroachments of Royal Power were Treason, what not, was in the Breast of the Judges, as appears by the Petition in Parliament, 21 Ed. 3. N. 15. and after settled by the Statute, 25 Ed. 3. Certainly that they have an immediate Tendency to a Rebellion, is evident. To alienate the Subjects Affection from their Prince, is a great Step that Way; and for so great a Body of Men (both for Riches and Reputation) to adjudge and publish, that the King, by his Prorogation, hath interrupted the publick Justice of the Kingdom, and the necessary Provisions for his own Safety, and the Preservation of his Protestant Subjects, is in Effect to determine and publish the King unfit for the Government, and by necessary Consequence would alien the Affections of such as should believe them. Add to this the Power they assume, and justify, to levy Money to their own Use, upon Foreigners as well as Citizens, and that to any Sum; which Mr. Recorder pressed as the Force of his Argument, that little or more made no Difference. When those they have persuaded to draw their Affections, shall be assured of such a Legislative Power to assist them with Supplies; what Consequences may be expected, every Man may judge. Especially if one thing more had been effected, as was contrived and endeavoured to be established; that London should become the *Assylum* of all Malecontents, as Rome was heretofore, who might there vent their Gall against the Government *impune*, and without Fear of Conviction.

I shall consider the Offences particularly, as they stand upon the Replication, as to the Levying of Money.

1. They are charged, that they in Common Council assembled, respecting only their private Lucre, and in Breach of the Trust reposed in them for good Government, did assume upon them an illegal and unjust Power and Authority to levy Money upon the King's Subjects to their own Use, without any lawful Authority. And the City of London have by several Charters such express Power given them, but it is confined to their own Members; neither the King nor the Law ever gave them any Power over Foreigners, to charge them for the private Profit of this City. Now to assume such a Power is a plain Usurpation by a Body Politick upon the Crown and the Law, and is a manifest Breach of that Trust for good Government, by an open and avowed Oppression of the King's Subjects by Colour of Law, which is the worst of Oppressions; and therefore the Law not only gives a new Name, but layeth heavier Penalties upon Oppressions committed by Persons in public Trust. It is called Extortion, and Oppression, where committed by any Person in public Offices or Trusts. It is not sufficient, that the injured Persons may have their Actions, or that they may be fined at the King's Suit; but the Law gives a Forfeiture of the Places of Trust, and all may be exacted from them, if the King please. The Persons injured may recover their Damages: They may be fined at the King's Suit, and their Offices seized; the Law adjudging all these Penalties but equal to the Crime. The Markets, as they stand upon the Replication, must be intended Free Markets, as the Streets of London, are for all the King's Subjects to have recourse to with their Provisions for Supply of the Inhabitants, without Payment of any Toll. The Sums of Money, for buying whereof the Law is made, as set out in the Replication, cannot be for any Toll of Markets, nor for Picage or Stallage, which may be annexed to Markets; but Imposition upon the Persons or Goods coming and brought thither, whether they sell or not, and whether they have any Stalls or not. And the Process is admirable, that if the Person refuse to pay, he shall be turned out of the Market; as if the Law were, that every Man that walks in the Streets should pay 6d. and if he refuse, he should be turned out of the City. I must confess, the Process is as good as the Law. Thus this Crime stands upon the Replication. How have the Mayor, Citizens, and Commonalty varied it in their Rejoinder? Not one Jot; for as to this Point of Charge, that they usurped such a Power, and did execute it by making a Law for levying of Money in Oppression of the King's Subjects, they give no Answer at all, either by traversing or denying, confessing and avoiding. If they had traversed their making of the Law, the Special Plea had amounted to the General Issue; but as it is, there is no Answer at all given to it. And therefore, if the making of such Law, in the manner set forth in the Replication, be an Abusion of the Franchise, Judgment of Seizure must be given for that Abuse.

The Reasons given by Mr. Recorder, that the making of this Law will not forfeit the Franchise, were these:

(1.) That if the King had made such a By-law in the Charter of Incorporation, that would not have forfeited the Corporation; no more can it, if it be made by the Corporation afterwards.

I do not understand the mystick Inference of this Argument, unless it be to continue the Allegory of resembling Corporations to Kings, that they can do no Wrong, and consequently can forfeit nothing by their Acts, though against Law. Where the King annexeth any Power to any Offices or Corporations, which the Law allows them not to exercise, the Law doth not adjudge the whole Grant void, but only those Powers: But if Officers or Corporations shall assume upon themselves to exercise Powers which the King could not grant, against the End of their Institution, by Extortion and Oppression of the King's Subjects, it is not sufficient, that the Acts are void, because illegal; but the Offenders shall be punished in such manner as the Law provides.

(2.) In all the Suits where By-laws have been adjudged unreasonable and void, it was never held or said, that such By-laws forfeited the Corporation; and if it should, every little Mistake in the By-law should forfeit the Corporation, which would render the State of Corporations very unsteady and uncertain.

I answer, first, That in those Suits between Party and Party,

there was no occasion for the Court to declare how far the By-law has intrenched upon the Prerogative, by Breach of the Condition in Law annexed to the Liberty. But I remember, in the Case of the Mayor of *Hitchin*, Mich. 27 Car. 2. upon Complaint in this Court to my Lord Chief Justice Hales, of his Refusal to sign the Poor's Rates, he publicly declared to him, That if he persisted in his Obstinacy, a *Quo Warranto* might be brought to seize the Franchise.

2.) There is a plain Difference between By-laws for regulating the Actions of the Members, and others within the Corporation, with a Penalty to enforce Obedience, and a Law directly for levying of Money: In the latter Case, the levying of the Money is the principal End of the Law; and to levy it *pro privato lucro*, and upon Foreigners, can receive no Palliation from being a Mistake against all the Laws and Authorities that are extant. But in the former Cases they have a Semblance for common Benefit, and possibly might be for the Benefit of all the Members, could the Restriction be made by Law; and the Penalty is but collateral, to enforce Obedience, and will stand and fall as the Law determines of the Principal. And the Law no-where determines all the Cases where the Liberty of any Members (as to Trade) may not, or may be restrained, whereby there is Room left for Mistakes; but against so known and universal a Principle, that no Corporation can levy Money for their private Profit, no Excuse of Mistake can be admitted.

3.) That which shelters all other By-laws from Oppression, is wanting in this; that as to the Recovery of the Penalty, they refer to a Court of Law, whereby they submit their By-law to the Judgment of Law for its Validity, that if they have committed any Mistake, it may be corrected by Law. But here the Remedy is plain Force; if the Person do not pay, he shall be turned out of the Market with his Goods: What was settled by Wrong, shall be recovered by Force. Thus Mr. Recorder's arguing makes the Duty a mere voluntary Payment; it is, *Solve, aut abi*, he hath his Election to pay, or be gone. I have not met with a more arbitrary Principle asserted or defended in a Court of Law. Should the King lay an Imposition of 12d. on every one that entered *Whitehall*, with Order to the Porter to turn him out on Refusal of Payment, what a Dust would this make, that the Subjects Rights to have Access to their Prince were invaded? Why it is no more than *Solve, aut abi*. The Right of all the King's Subjects, to come with the Provisions to publick Markets, is far greater, and as great as of the Lord Mayor, or of any of the Citizens to come there; and the putting such Terms upon their Right is absolutely illegal, in the worst Sense that Word is at any time used. And herein Mr. Recorder was in the right, that more or less are not material, because every Sum imposed in such Case is illegal, and what is illegal, cannot be reasonable; which absolutely precludes the Averment, that the Sums were reasonable; which obtains only in such Cases, where of common Right some Sum may be taken.

4.) In the last Place, the questioning of a Liberty in a *Quo Warranto*, whether upon the Title, or for a Forfeiture, is upon the Right between the King and the Corporation? In case of Mistakes and common Errors committed, those are not to be justified upon a Question of Right; and if they be, they are no longer Mistakes, but wilful Crimes. And therefore, in all Times such Mistakes, both in making of Laws and Matters of Fact, have been passed by and pardoned by the Charter of Confirmation, *etiam si abusi fuerint*. And in the Multitudes of *Quo Warranto*'s that have been brought, most ended by Submission before Pleader. But where it shall be insisted upon in point of Right, though in a smaller Point of Oppression, upon such Grounds as may equally intitle them to commit the greatest Oppressions, *Magis & Minus*, do not affect the Case in point of the Right or Forfeiture; but the Question is, Whether they have broken their Trust? And if so adjudged, Forfeiture is a necessary Consequence.

(3.) The Third Reason Mr. Recorder insisted upon is 19 H. 7. cap. 7. That there had been no need of that Law, if Corporations By-laws would be Cause of Seizure.

1.) I answer, That Statute extends not to the By-laws of Cities and Boroughs incorporated; but to Guilds and special Fraternities.

2.) It extends to good By-laws as well as bad, for greater Caution, that they put no new By-laws in Use till allowed; but the Allowance makes them neither better nor worse, only shelters for the 4<sup>th</sup> Penalty, as in the Taylors of *Ipswich*'s Case, c. 11. b. f. 54. So that the By-laws are but of the same Force they were before that Statute, &c. If they are good Laws, they may be executed without Allowance; and I have before shewn, that the Addition of another Penalty doth not dispense with the Penalty upon Breach of the Condition given by the Common Law. The other Crime of Oppression they are charged with, is, that they did exact and levy, to their own Use, the several Sums, and others, amounting to 5000l. per Ann in Oppression of the King's Subjects, and raising the Prices in the Markets for their own private Lucre.

Secondly, In their Rejoinder, taking by Protestation they are not of that Value, the Mayor, Citizens, and Commonalty acknowledge the exacting and receiving the Monies to their own private Use, but say not of what Value they are; but be they of what Value they will, attempt a Justification. It must be admitted, that if the Justification be insufficient, the Court cannot otherwise judge of the Crime than as it is laid in the Replication; where it appears to be as great Extortion and Oppression of the King's Subjects, and continued for many Years together, by Colour of an Authority usurped by them, as ever was practised by any Subjects upon their fellow Subjects; which cannot be denied to be an apparent Breach of that Trust committed to them, for the better Administration of the Laws and Justice to the King's Subjects.

The Parts of their Justification are these:

(1.) A Custom, that Time out of Mind, there have been publick Markets within the City.

(2.) They make Title to these public Markets by Prescription, but claim not any Toll of common Right belonging to these Markets.

So that both upon the Custom alledged, and Prescription made, the Court cannot otherwise intend but they were free Markets, as in truth they were. Then they alledge a Custom, that Time out of Mind, they used at their Charge to provide Places where the Markets were held, and

Stalls



Stalls and Stations, and other Accommodations for the Market-people, and Surveyors, and other Officers, for the better Government of the Market-people; and did cleanse, and were bound to cleanse, the Market-places. And for defraying of their Charges for all the time aforesaid, they had and used to have *diversa rationabilia Tolneta, Ratas, five denariorum summas*, of all Persons coming to the Market, for Stalls, Stations, and other Accommodations for the selling of their Provisions. Although they received Monies Time out of Mind, and until the By-laws, they cannot tell what these Sums were, nor what to call them, whether Tolls, Rates, or Sums of Money. Tolls they could not be, that is admitted of all Hands, because against common Right, and to be paid upon Entry into the Market, whether sold, or not. They do not intitle themselves so much as to Piccage or Stallage; for they make no Title to the Land where the Markets have been, or are held. And we all know, that before the Act of Parliament provided at the publick Charge fit Places, and settled them upon a publick Trust for Market-people, what Provision was made of Places by the City, viz. in the publick Streets, where there ever was a Free Market for Provisions, as would have been made evident, had the City tendered a sufficient Issue. Besides, the Sums charged in the Replication can neither be of Piccage or Stallage; but laid upon Goods brought within the Market, whether the Vender made use of any Stall, or Breaking of the Ground, or no. Neither is it averred in this Plea, or by any Words of Reference can it be inferred, that the Sums in the Replication are the same with those they claim; they claim only by Custom *rationabilia Tolneta, Rata, five denariorum Summas*.

(3.) Mr. Recorder would justify this Plea, that such a general Claim, with an Averment that they are reasonable, is a sufficient Justification of particular Charges, which are against common Right; and insisted upon the Claim of the City of London of the Water-Bailiff's Office, with the Fees thereto belonging; and the Case of *Maidenhead* in *Palmer's Reports*, of the Market, with the Toll thereto belonging. These Precedents answer themselves, there was no particular Charge for the Toll or Fees, but what is charged particularly is answered; besides, the Toll and Fees are claimed of common Right, as belonging to the Market and Office. In *Maidenhead's Case*, the Judges agreed, that Toll according to common Right might be granted by General Words; but Toll against common Right could not, nor be prescribed for but in Certainty. In that Case reported by my Lord *Hales*, Franchise pl. 11. the Difference is expressly taken; and the Authorities cited of 9 H. 6. 45. 11 H. 6. 14. *Fit Avoary* 126. That Demands against common Right ought to be prescribed for in Certainty; and the Authorities produced by Mr. Recorder in the Lord *Cobham's Case*, 1 Len. 218. *Hickman's Case*, 2 Roll. Abridg. 125. and Roll. 2. Abridg. 265. The Case of *Dublin* for Keyage or Crannage, for the Case of *Hill* and *Hawks*, and the Bell-man of *Litchfield*, prove it. No Man questions but Cities and Boroughs, upon good Consideration, may prescribe for Sums of Money against common Right; and may prescribe for an apt Remedy for Recovery of such Sums; but all the Authorities prove it must be prescribed for in Certainty, that the Court may judge of the Reasonableness of it. And whoever claims against common Right, must make out his Demand, both in Certainty, and that it is reasonable; it is otherwise, where according to common Right, as in Fines for Copyhold Estates, it is incumbent on the Tenant to shew if unreasonable. Besides, this Custom is void, because they do not intitle themselves to any Remedy for these uncertain Sums.

(4.) The next part of the Justification is, that Time out of Mind, within the City there hath been a Common Council; the Imperfection whereof I have already observed.

(5.) They set forth a Custom for this Common Council to make Laws for the better Government of the Markets, and appointing convenient Places and Times for the Markets. *Et ex Affessione & in certitudinem reductione* of reasonable Tolls, Rates, or Sums of Money to be paid by Persons coming to the Market, *pro Stallis, Stationibus, & aliis Accommodationibus*; so as these Laws be profitable to the King and his People, and not contrary to the Laws of the Land. For the first Part of the special Custom, for the better Government of the Markets, and appointing convenient Places and Times, it needed not; for it is incident of common Right to every Lord of a Market, and the Grantee of every Market, without special Clauses, hath the same Power and Trust. And yet it is ushered in with great Solemnity, a Confirmation by *Magna Charta*, a Charter in Parliament, 1 Ed. 3. & 7 R. 2. to make good a Custom, which is but the Common Law. Unless they set up this Custom to divert themselves, who have pleaded themselves Lords of the Markets, and so to fix it in others who are no Lords of the Markets; and thence to infer, that the Custom having intrusted others than the Mayor, Citizens, and Commonalty, with the Government of the Market, they the Lords of the Market ought not to suffer for the Misgovernment of those other Members. The second Part of the Custom is insensible. To make Laws and Orders *ex Affessione & in certitudinem reductione* of reasonable Tolls, Rates, or Sums of Money, to be paid by all Persons coming to the Markets, for Stalls, Stations, and all other Accommodations. What is meant by *Affessione* without an *Anglice*, I cannot imagine: it is no Law Term; in its proper Signification, it signifieth Sitting together; whence our Sessions quarterly, and Sessions of Parliament have their Name. The general Rates set by the Parliament upon the several Counties are sometimes called *Affessments*, and those entrusted with equally dividing the Rates in the several Parishes upon the Inhabitants, are called *Affessors*. In which of these Senses, or what Sense the City's Counsel apply this Word, I cannot resolve; for Mr. Recorder did not resolve it. It seems by the subsequent Words to be explained in *certitudinem ponere*, and to have some Resemblance to the Parochial *Affessments*, where the Duty before is imposed by Law, but the Ascertainings of every Man's Proportion is done by the *Affessors*: And this Mr. Recorder inclined to in his Endeavours to support the Custom, generally for reasonable Rates. And in this Sense too the City seems to understand it, by waving of the *Affessment* in the Rebutter. In our Surrejoinder we traverse the Prescription of taking of the Rates mentioned to be by the By-law *affessed*, and reduced into Certainty; which Issue they waive, and insist only upon their Prescription generally

alleged. Now, if taken in this Sense, the Clause is wholly insensible and uncertain, because the Tolls, Rates, or Sums of Money to be paid, are not referred to any former Law that imposed them; they do not so much as refer to the Prescription, and the Sums claimed thereby; but the Clause is independent and absolute of itself. Neither can the Court now intend it to refer to those Sums claimed, because we would have so intended it; and therefore took an apt Traverse; but the City waived it in their Rebutter; and they do lie under this *Dilemma*, that either it must be so intended, and then being traversed and waived by them, the Issue must be taken against them; or it cannot be so intended, and then the Custom is uncertain and insensible. And it cannot be intended by the Court for levying of Money by a new Imposition for the private Advantage of the City; that (as I have shewn) would be against Law, and is contrary to the Prescription they have made, and would vitiate their Plea, by claiming the Thing by Prescription, and by a new Law.

(6.) They set forth a By-law, which imports a new Imposition throughout, of several Sums to be paid to the Mayor, Citizens, and Commonalty; and they provide a new Remedy, that the Refuser should be removed out of the Market. They aver, indeed, the Sums are reasonable; but set out no Fact upon which the Court may any ways judge they are so; which are incumbent upon him that will claim any thing against the common Right. They do not so much as aver, that the Mayor, Citizens, and Commonalty laid out one Penny out of their Revenue, for providing the Markets and Stalls, or what other Stations or Accommodations they furnished the Market-people with, so as to give the least Support to this extraordinary By-law.

And this Averment was industriously left out, lest Issue might be taken upon it; and sufficiently proved, that both the Places, Stalls, and Conveniences, were provided for out of the public Monies granted by Parliament, in Trust for all the King's Subjects coming to the Market, as we have set out in our Surrejoinder. Then it would have evidently appeared, that this By-law was not only in Breach of the Common Law Trust reposed in them for good Government; but in Breach of that Trust reposed in them by act of Parliament. For all the King's Subjects, and these public Monies received and laid out upon that Trust, are made the Consideration to ground the Subjects Oppressions upon by this By-law. Though they laid out not one Penny, as appears to the Court, yet they acknowledge to have received all the Money to their own Use; and their Justification failing, it must be intended, they did it in such manner as is set out in the Replication, which chargeth the highest Oppression that can be possibly committed by Subjects upon Subjects, and is destructive of common Justice and good Government. It is likewise as great an Usurpation upon the Crown, to lay Taxes upon the King's Subjects without his Authority, and openly and avowedly to justify it. How much superior this Offence is to those, whereupon Instances of Seizure have been given, I leave to the Observation of the Court. Their Reply, that the Toll only can be forfeited, or at most the Markets, can weigh little. That the Markets cannot be forfeited, Mr. Recorder admits upon the Authority of the Case of *Maidenhead*, that Toll is not incident to a Market. This Imposition is wholly foreign to the Markets, which must be intended Free-Markets, wherein all the King's Subjects have Right to sell and buy, discharged of Toll, which shall be intended to have its Commencement by Erection, not by Grant to any Person, which the King may do in Cases of Fairs and Markets. Or if they be granted to any Person, if without Tolls, such Grants are upon Trust, for Benefit of the King's Subjects to buy and sell in; and the Grantee entrusted with the Rule and good Government thereof, for the Benefit of others. Besides, the seizing of the Markets is no punishment of the Corporation, but of all the King's Subjects, who are the Persons oppressed, and whose Rights are invaded by this Imposition. The Oppression is by the Corporation, and by an Authority they claim over the King's Subjects, to lay an Imposition upon their Goods, and to levy it by Force; which is an Abuse of the Power the Law hath entrusted them with, and a Misuser of the Franchise to Oppression. To forfeit the Sums exacted and levied is idle, and no Punishment; for they never had Right to them, and so no Right can be forfeited. In the Case of *Maidenhead*, where a reasonable Toll was granted, they had a Right to Toll, which may be forfeited by Abuser, in taking an unreasonable Toll; but where there is no Right to take any thing, there is no Right to be forfeited, but that Right by Colour whereof the Extortion or Oppression is committed. If an Officer, by Colour of his Office, oppresses, the Office is forfeited, or the Officer may be fined; the Cases were cited by Mr. Solicitor. R. Quo War. The Levying of two Shillings for the Penalty of breaking Ranto 1. the Assize, forfeited the View of Frankpledge. Using of false Weights and Measures forfeited the Franchise of *Evesham*. And generally, whatever is an apparent Breach of good Government, where-with every Franchise is intrusted, will, in Point of Right between the King and the Franchise, amount to a Forfeiture; because it is a Breach of publick Trust reposed in them by Law.

2. I shall conclude with the last Branch of their Crimes laid to their Charge:

For invading the King's Prerogative, and publicly libelling of him, and his publick Acts, to the People.

The Replication chargeth the several Facts thus:

(1.) That the Mayor, Citizens, and Commonalty, in Common Council assembled, maliciously, advisedly, and seditiously, and without any lawful Authority, took upon them to censure the King, and the Prorogation of Parliament made by the King.

(2.) That they gave their Suffrages, and ordered a Petition should be presented to the King, in the Name of the Mayor, Aldermen, and Commonalty, containing the scandalous Matter alleged.

(3.) That they maliciously, advisedly, and seditiously, and to the Intent the said Petition should be dispersed and made publick, to persuade them, that the King by the Prorogation had obstructed the publick Justice of the Kingdom, and to stir them up to a Dislike of the King's Person and Government, and to disturb the Peace of the Kingdom; did order the said Petition (containing the said scandalous Matter) to be printed.

(4.) The



(4.) They afterwards maliciously, advisedly, and seditiously, and to the Intent that the Petition should be dispersed and published among the King's Subjects, to aliene and withdraw their Affections from the King and his Government, did print, and cause to be printed and published the said Petition, in Contempt and Scandal of the King and his Government, and to the promoting and exciting of Sedition and Disturbance of the Peace within this Kingdom.

The Crimes, at Common Law, were *contra Pacem*, and punishable by Fine and Imprisonment in particular Subjects; where committed by Persons in publick Office, or intrusted with Government and Preservation of the Peace, they are of a deeper Dye. In the Title of the Statute, 13 Car. 2. cap. 1. for Preservation of the King's Person and Government, they are called seditious Practices and Attempts; for Prevention whereof that Law provides, *That if any Person or Persons shall maliciously and advisedly (by Writing or Printing) express, publish, or declare any Words, Sentence, or Thing, to incite or stir up the People to Hatred or Dislike of the Person of his Majesty, or the established Government; such Person is made incapable of any Office or Place of Trust, and to be further punished, according to the Common Law and Statutes in such Cases.*

This Law takes Notice, they were Crimes at Common Law, and punishable as seditious Practices. Sir James Bagg's Case allows Conspiracies and ignominious Crimes to be Causes of Disfranchisement; much more a Conspiracy of all the Members, to libel the Government, and alienate the Affections of the People from their Prince.

Now, What Answer do they give to these Charges in either Rejoinder?

To the first and last they give none at all; they shew no Authority for them in Common Council to debate, deliberate upon, and to determine of Prorogations of Parliaments by the King, or the Consequences thereof, which are *inter ardua Regni*, and not to be treated of but by the King's Writ: They are not of the King's and Kingdom's Common Council, but intrusted to advise in Affairs of the City, and *ne futor ultra crepidam*. They are charged to have done this advisedly, seditiously, and without any Authority; and it is charged precedent to the Petition.

To the fourth, for printing and publishing of it, to the Intent that it should be dispersed amongst the King's Subjects, to aliene and withdraw their Affections from the King, laid to be 13 Jan. 32 Car. 2. they say it was printed by Samuel Roycroft, by the Mayor's Appointment; *Quæ quidem Petitiõ & Impressio sunt eadem Petitiõ, Impressio, & Publicatio*, in the Replication mentioned: And traverse, *Abque hoc quod aliqua Petitiõ concern' Prorogationem præd' fact', ordinat', publicat', sic impress' fuit aliter, vel alio modo quam*; but do not add *vel alio tempore*. In which respect this Plea is stronger than the former, to involve the City in the Guilt.

Then they own, the Petition was voted and ordered to be preferred and printed *nemine contradicente*, to be sure to leave not one Citizen out of the Guilt; but they do aver, the Printing was to undeceive their fellow Citizens, whereas the Charge is, that it was to deceive them. The whole Plea amounts but to the general Issue, admitting the Petition itself were justifiable, and the making of the Petition lawful. Many Things in themselves are lawful, yet if done with an evil Intent, and for an evil Purpose, become unlawful and criminal, and upon *Not Guilty*, Proof must be made of the evil Intent; where the Thing itself is lawful, there needs no other

Proof. To lie under an Hedge on *Shuter's-Hill* is lawful; but to lie there in Wait to kill or rob a Man, is unlawful, and imports Scandal. To lay Wool near the Sea-side is lawful; but laying it there with an Intent to export it, is criminal, and forfeits the Wool. And it is not good in Pleading to answer such Intent with contrary averments; but where the Intent is Substance, it must be

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traversed or denied specially, otherwise the Plea amounts to but the general Issue. This Manner of Defence, or Shadow of Justification, proves one especial Ingredient of the Charge; that it was done *advisedly*. The City say, it was done upon weighty Considerations, and many Occurrences deliberated upon, and relate to them, all upon Record, that the Court may judge, whether they had not good Reason for what they did. And if they could judge, that their whole History taken together are no sufficient Considerations for any Subjects to agree or order any Petition to be preferred and printed, to stir up the Subjects to a Dislike of the King's Person and Government, which is charged upon them, and not answered; the Court must adjudge the Fact to be done maliciously, and seditiously. But the Words of the Petition are in themselves scandalous to the King and Government. Petitioning is lawful, and the City of London have often petitioned the King with good Acceptation, and observed a good Decorum becoming Subjects, both in the Matter and Manner of their Petitions; they used not to advise or meddle in Matters of State, but when sent for to advise, they confined themselves to the Affairs of the City. They never before, as I have met with, charged the King's Acts of State as Interruptions of the Prosecution of publick Justice.

The Words of the Petition are, *Your Petitioners were extremely surprised at the late Prorogation, whereby the Prosecution of the publick Justice of the Kingdom, and the making the Provisions necessary for the Preservation of your Majesty, and your Protestant Subjects, hath received an Interruption.* To delay, interrupt, or deny Justice, spoken of any Person intrusted with the Administration of Justice, and spoken of him in point of his Trust, always imports Scandal; in the Case of the common Magistrates, they do necessarily import Breach of Duty; neither in common Parlance amongst the Vulgar, nor any History or Author, that I have met with, were they ever used in any Sense of Credit or Reputation to the Person of whom they were spoken or published. Interruption of Justice is a greater Imputation than Delay barely, because the one may be a mere Omission, but Interruption imports some Act, whereby Justice is stopped; but both are temporary Denials of Justice, as Denial is an absolute Stop of Justice. *Nulli negamus aut differemus Justitiam*, are not only the Words, but the Duty of every King. To say or publish of or to a King, in the Point of the Exercise of his kingly Office, and a Point of as high Trust as any is, that of the Prorogation of Parliaments, that he hath interrupted the Prosecution

Vol. III.

of the publick Justice of the Kingdom, imports the greatest Scandal imaginable: For it was more of the King's Duty than of either Houses of Parliament, to promote the Prosecution of publick Justice, especially in the Cases set forth, which so nearly concerned his Person; and therefore the Charging of the King with the Interruption of that Justice, is of greater Imputation to the King; and the more Instances they give, it is an Aggravation of their Crime, by charging the King with interrupting the publick Justice in all these Instances. And there is as much Venom concealed in as few Words, as ever I met with. *Tacitus* did never outdo the Penner of that Petition, whereby all the principal Attributes the Law makes necessary for Princes, are impeached at once, both the Judgment, Mercy and Wisdom of the King. The Interruption of the publick Justice reflects upon his Justice in a high Manner. The Interruption of the Means of his own Preservation, besides his Justice, reflects upon his Wisdom; that the King should not take Care thereof, or did not foresee the Danger he put himself into, by the Prorogation. The Interruption of the Means for the Preservation of his Protestant Subjects, impeacheth his Mercy too, and chargeth the King with Cruelty to his Subjects, in taking no better care for their Preservation, when under such imminent Dangers; with a secret Insinuation, that as he had stopped Justice against his Popish Subjects, so he was regardless of the Preservation of his Protestant Subjects. What greater Malice could be inclosed in a Nut-shell? If Words were dubious, and of a double Signification, and might be taken in a good Sense as well as bad, they ought not to be published by Subjects of their Prince; and when charged to be spoken or published in the worst Sense, to withdraw the Subjects Affections from their Prince, the Court cannot intend them spoken in any other Sense; that must appear upon the Evidence, which cannot be in this Case, because they have not pleaded the general Issue, nor traversed that Point. But here the Words can bear no other Sense, but a direct Scandal to the King and his Government, in the Point of Prorogation of Parliaments. That the City so understood them, is evident by the Petition, in that very Clause, where they say, they were extremely surprised at the late Prorogation. Why should they be surprised? If the King had done nothing thereby, but what was just and good for his People, they had often tasted of his Goodness, and could not be surprised at that. It must then be some very ill Thing in the Prorogation, that so extremely surprised them, and filled them with such Terrors, as throughout the Petition they express. And they discover their Minds plainly, that the Effects of the Prorogation were the Causes of their Surprisal, *viz.* The Interruption of the Prosecution of the publick Justice of the Kingdom, and of making the necessary Provisions for the Preservation of the King and his Protestant Subjects; and in the next Paragraph they explain themselves further, and call that a Delay, which before they called an Interruption; that they were even impatient of the least Delay, of the long-hoped-for Security, whilst they see the King's Life invaded, and the true Religion undermined, and their Families and innocent Posterity likely to be subjected to Blood, Confusion, and Ruin. The panick Fear, and dismal Consequences, are charged upon the Prorogation. And to what other Purpose do they publish this severe Sentence upon the Prorogation, with their dismal Fears, but to affrighten the King's Subjects, and beget the like Fears in them? The natural Consequence whereof is, to withdraw their Affection: *Oderunt quem metuerunt Populi*.

Mr. Recorder, though he could not produce one Authority, that To interrupt publick Justice, was ever used in a good or justifiable Sense; yet endeavours to evade the Scandal of the Words by proper Answers.

That these Words are not spoken of the King, but of the Prorogation, as Consequences of it. Is not this Quibbling? The Prorogation is only the King's Act of proroguing the High Court of Parliament. And to charge the Acts of a King, or other subordinate Magistrate in Execution of his Office, with Injustice, Folly, or Infamy, is the same Thing as to charge the Persons themselves.

No, saith Mr. Recorder, unless the Action had been charged to have been done with such Intention; but they do not charge the King: And that it is so explained in another Part of the Petition, by saying, *But that which supports them against Despair, is the Hopes they derive from your Majesty's Goodness, that your Intention was, by this Prorogation, to make way for your better Concurrence with the Counsel of your Parliament.* Evil Intention may make an Act, otherwise good, to be bad and against Law, by Intendment of Law; the Intention is evil, and the Person answerable for all the Consequences thereof. If a Man throw a great Stone over the Wall, and a Person is killed, the Law adjudgeth it Murder: He cannot justify it by averring he had another Intention. So in the Matter of Scandal, if an unlawful Act or Crime, which purports Scandal, be charged upon a Person, it is no Justification, or Excuse, to aver he did not charge the Person, nor his Acts, with doing it with an evil Intent; but as the Law supplies Malice in the Criminal, where the Act is unlawful, so it intends Malice in the Libeller, in a Matter which in itself imports Scandal. Several Cases may be put to this Purpose. To charge the Wife with poisoning her Husband, is actionable, though not alledged Roll. Ab. 71. done voluntarily, or with an Intent to kill; the Law intends it. In this Case, they charge that the King by his Prorogation interrupted the publick Justice of the Kingdom, and with the dismal Consequences, which in their Judgment would follow thereupon, and publish this to affrighten the whole Kingdom; and that they were near despairing of their Safety, but hoped his Majesty did likewise intend by the Prorogation to make Way for his better Concurrence with the Counsel of his Parliament. A pretty Compliment for so infamous a Charge! And if it import any thing, it is a further Reflection upon the King, that he had not before concurred with the Counsel of his Parliament. But to fix the Matter home, Mr. Recorder, in the last place, justifies this Libel from the Truth of the Fact, that the publick Justice of the Kingdom, and finding out Means for Preservation of the King and his Subjects, had received an Interruption by the Prorogation. This toucheth to the Quick, and is more than the City have averred in all their Pleadings; they have nakedly represented their several Facts, precedent to the Petition; and leave it to the Court to judge whether

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whether there be sufficient to justify them, to make and publish such a Petition. But to aver it to be true, is to equal the Crime of the Petition, in charging the Prorogation with the Interruption of the publick Justice. But I hope, upon better Consideration, he will change his Opinion, and likewise upon the Inference he made, that if true, it is no Scandal to print and publish it to the King's Subjects; for in both Points he is apparently mistaken. It is admitted there was a Plot, and such Proceedings as are set forth against Delinquents; and that the King by his Proclamation and in his Speech expressed his Sense of the Plot, and pressed the Parliament to proceed to Trial of the Lords in the Tower committed for the Plot, and that there are many such Bills depending in Parliament. And it shall be admitted, that upon the Prorogation all these Proceedings were stayed, and, if Mr. Recorder please, received an Interruption; and to say so is true. But in this Case, if the City had been of an Opinion, that the Parliament, upon the King's Signification of his Pleasure they should proceed to the Trial of the Lords, did not make such Haste to try them, as the City judged was necessary for the Preservation of their Lives and Fortunes; and thereupon the City should have petitioned the Parliament to proceed to the immediate Trial of the Lords in the Tower, and thereby charge them, that they had delayed them the publick Justice of the Kingdom, by not proceeding sooner to the Trial of them, according to the King's Desire; Mr. Recorder would not have averred the Matter of Delay of Justice to be true, and therefore no Scandal to the Parliament; but he would then have found out the Difference between staying of Suits and Proceedings in Courts by the proper Judges, and the Delays and Interruptions of Common Justice; the latter are unlawful and criminal, and against the Duty of the Judges, but the former upon just Grounds are lawful, and many times in Prosecution of common Justice; and many times to proceed in such Cases, would be great Injustice either to the Criminal or the Publick, where the Witnesses on either Side are not ready, or for some other good Cause the Judges put off Causes till another Time, or adjourn a Court before all the Causes be tried. No Lawyer can truly say, that by the putting off the Cause, the Prosecution of Justice hath been interrupted; or will it be any just Justification for him for such Scandal, that there were Causes depending before the Adjournment. The Acts of inferior Magistrates are not to be examined, censured, and adjudged, much less scandalized by those, that are under their Magistracy; That would let in Confusion, and tend to the Overthrow of all Government. To say of a Justice of the Peace, *You have perverted Justice*, is actionable; *Seignior De la Ware and Pawlet, Trin. 37 El. More 409.*

*Mich. 1 Car. 1. Cro. 14. Sir John Isham versus Yorke; I have been with Sir John Isham for Justice, but could never yet get any at his Hands but Injustice.*

*Trin. 7 Car. Cro. 223. W. Marsham versus Briggs; Sir William Marsham is but an half-eared Justice, he will hear but one Side.*

*Mich. 8 Eliz. Rot. 1. Walsh was indicted for scandalizing one Sir Robert Catline, Chief Justice, and this Court, by saying, My Lord Chief Justice is incensed against me: I cannot have Justice, nor can I be heard; for it is made a Court of Conscience. He was afterwards discharged upon the general Pardon, 8 Eliz.*

They may be judged by Superiors, but not by Inferiors. Where the Common Law alloweth or authorizeth the Staying of Proceedings by Adjournment, or otherwise; to say the Act is done to delay or interrupt the publick Justice of the Kingdom, or that thereby the publick Justice of the Kingdom hath received Interruption, is not only highly scandalous, but absolutely untrue: For it is according to the Rules of Common Law, and the publick Justice of the Kingdom, and may be the promoting of common Justice, and for the Benefit of the Publick, and ought to be so intended, when done according to Law. For the Reasons of such Acts, much less the secret Intentions of the Judges, or of the Persons whom the Law hath entrusted with such Powers, are not to be examined, censured, or condemned by any Subjects, by any Corporation whatsoever. Petitions may be rejected by either House of Parliament, and so may Bills too, though they have the greatest Semblance of common Benefit; yet this is no Denial of Justice, nor to be scandalized under any such Notion: They may defer the Consideration thereof, or enter upon other Business; that is no Delay or Interruption of Common Justice.

The King may do the like; he may reject the Bills passed by both Houses, or he may advise upon them by these Acts, which the Law allows to be no Interruption of publick Justice: The King may adjourn or prorogue the Court of Parliament. Anciently those Words were used and taken promiscuously, though now from the different Effects they are differently used. And Mr. Recorder owns, that the King is by Law intrusted with this Power, and it is happy for the Subjects he is so intrusted, it being for their Benefit; which is a flat Contradiction to his Position, that it is true, that the publick Justice of the Kingdom is interrupted, or hath received an Interruption, by the Prorogation: Because what is just and lawful, *secundum legem terræ*, cannot be unjust or unlawful, which every Interruption of publick Justice is; and if the Act be not unlawful, it is no Delay or Interruption of Justice. And if the Subjects cannot examine into or censure these lawful Actions of their Princes, but must intend them to be upon just Grounds, and for their Benefit, and in order to their common Safety; to charge their Prince's Actions with the Interrupting of publick Justice, and of the Means for his own and his People's Preservation; and to publish this to all his Subjects, is, in Judgment of Law, a false, scandalous, and malicious Libel; and if not sufficiently punished, where will it end? To publish a Libel is in no Case lawful, be the Matter never so true, nay, though the Party who is libelled be dead; and the Degrees of the Crime, where against a private Person, and where against a publick Person, appear in the Case cited by Mr. Solicitor in the Reports, fol. 125. And that it is against all Laws both of God and Man, and the Mischief there represented. In the Case of all Common Pleas, the Offender shall be fined, and by the Statute of 13 Car. 2. all natural Persons are for the future disabled, and incapable of any Office or Place of Trust, where the Libel is against the King. But where the Matter is false, and the Libel published against the King, to withdraw his People's Affections from him, and that by the joint Counsels of a Corporation,

there can little Room for a Question remain, but they have broken their original Trust for good Government, and misused their Liberty to Licentiousness. How criminal is it for private Subjects to deliberate of, and determine, and publickly to censure the Counsels and Actions of their Princes, will appear by the Case of *Stubbs, Mich. 21 & 22 Eliz. Rot. 3.* where the Case was, that a Treaty of Marriage being on Foot between the Queen and Duke of Anjou, *John Stubbs* published a Book called, *The Discovery of a gaping Gulph, whereinto England is like to fall by another French Marriage*, containing a Disfluasive against the Marriage: And therein amongst other things chargeth, *That this Marriage hath Sin in itself, and of itself only, for being against the Law of God.* And in another Place, *That it opens all the Ports of Foreign Enemies*, with several bad Reflections upon the Duke. This Book was delivered by *Stubbs* to *Hugh Singleton*, a Stationer, to print, who caused it to be printed and published. They were both indicted for it in this Court, and the Indictment laid to be, with Intent to hinder the lawful Purpose of the Queen, and the Duke to marry, and to animate and stir up the Queen's Subjects to Rebellion, and to raise Discord between the Queen and her Subjects, and to subvert the good Government of the Kingdom. Upon *Not Guilty* pleaded (for they had not the Confidence to justify) they were found Guilty, and Judgment given for cutting off their right Hands upon the Statute 1 Eliz. cap. 6. for libelling the Queen. In this Case the Censuring of the Queen's lawful Purposes, in a more private Matter than the Administration of her Regal Office, by common Subjects not called to advise, is a Subversion of good Government within the Kingdom; and the Publishing the Effects and Consequences thereof to be sinful and dangerous to the Kingdom, is a Libelling of the Queen and her Government within the Statute. The Censuring of the Exercise of the King's lawful Prorogation, and charging it with the Interruption of publick Justice, is of a more dangerous Nature. Every natural Person convicted of this Offence, is by the Statute of 13 Car. 2. disabled for any publick Trust; the Proceeding against the natural Person could not be for Want of Proof, it being transacted in their Council. In this Process against the Whole, they have confessed it with the Aggravations laid. If the King pass not a Bill which the City of London have a Mind to, this Rejection of such Bill shall in Print be published to all his Subjects to be a Denial of Justice. If the King reprieve a Malefactor, it shall be a Delay or Interruption of publick Justice. To pardon a Malefactor shall be a Denial of publick Justice of the Kingdom. So that the Tenure whereby the City of London hold their Franchise, and all their Liberties, will be quite changed and altered, without the Aid of Act of Parliament. The City will no longer hold all their Liberties from the Crown *quandiu se bene gesserint*, which was their ancient Tenure, reserved by the Crown and the Laws of the Land upon their first Erection, but will gain *absolutum Dominium*. And the King shall exercise no just Prerogative, but at their good Pleasure; otherwise they will blast him to his People, and aliene their Affections from him. I have done with the Case. I have nothing more to offer. I have at large proved, that the Corporation of London is a great Franchise and Liberty. I have proved that Point of Forfeiture, and their Demeanours towards the Crown: They stand in the same Level with other Cities and Boroughs, which be forfeited and seized. I have presented to the Court two superlative Offences, both against their Prince and their Fellow Subjects, as well can be; wherein they have exceeded all other Cities and Boroughs, and themselves too in any former Age. The Manner of their Pleading, and Defence at the Bar, argue the Disease to be dangerous and infectious to other Cities and Boroughs, and of the Nature of the King's Evil incurable without the King's Hands. I have this Day brought them in Judgment before the Court, in order to their Cure. Nothing remains for effecting of the Cure, but the Judgment of the Court for Seizure of the Franchise of London into the King's Hands; which I demand for the King.

*Mr. Attorney General having taken up so much Time, the Court put off the Hearing the Counsel for the City till another Day, when Mr. Pollexfen argued as follows:*

**Mr. Pollexfen.** IN this Case, when I consider the Greatness and Consequence of it, That it affects the King, the Parliament, the Laws, the very Government under which we have lived, this great City of London, and all other Corporations and People of England, and their Posterities, for ever, I cannot but be troubled, that I should be the Man to whose Lot it should fall to argue it; but that which comforts me is, that your Lordship, and the Court, upon whom the Judgment of this great Case depends, will help out my Defects, and according to what is required in the great Places you bear, take care and provide, that by your Judgment the ancient Government and Laws of this Kingdom receive no Damage or Alteration. The King's Counsel have on their Side only some general Words out of old Records of Forfeitures and Seizures of Liberties which are of uncertain and doubtful Sense; but there is not on their Side produced any one Precedent, Judgment, or Opinion to maintain the Point in Question, *viz.* That a Corporation, or Body Politick, ever was determined, or dissolved, or taken away for a Forfeiture: No, not in the maddest of Times, in the Times of *Edward the 2d.* and *Richard the 2d.* when the Tumults and Disorders were so great, that they not only seized and took away the Liberties and Franchises, but the Lives of Princes, Nobles, Judges, Lawyers, and all that stood in their Way: In those Times, though they have hunted and searched with all Diligence, not one Instance of a Corporation taken away, or dissolved by a Forfeiture, is cited. So that from hence I hope I may safely conclude, that I argue in this Case for the old and known Laws, as they have been ever practised through all Ages, and against that which never hath been practised or known; which is a great Encouragement to me. The Pleadings being very long, I shall only repeat so much of them as I use, when I come in order to speak of them.

I. The first thing proper to be spoken to is the Information itself, and therein I make this Question: Whether as to that Part thereof, that chargeth the Corporation with usurping upon themselves the Being of a Corporation, whether that be properly brought against the Body Politick,



as this is, or ought to have been brought against the particular Persons? I do agree, that as to the other Things mentioned in the Information, the having Sheriffs, Justices, &c. the Information is properly brought against the Corporation: And I do also agree, that it may be good as to those Things, though bad and insufficient as to the Charging the Corporation with Usurpation of their Being, without lawful Warrant or Authority. And, that I may come singly to this Question, I do put out all the other Franchises in the Information, and take only what concerns this Point; and then the Information, as to this Point, chargeth, That the Mayor, Commonalty, and Citizens of London, by the Space of a Month last past, before the Information, did use, and claim to have and use, without any Warrant or Regal Concession, within the City of London, the Liberty and Franchise following, viz. to be a Body Politick, *Re, Facto, & Nomine*, by Name of Mayor, and Commonalty, and Citizens, and by that Name to plead and be impleaded; which Liberty, Privilege, and Franchise, the same Mayor, Commonalty, and Citizens, upon the King, by the Time aforesaid, have, and yet do usurp. This is the Substance of the Information as to this Point; and, Whether this Information thus brought as to this Matter be sufficient in the Law, upon which a Judgment can be given, or ought to have been brought against particular Persons, is the Question. I conceive it ought to have been brought against particular Persons, and is insufficient as it is, and that no Judgment can be given upon it, supposing the Defendants had demurred, or pleaded nothing to it. To make out the Insufficiencies, I desire to consider what it imports.

1. The very Bringing the Writ, and exhibiting the Information against the Corporation, imports and admits the Mayor, Commonalty, and Citizens, to be a Body Politick, capable to be sued and impleaded, *respondere & responderi*; otherwise there is no Defendant, no Person in Court, against whom the Suit is brought. It is not enough, that the Person sued be a Person by Supposition, or a pretended Person, but none in Reality. If a Writ or Information be brought against a Baron and Feme, this must admit, that they are Baron and Feme really and truly; and if there be any thing after in the Writ or Information, that shews, that they are not truly and really Baron and Feme, but that they do wrongfully and unduly take upon them to be Baron and Feme, when in Truth they are not, this would be contrariant and repugnant, and abate the Writ or Information. The like is supposed by the Bringing the Writ or Information against the Body Politick; it supposeth and affirmeth them really and truly to be such, and the subsequent Affirmation, that they usurped so to be, and are not so really, is contrariant and repugnant.

2. When in the Information it is alledged, that the Mayor, Commonalty, and Citizens, the Liberty, Privilege, and Franchise of being a Body Politick, *Re, Facto & Nomine*, and to be sued and impleaded upon the King, have and yet do usurp; to usurp or do any Act of Necessity imports and admits a precedent Existence of the Person that doth usurp, or do the Act to the Act done. Particular Persons may usurp, and take upon themselves, that which they have no Right unto: The Persons, that did the Act, did before exist, and had a Being. And when a Corporation is said to usurp, it of Necessity must be supposed to have a precedent Being. The Sense of Usurpation in a *Quo Warranto* is the Subject's taking upon him Franchises without Warrant.

My Lord Coke saith, That Usurpation in the Common Law hath two Significations: *Inst. 1. 277. b.*

1.) The one, when a Stranger presents to a Benefice, and his Clerk instituted and inducted, he gains the Advowson by Usurpation.

2.) The other, when any Subject without lawful Warrant doth use any Royal Franchises, he is said then to usurp upon the King.

So that an Usurpation supposeth of Necessity a Subject or a Person precedently *in esse*, that useth the Franchise, or that doth usurp. That which is not *in esse*, that hath no Existence, cannot use any Franchise, cannot usurp. The very alledging that they usurp, doth admit of Necessity an Existence precedent in the Corporation, such as can usurp, or act, and therefore this Information is inconsistent with itself.

3. But another Reason to prove, that it ought to be against particular Persons, and cannot be against the Body Politick, is drawn from the Judgment, that must be given upon this Information, if Judgment for the King. The Judgment must have two Things in it:

1.) To damn the Corporation, *Quod penitus extinguatur & excludatur* from being a Corporation for the future; for being wrongfully usurped, it cannot be continued: A Judgment to continue Wrong and Usurpation can never be a right Judgment.

2.) A Fine to the King, for the usurping it for the Time past. This Judgment may and ought to be given, where the Information is against particular Persons, for usurping upon themselves to be a Corporation, and they shall be fined and imprisoned; but this cannot be where the Information is against the Body Politick; for by the Judgment the Body Politick is extinguished and dissolved, and no Fine can be imposed upon that which is not: So that hereby the King must lose his Fine, which the particular Persons usurping ought to pay, and the Law is agreeable always to itself, and the Means answerable to the End. I suppose no Man will affirm, that where a Suit or Judgment is against a Corporation, that the Fine or Execution shall be against all, or any particular Member.

For the Precedents and Authorities in this Point,

(1.) I do agree, that there be Precedents in the Crown-Office of *Quo Warranto*'s brought against Corporations in such Manner as this is brought, for usurping to be a Corporation, and to claim divers other Liberties.

*Quo Warranto* against the Bailiffs and Burgeses of Stratford, for claiming to be a Corporation, and to have divers Liberties and Franchises; thereupon a Plea put in, and a Confession of their Claim by the King's Attorney. *P. 2 El. r. 1.*

The like against the Corporation of Reading, the like Plea and Confession, the very next Term after the Information filed. *M. 3 & 4 El. r. 4.*

Against the Corporation of Horsham, a Plea and Confession by the Attorney. *H. 14. Jac. r. 37.*

The like against the Corporation of Dover; but nothing done upon it besides Plea put in. *H. 19 Jac. r. 26.*

The like against Bath, a Claim put in, and confessed. *H. 20 Jac.*

The like against Brackley, and a *Noli prosequi*. *H. 20 Jac. r. 58.*

The like against Boston, a Claim put in, and confessed. *T. 3 C. 1. r. 22.*

The like against New Sarum, Imparlance, and nothing more upon it. *T. 2 C. 1. r. 47.*

The like against Bridgeport, Claim and Confession. *T. 6 Car. 1. r. 43.*

The like against Biddeford, a Claim and *Noli prosequi*. *M. 2. C. 1. r. 36.*

The like against Wicomb; they plead themselves a Corporation by another Name, and traverse the Name in the Information; nothing more on the Roll. *M. 8 C. 1. r. 42.*

And it is probable, there may be more like these; but if of any Authority, they are for me, and not against me.

1.) For that they all being for claiming other Liberties, as well as to be a Corporation, and being good and sufficient as to the other Liberties and Privileges, that the Corporation claims; though insufficient for this of claiming to be a Corporation, they must be proceeded upon, if the Attorney pleaseth. But is any to be found where only the Claiming to be a Body Politick, and nothing else? or if other Things questioned, yet only proceeded in as to this Particular of claiming to be a Body Politick, as in this Case? That will be like.

2.) In all these nothing is done; a Claim or Plea put in, and that confessed, or *Non prof.* or not proceeded upon to Judgment. Perhaps not proceeded in, because insufficient; and so are Authorities for me: For there being so many of these, which are either *Non prof.* or not proceeded in, perhaps the Reason might be, because insufficient in the Law, as to the Corporation, and so are Authorities for me in this Case. But one there is found.

*Quo Warranto* vers. Bailiffs and Burgeses of New Malton in Yorkshire; *T. 6 Jac. r. 3.* *Quo Warranto* they claim divers Liberties, as Courts, Markets, and others, and amongst the rest to be a Body Politick. They put in a Plea, and make their Claim by Prescription; Issue is joined, and tried by *Nisi Prius* at York, and found against the Corporation, and a Judgment entered, *Quod Libertat' & Franchises prædictæ in manus domini Regis capiuntur & sequeantur, & quod Ballivi & Burgeses capiunt' ad satisfaciend' Dom' Reg' pro Fine suo pro Usurpation' Libertat' & Franchises prædictæ.*

There is no mention of this Case in any Book or Report, as far as I can learn; so that this passed *sub silentio*. Next, how can this Judgment be good?

[1.] How can that be a right and lawful Judgment, which shall be given for the Continuing a Thing, that is by the very Judgment adjudged to be unlawfully usurped, and a Fine for it? It is directly *oppositum in objecto*.

[2.] How can the Corporation be seized into the King's Hands? *Extinguatur & excludatur* is proper; the Corporation cannot be in the King.

[3.] How could the Bailiffs and Burgeses be fined? When they are vanished and gone, there is no Corporation in Being; that which is laid upon a Corporation cannot be levied upon the particular Members.

I have made Inquiry after this Borough of New Malton: It is a small Borough, within the Manor of the Ancestors of my Lord Eure; it did anciently send Burgeses to Parliament, but from the Time of King Ed. 1. to the Beginning of the Long Parliament, 1640, it sent none then; upon Petition a Writ was ordered, and they then and ever since have chosen Burgeses: My Lord Eure being Lord of the Manor, and offended with them, did prosecute this *Quo Warranto*, and they having neither Lands, Revenues, or Estates, to defend themselves, he easily prevailed, they never in Truth being incorporate, nor having any Charter. But that which I give for Answer to these Precedents is,

1.] They are all, where not only the Being of the Corporation, but also divers other Liberties were in Question; so that the Informations were good in part, and not worth the while to question whether good as to that Part of their being a Corporation. The Fine upon them for usurping the other Liberties, would have been more than they could bear or pay.

2.] That this is but one Judgment, and in a Case of a small Borough, and that Judgment, as entered, not agreeable, but inconsistent with the Rules of Law or Reason. The Body Politick could not be seized into the King's Hands; but whenever a Judgment is given for the King, for Liberty which is usurped, or extinct in the Crown, the Judgment must be *quod extinguatur*, and that the Person that claimed them *deinceps Libertat' & Franchises prædictæ nullatenus intromittat', sed ab usu earund' amodo omnino cessat; quodque* the Person that used them, *pro usurpacion' Libertat' & Franch. prædictæ super Dominum Regem capiat' ad respondendum dict' Dom' Reg' de Fine suo pro Usurpacione Libertat' & Franch. prædictæ.* That this is the Form, *C. En. 559. a. 537. 527. b.*

3.] That this Judgment of New Malton passed *sub silentio*; for there is no Mention of it in any Book, nor doth it appear that ever the Question was moved or debated. And for Precedents in Matters of Practice and Process, they are of Authority; but in point of Law, unless they have been upon Debate, are of little Authority to prove what the Law is. *Rep. 4. 94. Slade's Case, L. 5. E. 4. 110.*

But on the contrary, all the Precedents that are in any printed Books of Informations, were brought to question, Whether Body Politick, or not, are against particular Persons by Name:

Against Christopher Helden, and others, *C. En. 527. Pal. 9. f.*

*Quo Warranto* against Cusack, and others, *Rel. 2. r. 113. 115.*

*Quo Warranto* against the Virginia Company was brought against Nic Farder, and others, *Quo Warranto* they claimed to be a Corporation. *Rel. 2. 455.*

Some of them pleaded insufficiently, upon which there was a Demur, and a Question, How the Judgment should be entered? for that the Master and Chief of the Company were left out of the *Quo Warranto*. By which it appears, that it ought to be brought against the Master, and particular Members by Name.

Next, for the express Authorities in this Case, to prove it cannot be against



against the Corporation, *Rel. Rep. 15.* is express, That if a *Quo Warranto* be brought to dissolve a Corporation, the Writ ought to be brought against the particular Persons; for the Writ supposeth, that it is no Corporation.

The Difference there taken, when the Attorney General supposeth the Defendant to be a Corporation, otherwise when he questions them as Inhabitants of a Vill, then they ought to enable themselves, they must then shew themselves a Corporation, also prove it.

My Lord Hales in his Common-place Book, in *Lincoln's Inn Library*, fol. 168, saith thus: *Nota, sc. Quo Warranto soit port pur usurper de une Corporation serra port vers particular Persons, quia in disaffirmance del Corporation, & Judgment serra donne que serra ouste; mes si le Quo Warranto soit port pur Liberties claim. per Corporation, serra port vers la Corporation.* This is positive.

This, if it were only my Lord Hales's Judgment, were of no little Authority; but I think it is a Report taken upon the Case of the *Quo Warranto* against *Cusack* and others. But Mr. Attorney finding, as I believe, all the Precedents to be against him, (for in them all there are either *non Prof.* or no Proceeding to Judgment, the Causes whereof, or at least some of them, probably might be the Insufficiencies of these Informations) and finding also the Authorities in Print, which have been cited to be all against him, and none for him, endeavoured to maintain the Information as brought not against the Corporation, but against the Citizens or Inhabitants of the City in their natural Capacities; and to that Purpose cited the Case, *C. En. 537.* of a *Quo Warranto* against the Inhabitants of a Village. *Quo Warranto* they claimed to be a Body Politick; and argued, That a *Quo Warranto* lies against the *Cives* of such a City, or *Burghes*, or Tenants. This seems to be rather a sudden Conceit, and altogether undigested, and not well considered. But in Answer thereunto, and to prove, that this Writ is brought against the Defendants as a Corporation, and cannot legally be taken in any other Case; if a Mayor and Commonalty plead, that they are seized in Fee, they need not say in Right of their Corporation, the Name shews them to be a Corporation, it need not be alledged. *Leo. 1. 153.* An Action there brought by the Guardians and Fellowship of *Weavers*; the Book saith, That they need not set themselves out to be incorporate, the Name shews it; so of Cities, saith the Book, *Hob. 211.* So then, when the Writ is brought against a Mayor and Commonalty, or Mayor, Commonalty and Citizens, the Law takes Notice of them to be a Corporation; and the Writ against them as such; the Name shews it. But against Inhabitants of a Village, a Writ brought by that Name, that cannot be taken to be other than Inhabitants, the Name shews it; and in such Case, some of the Inhabitants, by Name (*viz.*) *A. and B.* appear in Person, in their own, and Names of the rest of the Inhabitants, and plead, and are Defendants, *Co. En. 537.* So did they, as appears in that Precedent. No Appearance ever was of Inhabitants in other manner. But in this Case here are no Persons that do appear by Name, but the Corporation appear, and make an Attorney under their Common Seal. The Corporation, and no particular Persons, are the Defendants before you, or else you have no Defendants before you; for there is none appearing in Person, here is no Defendant, nor none against whom you can give Judgment; but all the whole Proceedings vain and against nobody. So that if we should admit, as Mr. Attorney argues, That this Information is not brought against the Corporation; then there can be no Judgment for want of Defendants appearing in their natural Capacities; you must have it against the Corporation, or nobody. A Mayor cannot be but where there is a Corporation; therefore this Notion is impossible, as I conceive. So that if there were nothing else in the Case, if the Information be ill brought, they can have no Judgment against us.

II. But admit, that the Information as to this Point be sufficient, then I proceed to consider the other Parts of this Case; the Plea: That contains the Defendants Title, (*viz.*) That she is a Corporation Time out of mind, and many Confirmations by Acts of Parliament and Charters. It is not denied, but that the Title made by the Plea is good.

But next the Replication, that contains,

1. An Issue upon the Prescription (*viz.*) That the Citizens of *London* have not been Time out of Mind a Corporation by Name of Mayor, Commonalty, and Citizens, &c.

2. A Pleading over, That the Mayor, and Commonalty, and Citizens taking upon them (*assumentes super se*) to be a Body Politick, and to have Power to make By-laws,

1.) *Colore inde*, but for their private Gain, & *contra fiduciam per Dominum Regem & Leges hujus Regni* in them reposed, took upon them to raise Money upon the King's Subjects, by Colour of an Ordinance by them *de facto* made; and in Prosecution of this usurped Power, the Mayor, Commonalty, and Citizens, in their Common Council assembled, published a Law for levying Money upon the King's Subjects, that came to the Markets within the City, 17 Septem. 26 Car. 2. (*viz.*) *De qualibet Persona*, for every Horse-load of Provisions brought into any publick Market within the City to be sold, 2d. a Day; for every Dorser of Provision, 1d. a Day; for every Cart-load drawn with not more than three Horses, 4d. a Day; if with more, 6d. a Day; that if any refused to pay, he should be removed from his Place in the Market: That, by Colour of this By-law, the Mayor, and Commonalty, and Citizens have extorted great Sums of Money for their own private Gain, amounting to Five thousand Pounds per Annum.

2.) And farther, That whereas there was a Session of Parliament holden 21 Octob. 32 C. 2. and continued till the 10th of Jan. 82. and then by the King prorogued to the 20th of that instant January; the Mayor, Commonalty and Citizens, Jan. 13. in their Common Council assembled, *malitiose, advise, & seditiose, absque legali Autoritate, in se assumpserunt ad censendum & judicandum dicti Domi Regem nunc, & Prorogationem Parliamenti*, by the King prorogued; and in the same Common Council, *Vota & Suffragia sua dederunt & ordinarunt*, That a Petition *sub nomine* the Mayor, Aldermen, and Commons of the City of *London*, in Common Council assembled, to the King should be exhibited: In which Petition it was contained, That by that Prorogation the Prosecution of the publick Justice of this Kingdom, and the making necessary Provision for the Preservation of the King, and his Protestant Subjects, had received Inter-

ruption. And that the Mayor, Commonalty, and Citizens, in the same Common Council, did unlawfully, *malitiose, advise, & seditiose*, with intent that the same Petition might be published and dispersed among the King's Subjects, to induce in them an Opinion, that the King had by that Prorogation obstructed the publick Justice, and to incite Hatred against the King's Person and Government, and to disturb the Peace, did order that Petition, containing the said scandalous Matter, to be printed; and thereupon, to those ill Ends and Purposes, they caused it to be printed and published: By which the Mayor, Commonalty, and Citizens, the afore-said Liberty and Franchise of being a Body Politick *forisfecerunt*, and after, by the Time in the Information, have and yet do usurp it.

Before I come to the Matter, I would speak to the Pleading herein, and in the subsequent Surrejoinder: And for the Pleading in it, I think it is as singular and unprecedented as the Matter of it is. This Replication, supposing the Matter had been the Act of the Body Politick, and good and sufficient, yet as pleaded, is insufficient, and not warrantable by any Law or Practice ever known. It contains,

1. An Issue, *viz.* no Corporation Time out of Mind.

2. Two Causes of Forfeiture of the Corporation, admitting they once were a Corporation.

So that, though the Point in Question be but one, *viz.* Whether we are lawfully a Corporation or no Corporation, though the Plea is single, that we are a Corporation by Prescription Time out of Mind; yet here is, to try this Point,

1. An Issue.

2. A double Plea, alledging two Causes to avoid it for a Forfeiture.

This I conceive cannot legally be done, though in the King's Case, I do agree, the King hath great Prerogatives in Pleadings; and as far as ever they have been allowed or enjoyed, let them be so still; but that the King can to the same Matter both take Issue, and also plead over at the same time, That I deny. It is most reasonable, that the Law should be careful to preserve the King's Rights; but on the other Side, I think it is not reasonable, that the Law should admit or allow as legal, any way of Proceeding that should destroy or render the Subject's Right indefensible, be his Right as good as it may be. If so be that Mr. Attorney may both take Issue upon the Fact, and also plead over, I would, by your leave, ask, How many Issues, and how many Pleas over, the King's Attorney may have? Suppose the King bring a *Quare impedit*, or Writ of Right, or any other Action, the Defendant makes his Title, which is usually done, by many Grants and Conveyances from one to another, to bring it to himself. May the King's Attorney now take as many Issues as Facts issuable, plead as many Pleas as he pleaseth, and all this *simul & semel*? It is true, that in this Case Mr. Attorney hath assigned only two Breaches, or Causes of Forfeiture; but he might, if he had pleased, by the same Reason, have assigned two hundred. If this may be, are we not all at Mr. Attorney's Mercy? If this may not be, then how many Pleas? Is it in Law defined? *In favorem Vitae* a Man may plead a special Plea, and plead also Not Guilty, but not several special Pleas; but that there is any such Prerogative for Mr. Attorney, in Suits betwixt the King and his Subjects, I can find no Instance or Authority for it: For though it be true, as I have said, that the King hath great Prerogatives in Pleadings, yet it is as true, that this is not boundless; but that if in the King's Writs there be Mistakes, or his Writ or his Action misconceived, he shall be bound by it in like Manner as Subjects are or shall.

*Partridge against Strange*, *Com. 84. a. 236. a.* and in the same Book, in my Lord *Berkeley's* Case, it is expressly said, That though the King hath many Prerogatives concerning his Person, Debts, and Duties; yet the Common Law hath so admeasured his Prerogative, that it shall not take away, or prejudice the Inheritance of any.

The King hath a Prerogative, that he may waive his Demurrer, and take Issue; or waive his Issue, and demur upon the Plea: But, saith the same Book, fol. 236. he must do it the same Term, not in any other Term; for then he may do it *in infinitum*, without End, and the Party hereby may lose his Inheritance; and for that the Common Law will not suffer the King to have such a Prerogative. These are the Words of the Book. And in the Point, that this Prerogative must be made use of the same Term, and that the King's Attorney cannot vary in another Term, and waive his Issue, is 13 E. 4. 8. Bro. *Prer. 69. 28 Hen. 8. 2.* So in making Title to a *Quare impedit*, he at the End of the Term waived his first Title, and made another. But it is true also, that as to the Point of waiving Demurrers, and taking Issue in another Term, there is Authority, that he may so do; *Rex vers. Bagshaw*, *Cr. 1. 347.* But whether it may be done or not in another Term, is not material to our Case: But the Use I make of these Cases is to prove, that the King's Attorney should not have both together *simul & semel*, as in this Case he hath done; he must waive one before he can have another Plea. For those Debates about his varying his Plea, by waiving his Issue and Demurring, or waiving his Demurrer, and taking Issue, signify nothing, if he may in one Plea, and at the same time take Issue and demur, or plead over to the same Matter or Point, as is done in this Case; therefore those Books strongly prove, that the Prerogative, that the King hath, is by waiving or relinquishing one, and choosing the other; and therefore not to have or use altogether and at once, as is done in this Case.

The King shall be bound by one Issue, he shall not have divers, 9 H. 4. 5. So that as this Replication is at the same time *simul & semel* to the same Matter, to take Issue, that we were not a Corporation time out of Mind, and to plead two Matters of Fact for Forfeiture, is the first Attempt that ever was of this Kind, and in its Consequence confounding the Right of the Subject, and leaves him perhaps only but a Colour of Law, but most difficult, if not impossible by it to be defended, let his Right be what it will, if Issues and Pleas without-Number may be by the King's Attorney joined and pleaded, and the Subject must answer. The very Charge besides will undo the Subject, and wrest him out of his Estate by the Law, that should preserve him. This Point, if I mistake not, will deserve Consideration, if it be new, and the first Project (for so I beg leave to call it) of its Kind; for I know no Book or Instance of the like, unwarrantable by old Laws and Rules of Pleading. The old Laws



Laws and Ways are good and safe: *Eventus varios res nova semper habet*. Perhaps the Consequence and Mischief attending this way of joining Issue, and at the same Time pleading over as many Pleas as Mr. Attorney pleaseth, are as great as any other in this Case, and not less to be minded or regarded. As of the one Side, great are the King's Prerogatives, and most necessary to be preserved and maintained; so it cannot be denied, but that the Law hath set Limits and Bounds, which must be kept and observed in pleading, which is the Method and Mean of preserving and determining Rights, without which no Man can be preserved by the Law. But supposing that several Causes of Forfeitures may be assigned, yet they must be all Facts done at the same Time, or they confound one the other; for if the first Fact was a Forfeiture, thereby the Corporation was determined, and at an End, and the subsequent could not be the Act of the true lawful Corporation; for that was forfeited, determined, and gone, by the precedent Forfeiture: and if so, that it was forfeited and gone by the precedent Act, viz. the making the Ordinance *Septemb. 17. 26 C. 2.* then how could it act and forfeit itself six Years after, in the Year Thirty-two? This seems impossible. But to avoid this, Mr. Attorney in his Argument, doth hold, That though the Act be a Forfeiture, yet till there be a Judgment, or something on Record, to determine the Corporation, (and in this Case the Judgment to be given shall do that Work) till such Judgment, the Corporation remains: Then taking it as Mr. Attorney will have it, and as the Truth is, supposing a Forfeiture, until that Forfeiture appear on Record, or that there be some Office or Inquisition that finds it, and that returned, and on Record, were it of any Estate in Lands, Tenements, Hereditaments, or Offices, it is not determined or vested in the King, but continues. This is quite contrary and contradictory to all that you have done, and the very Foundation of this *Quo Warranto*; for if you admit, as then you do, that the Forfeiture *ipso facto* did not determine, but that it must be this *Quo Warranto*, or Judgment upon it, that must determine the Corporation; and that the Corporation, notwithstanding such Act, was or is in Being; then they have not usurped upon the King: They are the same Corporation they were; they have the same Power to act they had; they have the same Warrant and Right they had, only subject to a Judgment against them, that may be given hereafter for a Fact, already past: For since that an Usurpation is a fortious and wrongful using a Liberty or Franchise upon the King, without lawful Authority; then, supposing such an Act of Forfeiture doth not *ipso facto* determine or dissolve, but a Judgment, or some other Act of Record must first be had before such Dissolution; then till such Judgment, or Act of Record, they are lawfully a Corporation in Being, and their lawful Warrant remains, and they did not, nor could so long usurp their Being, and then hereby is your own Information destroyed and abated: For there you say, that they did by the Space of a Month, without any Warrant, use and usurp the Liberty to be a Corporation. But hereby you grant, that it was not used unlawfully, nor usurped; but notwithstanding the Forfeiture the Corporation lawfully continued, unless there had been some Judgment, or other Act, on Record, to determine it. This I rest upon as impossible to be avoided. Is it possible, that a Corporation or Body Politick can at the same Time be lawfully and rightfully such, and not lawfully and rightfully such? Can Right and Wrong be the same? Can the same Thing rightfully be, or have its Being, and at the same time not rightfully be, or have its Being? Can we possibly be at the same Time, viz. the Time mentioned in the Information, a lawful Corporation, and yet an usurped or unlawful Corporation? Could we then have a lawful and rightful Authority to be a Corporation, and at the same Time have no lawful or rightful Authority to be so? These seem to be Contradictions; and if so, are the most difficult of all things to be believed or imposed; therefore to be plain in this Matter, either tell us, that we are yet till Judgment a Corporation or Body Politick lawfully and rightfully, or not. If you say we are, then as yet we are no unlawful Corporation, nor have usurped to be one, as in your Information and Replication you have alledged. We have not then unlawfully taken upon us to be a Corporation, and therefore cannot have Judgment against us; or be fined for having or being that which we lawfully have or be, as you now admit we are; consequently, you must go some other way, you have destroyed your own Information, and can have no Judgment upon it. But perhaps this Concession of Mr. Attorney, that the old and lawful Corporation and Body Politick is still in Being, and shall so continue, till by Judgment or Matter on Record determined, may only be some sudden Thoughts; for not only the Matter, but the whole Proceedings in this Suit, being at least unexperienced, and perhaps much out of Practice, it might easily happen, that in an hasty Proceeding, all things might not be thought on, nor all the Objections nor Inconveniencies foreseen, and perhaps the Consequence of the Position, that a Miscarriage, or doing an unlawful Act, should *ipso facto* forfeit the Body Politick or Corporation, might make a Man start, and cast about how to avoid it, and flying from one Danger run into another. These are things ordinarily happening, and perhaps have in this Case happened, and were the Cause of this Concession, that the old and lawful Corporation is yet in Being, which is contrary to the whole Frame and Scope of both the Information and Replication, and probably never thought on or intended when the Information or Replication was made, being quite contrary and inconsistent with the Frame and Foundation of them both. If it be holden, according to this Concession, that the old and lawful Corporation was not by the supposed Acts of Forfeiture dissolved and determined *ipso facto*, but remained and continued lawfully a Corporation, and yet is so; then we have not usurped, but are a lawful Corporation during the Time in the Information, and not as therein supposed by Usurpation, and without lawful Authority; and thereby the Information confounded and abated.

But supposing, according to what the Information and Replication suppose, that the Acts of Forfeiture did *ipso facto* dissolve and determine the Corporation; for they will at last, I doubt, come to that again: for this present Thought, that it shall be forfeit, but not dissolved or determined till Judgment, will be subject to almost all the same Inconveni-

encies; for when Judgment is given, the Forfeiture must relate to the Time of Offence, and to avoid all mean Acts, as in other Cases it doth: But to pass this over.

III. Supposing the Information good, the Replication good, and the Matters alledged for Forfeiture to be as in the Replication alledged: The next thing I pray Leave to speak unto, is, Whether the Matter alledged in the Rejoinder be not sufficient to justify or excuse the two Facts alledged for Cause of Forfeiture? I conceive they are. The Pleadings here must first be stated.

I. As to the Ordinance or By-laws for the Toll in the Markets. As to that, the Defendants in their Rejoinder have alledged, That the City of London is, and was always, the Capital and most populous City of the Kingdom; that there are and always have been great publick Markets within the said City; that the Mayor, Commonalty, and Citizens are, and always have been, seized of those Markets in their Demesne as of Fee, and at their own proper Charges provided Market-places, Stalls, Standings, and other Accommodations for Persons coming to those Markets, and Overseers and Officers for better Regulation, and keeping good Order, and cleansing the same; that for defraying those Charges, they have, and always had and received, divers reasonable Tolls, Rates, or Sums of Money, of all Persons to those Markets coming, for Stalls, Standings, and other Accommodations by them had, for exposing to Sale their Victuals and Provisions in those Markets; that the Freemen of the City of London are numerous, above fifty thousand; that there hath been, Time out of Mind, a Common Council, consisting of the Mayor, Aldermen, and certain Freemen annually elected, not exceeding the Number of two hundred and fifty, called the Commons; that there is a Custom within the City, that the Common Council make By-laws and Ordinances for the better Regulation and Government of the publick Markets, and for the appointing convenient Places and Times when and where, within the City, the Markets shall be kept, and for the assessing and reducing to Certainty reasonable Tolls, Rates, or Sums of Money, to be paid by Persons coming to the same Markets, for their Stalls, Stations, and other Accommodations by them had, for exposing to Sale their Victuals as often as, and when to them should be thought expedient, so as their Ordinance be useful to the King and his People, consonant to Reason, and not contrary to the Laws of the Land; that this Custom is confined by *Mag. Char. Stat. 1 E. 3. Stat. 7. R. 2.* that after the burning and rebuilding London, and the Alterations thereby made, Controversies, did arise within the City concerning the Markets and Tolls; that thereupon Sir William Hooker, then Mayor, and the Aldermen, and Commons in Common Council assembled, did make an Ordinance, intituled, *An Act for the Settlement and well-ordering the several publick Markets within the City*: By which reciting, that whereas for Accommodation of Market-people with Stalls and Necessaries for their Standings, for cleansing and paving the same, for defraying incident Charges about the same, reasonable Rates had always been paid. To the end the Rates to be paid might be ascertained, that the Market-people might know what to pay, and the Officers what to take, to avoid Extortion, it was ordered, there should be paid by the Market-people for their Stalls, Standings, and Accommodations in the Markets, For every Horse-load of Provision under publick Shelter *2d. a Day*, for every Doffler *1d. a Day*, for every Cart-load drawn with not above three Horses *3d. a Day*, with more Horses, *4d. a Day*, and upon Refusal to pay, to be removed: Then they aver, that these Rates are reasonable; that they are all the Rates that are paid by such Market-people to the Use of the City; that these Rates they have received since the making these Ordinances; that there is no other Ordinance for raising Moneys for such Provisions exposed to Sale in their Markets in any Manner made.

To this Rejoinder Mr. Attorney hath sur-rejoined, and taken it by Protestation, That the City were not seized of the Markets, nor at their own Costs provided Stalls and other Accommodations; and that the Rates by the Ordinance appointed were not reasonable. For Plea sets forth an Act of Parliament made *22 Car. 2.* enacting, *That to the end apt and convenient Places within the City should be put out for Buildings, and keeping the Markets; and that the Royal-Exchange, Old-Bailey, and common Gaols and Prisons within the City, should be made more commodious*; for the enabling the City to do these things, they should have a Duty out of Coals imported betwixt *May 1670.* and *Mich. 1687.* into the Port of London, *12d. per Chaldron*; which Duty they have accordingly received, amounting to a great Sum; and notwithstanding that Duty, without Title or Right, the Defendants made the By-law, for their private Gain, *absq; hoc*, that the Mayor, and Commonalty, and Citizens, have Time out of Mind had, or accustomed to have, *Tolneta, ratas, five denariorum summas per ipsos Majorem, Communitatem, ac Cives Civitatis prædictæ superius suppositæ fore per præfatam legem five ordinationem prædictam assess' & in certitudinem reduci' prout per placitum superius rejungend' supponitur.*

The Defendants they rebut, and say, that they have always had reasonable Tolls, Rates, or Sums of Money of all Persons coming to their Markets to sell their Provisions, for their Stalls and Accommodations: *Et de hoc ponit se super patriam*: The Attorney demurs. Upon his pleadings, the Questions are, Whether the Matters alledged by the Defendants, in Justification of the Ordinance, or By-law, be a good Justification in Law, or not? If it be, Mr. Attorney in his Sur-rejoinder hath given no Answer to it at all; he hath neither confessed it, nor denied it. The Rejoinder saith, that the Defendants are, and always have been, seized of the Markets in Fee; that they at their Charge provided Market-places, Stalls, Standings, and Officers for the Accommodations of the Markets, and cleansing them; that for defraying those Charges, they have always had divers reasonable Tolls and Rates for Standings, and other Accommodations; that the Common Council have, as often as expedient, always made Ordinances for regulating those Markets, and for assessing and reducing to Certainty reasonable Tolls, Rates, and Sums of Money to be paid by the Market-people for their Accommodations; that according to this Custom, they made the Ordinance and By-law. Mr.

Attorney



Attorney in his Sur-rejoinder hath not denied any Part of this; but offers a Traverse to that which is no-where alledged or supposed. It is never pretended, that the City have had, Time out of Mind, the very Tolls and Sums of Money for Toll assessed by the Ordinance. There is not a Word in the Rejoinder to that Purpose, but to the contrary; (*viz.*) That they, in their Rejoinder, claim a Power by Ordinance of Common Council to assess and set the Rates of these Tolls and Payments as often as and when to them shall seem expedient. It is admitted in the Rejoinder, that these Sums were not Time out of Mind, only they had Power to set, assess, and ascertain, as often as expedient: Therefore when Mr. Attorney traverseth our having, Time out of Mind, the Tolls, Rates, and Sums of Money by the Ordinance assessed, and in *certitudo* reduced this is plain, besides any thing claimed or pretended unto, if he had intended to traverse what we have alledged, that we have had Time out of Mind divers reasonable Tolls and Sums of Money for Stalls and Accommodations: Or if he would have traversed the Instance alledged for the Common Council assessing those Tolls, as often as expedient, that was plain and easy to do; but that he hath not done: He hath only traversed whether the Tolls, Rates, and Sums of Money, by the Ordinance assessed, and reduced into Certainty, have been Time out of Mind. This is the proper Sense of his Traverse; but if doubtful in its Sense, his Traverse is nought for that Cause; for dubious Words can make no Issue for the Jury to try, else Men should be tricked and ensnared by doubtful Words to pervert Right: So that if the Matter alledged in the Record be sufficient in Law to justify the making this Ordinance or By-law, then what is done therein by the Act of Common Council is lawfully and rightfully done, and no Forfeiture. I do agree, that for a Lord of a Market to prescribe to have a Toll uncertain, and as often as expedient, to ascertain it, is no good Prescription. But that is not our Case; I do distinguish betwixt that and this Case: Where there is by Custom, confirmed by Acts of Parliament, (for I shall shew that they are Acts of Parliament, notwithstanding what hath been objected against them) a Power and Authority vested in the Lord Mayor, Aldermen, and Common Council, to regulate and order the People Trades, and Markets in the City, and the Places, and Conveniences, and Officers, from time to time, and consequently to regulate and ascertain the Tolls or Rates to be paid by the Market-people, to prevent Extortion and Disorders; that such Custom is legal. The Chamberlain of London's Case: An Ordinance that no Broad Cloth shall be sold in the City, before it be brought to Blackwell-Hall to be searched, and a Penny for every Cloth to be paid for Hallage, under pain of forfeiting 6s. 8d. a Cloth, to be recovered in the City Courts, *Rep.* 5. 69. Though objected that this was an Imposition of Payment of Money upon the King's Subjects, yet adjudged good, and a *Procedendo* granted.

An Ordinance that no Unfreeman shall use a Trade in London, adjudged good, *City of London's Case, Rep.* 8. fol. 1. A Multitude of Ordinances they have for regulating all manner of Trades, and of Rates and Prices; and as much Reason there is to object against them, as this Ordinance, or the Custom in this Case: But the City of London have a Government and Power of making Ordinances for governing and regulating Trades, buying and selling within the City, placed in the Common Council, and confirmed by Act of Parliament; and therefore not like the Case of any private Lord of a Market. But it is true, their Ordinances must be unreasonable. The Payments that are imposed by this Ordinance, are only imposed upon those that are under Shelter. It is Reason a Recompence should be paid; and there is no Unreasonableness or Injustice appears in the Ordinance, but a reasonable Recompence. But the Custom or Power of the Common Council is not denied, as I take it: For they have not denied the Power to regulate and ascertain the Tolls or Sums of Money alledged to be in the Common Council; if they had, that must have been tried: Nor have they denied the Rates set to be reasonable. So that I think, as to this Matter, we have well-intituled ourselves, and justified our making our By-law, and taking the Tolls or Rates thereby appointed; and nothing in the Sur-rejoinder against us to the contrary is objected.

But for confirming and making good our Customs, in the Plea, there are three Acts of Parliament pleaded:

1. *Magna Charta.*

2. *Stat. 1. E. 3.*

3. *Stat. 7. R. 2.*

The King's Counsel have not denied *Magna Charta* to be a Statute, but have denied the other two to be Statutes, or Acts of Parliament; and the Reasons given by them are:

Because not in Print, nor Roll of it to be found; or because nobody knows where to find it.

As to the first, Private Acts of Parliament do not use to be printed, few are.

As to the second, Suppose there were no Roll to be found. Doth this after so long a time conclude there was none such? especially since Mr. Solicitor was pleased to acknowledge, that there are no Parliament Rolls of *E. 3.* till *4 E. 3.* It is true, that almost all the Parliament Rolls of *H. 3. E. 1. E. 2.* and till *4 E. 3.* are indeed lost. But besides, in those Days publick Acts were not only entred upon the Parliament Rolls, but from thence transcribed, and sent under the Great Seal to be published by the Sheriffs of the Counties, in the Cities and Boroughs, and also by Writ to the Courts in *Westminster-Hall*, to be there entered and recorded, of which there are many found, especially in the *Exchequer*; and hence came the Rule in Law, that Judges, *ex Officio*, are bound to take Notice of general Acts of Parliament: But for private Acts, they were put under the Great Seal, and the Parties interested had the same to produce: But that these in this Case should be questioned to be Acts, is strange.

But to prove them Acts: As to the Act, *1 E. 3.*

(1.) We have pleaded it under the Great Seal of King *E. 3.* that made it with a *Profert hic in Cur'*, and shewn it with our Plea as we ought; and this is Evidence sufficient of itself. If the same, produced under the Great Seal put to it when made, be not sufficient Evidence to satisfy, what can be?

(2.) But in this Case it is intolled upon Record also, *Inter placita Curie penes Camerarios in Scaccario*; it is enrolled there, *Trin. 1. E. 3. r. 61, 62.*

But perhaps it may be objected also, That this was no Act of Parliament, but only a Grant or Patent in Parliament; because it is that the King *de assensu Prælator' Comitū Baron' ac totius Communitat' regni in presenti Parlamento.*

I answer, that Acts of Parliament observe not any certain Form. In the Case of the Earldom of Oxford expressly, *Jones* 103. that there was Variety in penning Acts of Parliament in ancient time, *Dominus Rex per Concilium fidelium subditor' suor' statuit*, and other Forms there, are yet good Acts. But that they were anciently in Form of Patents or Grants in Parliament, *Magna Charta, C. 1.* is in Form of a Charter or Grant. The Form of the Act of Parliament, *11 E. 3. Prince's Case, R. 8. fol. 8.* for creating the Prince of Wales, *Edwardus Dei Gratia, &c.* in Form of Patent, and is *De communi assensu & consilio Prælator' Comitū, Baron' & aliorum de concilio nostro in presenti Parlamento*, and adjudged a good Act of Parliament; and the Authorities and Reasons to prove it an Act of Parliament are *fol. 18, 19, 20, 60* full, that it might be thought that this Objection would never have been made: And that this is in the same Form that all the rest of the Acts of this very Parliament of the *1 E. 3. Mem. 17.* are, appears by the Patent Roll of the same Parliament. A Charter granted by the King *de assensu Prælator' Comitū, Baron' Communit' Regni in Parlamento apud Westm'* to enable the City to apprehend Felons in *Southwark*. An Act in the same Form, for the annulling the Conviction of Treason that was against *Roger Mortimer*, in the Time of *E. 2. Rot. Claus. 1 E. 3.* An Exemplification then entered of an Act made in the same Form in the same Parliament, for the annulling the Attainder of *Thomas Earl of Lancaster*, attained *tempore E. 2. Rot. Pat. 2 E. 3. P. S. 1. M. 17.* Divers other Acts of Parliament in the same Form made *1 E. 3.* for annulling divers other Attainders that were *tempore E. 2.* So that as to this Act of Parliament *1 E. 3.* I think the Objections are answered, and that it is an Act, as pleaded, *Rot. Pat. 2 E. 3. P. S. 2. M. 11. Inst. 2. 527. 639.*

And as to the other Act *7 R. 2.* that that is no Act of Parliament, only a Prayer of the Commons, that there might be a Patent granted to the City, confirming their Liberties, *licet usi vel abusi fuerint*; and the Answer was, *Le Roy le veult.*

They object for Reasons against that being an Act of Parliament, First, That it wants the Assent of the Lords.

Secondly, It is only a Prayer of the Commons to have their Liberties confirmed, and the King's Answer *Le Roy le veult*, but nothing done to confirm it.

As to the first Objection, supposing it true that there is no mention made of the Assent of the Lords, yet the Act is a good Act.

1. It appears to be in Parliament *ad instantiam & requisitionem Communitat' Regni nostri in presenti Parlamento.*

2.) The Answer in Parliament, that is given by the King to the making all Laws, is given to this, *Le Roy le veult.*

3.) And next, it is admitted to be upon the Parliament Roll, *7 R. 2. Num. 27.* I have before said, that Acts of Parliament are not in any certain form; sometimes entered as Charters or Grants, sometimes as Articles, sometimes and frequently as Petitions; the Books I have already cited proved it. But according to the Course of Parliaments, let it be in what Form it will, let it begin in which House it will, yet it must go through both the Houses of Parliament, before it can come to the King for his Royal Assent. If either House rejects or refuseth, there it ends, it comes not to the King; nor is the Royal Assent in these great operative Words, *Le Roy le veult*, in Parliament given to any thing, but what the whole Parliament have assented and agreed unto: So that this is an Objection grounded upon a Reason contrary to all the Course of Parliaments, which shews, that the Lords Assent was to it, though not mentioned. *Selden's Mare Claus. 249.* gives a full Resolution herein: *Carissimum est*, saith he, that according to Custom no Answer is given, either by the King, or in the King's Name, to any Parliamentary Bills, before that the Bill, whether it be brought in first by the Lords, or by the Commons, hath passed both Houses, as it is known to all that are versed in the Affairs and Records of Parliament. And in the Prince's Case before cited, there the Act is said to be *de assensu & consilio* of the Lords, but doth not name the Commons; And this answers the other Reason also, *viz.* That it should only be a Prayer and Petition also, to have a Charter of Confirmation granted: For since the Forms are in manner of Petitions, since the Royal Assent or Words, *Le Roy le veult*, is never put to any Bills in Parliament, but such as are thereby made and passed into Laws, the giving the Royal Assent is sufficient in this Case to prove it a Law. But for further Evidence, we have it under the great Seal of King *R. 2.* thus penned: *Ad instantiam & requisitionem Communit' Regni nostri Angl' in presenti Parlamento nostro, pro majori Quiet' & Pace inter Legeos nostros fovendis, & pro bono publico de assensu Prælatorum, Dominor' Procerum, & Magnat' nobis in eodem Parlamento assistentium, &c.* So that hereby it is fully proved, and shewn, that though the Assent of the Lords be not mentioned in the Copy, yet that it was had, and under the great Seal of *R. 2.* it so appears. We have also, in our Book of the Acts of that Time in the City, the Proclamation made upon the first promulgating this Act, in the Time of Sir *Nicholas Brember*, Lord Mayor, *Lib. E. f. 169. a & b.* and therein it is also entered in the same Words, as before, under the great Seal of *R. 2. de assensu Prælator', &c.* Next our Books and continual Practice ever since. It is true, that in the *7 Hen. 6. fol. 1.* when it is said, that the Customs of London were confirmed by Statute, *Quare*, what Statute! but it is no there made a *Quare*, whether this were a Statute? *Instit. 4. 250. Rep. 5. 63. Rep. 8. 162.* all say, that the Customs of London are confirmed by Parliament, *7 R. 2.* Justice *Jones* 283. hath it *verbatim* out of the Parliament Roll. The constant Course of Pleading the Customs of London, is to plead a Confirmation of them by this Act of Parliament: So that as to this Point there is not any one Book or Opinion before this Day, in favour of what is affirmed, that these are not Acts of Parliament; and our Plea stands good in Law, and the Ordinance.



dinance, and By-law, and Custom is good, and then no Forfeiture thereby.

But suppose, and admit, that this By-law be the Act of the Corporation, and not good and sufficient in Law, nor in Law justifiable, *Quid sequitur?* Then it is void in Law. Then if it be void in Law, how can it make a Forfeiture? Suppose a Lessee for Years, or for Life, makes a Feoffment, but it is not duly executed for want of Livery and Seisin, by which it is void in Law, can this make a Forfeiture of the Estate of the Lessee? Suppose a Corporation *Tenant per auter vie* makes a Feoffment which is void for want of Livery duly made, will this forfeit their Estate? A void Act shall not destroy or forfeit a precedent Estate. A Parson, that hath a former Benefice, accepts a second Benefice incompatible, was instituted and inducted, but did not read the Articles, his first Benefice was not forfeit or void hereby, because by the Statute the not reading his Articles had made his Institution and Induction void. *Dyer 377 b.* So that then whether this By-law or Ordinance were good and void in Law, perhaps is not much material; it cannot make any Forfeiture of the Corporation, it can have no such Effect; for if it be a good and lawful By-law, no Forfeiture can be for doing a good and lawful Act. If the Ordinance be not warrantable by Law, then it is void in Law; if void in Law, a void Act can make no Forfeiture.

But you received, say they, and exacted from the King's Subjects Sums of Money by this Ordinance.

I answer, Suppose we did, and that we had no Right to have this Money; if an Officer, by Colour of his Office, receive more than is due, it is Extortion, and a Crime punishable: But if a Person, that is no Officer, take Money that is not due, or more than is his Due, the Parties injured have their Remedies by Action; but this is no Crime for which any Forfeiture or Penalty is incurred by the Person that so takes or receives the Money. Suppose a Lord of a Manor exact or take greater Fines or Sums of Money from his Copyholders or Tenants than he ought, they have their Remedies by Actions against those that receive; so if a Corporation receive or take Money supposed to be due, but in Truth is not, how can this forfeit any thing?

But you took upon you, say they, a Power and Authority to tax the King's People, and to take and receive the Money so taxed.

I answer, This is but the same thing, only put into greater Words. It is still but the making of an unlawful By-law, and thereby appointing Money to be paid which ought not, or more than should be; and as to the turning of it, or expressing it in stately Words, of taking upon you, or usurping Authority to impose upon, and tax the King's People; whosoever doth any Act or Thing, he takes upon him, and doth also execute the Power and Authority of doing that Act or Thing, which is comprehended in the Thing done. The making a By-law, or Ordinance, whereby more is ordered to be paid than ought, or Money appointed to be paid where none is due, is still all the Fact and Thing done; and if that make no Forfeiture of the Corporation, or Crime punishable by Indictment or Information, except only as the Statute 19 H. 7. c. 7. which I shall hereafter mention, hath appointed for Forfeiture of 40s. the taking or usurping the Power to do it, cannot be more, or effect more, than the doing the thing which comprehends it.

2. As to the other Cause alledged in the Replication for Forfeiture, the Petition printing, and publishing it; in the Replication 'tis alledged, That the Parliament the 10th of January was prorogued to the 20th of January; that the 13th of January the Mayor, Commonalty, and Citizens of London, in their Common Council assembled, *malitiose, adu'sate & seditiose*, took upon them *ad iudicand' & censend'* the King, and the Prorogation of the Parliament by the King so made; and that the Mayor and Commonalty, and Citizens of London, so in the said Common Council assembled, did give their Votes and Order that a Petition, in the Name of the Mayor, Aldermen, and Commons of the City of London, in Common Council assembled, should be exhibited to the King: In which Petition it was contained, that by that Prorogation the Prosecution of the publick Justice of the Kingdom, and the making necessary Provisions for the Preservation of the King, and his Protestant Subjects, had received Interruption; and that the Mayor, Commonalty, and Citizens of London, in Common Council, as aforesaid, assembled, maliciously and seditiously, to the Intent the same should be dispersed among the King's Subjects, and to cause an Opinion that the King obstructed the publick Justice, and to stir up Hatred and Dislike against the King's Person and Government, did order the said Petition to be printed; and afterwards they did print it, and caused it to be published.

The Defendants in their Rejoinder to this Breach set forth and alledge, That there was a Plot against the Life of the King, the Government, and the Protestant Religion; and set forth all the Proceedings upon it, the Attainders and Impeachments of the Lords in the Tower in Parliament depending, the Proclamations declaring the Dangers by this Plot, that they could not otherwise in human Reason be prevented, but by the Blessing of God upon the Consultations and Endeavours of that great Council the Parliament, and commanding a general Fast to be kept in London the 22d of December, and that it was kept accordingly; the Proceedings in the Parliament towards the Trial of the Lords, and preparing Bills to be enacted into Laws, for Preservation of the King and his Subjects against these Plots and Conspiracies: that divers of the Citizens, loyal Subjects, being much affrighted, and troubled in their Minds, with the Apprehension of these Dangers, did exhibit their Petition to Sir *Patience Ward*, then Lord Mayor, and the Aldermen, and Commons in Common Council then assembled, containing their Fears and Apprehensions and Expectations from the King and that Parliament; did petition, that the Common Council would petition for the sitting of that Parliament, at that time prorogued. And thereupon the Mayor and Aldermen, (naming them) and Commons in Common Council assembled from their Hearts truly loyal to the King, and for the Satisfaction of the Citizens, who had exhibited that Petition, and of Intent to preserve the Person of the King, and his Government, did give their Votes, and order a Petition should be exhibited to the King in the Name of the Mayor, Aldermen, and Commons in Common Council assembled, and set forth the Petition in the Name of

the Mayor, Aldermen, and Commons in Common Council assembled *in hac verba*: Wherein among other things it is contained, That they were extremely surpris'd at the late Prorogation, whereby the Prosecution of the Public Justice of the Kingdom, and the making Provisions necessary for preserving the King's Person, and his Protestant Subjects, received Interruption. And did farther agree and order that that Petition, after it had been presented, should be printed, which was so ordered with Intent, that false Reports concerning the Petition might be prevented; the Enemies of the King and the Conspirators, from proceeding in the Conspiracy, deterred the Troubles in the Minds of the Citizens alleviated, and the Citizens know what had been done upon their Petition; that the Petition was delivered to the King, and afterwards printed; that this is the same Petition and Printing in the Replication mentioned *absq; hoc*, that any Petition of or concerning the Prorogation of the Parliament was made, ordered, published, or printed in any other manner than they have alledged, as the Attorney General supposeth. To this Part of the Rejoinder Mr. Attorney hath demurred generally by the Demurrer, the Fact alledged in the Replication is admitted to be true. And it is true, that there are no Words, that are written or spoken, but are subject to various Constructions: But I take it, that no Words, whether written or spoken, ought to be taken in an ill Sense, if they may reasonably be taken in a better; *Nemo presumitur esse malus*; and therefore the Words must stand as they are penn'd: And having first expressed their Fears, and next their Hopes, from the King and Parliament's Proceedings in Trial of those that were impeached, and making Laws for their Security, and how they were surpris'd at the Prorogation; then they say, That by that Prorogation, the Prosecution of the publick Justice of this Kingdom, and the making necessary Provisions for the Preservation of the King and his Protestant Subjects, had received Interruption. It is mentioned only as a Consequence of the Prorogation, it is not said or expressed, that the King did interrupt; for I think there is great Difference betwixt the one sort of Expression and the other. An ill Consequence may attend a good, and commendable, and most necessary Act; but no Consequences can make an ill Act good; and therefore the expressing the Consequence doth not necessarily condemn or declare the Act to be an ill Act. Suppose, that in the Time of the great Plague a Man had had a Suit in *Westminster-Hall*, wherein all his Estate had been concerned, and had said or writ, that by the Adjournment of the Terms by the King, the Proceedings of the Courts of Justice in his Suit had received an Interruption, had these Words been punishable? The Adjournment was then the most necessary and commendable Act that could be for the Preservation of the King's Subjects in that raging Pestilence; and the Act itself being so good and necessary, though there were such Consequence as to that particular Suit, the writing or saying, that it had such a Consequence, such an Interruption, did not, I conceive, condemn, judge, declare or express the Act to be ill. Suppose a Man had had a Bill depending in that Parliament, to be enacted for the enabling him to sell his Land to pay his Debts, to free him from a Gaol: Or, suppose that some one of the Lords impeached in that Parliament had made a Petition for the Sitting of the Parliament, and had therein expressed as a Reason and Ground of his Petition, the like Words as in this Petition: What would the Court have judg'd of it? Are not the Cases much the same? If they are, there will be no Distinction of Persons in Judgment; I am sure there ought not. Perhaps when this Petition was made, there might be too much Heat in the Minds of Men; and it is true that Heat increaseth Heat, and Fire kindles Fire; it is time for all sorts to grow cool and temperate, and to weigh and consider we are, or should be, considering Men. This Petition was made *Nemine contradicente*, and undoubtedly among such a Number as the Common Council, there must be Men of Variety of Tempers and Dispositions: But for the greatest Number of the Aldermen, and Common Council, think of them; we know the Men, many of them; can we imagine, that they had either the least ill thought or Meaning towards the King, his Person or Government, in this Petition, or the printing it? And as for the printing it, that, my Lord, stands upon the same Reasons and Grounds: For if there be nothing ill or unlawful in it contained, then the printing and publishing of that which contains nothing ill or unlawful, is not, as I conceive, ill or unlawful. Printing is but a more expeditious way of writing, and is good or bad as the Matter printed is good or bad. The Defendants in their Rejoinder have set forth their whole Cause, the Reasons and Grounds of what the Common Council did, and the Manner and Intent of their doing it; all which Fact cannot be denied to be true, but is now confessed by the Demurrer. It hath not, nor can be said, but it is well pleaded, and might have been traversed and denied if not true: But it is confessed by the Demurrer to be true, and therefore that must be taken to be the Fact, and not as alledged in the Replication, and then so taken, I submit it to your Judgment.

3. But the next thing considerable is, Whether, supposing and admitting that if done by the Body Politick, it hath been a Miscarriage or a Crime? Whether not being done by the Body Politick, nor under the Common Seal, but by Common Council, whether thereby the Being of the Corporation shall be forfeit?

A Common Council in Corporations is generally a select Number of the Body Corporate, constituted to advise and assist the Corporation in their ordinary Affairs and Business. There is no certain Rule nor Measure of their Power wherein all the Common Councils agree. In some Corporations the Common Council have greater Authority, in some less, according to the several Authorities by their respective Charters, where the Corporations are by Charters; or by Custom or Usage, where the Corporations are by Prescription: But in all they are a subservient Number of Men, constituted and authorized for particular Ends and Purposes: And in this Case I think the Court can take Notice of the Common Council no otherwise than upon the Record they appear to be. The Replication doth not say what they are, but would go in the Dark, by Intention and Presumption, the best Way and Method to arbitrary Determination. The Rejoinder saith, that the Citizens and Freemen are a great Number, fifty thousand, and more. That there hath been

Time



Time out of Mind a Common Council, consisting of the Mayor and Aldermen for the Time being, and of certain Freemen, not exceeding two hundred and fifty, annually elected to serve as Common Council Men, and are called the Common Council the City; that Time out of Mind there hath been a Custom, that the Mayor, Aldermen, and such Citizens, so elected to be of the Common Council, according to Custom, have been accustomed to make By-laws and Ordinances, for the better Regulation of the publick Markets, for appointing Times and Places, and assessing and reducing into Certainty reasonable Tolls, Rates, and Sums of Mooney, payable for Stalls and Standings in the Market: For any thing appears upon the Record, this is all they have Power to do: *Non constat* to the Court, that they have any other Power or Authority over Lands, Estates, or any thing else. Next, if this which in the Rejoinder is alledged, of the Being and Power, be true, and so admitted, then what they did in making the Ordinance, was done by good and lawful Power and Authority, and then can be no Offence: But if to make the Ordinance be an Offence, and an unlawful Act, you deny the Custom to be good, and say, the Custom is void, and against Law, and for that Reason the Ordinance illegal. Then *non constat*, that they had any Power at all to do any thing, and then a Common Council to advise without Power to do any Act; and if so, How can a Parcel or Part of a Corporation, not authorized to do any Act, do an Act that shall forfeit? Suppose a particular Company, as the Mercers, had done this, could this be a Forfeiture? But if to avoid this you will say, that the Court shall take Notice of the Common Council of London, to have the Management of the Business of the Corporation belonging to them; this I think the Court cannot do, and I cannot see how possibly they can, as a Court, judicially take notice hereof. Suppose our Question had been concerning another Corporation, could the Court then, as a Court, judicially have taken notice of the Power or Authority of their Common Council? Mr. Solicitor in his Argument held, that there was no Difference betwixt London and another Corporation, except that London was the biggest. Then put the Case of any other Corporation, could the Court judicially have taken notice of their Power or Interest, without having it specially set forth? Is it possible the Court can, since they differ one from the other, as much as their Charters or Constitutions do differ, of which there are hardly to be found two in England that do agree in their Powers? If it had been of another Corporation, of Necessity the Constitution of the Common Council must have been set forth. If you are upon a By-law, made by any other than the Body Politick itself, must not the Power and Authority of those that made it be shewn, and set forth in Pleading, in any Case where there is Occasion to use it? How otherwise could the Court judge or determine of it? So that taking the Law to be as the other Side saith, that London differs not from any other Corporation; it is no-where alledged in the Pleading, that they have Power to make By-laws, for the ordering and governing the City, or that they can bind all the Corporation in Sale or Disposition of their Lands, or have the Power of the Common Seal: Therefore when the King's Counsel argue from these Powers, their Power of forfeiting, they argue quite out of the Record; they have no-where alledged or pleaded what they are, or what Power they have, as they should have done, if they had so intended. So as to this Particular, here is nothing before the Court, nothing upon Record, to shew how or which way the Body Politick should be concerned in these Acts of about two hundred and fifty of their Members, called the Common Council. Wherefoever any By-laws or Ordinances are pleaded, the Power to make these By-laws or Ordinances is pleaded, and so are all particular and derived Authorities, whenever Occasion to plead them, and necessary they should be so: For it is Fact, that the other Side may and ought to be at Liberty to deny it, if he see Cause; and therefore if they will heve it, that the Common Council have abused some Power or Authority they have, thereby to forfeit the Corporation, they ought to have shewn it; to say that Notice shall be taken, or it shall be intended or presumed, is in Truth a Presumption upon the Court, as if the Court should take notice of, intend, or presume, what the King's Counsel would have, which the Court cannot, nor will do, more in this than in other Cases. But supposing the Court will take more notice of London than any other Corporation, and will take notice of the Common Council there, and of their Power and Authority; and I will suppose, as the other Side do, that they have the Power of making By-laws, of leasing, granting, and managing the City-lands and Revenues, and of sealing with the Common Seal, and that this they have by Custom; then surely, say the other Side, they have the Power of surrendering and forfeiting the Corporation. If I should answer, Surely and without doubt they have not, this would not argue they have not; but the Argument should come of the other Side, to prove they have; they have not, nor can produce any Case or Opinion to prove it; and the very Thought, that they could, is so new, that I believe none can be found like it. But let us consider the Nature of this thing a little particularly: Though general Discourses are most easy and florid, yet perhaps a particular Inquiry may best discover. Admit, that they have the Power the other Side say they have; yet they are not the Corporation, but a Part constituted for these particular Ends and Purposes, for which they are impowered. Corporations had their Creations by Charter; that gives them their Being, and the Form, Method, and Power of Action. Suppose, that the first Charter of Incorporation that was granted to London did grant, that the Citizens should be incorporate, and a Body Politick, by the Name of Mayor, and Commonalty, and Citizens: that there should be a Mayor, so many Aldermen, and so many of the Citizens annually elected, that should be a Common Council; and that they should have Power to make By-laws, to demise or grant their Lands, under the Common Seal, in the Name of the Corporation. If they do any Act not within their Commission, is not that void? Suppose a Grant made to the Common Council, would not that be void? Suppose a Grant made by the Common Council, in the Name of the Common Council under Seal, or in the Name of the Corporation, but not under Common Seal, is not all this void? This I only instance, to shew that their Charter and Authority is, their Power and Warrant they are to act by: Did ever any Man hear of,

or see a Charter giving the Common Council Power to surrender the Corporation? Or was it ever thought of before these Days? If there be no such Power by the Charter be given, if they cannot do it without Power given them, shew me their Power, or else I think I may conclude, sure they cannot surrender the Corporation without Power. But the Common Council in London, that is by Custom, and their Power is by Custom. Then if the Question be, What is their Power? It is answered, What they have used and accustomed to do, that they may do; what they have not used or accustomed to do, that they cannot do; for if Custom and Usage be the Authority, that Authority can go no farther than their Custom and Usage goes. Then put the Question, Have the Common Council used to surrender or forfeit the Charter? Nobody can say it. What Reason then is there for any Man to say they can do it? It is probable, that the Common Council in London had first their Institution from some By-law or Ordinance, though now not to be produced, but consumed by Time. But be it that, or any other imagined Commencement, can it be imagined, that those that gave them their original Authority, gave them Power to surrender the Corporation or forfeit it? Suppose that the Power given them did authorize them not only to make By-laws and Ordinances for the good Order and Government of the Corporation, to grant or demise their Lands and Revenues, but had some general Words in it to act and manage the Matters of the Corporation: Is it not against all Sense to suppose, that that which is deputed and constituted for the well-ordering and managing of the Corporation, should have Power to surrender it? Then as the Counsel of the other Side argue, that because they may surrender, they may forfeit. By the same Reason, I hope, I may argue, if they cannot surrender or dispose of the Corporation, they cannot forfeit. Next, those Acts of the Common Council are not done neither in the Name, nor as the Acts of the Corporation, nor under any Seal; but do import in themselves only to be the Acts of the Common Council: The Ordinance, that is made by the Mayor, Aldermen, and Commons, in Common Council assembled. The Petition is the Petition of the Lord Mayor, Aldermen, and Commons, in Council assembled: Their Leases or Grants are in the Names of the Corporation, and under the Common Seal; and the Common Council only ministerial to the Corporation in ordering, managing, and disposing all for the Benefit and Advantage of the Corporation, to avoid the Inconveniency of assembling the numerous Body. But that anything, that hath but a ministerial Power, for the Service and Benefit of their Principal, should have Power to dispose of, sell, convey, or surrender, and destroy their Principal, is no Consequence in Law or Reason. No Deputy, Assistant, or Bailiff, hath such Power; if he exceed his Authority, his Act is void. Is it not so with all Authorities and derived Powers? What they do beyond their Authority cannot bind those from whom they derive it. It cannot be the Act of the Corporation; for a Corporation cannot make a Petition, no more than they can make a Deed, or subscribe a Writing, except under the Common Seal. Corporations cannot make a Lease at Will, license a Man to enter upon their Lands, or do any like Act, but under their Common Seal; nor can they commit a Trespass or Disseisin but by Command precedent, or Assent subsequent, under their Common Seal. How then can this be their Act? There is nothing in it that imports it should be theirs, nor ever intended to be theirs; it is not done by them, nor in their Names, but by the Common Council, and in the Name of the Common Council. If we may take notice of what is out of the Record, we know that they have in London a greater Assembly than the Common Council, viz. the Common Hall, wherein the Common Council are no more than others. Can the Petition of the Mayor, or Mayor and Aldermen, in their Names, be taken to be the Act of the Corporation? If that cannot be, why should the Petition of the Common Council in their own Names be any other than their own Petition, as their Ordinance and By-law are theirs, and not the Corporation's? 12 H. 7. 25, 26. 9 E. 4. 39.

The Case of Corporations takes notice of their Power, as Common Councils, to exclude the Commonalty, and the rest of the Corporation. The Act allows the Common Council's ordering Petitions. But where it is to be found, that it was ever said or thought on before, that they could forfeit or dissolve the Corporation? Rep. 4. 77. 13 C. 2. cap. 5.

4. But supposing all that I have said against me; and supposing the Acts of the Common Council to be the Acts of the Corporation, and supposing those Acts, viz. the making the Ordinance and Petition not justifiable or excusable; then the great Point will be, whether they or either of them are such Mis-carriages or Offences in Law, for which the Charter, that is, the very Being of the Corporation, shall be forfeit? This I call the great Point; for I think it to be as great in Consequence as ever any at this Bar, as if *Magna Charta* were at stake? for in my Apprehension, not only London, but all the Corporations of England, and the Government of England, will be deeply concerned in the Question. For let us but consider what a vast Part of England is concerned in the Corporations of England.

(1.) Ecclesiastical, or mixt, as Archbishops, Bishops, Dean and Chapters, Parsons, Vicars, Universities, Colleges, Hospitals of all sorts.

(2.) All the Cities and considerable Towns and Boroughs in England.

(3.) The very Frame of our Government is concerned; for one of the Estates of the Kingdom, viz. The Commons in Parliament, consists of Knights, Citizens, and Burgesses; the Citizens and Burgesses are usually chosen by them that are free of the respective Cities and Corporations; and where not chosen by them, yet the Elections are generally under their Power and Influence, and the Return made by them.

Perhaps also a Peerage is a sort of Corporation. Perhaps the World itself, at least this little World, will no longer be able to subsist in Health than the due Order and just Temperament of the several Parts and Powers therein are preserved, and contain themselves within their own Bounds. The taking away or infeebling any principal Part brings a Lameness and Deformity, Pain and Disorder upon, and at length confounds the Whole. The Laws answer their Ends, whereof the principal is the Preservation of the Government, which preserves the Laws, they cannot subsist without the other; therefore whatsoever it is that tends to the Subversion



or leaving at Will and Pleasure, that which is so considerable in our Government as Corporations are, ought to be thoroughly considered.

The better to examine and consider this great Point: In the first Place, the Reasons given on the other Side are,

First, That if Corporations be not forfeitable for their Miscalriages, they will attempt and do extravagant Acts, raise Sedition or Rebellion, and there will be no adequate Punishment to their Miscalriages.

In Answer to this Reason, I say, that there is no illegal Act that they can attempt or commit, but that they are under the same Severities and Corrections of Law, as any other the King's Subjects, not incorporate, are. Though it be true, that the Corporation itself is only a Body Politick, an invisible Body, yet the Members of it, they are visible. If they as Members of that Corporation commit or do any unlawful Act, they are punishable for it in their own private Capacities: If they make any Ordinance or By-law to raise Money unlawfully upon any of their Members, or others, the By-law or Ordinance is void: If they receive or collect any Money by it, the Receivers and Collectors are to answer it, they are to be sued as any other Subject. Suppose a Lord of a Manor or Market make an unlawful Order to collect or take Money from his Tenants or Copyholders, or unreasonable Tolls in his Markets; this Order is void in Law, and those that collect or receive any Money by it are answerable for it, and the Parties grieved have their proper Actions and Remedies, and perhaps the Markets, or at least the Tolls may be seized, or forfeit for this Miscalriage. This is the Provision that by Law is made against such Exactions, and this is just, and adequate, and reasonable. And if a Corporation made such Ordinance, By-law, or Order, and thereby there is the same Receipt or Exaction, the Subject hath the same Remedy, and there is the same Forfeiture of Toll or Market, as in case of any natural Person, or Lord of a Manor; and the Provisions by Law made are just, and reasonable, and adequate, in this Case of the Corporation, as of the other. The like for any Offence that can be committed, it must be done by particular Members, and they must answer for it. And this is no new Opinion; 21 E. 4. 14. is express, that a Mayor, and Commonalty, or other Body Politick, cannot commit Treason, although all the Commonalty do commit Treason; every of them is a Traitor in his own Person. I might cite other Authorities to this Purpose, but they have been already cited by Mr. Recorder in his Argument; and though the Counsel for the King would make these Books to be but some slight Opinions, yet unless they could shew some Authority, Book or Case to the contrary, their despising or little valuing what they can find no Answer for, will not render the Authority and constant Opinions of our Books of less Esteem than they ought to be. It is no Excuse, if they do an unlawful Act, that they are Members of a Corporation, or did it as a Corporation. Nobody can say this will excuse them; so that, notwithstanding their being a Corporation, they are as subject to the Law, be the Offence Treason, Sedition, or any other Crime or Offence, as any other the King's Subjects are; every particular Member, that acted or committed that Offence, is answerable to the Law for it. The particular Members that commit the unlawful Act, and all that act under their Authority, are subject to the same Law as all other the King's Subjects. And therefore this Reason, that else there will be no Punishment upon them adequate to the Offence, and consequently a Mischief and Inconvenience, is but a Shadow, and nothing proportionable to the Mischief and Inconveniences attending the Position of a Forfeiture of the other Side. But consider the Injustice that would be of the other Side, if this should be so: We know Assemblies determine their Acts by the Major Vote, and great Struggling there is, as we too frequently see in their Debates and Resolutions, and carried by Majority of one or two Votes, sometimes by Surprizes and undue Management, sometimes by Fear and Terror: Suppose an evil Act so carried or managed, is it Reason that all the whole Corporation should be thereby forfeit; and thereby all other Men, to whom they owe any Debts, must lose them, and the many Interests and Livelihoods depending upon the Corporation, the Customs, Courts, Offices, and Privileges belonging to it, endless to enumerate, shall all be undone and destroyed?

Secondly, The next Reason that hath been given is, that it is a general Rule in Law, That the abusing or misusing of a Franchise is a Forfeiture of the Franchise.

In answer, This is true in the Sense that the Books do say it; for if a Man misuse or abuse a particular Franchise, he shall forfeit that particular Franchise; but he shall not forfeit any other, except it be depending upon, and incident to it. And the Cases cited prove nothing farther: That when a Man hath divers Franchises not depending one upon another, and misuseth one Franchise, he shall not thereby forfeit the rest, but only that which he misuseth. 22 Aff. p. 34. Br. Fran. 34. And therefore the Cases cited, where the Abbot of Crowland, and the Abbot of St. Albans, had Franchises of Custodies of Gaols; one would not be at the Cost of a Commission of Gaol-delivery, the other did detain in Prison after legal Discharge, and Fees paid, 8 H. 4. 18. Rep. 9. q. 6. b. 24 E. 4. b. Inst. 2. 43. This was a Misuser of those Franchises and Forfeitures. So also perhaps if there be a Franchise that hath Incidents to it; as Pypowders to a Fair, Pillory to a Leet: An Abuser of the Incident, as the Court of Pypowders, or the not having a Pillory, may forfeit the Market or the Leet. If the Lord of a Market take outrageous Toll, he shall forfeit the Market, Stat. West. 1. cap. 31. Inst. 2. 219. But doth this prove, that if a Corporation have Fairs, Markets, Gaols, or Leets, and misuseth any of them, that the Body Politick, the Corporation, shall be forfeit? If this be so, the Abbots, they being Corporations, in the Cases of the Abbots of St. Albans and Crowland, should have forfeited not only the Liberties of having Gaols, but the very Corporations or Bodies Politick, of being Abbots; a conceit never yet imagined. Can you say the City of London is either dependant or incident to the Markets; or on the contrary, that the Markets are so incident or dependant upon the Corporation, that they cannot be one without the other? Can this be said? If this cannot be said with Reason, how can then the taking these Tolls admit they were outrageous, and a Forfeiture of the Market, forfeit the Corporation?

VOL. III.

The making the Ordinance, supposing they made it, is but the Means by which they took it. Your Books only prove the Abuse of a Franchise, a Forfeiture of that Franchise, or Incidents to it, and no other: But the Inference in this Case is not the Forfeiture of that particular Franchise, but of the Being of the Corporation that owned the Franchise; which is a plain *non sequitur*, unless you say the Corporation is incident to the Market. Arguments from general Rules are the most fallible, especially in Law; and that this is such, I hope most plainly to shew in the distinguishing the different Nature of Franchises; which I shall do presently, only taking in my Way their next Reason that they offer, and answer both together; which is,

Thirdly, That a Corporation is a Franchise; that it commenceth by Grant, and therefore is forfeitable and surrenderable, as other Franchises are; and if they be surrenderable, then also are they forfeitable.

I do agree, that *Franchise* is a large Word, it is of the like Sense of Liberty or Privilege. Therefore in *Quo Warranto*, Franchises, Liberties, and Privileges, seem to be of the same Sense. To be a Subject born, and to have Liberty and Privilege of a Freeman, and no Villain, is a great Franchise; and therefore in Law, when a Villain is made free, we say he is enfranchised, he hath the Franchise, Liberty, and Privilege of being a Freeman. An Alien, he is made Denizen by Letters Patents; a Person attained is pardoned by Letters Patents, and a Restitution in Blood granted, and made a new Creature. By these Grants the Alien and the Person restored have such Franchises, Liberties, and Privileges granted them, that though before they were not capable to take, hold, or enjoy, or act as natural-born Subjects or Freemen; yet hereby they have such Capacity granted. Next, I think it will be granted, that this Franchise, Liberty, Privilege, or Capacity, is not surrenderable or forfeitable, except only in Cases of Treason or Felony, where they forfeit their Lives; by these Instances this is proved, that it is no true Position, that whatsoever is grantable is surrenderable; and if surrenderable, forfeitable; which is one of the Reasons given by the King's Counsel, why a Corporation is forfeitable; for these Franchises or Privileges are by Grant, and yet not surrenderable or forfeitable; and this also shews, that Arguments general, and from general Rules, are most fallible, and fit only to take weak Apprehensions. But next, consider what it is to be a Body Politick or Corporation. A Body Politick is framed and constituted in similitude or likeness of a natural Body, with Capacity to take, hold, and enjoy, and act as a natural Body, and can no more surrender or forfeit his Being, while the Members of that Body are subsisting, than a natural Body can while alive. It is only a Capacity framed and created in a Multitude to be and act as one Person; they are incorporate and made one Body Politick, that have Power, and Capacity, or Franchise of acting, taking, holding, and granting; this is their Franchise, admit it so, but differs from others. Franchises and Liberties of all other Natures are Estates and Inheritances grantable and conveyable from one to another, as other Estates are; this is no such thing, grantable, or transferrable; other Franchises and Liberties affect the King's Subjects, and are Privileges claimed, wherein the King and the rest of his Subjects, not claiming the Franchise, are more concerned than in this of being a Body Politick; for other Franchises either convey some Profit from the King, as Fells Goods, Waifs, Estrays, Wrecks, or the like; or affect his Subjects, as Courts, Gaols, Returns of Writs, Fairs, Markets, and the like: But this of being a Body Politick is only a Capacity to be a Person capable of having and holding what may be granted unto it, and of granting and acting as a natural Body, and affects the King, or other his Subjects, no otherwise, than giving Capacity to take, hold, and enjoy what they can get, as other Persons capacitated may. Other Franchises, Liberties, and Privileges are distinct and separate Estates, and if any one be forfeit, as it may for Misuser, the rest are not; except Incidents and Appurtenances. But if the Being of a Corporation be forfeited, all their Estates, Lands, Goods and Chattels are gone at once: So that though you admit and call this a Liberty or Franchise, it is nothing like in its Nature to those Things generally known and understood by the Name of Franchises or Liberties; and general Sayings are generally to be understood of such Things as are generally so taken and called. If then there be such great and apparent Difference betwixt this of the being a Body Politick, supposing it being, in a general and large Sense, a Franchise, Liberty, or Privilege, and other particular Franchises, admitting that which is said, that the Misuser of a Franchise is a Forfeiture, holds generally true, yet it is not in every Particular true; where there is such apparent Difference and Reason to distinguish, as betwixt the Being of a Corporation or a Body Politick, which is only a Capacity, and other particular Franchises, which are Estates; there is also apparent Reason to distinguish betwixt one and the other, they being so much differing one from the other in Nature and Reality. But next, that this was never taken in Law to be such a Franchise, Liberty, or Privilege, as was comprehended under the general Meaning of Franchise or Liberty: by Stat. of Glouc. 6 E. 1. Inst. 2. 278. Writs were to go to all Sheriffs forty Days before the Eire, of general Summons, for all to come in at the Eire to claim their Privileges; and the second Day of the Sitting of the Justices in Eire a Proclamation made to the same purpose. In the Comment upon that Statute it appears, Inst. 2. 281, 282. that if the Party did not appear, his Franchises were seized into the King's Hands, *Nomine districtionis*; and if not replevied, sitting the Eire, they were forfeit or lost for ever. If the Party did appear, and did not claim, then they were lost for ever. In all the Proceedings in Eire there is no such Thing can be found, that the Corporations did come in and make Claims to their being Corporations or Bodies Politick, or that ever any were seized, if it be seizable, into the King's Hands, or was forfeit for not claiming. Fulcher and Heyward's C. Palm. 491. It appears, that the Dean and Chapter there surrendered their Charter, and all their Manors, Lands, Possessions, Privileges, Franchises, and Hereditaments, Spiritual and Temporal, and this with Intent to surrender, that there might be a new Corporation erected; as is recited in the Letters patents of new Erection.

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In this Case, Rep. 3. 75. And. 2. 120. Jones 163. resolved, That by this Surrender the old Corporation was not surrendered. This Judgment doth conclude, and must be given, either because by the Word Franchise, and the other general Words, the Franchise of being a Corporation was not comprehended; or if the Word is sufficient, and did comprise it, that it could not by Law be surrendered. This I think sufficiently shews, that Corporations were in Law as Persons natural are, and in like manner claimed; and that the being a Body Politick, or Corporation, was not to be claimed, comprised, or meant within the general Word Franchises, no more than the Liberty or Franchise of Denizen, or Manumission. Next, no Instance can be given of any Seizure of any Corporation, or Body Politick, for any Forfeiture: Seizure of their Liberties, or putting Officers upon them, is quite another Thing, as I shall shew presently: So that these general Sayings in Law Books, that Misuser of a Franchise forfeits the Franchise, neither in Law or Reason extends to the Being of a Body Politick or Corporation, but is applicable only to particular Franchises of other Natures; and the other Reason, that that which is grantable is forfeitable, is as fallacious, as before appears.

3. As for the Records cited to prove, that the Corporation or Body Politick may be forfeited, I will state those that are most effective, and do them Right therein.

Johannes Dennis, Mayor of Sandwich, P. 9. E. 1. and three more, were attached to answer Domino Regi de placito transgr' & unde Robertus de Stokbo, Sheriff of Kent, qui sequitur pro ipso Rege, complains, that he had sent his Bailiffs (naming them) to make Execution of the King's Writ, in Villa de Stanore, quæ est Baronia domini Regis, and that the Defendants, with Swords drawn, took away the King's Writ, and trod it under their Feet, and would not suffer it to be executed; unde dicit quod deterioratus est, & damnum habet ad Valentiam 2000 Marks. The Mayor appears, and pleads to the Jurisdiction, that he ought not to answer this Matter, except in the Court of Shipway. The Sheriff replies, that Stanore is the King's Barony, belonging to the Barony of St. Austins, and relies upon a Record before Justices in Eire, where an Amerciament upon that Ville was formerly set. The Mayor refuseth to plead over. Then a Day is given over, then it is entred thus: Postea; coram Domino Rege, & ejus Concilio, quia Barones de l' Cinq; Ports, nec aliqui alii in Regno nostro possint clamare talem libertatem, quod non responderent Domino Regi de contemptu sibi facti, ubi Dominus Rex eas adjuvare voluerit; et quia prædicti Barones non protulerunt aliquas Chartas a Regibus concessas, in quibus non fuit excepta Regia Dignitas, consideratum est quod respondeant; & quia le Defendants would not answer any otherwhere than in Shipway, consideratum est quod habeantur in defensionem, pro convictis de prædicti Transgr' & Contempt'. Et quia the said John Dennis is convicted of the said Offence, and the Fact of the Mayor, in those things, which touch the Commonalty, is the Fact of the Commonalty, consideratum est quod Communitas de Sandwich amittat Libertatem suam, &c. Then follows Postea, in præsentia of the Bishop of Bath and Wells, then Chancellor, and others, cum Assensu Regis, an Agreement betwixt the Abbot of St. Austins, the Men of Stanore and Sandwich, de omnibus contentionibus. And then goes a long Agreement betwixt the Abbot and the Men of Sandwich and Stanore, concerning their Jurisdictions and Courts: Et si aliqua pars contra concordantiam illam ire vel facere, alia pars habeat suam recuperare per breve Domini Regis de Judio exente de isto Recordo. Et pro hac prædicti homines vadant prædicti Abbati 100 Marks, which the Abbot remits for 10 dolis Vini, pretii 30 Marks, to be paid at the Feast of St. John the Baptist. This is the Record at large; and for the Extract in the Collections at Lincoln's Inn, whether it be of this Record, or any Execution that went out upon it, non constat: But that I think it could not be upon this Record; for the Record is not 30 Marks annuatim, as the Abstract is, and the Entry of the videtur at the Conclusion, quod Judio extendit contra Barones quinque Portuum, & eorum Libertates, ut mihi videtur, that is not my Lord Hales's Note, nor doth it appear whose it was. Out of this Record how can a Man infer, that a Corporation shall be forfeit for the Mis carriage of the Mayor or Officer? How doth it appear from hence, that they should lose or forfeit their being a Corporation? By amittat Libertatem all that is meant thereby is their Liberty in Stanore, or the Liberty they claimed to be impleaded in the Court of Shipway; and the Note in the Extract, videtur quod Judio extendit versus Barones, must be, I think, taken to be as to their Liberty in Stanore, or to be sued only in the Court of Shipway. I have taken the more Notice of this Record, because it hath Countenance of a judicial Proceeding; but as to all the other Records cited,

A Writ to the Sheriff of Gloucester, reciting, that the King, for Injuries and Contempts done by the Mayor and Commonalty of Bristol, the Liberty of that Ville by Bartholomew de Baddlesmere, Custos of that Ville, into his Hands had seized. 6 E. 2. R. Cl. m. 5. The Writ commands the Sheriff, that the Custos should have the Execution of Writs as the Mayor and Bailiffs used to have. And in the Times of Henry the Third, Edward the First, Edward the Second, and Richard the Second, there were frequent Seizures of the Office of Mayor; and the Kings did put in a Custos in the Place of Mayor, or made a Mayor, and these are called Seizures of Liberties.

King Henry the Third put in a Custos over London, which continued till the 54th of his Reign, and then was taken off, and the City restored to its Election. 49 H. 3.

Edward the First put in a Custos, and continued so to do till the 24th Year of his Reign, and then was taken off. 15 E. 1.

The 14th of Edward the Second a Seizure of the Office of Mayor by Henry de Staunton, and his Fellows, Justices in Eire in the Tower, and Mayors put in by the King till the 20th of Edward the Second, and then restored: But for that of Richard the Second, give me leave to digress, and give you the State of it out of the City Registers, which are more full than these cited.

A Writ from the King to the Mayor, Sheriffs, and Aldermen, commanding them to come with twenty-four principal Citizens, before the King and his Council at Nottingham, in crastino Sancti Johannis Baptistæ tunc proximi, and to bring sufficient Authority from the Commonalty to answer such things as should be objected. 16 R. 2. July 22. Lib. H. fol.

269. b. City Reg. They appeared, and had a Letter of Attorney, ubi pro diversis defectionibus in Commissione sua sub communi Sigillo, & aliis de causis, the Mayor and Sheriffs were discharged of their Offices, and committed diversis Prisonis; and afterwards, the first of July, Sir Edward Dallinggrigg made Custos by the King, came to the Guildhall, and his Commission being read, he was sworn before the Aldermen, secundum quod Majores ante jurare solebant; the King also made the Sheriffs, and they were also sworn. This is also entered in the City Register, Lib. H. fol. 270. b.

It appears that the King first swore the Custos, and the Sheriffs, to be true to him, and also turned out the Aldermen. And that the Proceedings were before the Duke of Gloucester, and other Lords, by a Commission to inquire of all Defaults in the Mayor and Sheriffs, in the well-governing of the City, awarded upon the Statute made by the King's Grandfather; and that they were convicted by their own Confession, and thereupon the Liberty of the City seized.

The Pardon and Restitution entered, and thereby it is recited, that the Proceedings were upon the Statute, and the Judgment was, That for the first Offence they should forfeit One Thousand Marks; for the second, Two thousand Marks; and for the third Offence, that the Liberty should be seized 19 Sept. 16. R. 2. Lib. H. fol. 272. a. ubi supra.

The Statute 28 E. 3. cap. 10. enacted, That the Mayor, Sheriffs, and Aldermen of London, which have the Governance of the same, shall cause the Errors, Defaults, and Misprisions in and about the same, to be corrected and redressed from time to time, upon Pain, that is to say, to forfeit to the King for the first Default, One thousand Marks; for the second Default, Two thousand Marks; and for the third Default, the Franchises and Liberties of the City shall be seized into the King's Hands. And that the Trial of these Defaults shall be by Inquests of foreign Countries, and the Pains levied upon the Mayor, Sheriffs, and Aldermen. Upon this Statute were the Proceedings of R. 2. grounded.

The other Side have likewise much relied upon another Seizure made of the Liberties of the City of Cambridge.

A great Riot committed by the Town upon the University, heard in Parliament by way of Petition, and Form of Articles exhibited by the Scholars against the Mayor and Bailiffs. Upon reading of which it was demanded of them, What they could say, why their Liberties should not be seized? After many Shifts they submitted themselves to the King's Mercy. The King thereupon, by common Consent in Parliament, seized the same Liberties into his Hands, as aforesaid, and then granted divers Liberties to the Universities, and certain Liberties the King granted to the said Mayor and Bailiffs, and increased their former. These are the most substantial; it would be too tedious to repeat all, for there have been in those Days, but not since, many like Seizures of Liberties, as these; only general, but nothing particular to our Purpose, and though not cited, I shall also mention those in Crook. 5 R. 2. Rot. Par. N. 45. Inst. 4. 228.

Certiorari to the Mayor of Fish; they disobeyed the Writ, and gave scurvy Words Cr. 1. 252. Tyndal's Case; and thereupon Mr. Noy cited two Cases of Seizures of Liberties. The Bishop of Durham had contemned the King's Process, and imprisoned the Messenger. An Information exhibited against him, the Offence proved; adjudged he should pay a Fine, & quod capiatur, and should lose his Liberties for his time; because justum est quod in eo quod peccat in eo puniatur. 33 E. 1. Rot. 101. Another in Banco Com', a Prohibition awarded to the Bishop of Norwich; and he excommunicated the Party that brought the Writ; 21 E. 3. Rot. 46. the Party brought his Action, adjudged against the Bishop, that his Temporalities should be seized till he absolved the Party, and satisfied the King for his Contempt, and that the Party should recover 10,000l. Damages. I answer to them,

(1.) That they were all above three hundred Years ago, except that of 16 R. 2. which is above two hundred and ninety, and no such thing ever was done since; what Strefs or Weight can be given to such Proceedings? To what Rules of Law, since known or practised, can we bring these Proceedings? Are they now legal Precedents for the like things to be done. The Writs out of old Records for the Ship money, and the Knighthood-money, had as good Records to warrant them, and much more plain to the Purpose than these. The Precedents of Edward the Second, and Richard the Second, either of their Lives, or of their Deaths, or of the Lives or Deaths of some of the Judges of those Days, ought, as I conceive, to be no examples. And for H. 3. E. 1. E. 2. and R. 2. and those Times, they were Times of great Troubles and Disorders; and what was then done is no Rule or Precedent for this Court, or any other Court of Justice to go by, unless by latter Times allowed or approved. No Law-book or Report of any judicial Proceedings, either of E. 2. or of E. 3. or any latter Book of Law, that I have yet heard of, or met with, (and I doubt not but if there had been any, the King's Council would have made use of them) hath ever given so much Credit or Countenance to these Proceedings, as to take any notice of them. To make use of old Records or Precedents, the Grounds or Reasons whereof cannot now be known, to subvert any Law or Government established, is neither advisable nor commendable. But for further Answer to them:

(2.) As to that of 16 R. 2. that you see is grounded upon the Statute 28 E. 3. c. 10. and can signify nothing to the present Purpose; for there, according to that Statute, they condemn the Mayor, Sheriffs, and Aldermen, upon their Confession, that they had misgoverned the City. The Mayor and Sheriffs being committed to Prison, and this done before Dukes and Earls, by special Commission to that Purpose appointed, and convicted by their Confession, for the first, second, third Offence, all at once, is this of good Authority in Law? And for the others, that of E. 2. was before Justices in Eire at the Tower, the Office of Mayoralty seized into the King's Hands, and replevied from Year to Year. And that Seizure that was made by King E. 1. for what Reasons or Grounds, or by what sort of Proceedings, doth not appear; all that doth appear of it is, that de facto Custodes and Mayors were put upon the City; but quo jure, who can tell? We know these Times were Times of Trouble, in the Barons Wars. The Barons, Simon Mountford, Earl of Leicester, being their General, fought a Battle with the King at Lewes, and took the King



and Prince Edward the First, both Prisoners. 48 H. 3. The Barons differing among themselves, and the Earl of Gloucester joined with the Prince, who got out of Prison; another Battle was fought at *Evesham*, and the great Earl *Mountford* slain; 49 H. 3. and then at *Winchester* by Parliament all his Party, and the Liberties of the City of *London* seized; and in such Times as these, and which followed in E. 1. E. 2. and R. 2. it is not to be marvelled if there were many Seizures and *Custodes* put on the City; it is more a Marvel they were not destroyed. The Statutes made in these Times shew not only the Disorders, but that the Liberties were greatly infringed, or else there would not have been Statutes to confirm them; whether the infringing or seizing were the Cause or Effect, is hard to know; but just before in those Times there were undoubtedly many extravagant Acts of all Sides, which produced *Magna Charta*, made the 9 H. 3. for confirming of the Liberties and Privileges not only of *London*, but of all other Towns; and after these Times, in the three Reigns of the three succeeding Kings, how many other Statutes for confirming the Liberties and Privileges of the Cities and Towns were made, 1 H. 4. cap. 15? The Penalties and Forfeitures imposed by the Statute 28 E. 3. cap. 10. upon the City of *London*, put into the same Condition with other Cities and Boroughs, as to Penalties and Seizures. A Statute confirming to all the Cities and Boroughs the Liberties and Franchises, which they by former Grants or Confirmations had, viz. 4 H. 4. cap. 1. confirmed in like manner by 7 H. 4. cap. 1. Again confirmed in like manner by 3 H. 5. cap. 1. Again confirmed by Statute of 2 H. 6. cap. 1. By which it appears what a Sense and Memory they had of the Seizures that had been of their Liberties and Privileges, that they never thought them sufficiently confirmed; but they were sufficiently confirmed; for from the Time of R. 2. to this Day, we do not find any Seizure of any Liberties or Franchises, or *Custos* made or put upon them. That which was in those Days of Violence done, shew them the worst of Times, but are no Precedents for the best. But next,

Supposing and admitting these Records of these Times of good Authority, and as authentick Precedents as can be, they are so far from proving against me, that I hope to make it most plainly to appear, that they are strong and plain Authorities and Evidence against them, and for me. It is ordinary in disputing or arguing to lose the Point disputed or argued. That I may not commit so great an Error, but may evince and make plain what I have affirmed, give me leave to look back to the Information and Replication, and from thence to make the Points that we argue, single, clear, and open. The Information that saith, that we usurped upon the King to be a Corporation and Body Politick, but in Truth are none. The Bar sets forth the Title to be a Corporation by Prescription, Time out of Mind. The Replication, that endeavours to avoid the Bar, by allowing that we were once a Corporation lawfully; but that by our Mis-carriages we have forfeited our being a Corporation, and thereby became none, and after that usurp'd to be one. So that, that which the other Side maintains, is, That by our Mis-feasances we have committed a Forfeiture of our old lawful and rightful Corporation. This I deny; the Affirmation is upon them to prove, and they producing no Record that expresses any such Forfeiture of a Corporation, but only Records generally saying, that the Liberties should be forfeited or seized, the Question is, What the Meaning is in these old Records of forfeiting and seizing Liberties? Mr. Attorney was pleased to take it, and so did Mr. Solicitor, as I think, that forfeiting and seizing were much one. I shall not dispute that; but whether in any of those Records the Corporation or Body Politick were by these Words taken to be forfeited? Mr. Attorney was so careful to avoid the Consequences of a Forfeiture of a Corporation, which are so great and destructive, that he would not by a Judgment in a *Quo Warranto* against a Corporation have the Corporation determined, no more than he would by the Forfeiture *ipso facto* have it determined, but that there should be some Seizure into the King's Hands; but what that is, or how to be understood, I cannot imagine. For if the Corporation be not to be dissolved and determined, in whom should it rest or remain after such Forfeitures, or during such Seizure? Shall it after Forfeiture remain in the same Persons that it was in? Shall it subsist, live, and act as before? or shall it be in *Limbo patrum*, or in *Nubibus*? Is a Corporation transferrable to any other Person or Persons? Can a Corporation be conveyed or transferred? That is impossible; and so it appears in the Dean and Chapter of *Norwich* Case, and *Fulcher* and *Heyward*, and 1 *Inst.* in the Case of the Homage Ancestral before cited. That a Corporation is not transferrable from one Body of Men to another; therefore the King cannot possibly have it, nor can he grant it. Ay, but saith Mr. Attorney, it shall be seized, and in the King's Hands; what is meant by these Words? How can it be in the King's Hands, if not transferrable? Next, What shall the King do with it, shall he grant it to others? No, that is impossible; by the Cases cited, it so appears the King may make a new, but he cannot grant an old Corporation, because not transferrable. Then if he cannot grant, if it be not transferrable, if a Corporation or Body Politick be by Law framed in Similitude of a natural Body, then it is no more transferrable than a natural Body is. The Body Politick cannot be taken out of the Hands of the Persons incorporate. From hence then, if this be so, it will follow of Necessity, that the Corporation, if it cannot be transferred to the King, or by the King's Grant, out of the Persons in whom it is, to others, it must remain where it is, or be dissolved. Next, that which I shall shew is,

That by the Words *forfeiting* and *seizing* Liberties in those old Records, it cannot be meant forfeiting and seizing a Corporation or Body Politick; they still continued. But that which is the true Sense of these Words, forfeiting and seizing Liberties in those Records was, if the Abuse or Misuse were of a particular Franchise, as of Courts, Prisons, Markets, or the like, the King had them forfeited to him. If the Abuse were by a Corporation, they acted by their active Parts, by their Mayors, Bailiffs, Sheriffs, Coroners, or the like; the King seized these Offices, turned the Corporation-officers out, and put others into their Places. This was the Course in the Eires, where these Seizures in those Days usually were: But for seizing Corporations as forfeit, there hath been no Instance of it in any Time; but the contrary is most evident. For the Corporations, notwithstanding the supposed Forfeitures or Seizures, remained still in Being; and this is evident even to Sense. The Seizures, that have been mention-

ed, have been of *London*, *Bristol*, *Gloucester*, *Cambridge*, and *Cinque-Ports*, *Ipswich*, and *Winchester*.

I offer to your Consideration, whether these Cities of *London* and *Bristol*, *Gloucester*, *Cambridge*, and also the *Cinque-Ports*, ever since, have not continually in all Pleadings, Claims, and Titles, made themselves a Title by Prescription? Are they not by Prescription to this Day? Do they not claim their Markets, Tolls, and all their Privileges by Prescription? Do not the Acts of Parliament that immediately follow these Seizures made by H. 4. H. 5. H. 6. in the Times succeeding, all confirm their Privileges? Not a word of granting new Privileges, but confirming the old; which shews plainly, that in those Days the Corporations were not thought or imagined to be determined or dissolved. By these Seizures, or supposed Forfeitures, the Enjoyment or Possession, for the Space of three hundred Years, is Evidence sufficient of their remaining and being Bodies Politick by Prescription, which they could not be if they were forfeited, as pretended. For by Forfeiture they must mean the losing their Corporation, or being divested; no other Sense can be, or ever was, of Forfeiture. Could they forfeit them, and yet keep them? Could they lose them, and yet have them? If they could not, then it is plain, that since they always have had them, they never forfeited or lost them. But for farther Evidence hereof, I shall make it most plainly to appear, that during the very Times of these Seizures the Corporations remained and acted as Corporations; and that at that Time it was never thought or imagined, that during the Seizures the Corporations were forfeit; all that was done was, that the Election of their Mayor, or of their Sheriff, was *de facto* taken from them, and either a *Custos*, or a Mayor, by the King put over them, and continued till those Kings Displeasures were over, and then they chose their own Officers again: But no Thought then of forfeiting the Corporation. By the City Books, as well as Records, this is most evident. The putting a *Custos* by King E. 1. continued for the Space of eleven Years, from the 15 E. 1. to the 26 E. 1. and then they chose their Mayor again. By the City Books it appears that their Court of Hustings all along continued, as at other Times, Aldermen all along. *Lib. A. fol. 50, 51. 135.*

*Radulphus de Sandwyco Custos Civitatis London, Henricus le Walleys, and others, Aldermen, (naming them) & universalis Communitas ejusdem Civitatis, make a Conveyance of a House to John de Bangwell, 18 E. 1.*

The Court of Aldermen holden before the *Custos* and Aldermen, 18 E. 1. *Lib. A. fol. 110.*

With the King's Remembrancer in the Exchequer, *Cives London venerunt coram Baronibus, & presentaverunt Johannem de Canluar & Willielmum de Betoyn ad respondend' pro Civitate predicta & Com' Middlesex, de his que ad Officiu Vicecomitis pertinent, & ad hoc faciend' presterunt Sacramentum, 16 E. 1. Ro. 1.*

*Ibidem*, The Presentment and Swearing two other Sheriffs, 18 E. 1. Ro. 1.

*Ibidem*, The like, 21 E. 1. Ro. 3.

*Ibidem*, The like, 23 E. 3. Ro. 3.

*Auby le Artheir attachatus fuit ad respond' Communitat' Civitatis London' de placito, for that he, being no Freeman, merchandized in the City, 21 E. 1. Lib. C. fol. 19. b.*

Another like Suit against an Un-freeman. *Lib. C. fol. 7. b.*

A Writ of Right in the Hustings, brought by the Corporation. *Communitas Civitatis London per Radulphum Pecoys Attornatum suum petit versus Hugonem Episcopum de Bedlam unum Messuagium, &c. 22 E. 1.*

All the Aldermen, and twelve Citizens, were called before the King and his Council, and the King restored them the Election of their Mayor, and they chose *Henry de Gabrys* Mayor. And on Monday following comes the King's Writ, whereby the King, for good Services, *reddidimus & restitimus Civibus London Civitatem, una cum Majoritate & Libertatibus suis, quas certis de causis dudum capi fecimus in manum nostram*. So that hereby it most evidently appears, the Corporation was not forfeit, lost, or dissolved, only a *Custos* put over them, which acted in the Place of Mayor; and when removed, they chose their Mayor again, 26 E. 1. *Lib. B. fol. 38.*

The Liberties not forfeit, only seized into the King's Hands; so saith the Writ *dudum capi fecimus in manum nostram*. The Record of *Cambridge* I have looked upon; it plainly appears in it, that the Corporation was not forfeited and dissolved, as you suppose: For it appears, that when they submitted to the King to do with their Franchises what he pleased; yet it was *subito* to the Mayor and Bailiffs, their Response to all other Matters. And afterwards, at the same Time, the King grants to the same Mayor and Bailiffs divers Liberties; by which it appears, that the Corporation was not forfeit, but still in Being, notwithstanding the Seizure and Forfeiture.

The Seizure that was by King Edward the Second was in no sort any Forfeiture or Determination of their Corporation; but either under a *Custos*, or under a Mayor put in by the King.

The *Custos*, Aldermen, and Commonalty, appeared, and turned out some of their Aldermen. *Lib. E. fol. 11. b.*

They chose and swore their Sheriffs, and by this Time they had a Mayor again; but the Office of Mayoralty, granted them by the King. *Lib. D. fol. 6.*

The King grants to *Nicolas de Farrington* the Office of Mayor, *quandiu nobis placuerit. 16 E. 2. Lib. E. fol. 146.*

They had a Writ restoring to them the Office of their Mayor again, 20 E. 2.

Then for the Seizure of 16 R. 2. that continued but from the 22d of July unto the 19th of September following; and the Form or Colour of Law that they had for that, was the Statute of 28 E. 3. and the *Custos* put in sworn at *Guildhall*, and took the Oath of the Mayor, as appears in the Book which I cited; where it is mentioned to be upon that Statute. *Lib. H. 269. b. 16 R. 2.*

But for farther Evidence; in the Treasurer's Remembrancer's Office in the Exchequer, 4 E. 3. Rot. 2. in *Bago de Quo Warranto in Itinere Northampton & Bedford, Quo Warranto versus Villam de Bedford*; in that Record are these Things: First, that the Village of *Bedford* had not at the last preceding Eire made Claim of divers Liberties, and thereupon in that Eire adjudged, *quod omnes Libertates non elamat' capt' fuissent in manus*

*Domini*



*Domini Regis*, and had not been replevied, but the Corporation not seized. Thereupon the Corporation offer a Fine of eight Marks to the King, *pro licentia clamandi* their Liberties, and admitted to a Fine: But then it appeared, that the Mayor and the Coroners had sat in Judgment, and condemned Men for Felonies committed out of the Jurisdiction; and thereupon *Consideratum est, quod prædictæ Libertas de Infangtheife, & Officia Major, Ballivorum, & Coronatorum ejusdem Villæ capiantur in manus Domini Regis. Sed quia cæteræ Libertates & consuetudines Villæ prædictæ abique Ministris pro communi utilitate Populi ibidem nequeant conservari*, the Court puts *Johannem de Tound Custos, Johannem Wymound* and *Richardum Rounds* Bailiffs, and *Nicolas Astwood* and *William de Knight* Coroners, who were all sworn to execute those Offices, and to answer the King the Profits. Hereby it appears, that the Course was not to forfeit or dissolve the Corporation: they never were so unreasonable; for hereby all their Lands and Goods, and all the Debts owing by them, or to them, would all be lost: All they did was, they put in Officers to preserve the Corporations. So that I think there is nothing more plain, that though the Liberties were seized, and that Officers, *Custos*, or Mayors, were put upon them; yet the Corporations, or Bodies Politick, or their Liberties, were not forfeit or determined. If they had been either forfeited or determined, could the Writs of Restitution have set them up again? The old could never be restored or set up again, but by Act of Parliament; they might have had new Charters, and have been made new Corporations; but the old could never have been restored, if once forfeited, as now imagined. So that the Point betwixt us is, Whether the Records of *E. 1. E. 2. and R. 2.* of Forfeitures and Seizures of Liberties, supposing the Causes or Offences for which they were seized were very great and provoking, as in all Probability they were, do prove that thereby the Corporations were forfeit, dissolved, or determined? It appears they were not forfeit. You can never avoid it. If abusing the Franchise or Liberty of being a Corporation be a Forfeiture, as you affirm, and that they were seized for being forfeit; then the Offences that were committed by these Corporations in those Princes times, were Forfeitures, and consequently the Seizures dissolved the Corporations. They could not forfeit and lose their Corporations, and yet keep them. And that they still had their Being, is most evident by the Records of those Times, shewing, that they acted, and enjoyed their Corporations under those Seizures, only a *Custos* instead of a Mayor, all other Things the same; that they have in all Ages ever since been allowed to be Corporations by Prescription, never denied or questioned; that the Acts of Parliament immediately following, confirming their Privileges, never questioned their having them. Never any Thoughts of making void any Forfeitures by these Acts, or any new Grants, but always pleaded by Prescription. These Things plainly shew, that the Offences committed in those Times did not forfeit the Corporation; and all that dark Authority they have out of those Records is directly against them, proves only that these Abuses gave only Cause of Seizure of some Offices, but no Forfeiture of the Corporation, that still continued.

Having thus answered those old Records, and shewn that they are of Authority for me against them; and since it hath been stirred in this Case, whether a Corporation or Body Politick be surrenderable or not, and insisted upon, by the other Side, that it is, and from thence an Argument drawn to prove, that if surrenderable, it is forfeitable: Whether it be surrenderable, or not, perhaps is also doubtful, so that I think a Man cannot argue from it any thing. First, I am sure there is no great Reason why it should be; for since that Men that are of the Corporation take, upon their coming to be made Free, an Oath to preserve the Rights, Liberties, and Privileges of it; and since the active Members are intrusted for all the other Members that elect and choose them, and also for their Successors; I cannot see how a Man can satisfy himself in so doing.

Sir *James Bagg's Case*, Rep. 11. 98. they forfeit their Freedom by doing contrary to their Oath and Trust. If every Freeman by his Oath and Trust be obliged to seek the Benefit of the Corporation, to surrender is against the Oath. The Law seems to have a Care of preserving Corporations; and therefore provides, that the taking any new Charter, though there be many Alterations in Offices and Names, yet doth not surrender the old. But were it of any other Franchise, the taking anew of the same thing is a Surrender of the old.

Dean and Chapter of *Norwich's Case*, Rep. 3. 73.

*Fulcher and Heyward's Case* seems a strong one to prove it nor surrenderable, *Jones* 266. And though the Bishop did not in that Case join in the Surrender, that cannot hinder; because the Bishop is no Part of the Corporation, and therefore cannot hinder them to surrender, if they will.

A Vill incorporate by the Name of Bailiffs, 4 H. 26. 22. b. The King *de novo* incorporates them by the Name of Sheriffs: Are their Privileges that they before had, gone? No, *Dieu defend*, saith the Book. But this being not my Question, I intend not to debate it thoroughly, but to keep to the Point of a Forfeiture of a Body Politick or Corporation, and farther to examine the Reasonableness and Justice of this Doctrine of Forfeiture, and see how adequate and just it is; for that is the thing, I perceive, desired.

First, Their Position is, That a Corporation, or Being of a Body Politick, is a Liberty or Franchise; and if abused or misused, is forfeited, determined, and dissolved.

That I may a little understand this Position and consider of Abuse and Misuse, and of the Extents and Consequences of it: By Abuse or Misuse, every Act that a Corporation doth, that is not justifiable by Law, is, as I take it, an Abuser or Misuser. If a Corporation receive any Money that is not due to them, if it be by Virtue of any By-law, that is a Forfeiture, though it be but a Groat. What if they by their Common Seal Command their Servant to enter into such Lands, or distrain such a Man's Cattle for Rent not due; is not this a taking upon them to oppress the King's Subjects, and to extort from them their Lands or Moneys where not due? This is a Misuser. A Body Politick, as I have said, is but a Person created in Resemblance of a natural Person, to have

a Capacity to take, hold, and enjoy to particular Ends and Purposes. And hold or enjoy is not possible, without acting; and all that act must of Necessity be subject to Errors sometimes, in their Actions, as natural Persons are. And must it be so penal to them, that every Error, Misuser, or Abuser, must be a Forfeiture? Can it be reasonable or just in Law, that this can be? Laws are made for Preservation, not for Destruction; if every Abuser or Misuser forfeit, be it a small Transgression, is it either reasonable or probable, that any Law shall punish it with Destruction of the Body? The greatest Offence, be it Treason or Rebellion, or the least illegal Act, Offence, or Misdemeanour, must have the same Measure of Punishment by this Rule; and the Law then doth not distinguish. If a natural Body, or Person, hath a Market, and orders his Servants to take such Tolls, and he takes them; what would this Crime be besides Forfeiture of his Market? Why should a Corporation then, not only in such Case, or for any Offence or Misdemeanour to the Value of a Penny, forfeit and lose, as in the Case of High Treason, his Life or Being, Lands, Goods, and All? This cannot be agreeable to any Rules or Reason of our Law; and therefore I take it, it cannot be the Law. The next thing I design to insist upon is,

Secondly, The Mischiefs and Inconveniencies that must attend this Doctrine or Law of forfeiting and surrendering, if the Law be so.

Let us then consider, whether this at one Stroke do not make all the Corporations in England, of all sorts, forfeit at once, and perhaps many Years since. Is there any Corporation in England that hath not offended or transgressed? All manner of Corporations fall under this Rule. If they have transgressed or done any such Act as makes a Forfeiture (as every Misdemeanour, for any thing I can see to the contrary, doth) whether the Corporation be *ipso facto* dissolved by the Offence committed, or else by the Judgment which must relate to the Offence, to avoid all mean Acts done by the Corporation; all that they have done since such Misdemeanour, they have done without Right; and all that they think they have a Title to as a Corporation, they are mistaken in, they have none. Perhaps if a Parliament should be called, those forfeited Corporations can lawfully send no Burgesses. I do not know whether I am mistaken, or not, I only offer this to Consideration amongst others: As (give me leave to venture a little farther upon these Considerations of Surrenders and Forfeitures of Corporations) can a Bishop, Dean and Chapter, Prebendary, Parson, &c. surrender his Corporation or Body Politick? If they can, most of them, perhaps, are of the Foundation of the Crown, and had their Lands from thence. We have many Statutes made to restrain their Alienations: Those of Queen Elizabeth did not extend to hinder their Alienations to the Crown; but perhaps, out of Hope of Preferment, they aliened to the Crown, till the Statute of 1 Jacobi, cap. 3. took away that Power also of conveying to the Crown: Can these forfeit the Corporations? Perhaps we are Sinners all, or at least, as the Balance at some time or other may beholden may be found too light: We are upon a Point that goes to Posterity; Fear and Favour, what may it do, and what may it not do? If they may surrender or forfeit, what Effects may this have upon the whole Ecclesiastical Estate? If this had been known in the Days of King Henry the Eighth, perhaps there would have been no great need of Acts of Parliament to make him Head of the Church, or to have dissolved the Monasteries. Suppose that Colleges, Hospitals, and other Corporations founded for Charity, can surrender or forfeit; the present Masters and Fellows, and the Heirs of the Donors, may truck; what Effect may this have upon them? what Ways may they find out? Also Cities and Boroughs; what Divisions and Contentions hath it already produced, some for surrendering, others for defending, what Animosities are about it? The End of the Law is to preserve Peace and Quiet. Divisions and Dissensions frequently end in the Destruction of both Parties. The Citizens and Burgesses are, I think, three Parts of four of the House of Commons. It is considerable what Effects this may have in Parliaments, our Laws and Posterity perhaps not a little concerned herein; and if so, surely this is a great Case. But if only the City of London, give me leave to see what the ill Consequences and Mischiefs will be. Arguments from Mischiefs and Inconveniencies are forcible Arguments in Law: So saith *Littleton*, and my Lord *Cook* upon *Littleton*. And Men must be desperate and sensual, that despise future Mischiefs and Inconveniencies. And many other Places there cited, *Inst.* 1. 11. 60.

1. All their Lands will be gone, and revert to the Donors, and their Heirs. By Dissolutions of Corporations all their Privileges are gone, and their Lands revert to their Donors, or Lords, of whom they were holden. *Jones* 190. *F. N. B.* 33. k. *Inst.* 113. b.

2. All their Markets, Tolls, and Duties, that they claim by Prescription; whereby the Government and the Honour of the City, the publick Halls, Gates, Prisons, Bridges, and other Edifices, are in a great measure maintained.

3. All the Debts owing to the City, and all their personal Estate, by the Death or Dissolution of the Corporation, will be gone; but who shall have them? Perhaps *non definitur in jure*.

4. All the Liberties, and customary Privileges, that the Freemen of the City, their Wives and Children claim, viz. to have customary Shares in their Husbands or Fathers Estates; to be exempt from Tolls in other Towns, Ports, and Markets; to exclude Foreigners and Unfreemen from using their Trades in London, and many others.

5. All the Acts of Parliament that give particular Powers and Authorities to the Lord Mayor and Aldermen, or Common Council, or Corporation, respecting either the Government or Justice of the City; as about Ministers, and Payment of their Dues, Buildings, Paving of Streets, Sewers, Insurance Office, and many others.

6. What shall become of the Orphans, and all the Moneys and Debts the City owes, and all the Charities in the City? We have seen the City burnt, and may remember what a Swarm were unhived thereby; but we never yet saw it dissolved, nor are the Consequences measurable. And though it please his Majesty, upon the Dissolution of this, to grant a new Charter, yet it will be impossible any of these Things can be preserved: Their Lands, Estates, Debts, Privileges, Customs, are all Personal,



and annexed to the Corporation, and must live and die with it; the said Acts of Parliament are all fixed to this Corporation, and so are the Charities, and cannot, as I conceive, be ever transferred to any other to be new created. A new Corporation can be in no Succession or Privy with the old. If a Body Politick be once dissolved, though a new one be founded of the same Name, that can have no Succession to the old, nor come in Privy to it: Therefore it is, that in the Dean and Chapter of *Norwich's*, Case, and in *Fulcher* and *Heyward's* Case, the Preservation of the old Corporation is insisted on. *Inst.* 1. 102. b. If every Abuser committed by a Corporation be a Forfeiture, Determination, or Dissolution, is there any one in *England* not forfeited and dissolved? Abuse is a Word of a wonderful large Sense: When the Law speaks of a Franchise abused or misused, it is applicable to a particular Franchise, as to a Market, Court, or the like; and if that Franchise be misused, or abused, in Oppression or Misuse, contrary to the Ends of it, some Certainty there is in it: But the Abuse of a Corporation extends to all its Acts, and all Estates of the Corporation; and all the Privileges of all the particular Persons, and all that are concerned in them are Sufferers for every Abuse, or Misuse, or Misact, or Trespass, how small soever. Who can tell in the Actions of a Person what may be taken to be ill or illegally done, or an Abuse? Who will trust a Corporation, if its Duration and Existence be so fickle and infirm, that every Abuser or Misuser shall forfeit it? There will be no need of Officers to be moved, thereby to determine this Corporation at Will and Pleasure, this Position contains enough to do all. These great Consequences, attending this Doctrine of Forfeiture, are Reasons to prove the Law otherwise.

But saith Mr. Attorney, (if I understand him) We do not intend to destroy the Corporation, though we say in our Pleading, That you have forfeited your old Corporation, that you have, without any lawful Authority, usurped upon the King, and pray in our Replication, that *de Libertate, Privilegio, & Franchesia illa* (viz. the being a Corporation) *abundantur & excludantur*. These are but Words of Form, we only will lay the King's Hands gently upon it, and seize it; but the Corporation shall not be destroyed or dissolved.

I answer, This is wonderful, and a great Compliment to the City, as I take it; let us not flatter or deceive one another. We are not now in the irregular Days in the Records mentioned, nor in such sort of Proceedings as in those distracted Times. Let us not go by blind Conjectures out of old Records, and bring in unknown Ways. We are now in a *Quo Warranto*, which, as Mr. Attorney truly saith, is in the Nature of a Writ of Right; and a Writ of Right is the highest Writ that is in the Law; and the Judgment therein, and in this *Quo Warranto* must be conclusive to all Parties. If given against the Defendants, it must conclude them for ever, and dissolve their Corporation; and if given against the King, he shall never hereafter bring it in Question for any Cause precedent. *Rep.* 9. 28. *Inst.* 2. 282. 495. *Cook's Entries* 527. D. hath a Precedent of it. *Consideratum est, quod the Defendant de & in Libertatibus, Privilegiis, & Franchesiis prædictis, in Informatione prædicta specificat nullo modo se intromittat, sed ab illis penitus excludatur*. The like against *Ferrers*, and the *Virginia Company*, and many others may be found, *M.* 21. *fac.* 1. r. 9. The Court cannot alter the Judgment, it will be erroneous if they do. And to talk of a Judgment of a Seizure, what is the Meaning of it, or such Judgment? Is it final, or not final? The Court must give a final Judgment, that the Party, if he think fit, may have his Writ of Error. The Court will not take any of your old Records to go by, if any such are to be found, that would warrant any other Judgment: Therefore a Seizure, without such a Judgment, that determines the Corporation, cannot be any way brought to pass, as I believe, nor can I understand in whom, by your Seizure, you would have the old Corporation to subsist. Transferred from the Persons, in whom it now subsists, I think is impossible, but dissolved by your Judgment it may be: And I hope your Lordship will not be induced by singular unwarrantable Things, that a Judgment should be given, that shall neither dissolve the Corporation, nor continue it, that shall neither be for Plaintiff or Defendant, that shall leave the Corporation neither alive nor dead, but in *Transitu*, or *Limbo Patrum*: A Judgment, *quod capiantur*, or *quod Libertates & Franchesiæ prædictæ seisciantur in manus Domini Regis*. Was there ever any the like? What shall be understood by it? Shall we be afterwards a Corporation? Shall our Magistrates continue? Shall we have our Lands, Markets, Tolls, Customs, or Franchises, or not? Or shall we be none, and yet not dissolved? I must confess, I am confounded in these Notions.

Next, as to the Authorities in Law for me:

1. I take it to be a great Authority for me, that there is no Precedent or Judgment, or Book-case produced or found, that ever a Corporation was forfeited. It lies upon the other Side to produce it, or shew it; and no doubt they would, if there had been any, but there is none by the Authorities they cite; you may easily perceive, any sort would not be omitted.

2. The Nature of a Corporation, as our Books do describe it, shews it not forfeitable. I take it plain out of the Case of *Sutton's Hospital*, and the other Books there cited. *Rep.* 10. 92. b. 21 E. 4. 72. A Corporation aggregate is invisible, immortal, and rests only in Intendment and Consideration of Law, cannot commit Treason or Felony, be out-lawed, excommunicate, hath no Soul, cannot appear in Person, cannot do Fealty, cannot be imprisoned, not subject to Imbecillity or Death. *Br. Corp.*

34. They cannot commit any actual Trespas or Disseisin, except under their Common Seal, by Command precedent, or Assent subsequent: When our Books say, that they are a Body Politick, and rest or have their Being in Intendment or Consideration of Law, thereby is meant, that they are by Law enabled to act to particular Ends and Intents answerable to their Ends and Creations. Their Ends or Creations are only to be subservient to the publick Good, and Government, and Preservation of the City or Town incorporate, and of the Members thereof. And there be any Act done by the Members, that are the active Part of such Corporation, to any other Intent, End, or Purpose, this is not the Act of the Corporation, but of the particular Members, and they only are answerable for it. And as to particular Offences and Miscarriages in this

Case alledged, it cannot be denied, but that the particular Members are answerable for it; and if they, then according to all Books, they ought not to be doubly chargeable or answerable in both Capacities. And the Argument cited out of *Bagg's Case*, of a Freeman convict of Perjury, and thereupon disfranchised, doth not prove, that they shall be punished in a double Capacity; for the Corporation is not thereby punished, but preserved. The Being of a Body Politick is only a Capacity, and in resemblance of a natural Body, and no more forfeitable than a natural Body. It is seizing and forfeiting of Liberties, that we meet with; that is such as are generally spoken of; as Markets, Courts, Jurisdictions, and the like: And in the old Records, by seizing the Liberties of a Corporation is meant the taking from them their Officers, and putting in others upon them for a Time. But a Forfeiting, Dissolving, and determining the Body Politick, never was yet done or known, nor, as reasonable to believe, ever entered into any Man's Thoughts till now; for I have already shewn, that Offences and Miscarriages, that were committed by the Corporations in those troublesome Times of E. 1. E. 2. and R. 2. for which their Liberties were seized, were not Forfeitures and Determinations of those Corporations; they all remain Corporations by Prescription to this Day: And I have also taken Notice, that the Acts of Parliament, that were made in the succeeding Kings Reigns, of H. 4. H. 5. and H. 6. are only Acts of Confirmation to the Cities and Boroughs of their Liberties and Privileges. From that Time till within these three Years, I believe it never entered into any Man's Thoughts, that a Corporation was forfeitable; for farther Proof whereof divers other Statutes, and the whole Series of Matter is Argument.

The Statute 15 Hen. 6. cap. 6. that provides against Abuses and Exactions made by Societies incorporate, by their By-laws and Ordinances, and appoints a Forfeiture of Ten Pounds, and of their Power to make By-laws: To what End should this be, if the Corporations themselves were forfeited, or thought so to be?

The Statute of 19 H. 7. cap. 7. recites the Statute of H. 6. and the Exactions and Abuses by Fellowships, by their By-laws and Ordinances; and appoints a Penalty of Forty Pounds, if they exact Money by an unlawful and unwarranted By-law, not examined and signed by the Chancellor and Chief Justice.

The Statute of 12 H. 7. c. 6. sets forth grievous Exactions by the Fellowship of Merchant Adventurers by their By-laws, and imposeth a Penalty for the future.

The Statutes 22 H. 8. 4. 28 H. 8. 5. shew like Exactions by Corporations upon Apprentices by their Ordinances and By-laws, provides Remedy, and enacts Penalty. If in those Times it had been thought or imagined, that a Corporation had been forfeitable, every of these Offences forfeited it, what need farther Remedy? In the Case of *Heddy* and *Wheehouse*, of excessive Toll by the Town of *Northampton*, *Moore* 474. 39 *Eliz.* In the *Quo Warranto* against a Corporation, though the Question was concerning their taking Toll, and whether they had forfeited their Market, or only their Toll; no Thought of forfeiting their Corporation was ever mentioned. So that I think I may conclude with the tumultuous Times of *Edw.* 1. *Edw.* 2. and *Richard* 2. what was then done, doth plainly shew the Corporations were not forfeit or dissolved: That by all the Acts of Parliament, and Proceedings in almost all the Reigns of any Length or Duration, from that Time to this very Case, the Opinions and Thoughts of Men were otherwise; as by the Statutes and Transactions appear: Not one Opinion, Book, or Authority, produced, or to be found. The great Concern not only of this great City, but of all other Cities, Towns, and Corporations, Ecclesiastical and Temporal, all depend upon it. And which is more than all, the very Government by Law established will be in great Danger of Alteration by it.

I have argued long, and tried your Lordship's Patience; the Weight and Length of the Case, and Rareness of the Matter, there never having been the like before in any Age; will, I hope, excuse me. But besides the whole Frame and Foundation, that the other Side have laid, being all built upon general undigested Notions, as I take it, viz. that Abuser and Misuser of Liberties forfeits them, without distinguishing betwixt one Thing and another; that the Words Forfeiting and Seizing Liberties, found in old Records, should be Authorities to prove Forfeiting Corporations or Beings of the Body Politick, though no such Thing then, or at any time since, till very lately, was ever thought on or imagined: It was necessary for me to open and set forth these general Notions, and to explain and distinguish; which, I hope I have done, that it may appear what the Sense of them is, how far they agree with Law and Justice, and how far not. And if, in the Doing hereof, or in the setting out the repugnant or inconsistent Matters or Opinions arising in this Case, to maintain this *Quo Warranto*, I have expressed myself in any other manner than became me, I humbly beg Pardon for it; and that it may not reflect upon the Cause, nor prejudice it.

Upon the whole Matter, if this Information brought against the Body Politick for usurping to be a Body Politick, ought to have been brought against the particular Persons; if it be repugnant or contradictory, that a Corporation can usurp to be a Corporation; that a Body Politick or Being can usurp to be a Body Politick or Being, before it had a Being, or to be that same Body Politick or Being, which it was when it did usurp; if forfeiting a Franchise, or Liberty, or other Estate, cannot determine or vest that Franchise or Estate in the King, till the Forfeiture appear on Record; then the old Corporation supposed to be forfeited, if it were so, did notwithstanding, and yet doth continue in Being, there being no Record to determine it; and consequently that, which is pretended a new one by Usurpation, is impossible. If by Seizure into the King's Hands (as pretended) the Continuance of the Corporation be intended, how inconsistent is it with Law or Justice to continue any thing in the King, that is wrongfully usurped, and the Parties to be punished, fined, and committed for usurping? If Mr. Attorney's Replication, taking Issue upon our Prescription to be a Corporation, and going over, and alledging several distinct Causes of Forfeitures, cannot by Law be maintained, and in the Example doth introduce a Way to bring all Men's Estates subject to Mr. Attorney's Will and Pleasure, (for, let any Man's



Right be as good as can be, it will be scarce possible to defend it, if such Pleadings as in his Replication be allowable by Law) then be the Matter in Law as much against us as possible; yet Mr. Attorney can have no Judgment for him upon this Information. Next, Supposing the Information all good in Law; yet, if the Judgments, Records, and Authority, that have been cited by them for Seizures, do plainly shew, that Seizures and Forfeitures are very different in their Natures; that the Corporations all continued notwithstanding the Seizures; and the Seizure was only the King's putting in Mayors and Officers to act in them; instead of others elected or constituted by the Corporation, and they remain Corporations by Prescription to this Day, and never were forfeited, dissolved or determined by such Seizures; if the general Authorities in Books, that the Misusing or Abusing a Franchise be truly applicable to Franchises, (that are Estates and Interests grantable or conveyable from Man to Man) and never were intended of such a Thing, as is rather a Capacity or Being than a Franchise; if there be no Case, or Precedent, or Opinion to be found for it; if, on the contrary, the particular Cases cited prove, that where the Corporations have by Miscarriages forfeited particular Franchises, they do not forfeit their Corporations; if there be scarce any Corporation in England, that have not at some Time or other done something they should not, or omitted to do something they should, and thereby forfeited their Corporation, and consequently all are Usurpers, and their corporate Acts since done, all void: If the Corporation here hath done nothing, but that the Mayor, Aldermen, and Common Council, are only Delegates, Deputies, or Ministers of the Corporation for particular Purposes; if Servants, Deputies, or Delegates do that which they have no Authority to do, they must answer for it in their own Persons; but their Masters, or those that deputed or delegated them for another Purpose, they are innocent; they shall not suffer by it, though no Acts of Parliament had been in the Case; if the Acts of Parliament against seizing the Liberties of the City, for or by reason of any Miscarriage of their Officers or Ministers, extend to these Acts of the Mayor, Aldermen, and Common Council; if so be that these Acts were the Acts of the Corporation; yet, with Submission, if they have shewn a good and legal Right, by their Custom and Title, to make By-laws for regulating and settling the Markets and Tolls, and that which they have done be, as pleaded, reasonable, and that there was reasonable Ground at that Time for their Petition, which they have set forth; if all these Particulars that I have now summed up be against me, then Judgment must be against me; though I know not what that Judgment can be. But if any one of these Particulars, thus repeated be for me, and against Mr. Attorney; then Mr. Attorney can have no Judgment against the City; but Judgment must be for them; which I humbly pray.

**T**HE next Term, viz. *Trinit. 35 Car. 2.* (Chief Justice Saunders dying the Day of the Judgment given, or the next Day after) Mr. Justice Jones, Justice Raymond, and Justice Withens, being in Court, Justice Jones pronounced the Judgment of the Court, and Justice Raymond and Justice Withens affirmed, that Chief Justice Saunders was of the same Opinion with them, and that they all agreed,

1. That a Corporation aggregate might be seized. That the Statute 28 E. 3. cap. 10. is express, that the Franchises and Liberties of the City, upon such Defaults, should be taken into the King's Hands. And that Bodies Politick may offend, and be pardoned, appears by the general Article of Pardon, 12 Car. 2. whereby Corporations are pardoned all Crimes and Offences. And the Act for regulating Corporations, 13 Car. 2. which provides that no Corporation shall be avoided for any thing by them misdone or omitted to be done, shews also that their Charters may be avoided for Things by them misdone, or omitted to be done.

2. That exacting and taking Money by the pretended By-law, was Extortion, and a Forfeiture of the Franchise of being a Corporation.

3. That the Petition was scandalous and libellous, and the making it and publishing it a Forfeiture.

4. That the Act of the Common Council was the Act of the Corporation.

5. That the Matter set forth in the Record did not excuse or avoid those Forfeitures set forth in the Replication.

6. That the Information was well founded (a).

And gave Judgment, That the Franchise should be seized into the King's Hands, but the Entry thereof respited till the King's Pleasure was known in it. Justice Raymond and Justice Withens declare, that they were of the same Opinion in omnibus.

And accordingly, after Entry made by Mr. Attorney, That as to the Issue joined to be tried by the Country; as to the Claiming to have and constitute Sheriffs; as to the having the Mayor and Aldermen to be Justices of the Peace, and to hold Sessions, *quod ipse pro Domino Rege ulterius non vult prosequi*; Judgment is entered:

*Ideo consideratum est, quod præfat' Major & Communitas ac Cives Civitatis Lond' as to the Issue aforesaid, betwixt our Lord the King and them joined, and as to the Liberties and Franchises aforesaid by them claimed, to have and elect Sheriffs, and to have their Mayor and Aldermen to be Justices of the Peace, and hold Sessions, eant inde sine die, salvo jure Dom' Regis, si al', &c. Et quoad dictas separales materias in lege unde tam præfat' At' Gen' quam præfat' Major et Communitas & Cives Civit' præfat' posuerunt se in Judicium Curie, the Court advise till Trinity Term; and then pro eo quod videtur Curie hic quod præfat' Major & Communitas ac Cives Civitatis præfat' forisfecerunt Domino Regi nunc Libertat' Privileg' & Franchef. præfat' ob causas in Replication' præfat' Attorn' Gen' superius specificat' quod Placita præfat' Major & Communitat' ac Civium Civitatis præfat' superius rejuvendo & repellendo in ea parte placitat' materieque in iisd' content' minus sufficien' & invalid' in lege existunt ad præcludend' dict' Dom' Reg' a Forisfactura præfat' aut ad Major' & Communitat' ac Cives Civitatis præfat' ad clamand' Libertat' Privileg' & Franchef. præfat' sibi allocand' & adjudicand' manutend' naturaque Deliberatione superinde prius habit' considerat' est, quod Libertat' Privileg' & Franchef. præfat' fore de seipsis unum Corpus corporat' & Politic' in re, factis & nomine per nomen Majoris Communitatis & Civium Civitatis Lond' ac per idem*

*nomen placitare & implacitari, respondere & responderi per ejusd' Majorem & Communitatem, ac Cives Civitatis Lond' præfat' superius clamat' capiantur & seiscantur in manus Domini Regis; & quod præfat' Major & Communitas ac Cives Civitatis Lond' præfat' capiantur ad satisfaciend' dict' Dom' Reg' de Fine suo pro Usurpatione Libertat' Privileg' & Franchef. præfat'.*

Thus was the Metropolis of the Kingdom deprived of its Charter and Magistrates, till the Year 1688, when King James, terrified at the News of the Prince of Orange's intended Invasion, thought fit to restore it, October the 6th, and ordered Lord Chancellor Jefferies to carry it back himself; whereupon Sir George Treby was restored to his Place of Recorder, and the rest of the Magistrates, according to the ancient Constitution of the City.

# P O S T S C R I P T.

**T**HE Question concerning the Surrender of the Corporations, or Bodies Politick, not being directly in the Case, but in the Arguments on both Sides insisted on, it may not be unnecessary to state that Point, and collect what hath been in the Debates or Arguments alledged on either side, that the easier View and Judgment may be made of it. By Surrender in this Question is, by both sides, meant and intended some Deed or Instrument in Writing, whereby a Body Corporate or Politick can surrender and dissolve itself. It is agreed that a Body Politick may be dissolved, either by the Death of the Persons incorporate, or their Refusal to act, nominate, or elect Officers or Ministers, so as there remain not sufficient, authorized or enabled by their Charter or Constitution, to preserve their Being: This is admitted to be a Cesser, or Dissolution of the Corporation, and such a sort of yielding up, or Surrender, is admitted possible. But whether by any Deed or Instrument in Writing it can be done, that is the Question intended. For the Surrender, it hath been alledged,

1. That the Being of a Body Politick is a Liberty, Privilege, and Franchise, that had its Commencement by the King's Charter, or by Prescription, which supposes a Charter; and if it have its Beginning and Creation by Charter, which is the King's Deed that grants it; by Deed again it may be regranted and surrendered: And it is a Maxim in Law, *Unumquodque dissolvi potest eod' modo quo ligatur.* And instances in Fairs, Markets, Leets, and such-like Franchises, granted by Charter, which, say they, may be surrendered by Deed, or Regrant.

2. That it is necessary that it should be dissolvable by Surrender. Perhaps a Town may come to decay, and not be able to defray the Charge that the Support and Maintenance of the Corporation may require; for every one sees that Ornaments and Officers must be, and these cannot be bought or maintain'd without Estates; and poor Men are not able, without Ruin to their Families, to bear the Magistracies and Offices; and therefore it is necessary there should be a Power in them to surrender.

3. That the Books and Cases in Law do prove, that a Corporation, or Body Politick, may surrender itself, and thereby be dissolved.

Dy. 273. There the Case is thus stated: The Deanry of the Cathedral Church of Wells was dissolved by the Surrender of Fitz-Williams, tempore H. 8. And the Prebend of Currey, in the same Church, was also surrendered by Goodman, Prebendary there, 1 E. 6. And in this Year the Dissolution of the Deanry was confirmed, and the Deanry extinct by Act of Parliament, and a new Dean erected and created; to which new Deanry, the Lands and Possessions of the old were annexed, amongst other Possessions, and the Nomination of the new Dean and Successors given by that Act to the King; and that he should have the same Power in *Chor' & Capitulo*, as the old Dean had; saving to all Strangers, other than the Bishop of Bath and Wells, the old Dean, and the old Prebendary, and their Successors. In this Case it is admitted, and taken for granted, that the Deanry, and also the Prebend, were surrendered.

Dy. 284. There the Archbishop of Dublin had two Chapters, viz. the Dean and Chapter of St. Patrick, and the Dean and Chapter of Christ Church, and both these used to confirm the Bishop's Leases. The Dean and Chapter of St. Patrick, by Deed under their Common Seal, gave and surrendered all their Church, Houses, Lands and Possessions to the King, without Licence or Consent of their Bishop, being their Ordinary, and Patron of the most Part of the Prebends. After this Surrender their Church was used as the Common Hall, for the four Courts in the Term there; and a Lease is made by the Archbishop, confirmed by the Dean and Chapter of Christ Church only; and whether the Successor of the Archbishop were bound by this Lease was the Question. The Judges in Ireland were divided in Opinion, and thereupon the Case was sent over for the Opinion of the Judges here: And the Opinions and Resolutions of five Justices, viz. Catlyn, Dyer, Saunders, Welsh, and Curus, certified to the Lord Deputy of Ireland, under their Hands, were, *Quod non fuit aliud Capitulum in esse tempore confirmationis Dimission' præfat' nisi Christi-Church tantum, quia Corporatio & Capitulum Sancti Patrick fuit per donum & sursum reddition' Decani & Capituli præfat' legitime dissolutum absque consensu Archiepiscopi.*

Jones 168. The Opinion of Justice Jones there, that a Corporation may be dissolved by an Act proper, viz. by Resignation.

On the other side, it hath been answered,

1. Admitting it to be true, That to be a Body Politick, is a Liberty, Privilege, and Franchise, created by Charter, which is the King's Deed; yet it doth not follow, that it may be surrendered by Deed: For the Charters that incorporate the Citizens, or Inhabitants of such a City, Town, or Place, and make them a Body capable of taking and having Lands, Goods, or Chattels, to sue and to be sued, and to have a Common Seal, and to act according to the Powers, Ends and Purposes, in the Charters contained, only give them a Capacity for those Ends. The Liberty, Privilege and Franchise that they have, goes no farther. They cannot transfer this Privilege, or Franchise, to any other Persons. They are only personal Franchises or Capacities, fixed in the Persons to whom they are granted, like to Patents of Denization granted to Aliens, whereby a Capacity is granted to have, hold, and act, as a natural-born Subject; Grants of enfranchising a Villain; these are Grants that

(a) See the Petition of the Mayor, and Aldermen, and Lord Keeper North's Speech to them, in *State Trials*, Vol. VIII. p. 446—447



cannot be surrendered; these are Franchises and Capacities like this; these are Exceptions to the general Rule, *Unumquodque dissolvitur eodem modo*, &c. So also of Fairs, Markets, Courts, &c. they are created by Charter, they may be granted over, or granted to the King, but if they be regranted to the King, they are not extinct, but remain in the King.

Abbot of *Strata Marcella's Case*, Rep. 9. 25. b. shews the Difference thus: When the King grants Franchises, that were in the Crown before the Grant, as *Bona Feloniam*, Deodands, Wreck, &c. and these come again to the Crown, they are merged in the Crown, and the King is seized of them *jure Corona*; but when a Privilege, Liberty, Franchise, or Jurisdiction, was at first erected or ordained by the King, there, by the coming of it again to the Crown, they are not extinct; and instanceth in Fairs, Markets, Hundreds, Leets, & *similia*. They are not dissolved or gone, for thereby Subjects would be prejudiced: For if the Court should be so granted, and thereby dissolved, the Subjects Judgments and Suits in those Courts would be all lost. These are other Exceptions to that general Rule, *Unumquodque*, &c.

2. That the Reason given for the Surrenders of Corporations from the Poverty that may happen, for the Conveniency of some Corporation, is answerable; for that doth not very frequently happen: But when it doth happen, if they are weary of it, they may let it alone, and not act, or choose Officers; it will cease of itself, they need not be at the Charge or Trouble of a Surrender: But on the other Side, the Inconveniencies are very great, and are some of them before specified. The Establishment of the Church is all in Corporations, Bishops, Deans, Chapters, Prebends, Parsons, Vicars; if these be surrenderable, as by the Cases cited, without Consent of Bishops (a Prebend is, as to his Being, but as a Parson, or a Vicar) the Universities, Colleges, Hospitals all the Cities, considerable Towns, Trades, and Mysteries, are Corporations; if these be surrenderable, it affects our old Government.

3. As for the Books and Authorities, Dy. 273. the Dissolution of the Corporation thereby surrendered is only mentioned in putting the Case, it is not debated, nor was it material in the Case: For the Act of Parliament there settled the new Dean and Chapter; and the Prebendary, and the Matter of the Case ariseth upon the Deprivation of Dean Goodman, and the Appeal, and Reversion of that Sentence, there is not as much as any Opinion in the Case concerning the Dissolution or Surrender, whether good or bad. But what may reasonably be inferred from that Case is, that the Surrender and Dissolution thereby was not good in Law; for if it had, what needed the having an Act of Parliament to secure against the old Dean and Prebendary? which yet appears in the Case was had.

And, Co. Rep. 3. 75. b. in the Case of the Dean and Chapter of *Norwich* this Case of *Dyer* is cited, and there it is expressly said, that that Surrender was not thought good, till confirmed by Act of Parliament.

And as for the other Case, *Dyer* 282. of the Surrender of the Dean and Chapter of *St. Patrick*, the Opinion of the Judges there given is, by all the Judges, 3 Car. 1. in the Case of *Hayward and Fulcher*, in *Jones* 168. denied to be Law, and said to be a private Resolution. So that these two Cases in *Dyer* having been by those latter Authorities denied, remain no Authorities. And as for the other Authority, viz. The Opinion of Justice *Jones* 168. that a Corporation may be dissolved by a proper Act, viz. by Resignation, that is true, taken in the Sense he speaks it: It is spoken of a Dean and Chapter resigning to the Ordinary, viz. the Dean resigning his Place of Dean, and the Prebendaries of the Chapter resigning their Prebends to the Ordinary, whereby their Churches and Prebends became void, and to be supplied by the respective Patron, collating or presenting, as in Cases of Resignation, by any Parson or Vicar to his Ordinary. But this is nothing of a Surrender of the Body Politick to the King, and thereby dissolving the Corporation, and destroying all Supply, by new Presentments or Collations. And this appears by the very Words of Justice *Jones* there; for when he saith, they may be dissolved by a proper Act, viz. by Resignation; the next Words are, or by Death of the whole Corporation, and the King being Patron, it is in his Election whether he

will collate *de novo*, or not, and till he collates the Corporation is in suspense; but if the Bishop be Patron, then the Bishop, upon the Resignation, hath Power to collate, and thereby to continue the Corporation: So that it is very plain, that the Resignation he speaks of is not meant for any Surrender to the King, or any thing that determines the Corporation, except the Patron will not collate, and thereby suffer the Corporation to cease; but on the contrary, that a Corporation cannot be dissolved by any Surrender.

The Suppression and Dissolution of the Abbeyes, Priories and Monasteries, by H. 8. was no Dissolution of their Bodies Politick. *Br. Extinguishment*, 75. *Br. Corporation*, 78. *Davies*, Rep. 1. *Moore's Rep.* 282. Though their Houses and all the Possessions were gone, and the Persons either discharged of their Orders, or sent into other Houses; yet resolved, that the Corporations remained. And it can scarce be imagined, but in some of those Cases it would have been practised, or at least something said about surrendering their Body Politick, if it had been then thought surrenderable. But the Case of the Dean and Chapter of *Norwich*, Rep. 3. 41 *Eliz.* before-cited, and the Case of *Hayward and Fulcher* before-mentioned in 3 Car. 1. *Jones*, 168. *Palm. Rep.* 500, 501. *Anderf.* 2. 120. have been cited as Judgments against Surrenders by all the Judges of the King's Bench. The Case was, That the Dean and Chapter of *Norwich*, 3 *Junii*, 1 E. 6. surrendered to the King their Cathedral Church, and all their Manors, Lands, Tenements, Hereditaments, Franchises, and Liberties, Spiritual and Temporal, by whatsoever Names they are known, or which they have or ought to have in the Right of their Church. And by the Case 41 *Eliz. Co. Rep.* 3. 74. and the Opinion of all the Judges of the King's Bench, 3 Car. 1. adjudged, that this was no Surrender of the Corporation.

They object, That the Words of the Surrender do not shew any Intent to surrender the Corporation, but only the Possessions.

I answer, The Being of a Corporation is a Franchise or Liberty; and there is an express Surrender of all Franchises and Liberties, Spiritual and Temporal, by what Name soever known, which they have in the Right of their Church: And this was a Spiritual Franchise, which they had in Right of their Church.

Next, this Surrender was made with Intent to dissolve the Corporation, and to have a new one erected: This appears by the new Charter of Erection, made in *November* following; which recites the Surrender made to that Intent. It is not any-where in the many Arguments of that Case alledged, that there wanted Words in the Surrender to do it, which would have been, if that had been the Ground of their Judgment.

In the Case cited out of *Dyer* 282. there the Words of the Surrender were, that they surrendered their Church, Houses, Lands, and Possessions, which are not half so large and ample Words as in this Surrender are contained; and the other Side cite that as an Authority, to prove a Corporation surrendered, and admit the Words there sufficient, and deny them to be sufficient here, though much more large, express, and general. The arguing there in *Palmer* 501. that it is against the Nature and Constitution of Corporations, that by the Words put in their Charters, by their very Constitution, are to have perpetual Succession, *perpetuis Temporibus duratur*, and which by their Oaths they are sworn to preserve, or they should be *Felo de se*. And the express Words of the Judges reported in these Books shew their Opinion, that the Corporation could not be surrendered. *Jones* 168. *Dodderidge* Justice, there saith, that the Dean and Chapter cannot surrender their Corporation. *Palm.* 501. *Whitlock Inst.* there saith, For that the Dean and Chapter are Counsel to the Bishop instituted to that Purpose, they cannot dissolve themselves; for the Publick Corporation is the Soul to the Body, that cannot be granted or severed; though the King can create a Corporation, he cannot dissolve it. And *Jones Inst.* there 502. saith, that the Dean and Chapter were Counsel to the Bishop, and cannot destroy themselves; if they could, great Inconvenience thereby will ensue to the Church.

CXV. *The Trial of \* Thomas Pilkington, Esq; Samuel Shute, Esq; Sheriffs, Henry Cornish, Alderman, Ford Grey of Werk, Sir Thomas Player, Knight, Chamberlain of London, Slingsby Bethel, Esq; Francis Jenks †, John Deagle, Richard Freeman, Richard Goodenough, Robert Key, John Wickham, Samuel Swinock, John Jekyll, Sen. at Nisi-Prius at the Guildhall of London, for a Riot, and an Assault and Battery on Sir John Moore ‡, then Lord Mayor, May the 8th 1683. 35 CAR. II.*

#### THE INFORMATION.

London ff. BE it remember'd, that Robert Sawyer, Knight, Attorney-General of our Lord the King, who for our said Lord the King in this behalf prosecuteth, cometh into Court in his proper Person on Friday next after fifteen Days of the Holy Trinity, in this same Term, and for our said Lord the King doth give the Court here to understand and be informed, that the Four-and-twentieth Day of June, in the Four-and-thirtieth Year of his now Majesty's Reign, at the Guild-hall of the City of London, a certain Court for assembling the Citizens and Freemen of the City of London, called a Common-hall, being summoned and called by Sir John Moore, Knight, then and yet Mayor of the City of London, was in a lawful Manner held before the said Sir John Moore, Knight, Mayor of the City aforesaid, as well for the due Election of Sheriffs of the City aforesaid, for the Execution of the Office of Sheriff of the said City for one whole Year, next following after the Vigil of the Feast of St. Michael then and yet next coming, as for the Election of divers other Officers of the said City: And that then and there in the said Court it was begun to take the Poll of the Electors then and there present, for the making known of the Election of the Persons to serve in the Office of

Sheriffs of the said City, for the Year aforesaid. And that the said Sir John Moore, Knight, Mayor of the said City, afterwards the said 24th Day of June, in the 24th Year aforesaid, at Guild-hall of the said City of London, (to wit) in the Parish of St. Michael Bassishaw, London, in a lawful Manner did make and cause to be made Proclamation for the Adjourning of the said Court so as aforesaid held, and then and there did adjourn the said Court until Tuesday then next following, to be held at the Guild-hall of the said City of London; and then and there after the said Adjournment, so as aforesaid made, the said Sir John Moore, Knight, Mayor of the said City of London, did make and cause to be made publick Proclamation for the Departure of all Persons upon the said Occasion there assembled: And further the said Attorney-General doth give the Court to understand and be informed, That Thomas Pilkington, late of London, Esq; and Samuel Shute, late of London, Esq; then Sheriffs of the said City of London, and Henry Cornish, late of London, Esq; Ford Grey of Werk, &c. the said Premises sufficiently knowing, but being ill disposed Persons, and devising and intending to disquiet, molest and trouble the Peace of our said Lord the King, and the common Tranquillity of this Kingdom of England, they the said Thomas Pilkington and Samuel Shute, under Colour of the Office of Sheriffs of the said City of

\* Burn. Hist. Own Times, Vol. I. p. 535. He was afterwards Lord Mayor for two Years together, 1689, 1690.

† See State Trials, Vol. VII. p. 466.

‡ Burn. Hist. Own Times, Vol. I. p. 528. 530.



London, and the said Henry Cornish, Ford Lord Grey, and others afterwards, and after the Adjournment aforesaid, (to wit) the said 24th Day of June, in the 34th Year aforesaid, at the Parish of St. Michael Bassishaw, London, aforesaid, in the said Guild-hall, there with Force and Arms, riotously, routously, unlawfully, and seditiously, did assemble, congregate, and unite themselves with very many other ill-disposed Persons, and Breakers of the Peace of our said Lord the King, to the Number of One Thousand Persons, to the said Attorney-General of our said Lord the King as yet unknown, to disturb the Peace of our said Lord the King; and being so assembled, congregated, and united, then and there with Force and Arms, &c. riotously, routously, and unlawfully, in and upon the said Sir John Moore, Knight, Mayor of the City aforesaid, in the Peace of God, and our said Lord the King, then and there being, did make an Assault and Affray, and him the said Sir John Moore, Knight, then and there did beat, wound, and evil-intreat, so that of his Life it was greatly despaired; and after the Adjournment aforesaid, and Proclamation so as aforesaid made by the said Sir John Moore, Knight, Mayor of the said City, they the said Thomas Pilkington and Samuel Shute, then and there by Colour of their Office of Sheriffs of the said City of London, and the said Henry Cornish, Ford Lord Grey, &c. with divers other Persons to the said Attorney-General of our said Lord the King as yet unknown, unlawfully and seditiously aiding and assisting the said Thomas Pilkington and Samuel Shute with Force and Arms, &c. riotously, routously, and unlawfully, did there continue to take the Poll of the Persons so then and there unlawfully assembled, as if the said Persons had been lawfully assembled for the Election of Sheriffs of the said City; and that the said Thomas Pilkington, Samuel Shute, Henry Cornish, &c. then and there unlawfully, tumultuously, and seditiously, did affirm, and every one of them did affirm, say, and with a loud Voice to the said ill-disposed Persons affirm, that the said Sir John Moore, Knight, Mayor of the said City of London, did unlawfully and unjustly assume upon himself the Liberty to adjourn the said Court, which did not belong to him: And that the said Thomas Pilkington, Samuel Shute, Henry Cornish, &c. then and there, the said unlawful and ill-disposed Persons, so as aforesaid, assembled and congregated with Force and Arms, riotously, routously, unlawfully, and seditiously, by the Space of three Hours, to disturb the Peace of our said Lord the King, and to commit the Riot aforesaid, did stir up, move, persuade, procure, and then and there by the whole Time aforesaid in Guild-hall, London, aforesaid, in the Parish aforesaid, great Rumours, Cries, Hollowings, and terrible and unwonted Noises, with Force and Arms, &c. riotously, routously, unlawfully, tumultuously and seditiously, did make and cause to be made, and did stir up, in Contempt of our said Lord the King, and the manifest Disturbance and Violation of his Laws and his Peace, to the great Danger of stirring up and moving of a Tumult, and the Spilling of much Blood there, to the great Terror, Trouble, and Fear of all his Majesty's Liege-people, Subjects of our said Lord the King, to the ill Example of all others in the like Case offending; and against the Peace of our said Lord the King, his Crown and Dignity, &c. Whereupon the said Attorney-General of our said Lord the King, for our said Lord the King, prayeth the Advice of the Court in the Premises, and due Process of Law against the said Thomas Pilkington, Samuel Shute, Henry Cornish, Ford Lord Grey, &c. in this Behalf to be made to answer our said Lord the King, of and in the Premises, &c.

To this Information the Defendants had pleaded Not Guilty.

Cryer. **YOU** Good Men of Nisi-Prius, summoned to appear here this Day, between our Sovereign Lord the King, and Thomas Pilkington, and others, Defendants; Answer to your Names, and save your Issues.

The Jury appeared.

Mr. Sommers. My Lord, I am to challenge the Array.

Mr. Thompson. My Lord, I desire this Challenge may be read.

The Challenge read in French.

L. C. J. \* Gentlemen, I am sorry you should have so bad an Opinion of me, as to be so little a Lawyer not to know this is but a Trifle, and nothing in't. Pray, Gentlemen, don't put these things upon me.

Mr. Thompson. I desire it may be read, my Lord.

L. C. J. You would not have done this before another Judge: You would not have done it, if Sir Matthew Hale had been here.

Mr. Thompson. My Lord, I believe if there had been nothing in it, it would not have been signed.

† Sir Robert Sawyer. Mr. Att. Gen. † Very few but Mr. Thompson would urge it.

Mr. Thompson. I don't know whether you think so, or not, Mr. Attorney; but I have a great deal to offer, if you please to answer it. We offer our Challenge in point of Law.

L. C. J. There is no Law in it.

Mr. Thompson. We desire it may be read in English.

L. C. J. Why? Do you think I don't understand it? This is only to tickle the People.

The Challenge read by the Clerk accordingly.

Mr. Serj. Jeff. Here's a Tale of a Tub, indeed!

L. C. J. Ay, it is nothing else; and I wonder Lawyers would put such a Thing upon me.

Mr. Thompson. My Lord, we desire this Challenge may be allowed.

L. C. J. No, indeed won't I, there is no Colour for it; and I am apt to think, there are not many Lawyers in England would have put such a Thing upon me: Because I am willing to hear any thing, and where there is any Colour of Law, I am not willing to do amiss: Therefore you think I am now become so very weak, you may put any thing upon me; without you think I was always so, and therefore may be so at this Time. For, pray now consider, if so be the King's Counsel should come and plead this Challenge, what would be the Consequence of it? I thought you would have said, that the Sheriffs had been a-kin to the King, but you have made it worse. You do come with a long Tale here of the whole Merits of the Cause, and more than yet doth appear; and by this you would have the Challenge to be allowed: In such a Case a Man may come

and tell a Tale of the Merits of the Cause, and then it must be tried by the Challenge. If the Sheriffs do return an Inquest for the King, and the Sheriffs do hold of the King a Fee-farm, or have a Pension or an Annuity from the King, the Book doth say, that in some Cases it is a Challenge; for though they cannot be challenged as being favourable for the King, yet for those Reasons they may be challenged. But what is here? Here you tell a long Process concerning a Difference between the Mayor and the Sheriffs, and all this Matter is wrapp'd up all together; and if all this were true, it is no Challenge at all.

Mr. Thompson. We shall speak with all Submission to your Judgment, my Lord.—Good, Mr. Attorney, give me Leave.

Mr. Attorney General. I move for you.

Mr. Thompson. If you please, you may move for yourself; I don't need you to move for me. My Lord, with Submission, the Information is not good: My Lord, it is an Information that doth set forth, that my Lord Mayor had Right of Adjourning the Poll, when an Election is to be for Sheriffs. My Lord, if he had not that Right, it can be no Riot according to this Information. My Lord, upon his Adjourning, Mr. Sheriff North was chosen: My Lord, if that Adjournment was not according to Law, Mr. Sheriff North never was Sheriff of London; then, my Lord, here is the Case in this Question of Title, for Mr. North doth come in Question, Whether he be a legal Sheriff of London?

L. C. J. Prove to me now that of Sheriff North; Pray what Annuity, Pension, or Fee-farm hath he as Sheriff of London, whereby he is concerned?

Mr. Thompson. My Lord, there are other Reasons which I shall shew to you; and the first Reason, my Lord, in this Case, is this; it will appear the Election of Mr. North is interested in this Matter; and Sir John Moore had not an Opportunity to adjourn the Poll, Mr. North was not chosen duly Sheriff; now, if the Sheriff's Choice come in Question in point of Right, it is a good Challenge.

L. C. J. In point of Profit it might be so, and not in all Cases neither; for he that holds Lands in Capite of the King, cannot be challenged for all that.

Mr. Thompson. I think, my Lord, this is a common Case in our Books, That if in case a Sheriff be concerned in point of Title, this is a principal Challenge, because that he is interested in that Title, he is no Person by Law to return a Jury. I don't doubt but your Lordship will do that which is right, and according to Law. My Lord, I say, where a Sheriff is interested in point of Title, he is no Person by Law to return a Jury, and this Question will appear plainly upon this Information; for if in case this was not a lawful Adjournment by Sir John Moore, this is not a lawful Return—Gentlemen, my Lord, I know, will hear me, if you have but Patience; I always speak and stand up for my Clients as I ought to do. If you please to let me have Liberty, I have my Lord's. If a Sheriff be concerned in point of Title, it is a principal Challenge, and the Sheriff ought not to return the Jury, but the Coroner: And, my Lord, much more in this Case; for that the very Title to the Office of Sheriff is here in Question, and therefore he is no Person fit to return this Jury, my Lord. We desire your Lordship's Opinion.

L. C. J. Mr. Thompson, Methinks you have found out an Invention, that the King should never have Power to try it even so long as the World stands. Say you, Sheriff North is not a right Sheriff, Who should have been? Why, say you, Dubois and Papillon, or one, or both of them. Now the King he hath brought his Suit for a Riot.

Mr. Serj. Jeff. And an Assault and Battery upon Sir John Moore.

Mr. Thompson. That is a Fiction.

L. C. J. The King hath brought his Suit, and brought it to an Issue. Why now, if so be this Challenge should have any thing in it, then the King must have challenged North, and what must he have done then? Why, for Papillon and Dubois, they are not Sheriffs in actu, then, say you, the Coroner. Pray, Mr. Thompson, if so be the King had made the Venire either to Papillon or Dubois, or to the Coroner: Whether or no had not the Cause been found against the King, before one Word had been said actually for him? You say the Question is, Whether he be a Sheriff or not? If the King had challenged him, and made the Venire to the Coroner, for God's sake, Had not that made an End of the Question?

Mr. Thompson. No, my Lord, not at all.

L. C. J. Now? Then I understand nothing.

Mr. Thompson. My Lord, if the Sheriff appear to be concern'd, it doth not determine the Cause.

L. C. J. But it does by your own Opening now. You say the Question is, for which you do now challenge the Array, because it is returned by Sir Dudley North, supposed to be one of the Sheriffs, and tell the whole Process, how that in Truth it is a Question whether he be a Sheriff or not; and therefore, say you, or you say nothing, that the Venire should not go to North.

Mr. Thompson. No, my Lord, I pray, good my Lord—

L. C. J. Should it have gone to Dudley North, and then have been challenged for him?

Mr. Thompson. No, I beseech your Lordship, we do not say so. My Lord, we say, That whereas they do charge in the Information, that there was an Assembly for the Election of Sheriffs, and that Sir John Moore being then Mayor, did lawfully, according to Law, adjourn this Assembly; and that afterwards the Defendants, Pilkington and Shute, did continue this Assembly, and took a Poll, and so they would make this a Riot in the Continuance of it: My Lord, we do say this, That the Election of Mr. North upon this Point doth come in Question; and my Lord, we do say, That if that be not a legal Adjournment, then Mr. North is not legally chosen.

L. C. J. Right, now you have told it in more Words.

Mr. Thompson. We say, If the Election be interested, they are all Parties by Law.

Mr. Serj. Jeff. Who would you have the Process go to?

Mr. Thompson. To the Coroner.

L. C. J. Very well, upon my Word. If he were Sheriff, it cannot go to the Coroner, you know, and therefore if he were challenged, to go to the Coroner—

Mr. Thompson



Mr. Thompson. *Sub judice lis est*, my Lord.

Mr. Serj. Jefferies. We desire for the King, that the Challenge may be over-ruled.

L. C. J. Ay, ay.

Mr. Serj. Jefferies. I desire the Jury may be sworn.

Mr. Williams. Certainly if they be impanelled by Persons that are not Sheriffs, that is a good Challenge, that is admitted by every body; now we have made a Challenge, and that is a good Cause of Challenge certainly, if that were the Cause. But now, my Lord, I must confess what your Lordship says, it is a difficult Matter to challenge any Array, because they are arrayed by a Person that hath an Interest, or some such thing that is a Challenge of the Array, but that is not the Matter in this Case. It cannot be denied, if these Persons were not Sheriffs of London, that that is a good Cause. I take the Result of the Challenge to be this: Say we, the principal Question of this Information, the Riot, will depend upon this Question, Whether there were a regular Adjournment or not? There, say we, begins the Question of the Riot. If so be that my Lord Mayor of London that was, had Power to adjourn the Court, and it be admitted a regular Adjournment, certainly the Riot would follow, and what follows then? Then comes on a Question, and it is immediately consequent upon it, That these Gentlemen be actual Sheriffs of London, they being actually chosen upon this Adjournment, they are actually Sheriffs: But if really my Lord Mayor had no Power to adjourn, and that Power was in the Sheriffs, that they were actually taking the Poll, and the Poll was for Mr. Dubois and Mr. Papillon: Then the Question is, if so be the Adjournment by my Lord Mayor were not a good Adjournment, then the Poll was a regular Poll taken by the Sheriffs, then consequently those that were elected upon that were truly chosen, and then it is a right Challenge. These Gentlemen, I must confess, they are Sheriffs *de facto*; but we know very well there may be Sheriffs *de facto*, and there may be other Sheriffs *de jure*, these Things are very consistent. If so be that Mr. Papillon and Dubois be duly elected, they are Sheriffs *de jure*, but they want the Formality, for they are not sworn, and cannot return a Jury. On the other side, the Sheriffs are Sheriffs *de facto*, but not legally chosen, and the Riot will depend upon that Question, of the other Persons that are Sheriffs *de facto* and not *de jure*. This we suggest in this, Whether your Lordship will receive this challenge, or whether your Lordship will proceed first to the Trial of the Cause, and let this follow. My Lord, Might not there have been something in this Case upon the Roll at Westminster? Might there not have been a Surmise to this Purpose, because there is such a Question upon the Roll? For it appears, that the Common Hall was for the Election of Sheriffs, and that it was adjourn'd by the Mayor: And what follow'd? Might there not be such a Surmise, that the *Venire facias* should not go to the Sheriffs, but to the Coroner? Might there not have been such a thing?

L. C. J. My Speech is but bad: Let me know what Objection is made, and if I can but retain it in my Memory, I don't question but to give you Satisfaction. If the King had brought an Information against Mr. Sheriff North, and charged him with a Crime, there is no manner of Question, that the King should have challenged as he was a Sheriff, and sent the *Venire* to the Coroner, or other Officer; here he is not accused, nor to be acquitted, of any Crime. Gentlemen, I put you upon this, if so be that the Sheriff of London should get a great deal of Money, (but I never understood, that he got by it) if you prove, that he hath got any considerable Matter by the Office, it would be something in the Case, that he should be greedy of the Office. But look ye, on the other Side, if there be nothing in it one way or another, that there is Profit accruing to him by the Office, what can the Law say? But here was the Question between, indeed and in truth as you do open it, between the Mayor, Sir John Moore, I think, and the Sheriffs that then were, that was the Question between them. Now what is this in point of Law, that the Sheriffs must be challenged? They must be challenged, because it is return'd by these Sheriffs: You can't say the Sheriffs do favour—the King.

Mr. Sol. Gen. My Lord, we trouble your Lordship about a Question very unnecessary: The Sheriff is not concerned in this Question, neither can the Consequences affect the Sheriff any way.

Sir Fr. Winn. My Lord, if I don't shew that he is concern'd, notwithstanding what Mr. Solicitor says, it is another matter. If this had been upon a common Riot, and not related to the Election of Sheriffs, it would have been harder against us. I only offer a Word or two, and submit to your Lordship. This Information doth take notice of the Election of Sheriffs, and of an Irregularity in disturbing the late Lord Mayor about adjourning the Poll; I do believe, my Lord, it will not be deny'd, but that in this Cause a Riot or no Riot will depend upon the Poll, or the Mayor's adjourning. If that be so, that which your Lordship is pleas'd to urge, That the Sheriff gets nothing, yet that he hath assumed the Office *de facto*, appears by the Return, that is very plain, my Lord, he hath assumed it, and did exercise it. If it appear to be legal or illegal upon the Adjournment by the Mayor, then it must have one of these two Consequences. My Lord, I humbly conceive, till the Sheriffalty had been agreed, it would have done very well for Mr. Attorney to let this Riot alone, unless he would have made it a common Riot; if he would have been pleas'd to stay till the Law had determin'd who had been the right Sheriffs, then *Process* would have gone for the King. And, my Lord, there is another Thing under Favour: If Mr. Attorney had been pleas'd to prosecute for the King, then surely, my Lord, there was a Way to lay it so that the *Process* should be returned by Persons uninterested, and not by the Sheriff whose Election is in Controversy: I don't argue out of the Record, but by the Record itself. If in case it doth appear still to be under Consideration; if that be so, I do humbly conceive, because that Right of Election of Sheriffs is undetermined, that therefore he might have made the *Process* to the Coroner, if he would have made it before; but it should not be heard before the Election of the Sheriffs, because it will be a Riot, or not a Riot, upon that.

L. C. J. Good now, Sir Francis, you mistake, it could not be to the Coroner.

Mr. Sol. Gen. My Lord, it is but wearying your Lordship to no Purpose.

Mr. Wallop. If he be not Sheriff, that Title of his depending upon my Lord Mayor's Adjournment, which is reasonably set forth, it is concerning the Consequence of the Cause.

Mr. Att. Gen. If you please, my Lord, I will answer what hath been said: Mr. Thompson did first urge according to the Rules of Law, if the Matter that appears upon the Record be the Thing in Question; that if the Sheriff be interested in that Matter, that that is a good Cause of Challenge. That is a good Rule, and the Law is so; but that is nothing to this Purpose; my Lord, here upon the Record there is nothing in question but a Fine for the King, nothing to be recovered: Where Lands are in question, as in an *Ejectment*, if the Sheriff be interested in that Land, in that case that is a good Challenge; but here appears nothing by the Record, here is nothing in question but a Fine for the King; so that certainly that Case, in point of Law, is nothing to the Purpose. Then they say it appears in the Record by Recital, and in the Information, for that is the Substance of all they say: It doth appear there, as it is said, that the Mayor did adjourn the Court, and so the Question of the Riot will very much stand upon the Validity of that Adjournment. But it doth not wholly stand upon that; for there are many outrageous Actions, Assaults of the Mayor, throwing off his Hat, great Clamours; thrusting and pressing many of the Aldermen; nay, bruising them; so that this Riot, notwithstanding the Adjournment, be that as it will, will appear, in the Uphold of the Cause, to be a Riot, notwithstanding that Question. But in the second Place, the Question of Mr. North's being a Sheriff, or not a Sheriff, no ways depends upon this Adjournment, no Pretence of the Title depends upon that; so, my Lord, they have suggested a Thing that is foreign to the Record; it depends purely that, upon a Custom of the City for my Lord Mayor to elect, not upon the Power of my Lord Mayor's Adjournment; for after that they proceeded on with the former Choice of Mr. Papillon and Mr. Dubois; so that whether that Adjournment be a good Adjournment, or no good Adjournment, his Title will depend upon that, whether at the second Meeting or no Mr. Papillon and the other Gentleman be well chosen, and Mr. North not well chosen; so that his Title doth not depend upon this Question one way or other. But, my Lord, that which makes this as frivolous a Thing as ever was urged in a Court of Law, my Lord, that it should have been upon Rule before any Direction to the Sheriff or Coroner, if they would have had *Process*; they have suggested Matter of Fact wholly out of the Record, Matters have been suggested, that it might have been tried before it came to Direction; now there appears nothing in the Record to bring a Challenge to try the Matter; nay, as they themselves say, it is to try the Merits of the whole Information, that the Information depends upon that Question, Whether the Mayor may adjourn? It is a great Usurpation upon the Government of this City, as they have done in other Things to the King. My Lord Mayor is the Supreme Magistrate here, and the Sheriffs have nothing to do in this Point, and therefore I pray it may be over-ruled, and that the Jury may be sworn.

Mr. Thompson. We would have, my Lord, the Benefit of a Bill of Exceptions.

Mr. Serj. Jefferies. Swear the Jury, swear the Jury.

Mr. Thompson. I have another Challenge.

L. C. J. I tell you plainly, I see nothing in it for a Bill of Exceptions.

Mr. Thompson. We desire we may have the Benefit of a Bill of Exceptions. My Lord, if this be the Case of trying a Riot, we must take what Advantage we can in point of Law.

Mr. Serj. Jefferies. We come to counsel the King, as we ought to do, by Law.

Mr. Thompson. My Lord, I challenge, on the behalf of my Lord Grey, this Jury.

[Challenge read.]

Seignior Grey.

Mr. Att. Gen. They call that a *Newgate* Challenge.

Mr. Wallop. That was a Challenge taken at the *Old Bailey*.

Mr. Thompson. And over-ruled.

Mr. Serj. Jefferies. And I pray it may be so here.

L. C. J. I think your Challenge is, that they are not Sheriffs?

Mr. Thompson. My Lord, Is the Fact true or false? I desire of these Gentlemen, if it be insufficient in point of Law, let them demur.

Mr. Serj. Jefferies. Pray tell me, *Robin Hood* upon *Greendale* flood; and therefore you must not demur to it.

Mr. Thompson. If the Challenge be not good, there must be a Defect in it either in point of Law, or in point of Fact. I desire, on the Behalf of my Lord Grey, this Challenge may be allowed.

Mr. Serj. Jefferies. And I pray for the King, that it may be over-ruled.

L. C. J. I think you have owned them to be Sheriffs already.

Mr. Serj. Jefferies. My Lord Grey did own it in his Challenge, because there were no Knights.

L. C. J. We try a great many *Nisi-Prius* here sometimes, two or three Days after the Term, every Defendant, that thinks it goes hard with him, we must have a Trial still, whether the Sheriffs be Sheriffs, or no? This that you have done now, may be done in every Cause that we may be trying. Upon your Evidence if you can prove them none, you go a great way.

Mr. Thompson. My Lord, we desire the Challenge may be allowed, or otherwise a Bill of Exceptions. My Lord, we pray a Bill of Exceptions.

Mr. Serj. Jefferies. This Discourse is only for Discourse sake; I pray the Jury may be sworn.

L. C. J. Ay, ay, swear the Jury.

Sir Benjamin Newland, &c. sworn.

Mr. Thompson. We challenge Mr. Fensil; he hath given Evidence in this Cause at the Council-Table.

L. C. J. What then?

Mr. Att. Gen. My Lord, they shall have all fair.

L. C. J. Mr. Attorney says he won't stand upon it.

Mr. Thompson. My Lord, we pray a Bill of Exceptions.

L. C. J. I think many would not have offer'd it besides you. Shall I go and sign a Bill of Exceptions, to let all the World know this is so, and so all the World must try whether they be Sheriffs of London?

Mr. Thompson. My Lord, don't say so; for I think all the Counsel in the Court would.

L. C. J. If it doth fall out, that in truth they don't happen to be Sheriffs, surely you shall have all the Advantage that can be for you; but pray don't think, that I will put off a Trial upon every Suggestion that the



Sheriffs are not Sheriffs. You shall have all that is Law by the Grace of God, and I am not afraid, that you or any Man should say, I don't do Justice; I am not bound to gratify every Man's Humour; I am to do according to my Conscience, and the best of my Knowledge, and according to my Oath; and I will do that, and gratify no Man.

Sir Benjamin Newland	} Jur.	Henry Wagstaff
Sir John Matthews		Barthol. Fesiman
Sir John Buckworth		Thomas Blackmore
Sir Thomas Griffith		Samuel Newton
Sir Edmund Wiseman		William Wotton
Percival Gilburne		George Villars.

Cryer, O yes, O yes, O yes, If any Man can inform my Lord the King's Justice, the King's Serjeant, or the King's Attorney, or this Inquest now to be taken, &c.

Mr. Dolbin. May it please your Lordship, and you, Gentlemen of the Jury, this is an Information brought by the King against Thomas Pilkington, &c.

Gentlemen, the Information sets forth, That upon the 24th of June last, in Guildhall, there was a Common Hall summon'd by Sir John Moore, Knight, and thereupon held for the Election of Sheriffs for the Year then ensuing the Feast of St. Michael: And that on the same 24th of June, Sir John Moore, then Mayor, adjourn'd the Court till the Tuesday following by Proclamation. That after the said Adjournment, my Lord Mayor made Proclamation for all Persons to depart; and that the Defendants, intending to disturb the Peace of the King after the Adjournment aforesaid, did unlawfully, with many Persons unknown, meet together, and riotously assault the Lord Mayor. And after the Adjournment by Proclamation, two of the Defendants, Pilkington and Shute, by Colour of their Office as Sheriffs of this City, and the rest of the Defendants, did continue the Poll, and unlawfully affirm to the People, That Sir John Moore had no Power to adjourn them. And that they continued this great Tumult three Hours, to the Terror of the King's Subjects, and the evil Example of others, and against the Peace of our Sovereign Lord the King. To this the Defendants have pleaded Not Guilty, &c.

Mr. Att. Gen. This Information, my Lord, is brought for settling the Peace in this City, and to shew before you all, who is the Supreme Magistrate under the King in this City; for that, Gentlemen, you see, is grown a great Question, Whether my Lord Mayor is not only in the Hall, but in his Chair, the Supreme Magistrate?

Gentlemen, I must acquaint you, that my Lord Mayor in all Times, even before the City had the Election of him, was the King's Lieutenant, and the Supreme Magistrate in the City, and no publick Assemblies could ever meet together without his Summons; he was the great and chief Director, and this I believe in all your Observations that are of the Jury, I can make it evident, that this hath been the constant Frame of this Government in the City: For the Sheriffs, Gentlemen, they are no Corporation Officers, they are County Officers, as in all the Counties of England, and they are the King's Officers for the Execution of the King's Writs, and the Preservation of the King's Peace; but the Government of the Corporation is in the Mayor, and not in the Sheriffs. Gentlemen, the Question now arising here, is about the Election of Sheriffs; it's true there were very disorderly tumultuous Proceedings; my Lord Mayor he comes and doth appoint another Day for them, and discharges them at that Time. We will make appear to you, that it was always his Right in all Times, both to summon a Common Hall, and dissipate it, and appoint them another Day, or to dissolve them, as the Mayor did see Cause. The Mayor having, according to the ancient Manner, adjourned this Court, the Sheriffs they proceed; do not only refuse to obey, but they proceed, and make Proclamation, that it is not in the Power of the Mayor, taking upon them that which never any Sheriffs did in any Time; they make Proclamation contrary to what the Mayor had done, and continue the Poll, and proceed and proclaim the Mayor had usurped that Power which was their's, tho' afterwards they transferr'd the Supreme Power to the Liverymen; but I think no Age will suffer, that the Supreme Power should be in the Liverymen, that are expressly appointed to act by a Common Council, which is indeed the Representative of the whole City. But this, Gentlemen, being done by the Sheriffs having usurped the Power of the Mayor, they did proceed in a riotous Manner; when the Mayor attempted to go out of the Hall, they struck him, struck his Hat off, and pressed several of the Aldermen; the Evidence will make out in what an outrageous Manner it was carried on. If the others had made Opposition, how soon had all been in Confusion upon this Usurpation, that the Sheriffs had set up for themselves, that they are the Delegates of the People, and must appear to be the Supreme Magistrates of the City of London! I think the Citizens themselves will never endure, that those that are but County Officers, should ever invade the Government of the Corporation. Gentlemen, we will shew you the Particulars of this, and you have nothing to inquire after, but whether they are Guilty of the Riot or no?

Mr. Sol. Gen. My Lord, we will call our Witnesses, and prove our Case by these Steps. For the Question, That whether or no the Defendants in the Information were guilty of a Riot, in continuing the Assembly after my Lord Mayor had adjourn'd them, we will prove it by these Steps, that it is in the Power of the Lord Mayor to call a Common Hall, and adjourn the Common Hall; That, my Lord, when the Common Hall was assembled for the Purpose of electing Sheriffs, that he did adjourn the Common Hall; and that contrary to his Adjournment the Sheriffs continued it, declaring my Lord Mayor had no Right so to do; and that afterwards my Lord Mayor commanded them to depart, and they continued their Assembly there in a very riotous Manner; and as my Lord Mayor came down, they offer'd Insolencies to his Person, and they continued the Assembly there in a riotous Manner, and commanded the Sheriffs that did assert their Right, following them in a riotous Manner into Cheapside, crying out in a factious Manner, God bless the Protestant Sheriffs.

Mr. Serj. Jeffries. My Lord, we would begin with our Witnesses; but for the Gentlemen of the Jury, which I think are Men that belong to the City, and that the thing may be very intelligible, I beg Leave to ac-

quaint your Lordship with the Methods that have always been proceeded in, in Choices of this Nature. My Lord, we will make it appear, and I think it will not be doubted by any Man that knows the City of London, that Common Halls are always summon'd to appear by the Intimation of the Mayor, of the Mayor himself, at any Time when he finds an Occasion, either for the assembling of a Common Council, or the assembling of a Common Hall, &c. Precepts are issued; they are Words that you, Gentlemen, do understand very well, to summon a Common Hall from time to time. It is very true, tho' they do usually make Summons for Midsummer-Day, yet Midsummer-Day being a publick and notorious Day for the Choice of some particular Persons, they are not so continually exact in Summons; for they do presume, that every body takes Notice of the Day. But I am to give your Lordship an Account: Whereas in the Record there is only Notice taken concerning the Sheriffs on Midsummer-Day, it is notoriously known to all Gentlemen that are Inhabitants in London, there is a Choice of Chamberlain, and Auditors of the Bridge-house and Chamber-accounts, down to Ale-conners; and that the Sheriffs of London, qua Sheriffs of London, are no more in the Case than any private Man is. I do take Notice of this, to give you an Account, that as soon as these Officers are dispatched, I myself had the Honour to serve the City some Time, and know it very well; therefore I take the Liberty to explain it to some of these Gentlemen that are Foreigners. My Lord, as soon as ever this is done, (as it was frequent before People were so ambitious to come into the Office of Sheriffs, as they have been within two or three Years; for it was not known, till of late, that People were fond of the Office; there is a Term they use, To go a Blding, as they call it, they did not seek for the Office, as they have done of late) when there was any Person came off from serving, that is, paid a Fine of 400 l. for coming off; then the usual Method was to call another Common Hall; for they never made Application to Mr. Sheriff, Good Mr. Sheriff, let us have a Common Hall: But the common way, was in time of Vacation, (for in August, there are no such things as Courts of Aldermen held; Courts are not then held, except the Sheriffs Court) then to go to my Lord Mayor's House, and he appoints them to come to a Common Hall, a Meeting for to choose such and such: He orders the Sword-bearer, or other Officer that is Attendant upon his Person in his House, to send forth Summons, in order to such a Thing as the assembling a Common Hall, and there may be sometimes but one Sheriff there; nay, I have known it sometimes when there hath been never a Sheriff, and yet they have not thought they have wanted a Judge of that Assembly: But, my Lord, when all the Matter is over, and Persons are declared to be chosen into this or that, or the other Office in the Common Hall, then an Officer in the City, not an Officer of the Sheriffs, but an Officer which is called by the Name of the Common Cryer, he makes Proclamation upon the Hufings, where my Lord Mayor is Judge, for all Gentlemen to depart for that Time, and to give their Attendance there to another Summons. And now, my Lord, to make the thing a little more intelligible, there is a Difference between the Choice of the County Officers and the Corporation Officers; for at the Election of City Officers, the Common Serjeant, the Common Cryer, and Town Clerk, are the Officers that attend and manage the Common Hall, where my Lord Mayor is looked upon to be the Superintendent; but at the Election of Parliament-men, the Writ is directed to the Sheriffs, and they interpose in all the Management; and then the Common Serjeant and Common Cryer have nothing to do; but at such times, the *Secondaries of the Compter*, which are Deputies to the Sheriffs, they come and manage the whole Affair. This I tell you, because I have been pretty well acquainted with the Methods of the City. I do very well remember I had the Honour to serve the City of London, at that Time Sir Robert Clayton was Lord Mayor; and there was a great Occasion to try a Person about the Assassination of Mr. Arnold; and the Question was, Whether they should proceed to a Poll or not? because they were to go to the Sessions-House in the Old-Baily, in order to the trying of that Person. That worthy Gentleman being then in the Chair, I had the Honour to sit by him; ordered the Court to be adjourned for a Day or two, because they were to go to the Sessions. There was no asking the Sheriffs Opinion when Sir Robert Clayton was Lord Mayor, nor there was no such thing then; but now the Case was altered, for Sir John Moore was Lord Mayor. Now, my Lord, Sir John Moore, like a good Magistrate, endeavouring to preserve the Privileges of the Chair, there happened a Controversy amongst the Members of the Common Hall, whereby the publick Peace of the Kingdom might have been very much injured, as well as the Peace of the City much disturbed. To prevent which, Sir John Moore, with the Advice of his worthy Brethren the Aldermen, came upon the Hufings, and found they were all in an Uproar, and not cool enough for any Debate; for they were wound up to that Height of Fury or Madness, that they had not a good Word to bestow upon their Magistrates, nor upon him whom their chief Magistrate did represent. For we must tell you, when they cried, Pray God bless the King, as is usual for the Officer upon such Occasions; many cried, No, God bless the Sheriffs, the Protestant Sheriffs. Whereupon my Lord Mayor, for Preservation of the Peace, adjourned the Common Hall, and required the Members to depart and come down off the Hufings: The Rabble, (for by the way, a great many of these Persons in this Information, as Mr. Goodenough, and the rest of them, were not Liverymen, nor concerned in the Election one way or other; but came there on purpose to foment and to raise up the Spirits and malignant Dispositions of a sort of People that are Enemies to the Government; they came to foment Quarrels, and not maintain Peace) my Lord, when my Lord Mayor came off the Hufings, they came upon him, had him down upon his knees, and his Hat off; and if some Gentlemen had not come in, they had trod him under Feet; such an Indignity was then done to the Lord Mayor of London, who, I think I may say, deserved as well from the Government of this City, as any Gentleman that ever presided in that Office, that before had not been heard. My Lord, we will call our Witnesses, to prove the Manner of the Elections to be as I have opened it, and to prove the Matter in the Information.—Call the Common Serjeant and Mr. Lightfoot, the Common Cryer, and the Sword-bearer.

Mr. Att. Gen. Mr. Lightfoot, pray give an Account to the Jury and the Court, of the Manner of Election, and choosing of a Common Hall, and the Manner of it.



Mr. Lightfoot. My Lord, I have been almost 25 Years an Attorney; I always took it, that the Serjeant of the Chamber had Order to go down to the Clerks or Beadles of the Companies, to summon a Common Hall by such a Day.

Mr. Att. Gen. By whose Command?

Mr. Lightfoot. By my Lord Mayor's.

Mr. Att. Gen. In all your Time, did the Sheriffs ever summons any?

Mr. Lightfoot. O, No.

Mr. Serj. Jefferies. Pray Mr. Lightfoot, thus: When they were met, what was the usual Method?

Mr. Lightfoot. Before the Lord Mayor and Aldermen were set, the People walked up and down the Hall till the Lord Mayor did come; but as soon as my Lord Mayor came, the Common Cryer made Proclamation, O you good Men of the Livery, summoned such a Day for Election, and so draw near, and give your Attendance.

Mr. Att. Gen. Whose officer was the Common Cryer?

Mr. Lightfoot. My Lord Mayor's Officer.

Mr. Serj. Jefferies. A Corporation Officer.

Mr. Att. Gen. Now for the dissolving them.

Mr. Lightfoot. When they have done the Business, Mr. Town Clerk, as I take it, takes his Direction from the Lord Mayor, and he bids the Officer make Proclamation; You good Men of the Livery, depart hence for this Time, and appear at a new Summons.

Mr. Att. Gen. Did the Sheriffs ever dissolve them?

Mr. Lightfoot. Never.

Mr. Att. Gen. Did the Common Hall do it?

Mr. Lightfoot. No, there was no such thing.

Mr. Jones. Mr. Lightfoot, after my Lord Mayor had dismiss'd the Hall, did you ever hear the Sheriffs keep them together?

Mr. Lightfoot. All the People went away till within this three or four Years.

Mr. Jones. Since when?

Mr. Lightfoot. Since Mr. Bethel, about that Time.

Mr. Serj. Jefferies. Ay, in Bethel and Cornish's Time, then began the Bustle.

Mr. Williams. You say you have been an Attorney 25 Years; I would ask you, In all that Time, Mr. Lightfoot, in all that Time, did you ever know the Lord Mayor adjourn the Common Hall to a certain Day?

Mr. Lightfoot. There was never any Occasion.

Mr. Thompson. Answer my Question.

Mr. Lightfoot. I never did.

Sir Fr. Winn. I would ask you another Question, Mr. Lightfoot: Did you ever know, before the Election was over, when the Electors were choosing Sheriffs, or polling, or debating it, did you ever know in the Middle of it, the Mayor, against the Will of the Sheriffs, adjourn it?

Mr. Lightfoot. No, no.

Mr. Sol. Gen. Did ever the Sheriffs undertake to keep them together before these late Times?—Mr. Lightfoot. No, never.

Mr. Thompson. Pray, Sir, this: Though it is usual, after the Sheriffs have taken the Poll, to acquaint my Lord Mayor, Did you ever know, that the Sheriffs have adjourn'd the Common Hall without acquainting my Lord Mayor?—Mr. Lightfoot. No.

Mr. Thompson. I ask you one Question more: Do you remember when there was a Poll between Sir Thomas Stamp and another?

Mr. Lightfoot. No, I do not charge my Memory with it.

Mr. Thompson. Do you remember when there was a Poll between Sir Robert Clayton and Mr. Kyffen?—Mr. Lightfoot. I was about the Hall.

Mr. Serj. Jefferies. Do you remember when there was a Poll between Sir Simon Lewis and Mr. Jenks? Who did manage that Poll?

Mr. Com. Serj. I did.

Mr. Williams. Are you upon your Oath?—Mr. Com. Serj. Yes, I am.

Mr. Lightfoot. When they were gone to the Poll, I went out of the Hall?

Mr. Att. Gen. Did you ever look upon it, that the Sheriffs had any thing more to do than others?—Mr. Lightfoot. No.

Mr. Att. Gen. Who were induced to take the Poll? Was it by the Sheriffs, or the Lord Mayor?

Mr. Lightfoot. I have been appointed by my Lord Mayor. I do know, that the Sheriffs have taken upon them to appoint a Poll, and then my Lord appointed his Clerks in the House to be assistant to the Common Serjeant, and the Town Clerk: I never was but in two Polls, one for Mr. Box, and another for my Lord Mayor. One went on with the Poll in one Place, and the other in another.

Mr. Att. Gen. But before that Time, Sir?—Mr. Lightfoot. I know nothing of that, Sir, I was never concerned before.

Mr. Holt. Pray, Sir, who used to manage the Poll before this Time?

Sir Fr. Winn. Mr. Lightfoot, I would ask you a Question: Who managed the Poll before?

Mr. Lightfoot. I have been in a Common Hall when they have been choosing Sheriffs, when several have fined. And it hath been upon the Question, when the Hall hath divided, and they have polled in the Hall.

Sir Fr. Winn. Who polled then?—Mr. Lightfoot. The Sheriffs and the Officers stood and saw them go out, and this is within these few Years.

Sir Fr. Winn. Mr. Lightfoot, I ask you thus: Now in all your Observations, when there was any Contest, who was Sheriff upon the Election, and the Divisions during the Time of Election, and before it, were at an End, who did manage it, the Sheriffs, or the Lord Mayor?

Mr. Lightfoot. When the Court had been proclaimed, and the Recorder had spoken to them, my Lord Mayor and the Aldermen withdrew from the Hustings, and the Sheriffs and other Officers stood there with them; then the Commons proposed who they would have put in Nomination, and they were put up; then the Sheriffs have turned back to the Gentlemen upon the Hustings to ask their Opinions, How are your Opinions concerning the Hands? We do think it goes so; then it hath been declared.

Sir Fr. Winn. By whom?—Mr. Lightfoot. The Common Cryer, or the Common Serjeant.

Sir Fr. Winn. You say, as soon as my Lord Mayor withdrew, during the Time of Election, the two Sheriffs managed the Hall.

Mr. Lightfoot. In that manner with others.

Sir Fr. Winn. Mr. Lightfoot, do you remember who adjourned the Hall, when Mr. Bethel and Mr. Cornish were chosen?—Mr. Lightfoot. I can't tell.

Mr. Serj. Jefferies. Mr. Common Serjeant, are you sworn?

Mr. Com. Serj. Yes.

Mr. Serj. Jefferies. Pray will you tell my Lord and the Jury what you have observed in particular, because I mentioned it, in the Time of Sir Robert Clayton? Mention how that was.

Mr. Com. Serj. My Lord, when the Common Crier hath made Proclamation, the Lord Mayor and Court of Aldermen being set upon the Hustings, Mr. Recorder makes a Speech; as soon as that is done, my Lord Mayor and the Aldermen retire into this Court, leaving the Sheriffs and me, and the rest of the Officers, upon the Hustings, and I there manage the Election; and when the Election is made, I go up to the Court of Aldermen, and make Report of what hath been done in the Hall. I declare the Election, and I manage the Election, and do it as the Duty of my Place.

Mr. Williams. Who manages the Election?

Mr. Com. Serj. I manage the Election; I declare what is my Opinion of the Election in the Hall; and I come and make Report to my Lord Mayor in this Court; then my Lord Mayor, and the Aldermen, and the Recorder, come down again. I remember particularly when Sir Robert Clayton was Lord Mayor, it was about the Choice of Mr. Bethel and Alderman Cornish, and there was a great Disturbance in the Hall; then I came into the Court, and after I had made my Report, I offer'd to give the Paper to the Recorder that then was, Sir George Jefferies. He told me, That the People would not hear him, and therefore he would not take the Paper. Upon that Sir Robert Clayton said to me, Pr'ythee, do thou speak to them; they will hear thee, if they will hear any body; for the Hall was in a great Uproar, and they call'd to throw me off the Hustings, and then I made Answer to Sir Robert Clayton; Sir, it is not the Duty of my Office, and when I do any thing that is not my Office, I shall expect particular Directions. Then, faith he, you must tell them, I must adjourn them till Monday, because I go to the Old Bailey to try the Assassins of Arnold. Thereupon the Hall was adjourned, and Proclamation made to depart; and my Lord Mayor attempting to go, was beat back twice or thrice, but at last they let him and the Aldermen go, and kept the Sheriffs and me till Evening. At last Mr. Papillon came up to me; Mr. Papillon, says I, I am glad to see you, you will hear Reason. Says he, Why do not you go on with the Poll? I told him, my Lord Mayor had adjourned the Hall. Says he, I did not hear it before; but now you tell me so, I will go out of the Hall. Says I, Sir, you will do very well to tell the Hall so; which he did, and some went away; and further Adjournments were made by the Direction of my Lord Mayor.

Mr. Att. Gen. I would ask you a Question or two: Who do you look upon to be the Chief Magistrate of the City?

Mr. Com. Serj. My Lord Mayor, Sir.

Mr. Att. Gen. Pray, in all your Time till this, was there no Uproar? Did ever any Sheriff undertake to controul the Mayor in the Business of putting Questions, or taking Votes?

Mr. Com. Serj. Sir, there was never any Dispute till Mr. Sheriff Bethel was upon the Hustings, and then there was.

Mr. Att. Gen. As whose Officer did you do it?—Mr. Com. Serj. My Lord Mayor's, and the City of London's; I have nothing to do with the Sheriffs; for when there is a Writ comes for the Choice of Parliament-men, directed to the Sheriffs, I never do it, but Mr. Secondary.

Mr. Att. Gen. I speak of latter Disturbances.

Mr. Com. Serj. The first Dispute about Sheriffs, since I was Common Serjeant, was about Mr. Jenks, and that Poll was taken by the Direction of the Lord Mayor, by the Town Clerk, and myself; and our Books say, If there be a Dispute in the Common Hall, it must be decided as in the Common Council. It is in Liber albus.

Mr. Att. Gen. Liber niger.

Mr. Serj. Jefferies. No, Liber albus.

Mr. Att. Gen. Liber albus? It is Liber niger, they turn the white Book into a black Book now.

Sir Fr. Winn. At that Time, Sir, when my Lord Mayor was willing to go to the Old Bailey, Did the Sheriffs do any thing farther?

Mr. Com. Serj. The Sheriffs did not meddle in the Matter.

Mr. Serj. Jefferies. Mr. King, pray give my Lord and the Jury an Account of what you know of this Matter.

Mr. Peter King. I have been at a Court of Common Hall 28 Years, my Lord, and have been concerned; I never looked upon the Sheriffs to have any Concern there. And I do very well remember Sir George Jefferies; I do remember and know, they did always in ancient Times take Advice of the Officers by, and they never did esteem themselves in those Days, to be any more concerned than as the best Officers to be preferred before the rest: When my Lord says, Come up, they come in Order, the Masters and Wardens of the Companies.

Mr. Att. Gen. Who did do the Business upon the Hustings?

Mr. King. All of them, Sir, all together.

Mr. Att. Gen. Was there never any Difference about the Votes?

Mr. King. Sometimes they have stood upon it.

Mr. Att. Gen. When there was a Question made to know who had the most, who decided it?—Mr. King. They generally asked one another, What do you think, and what do you think? I speak for twenty Years together since the King came in.

Mr. Att. Gen. I hope in God there hath been a King in England for twenty Years, tho' perhaps some of the Sheriffs that were then in Debate, would have had none.

Mr. Thompson. Mr. King, I only desire to know this of you, because I know you know Questions; I desire, my Lord, to know whether he speaks it to be a Matter of Right, or his Opinion; for we know Mr. King's Opinion will go a great way in this Matter. Do you speak it as a Thing of Right, or as your Conceptions?

Mr. King. Sir, it would be a thing very confident in me to determine of the Right, but only as I always esteem'd it.

Mr. Serj. Jefferies. Mr. King, I would ask you this Question; Pray do you tell your Belief upon the Observation that you have made from time to time of the Practice there?—Mr. King. An hundred and a hundred Common Halls I believe I have been at.

Mr. Thompson. That's good Store.

Mr. Serj. Jefferies. That may be when there are many Fines; when I was Common Serjeant, there were 5000 Pounds Fines one Year.

Sir Fr. Winn. I desire you to give your Opinion; you say they are all equal that are there.

Mr. King.



Mr. King. Every Officer in his Degree: for if twenty Men go together, he that is best speaks first.

Mr. Att. Gen. Were the Sheriffs allowed to be there, or no?

Mr. King. The Sheriffs are always bound to attend my Lord Mayor by their Oaths, unless they have lawful Excuse.

Mr. Jones. Mr. King, did the Sheriffs ever continue the Assembly after it was dissolved?—Mr. King. No, Sir.

Mr. Jones. Or could they do it?—Mr. King. I can't say that.

Mr. Thompson. Did you ever know my Lord Mayor adjourn the Court till the Hall had done?—Mr. King. I can't tell.

Mr. Thompson. I tell you, Sir, Sir Samuel Starling did.

Mr. Serj. Jefferies. But the Sheriffs could not do it.

Mr. Thompson. Nor he neither; for he paid for it.

Mr. Holt. Mr. King, I ask this Question; Who declares the Poll in the Hall?—Mr. King. The Common Serjeant.

Mr. Holt. Whodirects him usually?—Mr. King. His Office directs itself.

Mr. Holt. I ask, if the Sheriffs don't agree, who is elected before the Common Serjeant make Proclamation.

Mr. King. They always agree, unless it be very clear; I have known the Common Serjeant do it several times without disputing.

Mr. Com. Serj. When Persons are put in Nomination, and the Hands are held up; I generally ask the People about me, who have most, and particularly the Sheriffs, and so make Declaration.

L. C. J. The Officers ask one another, who they think has most? That doth not give them the Jurisdiction, that they choose Officers without the Lord Mayor or Sheriffs: But, for aught that I see, these Officers have had more to do about the Choice than the Sheriffs have. These Officers consult one with another commonly, and conclude which Side have most; and then report it to my Lord Mayor.

Mr. Serj. Jefferies. First of all, when they put any Question for any Officer in the Common Hall, the usual way of putting the Question is, *As many of you as would have such a Man to be such an Officer, hold up your Hands*: And if the Election be clear, Proclamation is made presently: If not, the Common Serjeant asks, *Who they think hath the Majority?* Which being declared, they acquiesce. But since Mr. Bethel came in, there have been very hot Disputes in the World; but before his Time there were Attempts made to keep Sheriffs off, but never before to get Sheriffs on. And after the Election is declared below, immediately they go to my Lord Mayor, and report it to him: And then comes down the Mayor and Aldermen to the *Hustings*, and the Recorder says, *We are informed, that such and such Persons have been put in Nomination, and the Election passed upon such and such*. And then the Lord Mayor commands the Assembly to be dissolved.

Mr. Wells. When the Common Hall is first met together, are not the Lord Mayor and Aldermen generally present?

Mr. Com. Cryer. At the first Meeting.

Mr. Serj. Jefferies. When they are there set, give an Account what Proclamation is there made.

Mr. Att. Gen. How long have you known it?

Mr. Com. Cryer. I have been in this Place almost seventeen Years; I always come with my Lord Mayor; I do make Proclamation by Order of my Lord Mayor, dictated by the Town-Clerk; and I take the Words from the Town-Clerk; and his Words I say; *You good Men of the Livery, summoned to appear here this Day, for the Confirmation of such a one chosen by my Lord Mayor, and another fit and able Person, to be Sheriffs of the City of London, and County of Middlesex for the Year ensuing, draw near, and give your Attendance*. I never adjourned the Court in my Life, but by Order from my Lord Mayor; nor never dissolved the Court, but by Order from my Lord Mayor.

Mr. Serj. Jefferies. Mr. Com. Cryer, I would fain know this; When my Lord Mayor is gone, and the Aldermen, during the Election, do you ever dismiss the Court before my Lord comes down again; and do not you take the very Words of Dissolution from the Town-Clerk?

Mr. Com. Cryer. I do so.

Mr. Serj. Jefferies. And what is usual in your Time when Sheriffs have fined off; who gives Directions for a Common Hall?

Mr. Com. Cryer. My Lord Mayor, Sir.

Mr. Att. Gen. Who is it puts the Question, the Common Serjeant or the Cryer?

Mr. Com. Cryer. The Common Serjeant dictates the Words to me; and I never take them from any other; I have taken the Paper into my own Hands, but never but one Year neither, when they were in a Confusion; the Time when Mr. Bethel was chosen there was some Difference, I did read the Names that Time, and never but that one Time. I always take the Words from the Common Serjeant; I never put any Vote, but what I have from the Common Serjeant.

Mr. Att. Gen. Do the Sheriffs put any Vote?

Mr. Com. Cryer. Never, Sir.

L. C. J. I do not understand him; I think he did mean, when Bethel was chosen, he put the Question by somebody else.

Mr. Serj. Jefferies. No, no, he took the Paper in his Hand. Before he used to take Dictates from the Common Serjeant; but there was a Confusion when Bethel was chosen, and then he took the Paper from the Common Serjeant and read it.

Mr. Com. Cryer. He gave the Paper into my Hand.

Mr. Com. Serj. My Lord, they made such a Noise, that he could not hear me.

Mr. Williams. Mr. Wells, How long have you been Common Cryer?

Mr. Com. Cryer. About seventeen Years.

Mr. Williams. In all that Time did you ever hear the Lord Mayor adjourn the Court to a certain Day?—Mr. Com. Cryer. Yes.

Mr. Williams. To a certain Day?—Mr. Com. Cryer. My Lord Mayor adjourn'd this Common Hall to a certain Day.

Mr. Williams. I ask you upon your Oath again, Did you ever know the Lord Mayor adjourn a Common Hall to a Day certain?

Mr. Serj. Jefferies. Do you remember that of Sir Robert Clayton's?

L. C. J. If to be they be adjourned, to meet upon a new Summons, if there be Occasion, no Question but he may to a certain Day.

Mr. Williams. Now we are upon Matter of Fact.

Sir Fr. Winn. Did you ever know my Lord Mayor adjourn them before the Election of Sheriffs was over? Here is my Question, observe it. When after once my Lord Mayor is gone out of the Hall, when the Election be-

gins, did you ever know my Lord come and disturb the Election, or adjourn it before it was done?

Mr. Com. Cryer. I never knew any thing of it before now.

Mr. Att. Gen. Mr. Wells, Do you remember that Instance in Sir Robert Clayton's Time?—Mr. Com. Cryer. No, Sir.

Mr. Att. Gen. Have not you known my Lord Mayor dissolve the Court before the Business hath been done; take up his Sword and be gone?

Mr. Com. Cryer. When he hath a mind to adjourn the Court, and declare it, I adjourn it by his Order.

Mr. Att. Gen. But have you not known him take up his Sword, and be gone before the Election is over?

Mr. Com. Cryer. Sir Robert Clayton did do that before the Business was done.

Mr. Thompson. Mr. Wells, Do not you remember, in Sir Samuel Starling's Case, that he did adjourn the Hall?

Mr. Com. Cryer. He dissolved the Hall.

Mr. Thompson. Very well.

Mr. Serj. Jefferies. He did dissolve the Hall, and so hath every Lord Mayor since. My Lord, if your Lordship please, I perceive this Gentleman makes a Question, Whether ever there was an Adjournment of a Common Hall before such a time as the Election of Sheriffs was over. I will give you an Answer to that Question, and a very fair one, and a plain one: I say, till the Time of Bethel, in Sir Robert Clayton's Mayoralty, there was never such a Thing as a Poll for Sheriffs.

L. C. J. Silence, that we may hear.

Mr. Williams. My Lord, we only ask a Question, we ask a Question, and take our Answer.

Mr. Serj. Jefferies. Will you give us Leave to go on, Sir?

Mr. Att. Gen. Sir William Hooker, Pray how long is it since your were Sheriff of London?—Sir William Hooker. About Sixteen or Seventeen Years ago.

Mr. Att. Gen. You have been Sheriff and Lord Mayor of London: I would only know, Whether you looked upon it as your Right when you were Sheriff?

Sir William Hooker. No, nor ever durst presume to think it: In those Days it was not thought upon.

Mr. Att. Gen. When you were Lord Mayor, did you order Summons for Common Halls?—Sir William Hooker. Always.

Mr. Att. Gen. Did you ever use to consult with your Sheriffs when to call a Common Hall?

Sir William Hooker. Never; and I think no such Thing was ever heard of under the Sun, till of late.

Mr. Thompson. Sir William Hooker, did you ever adjourn the Court before the Business was done?—Sir William Hooker. I never saw any such Occasion; Rebellion was not ripe then.

Mr. Att. Gen. Sir William, Pray thus; Have you ever in a Common Council, or Common Hall, known my Lord Mayor rise before the Business was done, and take his Sword?

Sir William Hooker. I confess I must own it, that when Things grew to a greater Height, I was forced once in this Place to cause the Sword to be taken up and go out, and the Court was dissolved, and durst not go on after I was gone.

Mr. Serj. Jefferies. Now, my Lord, if your Lordship please, I desire to call the Sword-bearer.

Mr. Williams. Sir William Hooker, if I may, without Offence, ask you, How old are you?—Sir William Hooker. Seventy Years of Age, Sir.

Mr. Williams. You say, you never knew Rebellion ripe?

Sir William Hooker. Good Sir, I perceive you are very apt to mistake; I lived in 41 and 42.

Mr. Att. Gen. Sir William, Can you remember the Meeting in 48?

Sir William Hooker. Ay, very well.

Mr. Att. Gen. Then they usurped the very same Power, and an Act of Parliament to confirm it.

Mr. Serj. Jefferies. My Lord, I desire Mr. Sword-bearer may be sworn.

Sir Fr. Winn. Pray, Sir, in all the Time that you have been acquainted with the Customs of London, did you ever know when there was an Election for Sheriffs, that the Lord Mayor did interpose or meddle till the Election was over?

Sir William Hooker. Sir, of late Years I have not appeared, because of an Infirmary, I cannot be long in London; but in all that Time I used to appear, I never did observe any such Thing.

Sir Fr. Winn. That the Mayor ever meddled?

Sir William Hooker. Nay, Sir, that the Sheriffs ever meddled. When I was Sheriff of London, I durst not presume to meddle, but left the whole to my Lord Mayor.

Sir Fr. Winn. Did you ever know, when the Election of Sheriffs was in a Common Hall, that the Lord Mayor offered to disturb them till the Election was over?

Sir William Hooker. Truly I do not remember any such Thing. Sir Fr. Winnington, I would give you a full Answer; I do tell you, as it hath been declared, my Lord Mayor and Aldermen come into the Court, and a Report is made; when this is done, they leave the Management of the Affair to others; we come and sit down till it is done.

Sir Fr. Winn. To whom do you leave the Concernment?

Sir William Hooker. To the Officers that it belongs to.

Sir Fr. Winn. Who are those Officers?—Sir W. Hooker. I never heard it disputed till just now.

Mr. Jones. Sir W. Hooker, you have been an ancient Citizen: Do you remember, that ever the Sheriffs presumed to hold this Court?

Sir William Hooker. No, never in my Life.—You may confound any Man at this Rate.

Mr. Williams. Pray, Sir, in your Time was there a Poll for Sheriffs in London?—Sir William Hooker. Truly not as I remember.

Mr. Williams. Do you remember any Poll in your Time? If you don't remember a Poll, you can't remember who took it.

Mr. Sol. Gen. Pray, Sir William Hooker, do you ever remember the Sheriffs appointed the Common Serjeant to take the Poll?

Sir William Hooker. Never in my Life.

Mr. Serj. Jefferies. Mr. Sword-bearer, I won't ask you how old you are; I desire to know how long you have been an Officer in this City?

Mr. Sword-bearer. Three-and-twenty Years.

Mr. Serj.



Mr. Serj. Jeff. I desire to know in all your Time, who ordered Common Halls? Who gave Direction for the summoning Common Halls?

Mr. Sword-bearer. My Lord Mayor always.

Mr. Serj. Jeff. Did my Lord Mayor use to send for the Sheriffs, to know of them when they would be pleased to have a Common Hall?

Mr. Sword-bearer. I never knew that the Sheriffs did interpose in calling a Common Hall in my Life.

Mr. Serj. Jeff. Mr. Sword-bearer, at such time as the Business was done, when the Common Cryer had Directions for dissolving the Common Hall, pray who used to give these Directions all along?

Mr. Sword-bearer. It was done by the Town Clerk, and my Lord Mayor's Officers.

Mr. Serj. Jeff. Did ever the Sheriffs continue the Hall after my Lord Mayor had adjourned it?

Mr. Sword-bearer. Truly I know no such thing.

Mr. Thompson. Mr. Sword-bearer, I would ask you one Question: If in Case the Common Serjeant, or the Common Cryer, or any other Officers do put a Question that the Commons would not have put, who orders them to put the right Question?

Mr. Sword-bearer. I can't say any thing to that.

Mr. Att. Gen. After the Common Serjeant comes up and reports what is done, then what doth my Lord Mayor do?

Mr. Sword-bearer. My Lord Mayor and the Aldermen go down to the Hustings, and it is declared by the Recorder, or the Common Serjeant, by the Order of my Lord Mayor.—I think my Lord Mayor went once down to give them some Satisfaction upon a Dispute.

Sir Fra. Winn. Mr. Man, during the Election did you ever hear them adjourn'd before it was over?

Mr. Sword-bearer. No, Sir; nor never heard any Occasion for it.

Mr. Williams. The Common Serjeant affirms himself to be a Servant to the Commons, and not to the Lord Mayor and Aldermen; have you known a Common Serjeant say, he was a Servant to the Commons, and not to the Lord Mayor and Aldermen?

Mr. Sword-bearer. I never was in a Common Hall upon any such Dispute, I am with my Lord Mayor.

Mr. Serj. Jeff. I have known a Recorder reprehended by a very learned Lawyer, for saying, *My Masters the Aldermen*.

Sir Fra. Winn. I ask you who hath the Management of the Common Hall in the Absence of the Mayor.

Mr. Sword-bearer. I am always here waiting upon my Lord Mayor.

Mr. Serj. Jeff. My Lord, if your Lordship please, we will rest here as to Point of Right. Now, my Lord, in the next place we will come to that which is a more immediate Question before you, and we will prove the manner of it, and the Persons that are guilty; for that is the next Step we are to go.—Mr. Bancroft.

Mr. Williams. My Lord, they have laid in the Information, That the Sheriffs are duly Elected, for one Year next following, from the Eve of St. Michael; now prove your Election to be for that Year you have laid in your Information.

Mr. Thompson. My Lord, they have certainly in Fact mistaken their Information. My Lord, they do declare that the Common Hall was held, according to Custom, for the Election of Sheriffs, to hold that Office from the Eve of St. Michael, for the Year next ensuing: Now, my Lord, that is not so in Fact, nor never was, for the Election is for a Year to commence on Michaelmas Day. They take on the Eve the Office upon them, but they do absolutely exercise the Office for a Year from that Time, from the Eve. Now, my Lord, we say, that Day is excluded; we are sure it is a Common Case, it is known very well; as in a Lease, the *Habendum* from any Date, the Day of the Date is no part of that Lease, it is exclusive and no part of the Term, and therefore, my Lord, if they do not prove it as they have laid it, we hope they will be nonsuited.

Mr. Sol. Gen. That is another piece of Law.

Mr. Holt. The Eve of Michaelmas Day, we make this Objection, and put you to prove it.

Mr. Serj. Jeff. Give us Leave to go on: Gentlemen, let us prove what we think fit; and if we have not made it out, then make your Exceptions.

Mr. Holt. Mr. Serjeant, I think it is proper to put it now, for if there be no such Election, there can be no such Riot; for they have made it a Riot in a special manner.

Mr. Serj. Jeff. Mr. Holt, under your Favour, it is not a Time now.

Mr. Att. Gen. This is the oddest way; these Gentlemen take upon them so: I will not prove it; and pray be quiet till I come to my time.

Sir Fra. Winn. Pray, Mr. Attorney, if we have an Objection to make, if the Court please we may be heard.

Mr. Serj. Jeff. Certainly it was never known, that when Mr. Attorney exhibited an Information, to tell us how to prove it. Surely, Gentlemen, you will give us Leave to go on with our Proof, won't ye?

Mr. Malloy. Mr. Bancroft, How long have you been a Servant of the City? By whose Order was the Hall summoned?

Mr. Bancroft. By my Lord Mayor's.

Mr. — Who hath dissolved them?—Mr. Bancroft. My Lord Mayor.

Mr. — Did you ever know the Sheriffs give any Order for the dissolving of it?—Mr. Bancroft. No.

Mr. Thompson. Did you ever know it dissolved before the Business was done for which they were call'd? Did my Lord Mayor in your time either dissolve them, or send them going, till the Election was over?

Mr. Bancroft. I can say nothing to that.

Mr. Att. Gen. Mr. Bancroft, I would ask you this, Sir; Did the Sheriffs ever continue the Hall after my Lord Mayor had dissolved it?

Mr. Bancroft. No, I never knew that in my Life.

Sir Fra. Winn. Mr. Bancroft, I would ask you a Question; I don't ask you who calls them, or bids them go home; during the Time of the Election did my Lord Mayor ever meddle?

Mr. Bancroft. My Lord Mayor withdraws?

Sir Fra. Winn. Who are those among the Commons, that manage the Business when my Lord Mayor withdraws?

Mr. Bancroft. The Sheriffs, and the Common Serjeant, and the Common Cryer.

Sir Fra. Winn. Who manages the Election? Who declares the Election? Who declares who is chosen?

Vol. III.

Mr. Bancroft. When the Election is made below, then the Sheriffs come up, and the Common Serjeant, and the Common Cryer along with them, and acquaint my Lord Mayor, and he goes down, and there doth confirm the Election; and withal, when the Work is done he dissolves the Court.

Mr. Williams. Did you ever know a Poll for Sheriffs?

Mr. Thompson. Do you take the Common Serjeant to be an Officer of the Commons of London, or an Officer of my Lord Mayor's?

Mr. Bancroft. I cannot be certain what he is.

Mr. Thompson. If in case the Common Serjeant differ from them in declaring the Poll, is it not usual for the Common Hall to order him to put it up again?

Mr. Serj. Jeff. Who does make a Judgment of the Election, the Common Serjeant, or the Sheriffs?—Mr. Bancroft. The Sheriffs.

Mr. Serj. Jeff. Does not the Common Serjeant make Observation as well as the Sheriffs?

Mr. Bancroft. The Sheriffs give their Opinions in it.

Mr. Serj. Jeff. Now, my Lord, if your Lordship please, if they had done, we would desire to go on to our Fact; for otherwise, for ought I perceive, we shall be in here till this Time To-morrow, and they say, we must not adjourn till the Cause is over. Mr. Common Cryer; hark you, Mr. Common Cryer, were you present at *Midsummer Day* when this Business happened? Give my Lord and the Jury an Account of the Carriage then.

Mr. Com. Cryer. I was there at the Beginning of the Election; I did make Proclamation, and afterwards there was a Pell demanded, and the Poll was begun, and I went home with my Lord Mayor; afterwards my Lord Mayor came back again, and there was a Hubbub; but about five or six a Clock, my Lord Mayor came down upon the Hustings, and I adjourn'd the Court till another Day; I did adjourn it by his Order, according as I used to do, and then I went away with my Lord Mayor.

Mr. Att. Gen. But what Usage had you in going out?

Mr. Com. Cryer. I went before my Lord Mayor, I was not with him. Mr. Williams. Where was the Adjournment?

Mr. Com. Cryer. Upon the Hustings.

Mr. Williams. Were the Sheriffs polling the People then?

Mr. Com. Cryer. I don't know that, Sir.

Mr. Williams. Were the Sheriffs near the Hustings?

Mr. Com. Cryer. I don't know, I saw them not.

Sir Fra. Winn. Upon the Election of them, when my Lord Mayor came to adjourn the Court, were the Sheriffs acquainted with it? Where were the Sheriffs?

Mr. Com. Cryer. My Lord Mayor sent to them.

Mr. Serj. Jeff. Mr. Weston, Pray will you tell my Lord and the Jury what Directions you had from my Lord Mayor, and how he was used when he came out of the Hall?

Mr. Weston. My Lord Mayor sent me, my Lord, to the Sheriffs under the *Lumbar House* twice to come up to the Council Chamber, and they told me: One told me he was upon the King's Business; and the other said he could not come; and about half an Hour after, my Lord, Sheriff *Pilkington* came up to my Lord Mayor into the Council Chamber, and then immediately came down to the Court of Hustings, and Mr. Common Cryer, by my Lord Mayor's Order, did adjourn the Court from *Saturday* till *Tuesday* following; and as we were coming out of the Hall, when Mr. Common Cryer had adjourn'd the Court, and said, *God save the King*, a great Part of the Hall his'd; and, but that there were so many honest Gentlemen about my Lord, I was afraid my Lord would have come to some Mischief; but coming to go into the Porch-yard, I saw his Hat off, and I went to catch his Hat, and caught one of his Officers by the Head, that was knocked down or fell down, that held up his Train. My Lord, the Sword was at that Distance, farther than it is between your Honour and where I stand, and crouded far away; and when my Lord came out into the Yard, Gentlemen, says he, I desire you would go home to your Lodgings, and commanded them in the *King's Name* to depart: And, says he to me, Pray go you back, and let the Sheriffs know, and tell them I have adjourn'd the Court till *Tuesday*. Upon my Lord's Command, I went back to let the Sheriffs know, that my Lord had adjourn'd the Court till *Tuesday*.

Mr. Serj. Jeff. Both of them, both *Shute* and *Pilkington*?

Mr. Weston. No, *Shute*; t'other was by.

Mr. Serj. Jeff. It was in his hearing, was it not?

Mr. Weston. It was in his hearing.

Mr. Serj. Jeff. Did you see my Lord Mayor down, and his Hat off?

Mr. Weston. I saw his Hat off, Sir *George*, but I can't tell how it came off.

Mr. Williams. You say, you saw my Lord's Hat off; can you tell whether my Lord was so courteous to take his Hat off or no?

Mr. Weston. I dare say, my Lord did not.

Mr. Williams. Did he, or no? I ask you upon your Oath?

Mr. Weston. I can't tell that, Sir.

L. C. J. I can't think that those Gentlemen were so extraordinary civil to my Lord Mayor, that when the Common Cryer made Proclamation *God save the King*, that there should be hissing; those that hissed were not extraordinary civil to my Lord Mayor, and I believe you don't think so neither.

Mr. Williams. I ask you a Question. My Lord Mayor's Hat was off—

L. C. J. Ay, and it must be supposed it was to compliment those fine Men that his'd at *God save the King*.

Mr. Serj. Jeff. My Lord, if your Lordship please, I would desire to know what Account any of them can give of the Opinion they had of the King, to be sure they had a great Opinion of his Representative: But my Lord Mayor, I find, was so extraordinary civil, that to this Rabble he must not only pull off his Hat, but fling his Hat to the Ground to them.

Mr. Thompson. I ask you whether you know that any of the Defendants in this Information did throw my Lord Mayor's Hat off, or no?

Mr. Weston. I can't say that.

Mr. Serj. Jeff. It is not a Farthing matter.

Sir Fra. Winn. Here is a mighty Riot upon the Hat.

Mr. Weston. Now I desired them to keep back; my Lord Mayor's Friends did press back as much as they could, to preserve my Lord Mayor; they press'd more forward, as the other kept back, and I desired them to forbear, nay, commanded them in the *King's Name*, and upon their Peril, and took my Cane to strike at some of them.

Mr. Williams. Did you?



Mr. Serj. *Jeff.* He served them well enough.

L. C. *J.* He did so. Do you think a Magistrate is to be crouded and press'd upon?

Mr. *Weston.* I struck at them, and said, Gentlemen, keep back, and intreated them and commanded them, and all would not do.

Mr. Serj. *Jeff.* I would only say this, Mr. Common Serjeant; What did you hear when Proclamation was made to depart?

Mr. Com. Serj. My Lord, I was not in the Hall when Proclamation was made; but I heard them cry out, *No God bless the King*; and I heard them cry out, *Down with the Sword*; *No Lord Mayor, no King*,

Mr. *Williams.* Can you name any Person that said this?

Mr. Com. Serj. My Lord, I laid hold on one Man that cried, *No God save the King*; *No Lord Mayor*, and the Rabble got him from me, one that I heard say so.

Mr. *Williams.* Mr. Common Serjeant, you say you heard this; can you name any Person?

Mr. Common Serj. I tell you I caught hold of him, and the Rabble got him from me.

Mr. *Williams.* Can you name any one?

Mr. Com. Serj. I tell you I cannot.

Mr. Serj. *Jeff.* My Lord, I hope that will not much prevail in this Place; but I hope it doth justify my Lord Mayor for endeavouring to disperse the Rabble that came together to that Height when the King was prayed for, to cry out, *No King, No Lord Mayor*. And we don't give this in Evidence against any one Person, for it was done in a tumultuous Manner; but they were so fond of this Man, as that they rescued him from him; and to fix it upon them, we will prove they were every one of them concerned in the Riot. Mr. *Craddock*, What Account can you give of this Matter?

Mr. *Craddock.* I was standing at the Place where they poll'd, and my Lord Mayor was coming towards it to protest against their Manner of Proceeding; and Sheriff *Bethel* came to me and said, *Resist him* (I think) *he hath nothing to do here*.

Mr. Serj. *Jeff.* That was *Bethel*, *Slingsby Bethel*?

Mr. *Craddock.* It was either *oppose*, or *resist* him.

Mr. Sol. Gen. He says he thinks he said, *Resist him*; but he is sure it was either *oppose*, or *resist* him.

Mr. Serj. *Jeff.* Did you see Mr. *Jenks* there?

Mr. *Craddock.* I can't say I did: I saw Mr. *Jenks* just as my Lord Mayor came down, not after.

Mr. Serj. *Jeff.* Did you see Mr. *John Deagle* there?

Mr. *Craddock.* I did not see Mr. *Deagle*.

Mr. Att. Gen. How did they use my Lord Mayor?

Mr. *Craddock.* I was not very near my Lord; my Lord, I stood at the Place where the Poll was taking.

Mr. *Thompson.* Mr. *Craddock*, We desire to ask you this Question, that you speak particularly to Mr. *Bethel*; Was it before my Lord Mayor had adjourn'd the Poll, or after?

Mr. *Craddock.* It was just as my Lord Mayor came to protest against the Manner of Polling.

Mr. *Thompson.* Was the Poll adjourn'd before or after?

Mr. *Craddock.* It was after.

Mr. *Williams.* Mr. *Bethel*, you say he said, *Oppose*, or *Resist*; did he say it was before the Poll was adjourn'd?

Mr. *Craddock.* Yes, Sir, it was before.

Mr. *Williams.* Can you say what the Words were?

Mr. *Craddock.* It was either *Oppose*, or *Resist*, *he hath no Authority here*.

Mr. Serj. *Jeff.* Which is *George Reeves*? Mr. *Reeves*, Pray will you tell us what you did observe done at this Time by Mr. *Pilkington*, or Mr. *Shute*, or any Person else?

Mr. *Reeves.* I came about four or five o'Clock to the Polling-place where the Coaches use to stand, and I saw the Sword up; I suppose my Lord Mayor was there, and came to stop their Proceedings in Polling; and there was a great Contest among them; some saying, *He hath nothing to do there*: *He hath no more to do than I*, says one; another cried, *Stop the Sword, Stop the Sword*; and I laid hold of him, and got him a little way, and made account to have carried him to the Sheriffs, and the Lord Mayor, but somebody got him away.

Mr. Serj. *Jeff.* What did you observe *Shute* and *Pilkington* do?

Mr. *Reeves.* They encouraged the People to poll.

Mr. *Jones.* After my Lord Mayor was gone?—Mr. *Reeves.* Yes.

Mr. *Jones.* Pray you, Sir, did you observe either Mr. *Shute* or Mr. *Pilkington* encourage the People to Hollow or Shout, or those Things?

Mr. *Reeves.* No, Sir.

L. C. *J.* Hark you, Friend *Reeves*, hark you? How do you know that *Pilkington* or *Shute* were Polling? Are you sure they were Polling after my Lord was gone?

Mr. *Reeves.* They were at the Polling-places, and they did not go away a great while after that.

L. C. *J.* From the People that were about them?—Mr. *Reeves.* No.

Sir *Fra. Winn.* We agree it; in Fact it was so.

Mr. Att. Gen. *Richard Fletcher*, pray will you give the Court an Account of what they did?

Mr. Serj. *Jeff.* *John Hill*, What did you observe there?

Mr. *Hill.* About five o'Clock my Lord Mayor came to the Hall; there was with him then Sir *James Edwards*, and Sir *William Pritchard*, now Lord Mayor, to the best of my Memory, and he told them he disliked their Polling any more; and there came a tall black Man; says he, Mr. *Sheriff*, go on, it is your *Business*, we will stand by you: about a Quarter of an Hour after my Lord came out of the Hall to the great Crowd, some of the People Hissing, and some making a Noise; and one came to the Sheriffs, and, says he, Gentlemen, *Why do not you make Proclamation with Oyes*? And they continued there till towards eight o'Clock.

Mr. Serj. *J. ff.* Did you hear no Officer adjourn the Court?

Mr. *Hill.* My Lord Mayor went home, I saw him within Doors, and I came back again.

Mr. Att. Gen. Was there no Proclamation made afterwards?

Mr. *Hill.* By some of the Officers, but I did not take particular Notice.

Mr. Att. Gen. Who did you see here after you went home with my Lord Mayor, and came back again?

Mr. *Hill.* I saw here Mr. *Robert Key* for one; and I saw Mr. *Goodenough* come in between eight and nine here in the Hall; and my Lord *Grey* came in, and several other Gentlemen.

L. C. *J.* What did they do when they came?

Mr. Serj. *Jeff.* Hark you, *Hill*: Was my Lord *Grey* and Mr. *Goodenough*, and Mr. *Key*, were they among the People?

Mr. *Hill.* After the Sheriffs came up, they went into the Orphan's Court; Mr. *Goodenough* came in and out; and my Lord *Grey* went in to them.

Mr. Serj. *Jeff.* Did they appear among the People up and down in the Hall?

Mr. *Hill.* They went thro' the Hall to and fro.

Sir *Fra. Winn.* What was the Christian Name of that *Goodenough*?

Mr. *Hill.* I know him; he that was Under-Sheriff last Year: I know him well enough, and he knows me; yes, that is Mr. *Goodenough*.

Lord *Grey.* I desire to ask this Witness a Question, my Lord.

L. C. *J.* Let your Counsel ask, my Lord.

Mr. Serj. *Jeff.* I desire to know another Question. Did you see Mr. *Cornish*?

Mr. *Hill.* I saw Mr. Alderman *Cornish* walk in the Hall; but I can't tell whether he went into the Room or no. After my Lord was gone, he did come up into the Mayor's Court, and came through among the People.

Mr. *Thompson.* *Hill*, you speak of my Lord *Grey*; upon your Oath did you see my Lord *Grey* walk to and fro in the Hall, or only came thorough?

Mr. *Hill.* My Lord *Grey* came in at that Gate, and went thorough the in Hall, and went in to the Sheriffs.

Mr. *Williams.* I would ask you this upon your Oath. Did you see him do any thing more?

Mr. *Hill.* No; I was there to discharge my Office.

Lord *Grey.* My Lord, I own my being there; but only desire to ask a Question that will clear this Matter.

Mr. *Hill.* I saw my Lord *Grey* come up to those Stairs, and he went into the Orphan's Court.

Mr. Serj. *Jeff.* How long might that be after the Poll?

Mr. *Hill.* After the Sheriffs came up, I believe it might be half an Hour, or a Quarter of an Hour, near an Hour.

Mr. *Williams.* Did you see my Lord *Grey* do any thing more than walk?

Mr. *Hill.* I saw him come to the Orphan's Court, and they would not open the Door at first; but they said it is my Lord *Grey*, and then they let him in.

L. C. *J.* Your own Counsel is asking, my Lord; I am willing you should ask a Question if your own Counsel will let you. Gentlemen, my Lord would ask a Question himself, and you won't let him.

Lord *Grey.* My Lord, though I do not know this Gentleman at all, yet I will venture to ask him a Question. Pray, Sir, did you see me speak to any one Man?

Mr. *Hill.* I have answered that already; I say not.

Lord *Grey.* Were the Books brought from the polling Place by the Sheriffs before I came, before that I went in there?—My Lord, I was there, and shall give you an Account of it.

L. C. *J.* It had been better, my Lord, if you had kept away.

Mr. Serj. *Jeff.* *Fletcher*, pray will you tell my Lord and the Jury, what you observed that Day here, after my Lord Mayor was gone, and had adjourned the Court?

Mr. *Fletcher.* On the 24th of June I was here by Order of Sheriff *Shute*, after my Lord Mayor had adjourned the Court, and it was to call all Men that were to poll to come forward, for the Books were to be shut up, and I went away immediately; I was very hot, and went away to the *Three-Tun Tavern*.

Mr. Serj. *Jeff.* Did you see Mr. *Shute* there?

Mr. *Fletcher.* Mr. *Pilkington* was there, and Mr. *Shute* too.

Mr. Serj. *Jeff.* Can you name any Body else?

Mr. *Fletcher.* No; I can name nobody else.

Mr. Serj. *Jeff.* What did Mr. *Shute* say?

Mr. *Fletcher.* He ordered me to make Proclamation for all Men, them that had a Right to poll, to come and poll, for the Books were to be shut up.

Mr. Serj. *Jeff.* Captain *Clark*, Pray will you give an Account of what you observed?

Capt. *Clark.* I came down into the Hall, and I did hear a Whispering, whereupon I went to guard my Lord Mayor; my Lord Mayor came down upon the *Hustings*, and Proclamation was made for the Adjournment of the Court; whereupon when Proclamation, *God save the King*, was made, an hundred, &c. I believe more, hift at that; I laid hold of one of them, *No King's-man, no Sword's-man*, cry'd they. *Sirrah, you are a Rascal*, and a Traitor in your Heart, said I, and laid fast hold of him; but there was a very great Croud; and says one or two, *For God's sake, Captain Clark, do you guard my Lord*; there was Mr. *Weston* and Major *Kelsey*; My Lord said they, *is in Danger*; said I, Gentlemen, keep by him, or go before, I will be in your Rear Guard. My Lord Mayor was down upon his Knee, I can't tell how he came down; *Press on, press on*. this was the Cry, and *God save the Sheriffs*. After coming down the Steps, I pressed as near as I could to my Lord Mayor, to keep them off; Now, said I, *this is the Time to keep the Rabble off, now face about*; I had my Sword in my Hand, and with the Pommel of my Sword kept them off; *Before God*, said I, *will keep you off*; and so I waited on my Lord home, and went and drank Glafs of Sack. About an Hour or two Hours afterwards, I came down to the Hall and found the People shouting, *God save the Sheriffs, God save the Sheriffs*: *What nothing*, said I, of my Lord Mayor? But, said I, *this is a Place to quarrel in, let us not quarrel together*. I saw the Sheriffs *Pilkington* and *Shute* were concerned in carrying on the Poll, and this they continued to do for some time; at last, *I am weary of the Hall*, said I, *I will home*; and this was between eight and nine o'Clock.

Mr. Serj. *Jeff.* Can you remember any body else besides the Sheriffs?

Capt. *Clark.* No, Sir, I cannot.

Mr. Serj. *Jeff.* Can you remember Sir *Thomas Player*?

Capt. *Clark.* No, I can't.

Mr. Serj. *Jeff.* Captain *Clark*, did you know never-a-one of them that cried out so?

Capt. *Clark.* No, my Lord, I was before Sir *Robert Clayton*.

Mr. Serj. *Jeff.* Major *Kelsey*, Pray will you give my Lord and the Jury an Account of what you saw on *Midsummer-Day*?



Major Kelsey. My Lord, when my Lord came out of the Court, I went after, and some cried, *Stop him, stop him*; but I got between them, and some of my Lord's Friends kept them off; but when we came just to the going-out, they gave a Shout, and I saw my Lord Mayor's Hat upon his Back, and I can't tell whether he touched the Ground with his Hand, but I was e'en almost down; said I, *Gentlemen, do you intend to murder my Lord Mayor?*

Mr. Serj. Jeff. Who did you see there?

Major Kelsey. Indeed, Sir, I was almost down, and did not see their Faces.

Mr. Serj. Jeff. Mr. Trice Hammon, I would only ask you, Who did you see, who did you observe to be there?

Mr. Hammon. About nine a Clock at Night, or something before, I stood at the Door that leads to the \* Common Pleas, and there came in Alderman Cornish and Goodenough, and old Key, an old white-hair'd Man; and by-and-by my Master Sheriff Shute came out and told me, *I shall give you all Satisfaction by-and-by. God bless you, Mr. Sheriff*, said I; and he went again, and there I staid till they came out, and then he went up on the Hustings; and I went along with him when he came out.

Mr. Serj. Jeff. Who went with him out to go to the Hustings?

Mr. Hammon. Sir William Gulton, and several other Men; there is never a Name in the Indictment more.

Mr. Serj. Jeff. None of them that are in the Indictment? Name them.

Mr. Hammon. I have named them.

Mr. Serj. Jeff. Prithce name them.

Mr. Hammon. Mr. Alderman Cornish, both the Sheriffs, my Lord Grey, Mr. Goodenough, and old Mr. Key.

Mr. Thompson. Which Goodenough?

Mr. Hammon. That Mr. Goodenough that stands there.

Mr. Serj. Jeff. There is such a Noise, that I did not very well hear that Word.

Mr. Hammon. Goodenough; not that Goodenough that looks upon me, but he that stands behind.

Mr. Serj. Jeff. He falls behind now, but he ran up-and-down then; and Alderman Cornish was there too.

Mr. Jones. You Witness, you have named all these Men; what did Shute do, or what did he say?

Mr. Hammon. When he came upon the Hustings, he made Proclamation himself, because one or two refused it, he did it himself; and after a while he adjourned the Court upon the Hustings; this was on Midsummer-Day.

Mr. Jones. What did he say?

Mr. Hammon. As the Common Crier usually says at such Times.

Mr. Thompson. You say you saw Mr. Goodenough, and you saw my Lord Grey; upon your Oath, can you say they did any thing, or was any thing done in Abuse to my Lord Mayor?

Mr. Hammon. They did not tell me, my Lord, what they did.

Mr. Thompson. I ask you what did they do?

L. C. J. Mighty busy they were.

Mr. Thompson. How long was it after my Lord Mayor adjourned the Court?—Mr. Hammon. About two Hours.

Mr. Serj. Jeff. So much the worse.

L. C. J. You must understand it was some time before Mr. Sheriff had made his Adjournment, they were busy till that Time.

Mr. Serj. Jeff. My Lord, if your Lordship please, I do agree with Mr. Thompson, that the Jury should remember that this was two Hours after my Lord Mayor had adjourned the Court.

Lord Grey. I desire, my Lord, I may ask him some Questions. You say you saw me go to the Council-chamber, at what time, and who went with me?—Mr. Hammon. A little before Candle-light.

Lord Grey. You say all the Company went out with the Sheriffs, and went away—Mr. Hammon. My Lord, I did not say you came out.

Mr. Att. Gen. My Lord was of the Upper House.

Mr. Thompson. Yes, and may be there again.

Lord Grey. I hope I shall be there, Mr. Attorney.

Mr. Att. Gen. It had better you had been so then, my Lord.

Lord Grey. It will be the worse for you; I shan't lie Perdue for you.

Mr. Att. Gen. If you threaten me, my Lord, I shall take notice of it. My Lord, I have done you a Kindness; but if you come under my Hands again I shall not do it.

L. C. J. They would not have it said, *God save the King*; and, my Lord, you were with some of those that abused him.

Lord Grey. After it was over, my Lord.

Mr. Att. Gen. You were not within your Duty here.

Lord Grey. My Lord, it was after the Poll was closed.

Mr. Serj. Jeff. My Lord, I desire, if you please, what is usual in all Causes, that we might go on without any Interruption. Let us go on for the King, and then make all the Defence you can. Don't think either to hiss or threaten us out of our Cause. Mr. Higgins, give my Lord and the Jury an Account of what you saw or heard.

Mr. Higgins. My Lord, I attended with several of our Company by my Lord Mayor's Coach to Guild-hall, and was in the Council-chamber, and he sent for the Sheriff; after that he went away; and when *God save the King* was said, said they *God save the Protestant Sheriffs*.

Mr. Serj. Jeff. I desire to know, Mr. Higgins, this, what they said?

Mr. Higgins. They cried, *Down with the Sword*.

Mr. Thompson. Mr. Attorney is making a Speech to us, I don't know what he hath said.

Mr. Serj. Jeff. I don't think Mr. Attorney thinks you worth a Speech.

Mr. Higgins. I desire to ask you a Question, I ask you this Question upon your Oath, after the Adjournment of the Court, and after this very insolent Behaviour of some of the Rabble that were there, for I can call them no better, who did you see there?

Mr. Higgins. After I went home, I went to see my Lord safe home, and came back again, I saw one Freeman, that they call the Protestant Cheese-monger, calling, *To Poll, to Poll*.

Mr. Serj. Jeff. Pray who else did you see?

Mr. Higgins. I saw Mr. Alderman Cornish come up towards the Sheriffs: Gentlemen, said he, *You are doing right*.

Mr. Serj. Jeff. Did you hear Mr. Alderman Cornish say so: What, this Gentleman? Do you know him?

Mr. Higgins. Says he to Sheriff Shute, *You shall have all Right done to you*.

Mr. Serj. Jeff. Who else did you see there?

Mr. Higgins. I saw Mr. Swinock.

Mr. Serj. Jeff. Did you see Mr. Key? Did you see Mr. Pilkington?

Mr. Higgins. I did not see Mr. Pilkington: I saw Shute.

Mr. Serj. Jeff. Did you see Mr. Jekyl?—Mr. Higgins. Yes.

Mr. Serj. Jeff. Which of them do you mean?

Mr. Higgins. The elder Man.

Mr. Serj. Jeff. There is John Jekyl the elder, Gentlemen; and John Jekyl the younger.

Mr. Higgins. I was disputing with a Fellow that his Toes came out of his Shoes, and had a green Apron; said I, *Are you a Livery-Man?* Yes, I am, said he, *Surely*, said I, *they don't use to make such as you are Livery-Men*. Says Mr. Jekyl, *He may be as good a Man as you, for aught I know*. That was about half an Hour after my Lord Mayor went home.

Mr. Serj. Jeff. What Time was the Adjournment?

Mr. Higgins. About five or six. I was speaking something, *You are all in a Riot. This is no Riot*, says Mr. Swinock to me; I can never meet you, but you are railing against the King's Evidence.

L. C. J. The King's Evidence, what was that?

Mr. Williams. What was done by Mr. Jekyl?

Mr. Higgins. He was talking among the People.

Mr. Serj. Jeff. He did encourage among the rest.

Mr. Williams. You are in a Passion now.

Mr. Serj. Jeff. No, Sir, I am not.

Mr. Higgins. He seconded Mr. Cornish when he said, *Insist upon your Rights*.

Mr. Serj. Jeff. Who did so?

Mr. Higgins. Freeman, my Lord, that they call the Protestant Cheese-monger.

Mr. Williams. A very pretty Word indeed.

Mr. Serj. Jeff. Aye, so it is; he is so called; you will give us Leave to hear what the Witnesses speak.

Mr. Williams. Another Epithet would do a great deal better.

Mr. Serj. Jeff. William Bell, what was done upon the Spot? Was there any Hurt?

Mr. Williams. Do you say, upon your Oath, that Gentleman was there?

Mr. Higgins. I have seen him in the Balcony.

Mr. Serj. Jeff. He says, he uses to be there upon publick Days in the Coffee-house.—Bell, I would desire to know of you, whether you are able to give an Account after my Lord Mayor's Adjournment, who was there? Name as many Persons as you can.

Mr. Bell. Mr. Bethel; and I saw Mr. Cornish go through the little Gate into the Yard.

Mr. Serj. Jeff. Who else?

Mr. Bell. That is all, Sir; Sheriff Pilkington delivered two Poll-Books into my Hand.

Mr. Att. Gen. Mr. Vavasor, will you tell my Lord and the Jury what you saw?

Mr. Vavasor. It happen'd thus: Mr. Hammon had taken a Man upon Execution, who was Bail for a Client of mine who had paid the Moneys long before; upon that I came to know who employed him; and coming here, I found Mr. Hammon in that Place, and the Croud was so great, *Don't go back again*, said he, *for you will go near to be abused*. Whilst I staid there, I asked him what was the Meaning; says he, *In this Room are the Sheriffs and some others casting up the Poll*; and whilst I staid, there came in Mr. Goodenough to-and-fro from them, and before they would admit any, they would know their Names; there was Mr. Key, my Lord Grey, and and Sir William Gulton.

Mr. Att. Gen. What afterwards?

Mr. Vavasor. Yes, Mr. Cornish was there; he and Sheriff Shute came out together, and they went upon those Stairs under the Clock.

Mr. Att. Gen. Who came out with Sheriff Shute?—Mr. Vavasor. Cornish.

Mr. Williams. What Cornish?—Mr. Vavasor. Alderman Cornish?

Mr. Williams. Very mannerly.

Mr. Serj. Jeff. His Name was Cornish before he was an Alderman.

Mr. Vavasor. And Sheriff Shute told the People, *If they would stay a little time, he would give them Satisfaction*. Upon that, Mr. Cornish went through the Company; and when they came to the Hustings, Mr. Shute ordered Proclamation to be made, and told them, *Whereas my Lord Mayor had taken upon him to adjourn at nine a Clock; We the Sheriffs of London and Middlesex, being the proper Officers, do adjourn it to Tuesday at nine of the Clock*. Upon that, an ancient Gentleman desired they might proclaim the Election. Then says Shute, that *I can't do it now, for we have taken very good Counsel for what we do*. Had it not been for Mr. Hammon, I had been, I believe, trod under Foot sufficiently.

Mr. Serj. Jeff. Mr. Denham, who did you see?

Mr. Denham. I saw Sir Thomas Player, and Mr. Jenks.

Mr. Serj. Jeff. Where did you see them, pray?

Mr. Denham. In the Yard. I went home with my Lord Mayor, and then I saw them. I had a kind of a Glance, but I can't swear positively to Mr. Jenks.

Mr. Serj. Jeff. Sir Thomas Player, and Mr. Jenks, what did you see them do?

Sir Fr. Winn. Hark you, Friend, where was it you saw them?

Mr. Denham. In the Yard.

Sir Fr. Winn. What did you see them do?—Mr. Denham. Nothing at all.

Mr. Serj. Jeff. How many People might be there then? Two or three hundred?—Mr. Denham. Above a thousand.

Mr. Williams. What did you hear Sir Thomas Player say?

Mr. Denham. Nothing.

Mr. Williams. How far was he from his own Door?

Mr. Denham. On t'other Side the Hall.

Mr. Williams. A mighty way indeed, a mighty thing. What said Mr. Jenks?

Mr. Denham. I can't say, Sir, that I heard him speak a Word, only in the Tumult.

Sir Fr. Winn. Friend, I ask you this; I think I heard you say, you saw Sir Thomas Player and Mr. Jenks in the Yard, but you did not see them do any thing at all?—Mr. Denham. No.

Mr. Serj. Jeff. Pray, Mr. Farrington, will you tell my Lord and the Jury what you saw after my Lord Mayor had adjourned the Court?

Mr. Fa



Mr. Farrington. I saw there Sheriff Pilkington, Shute, Sir Thomas Player, Mr. Wickham the Scrivener in Lotburi, Mr. Jenks, Babington, one Jennings an Upholsterer.

L. C. J. Sir Thomas Player you say in the first Place?

Mr. Farrington. Yes, and Wickham, my Lord, a Scrivener in Lotburi.

L. C. J. Who then?

Mr. Farrington. Sheriff Pilkington and Shute, and Mr. Cornish, Alderman Cornish.

Mr. Serj. Jeff. Did you see one Deagle there?—Mr. Farrington. No, Sir.

Mr. Serj. Jeff. Wickham you saw there?

Mr. Farrington. Ay, Sir, I know him very well.

Mr. Thompson. What is Wickham's Christian Name?

Mr. Serj. Jeff. John Wickham, he goes by that Name, it may be he was not christen'd. Was Jenks there, do you know him?

Mr. Farrington. The Linen-draper.

Mr. Serj. Jeff. Ay, very well, he goes by the Name of Francis Jenks. Did you see Jenks there?

Mr. Farrington. I don't know the Name; I saw a great many I knew by Sight, but not their Names.

Mr. Holt. What did these Gentlemen do?

Mr. Farrington. I'll tell you, Sir; there was Sheriff Pilkington and Sheriff Shute, I went in where they were taking the Poll; said I, Gentlemen, my Lord Mayor hath adjourned the Court, what do you here? I suppose it lies in my Lord Mayor's Power; if it lies in him to call, certainly he must dissolve.

Mr. Williams. You argued thus.

Mr. Serj. Jeff. Pray give us Leave to go on.

Mr. Farrington. There was Mr. Wickham, and says he, My Lord Mayor hath nothing to do here, neither will we be ruled by any of your Tory Lord Mayors. This is not the first Asserption, said I, that you have cast upon a Gentleman that loves the Church and the Government established by Law; and they fell about me, and had it not been for Mr. Fletcher and Mr. Hill, I believe they had done me a Mischief; for they trod upon my Toes; who did it I can't tell.

Mr. Serj. Jeff. But you say Sir Thomas Player, and Pilkington, and Alderman Cornish, were amongst them?

Mr. Farrington. Yes, Sir.

Mr. Serj. Jeff. That's enough.—Pray Mr. Cartwright, will you tell my Lord and the Jury what you observed there, and who was there.

Mr. Cartwright. I know the Names of no Persons that were there; all that I can say was this: As soon as my Lord Mayor adjourned the Court upon the Hurlings, he came down, and going out of the Hall, he had like to have been thrown down, had it not been for Mr. Shaw; and going to save my Lord Mayor, I wrenched my Back, and I spit Blood for seven Days after.

Mr. Serj. Jeff. Tell that, Mr. Cartwright over again.

Mr. Cartwright. My Back was wrenched in saving my Lord Mayor, and I spit Blood seven Days after.

Mr. Serj. Jeff. Endeavouring to save my Lord Mayor his Back was so wrenched, that he spit Blood six or seven Days after. Hark you, Mr. Cartwright, ever since that Time have you found any Indisposition?

Mr. Cartwright. I have not been my own Man since.

Mr. Williams. He took a Surfeit.

Mr. Serj. Jeff. He took a Surfeit of ill Company I am sure.

Mr. Sol. Gen. Mr. Shaw, give my Lord and the Jury an Account of what you know.

Mr. Shaw. My Lord, my Lord Mayor sent to the Sheriffs, and ordered them to forbear polling, and come up to the Chamber, and sent two or three times; but they denied coming to him, and went on and ordered the Common Cryer to make Proclamation for them to depart; and if they staid, that he would look upon them as Rioters; and there was hissing and a great deal of Crowd; and there was Sir James Edwards in the Court, they hunched him with their Elbows; and as his Lordship came down, going down the Steps there was such a Crowd, that if I had not caught his Lordship in my Arms, he had fallen upon his Forehead, and his Hat was off.

L. C. J. Who did you see so misbehave themselves?

Mr. Shaw. My Lord, I can't tell.

Mr. Serj. Jeff. I think we have now proved it against every body we design, save only against Mr. Deagle; for we do not now proceed against Dorman, Newman and Benjamin Alsop. Now, my Lord, we will only prove against John Deagle, and then we shall have done. Mr. Kemp, will you tell my Lord and the Jury who you saw here? Did you observe any Particulars after the Court was adjourned?

Mr. Kemp. I don't remember I observed any one Man.

Mr. Serj. Jeff. You don't? Had you any Discourse with Mr. Deagle at any time?—Mr. Kemp. Yes, I had.

Mr. Serj. Jeff. What did he tell you?

Mr. Kemp. He did confes he was there about Seven a Clock at Night.

Mr. Serj. Jeff. He did own he was amongst them?

Mr. Kemp. Yes, with Alderman Cornish.

Mr. Serj. Jeff. What say you, Mr. Rigby?

Mr. Rigby. I saw him about Seven a Clock.

Mr. Serj. Jeff. Was he in the Crowd?

Mr. Rigby. Yes, amongst the People.

Mr. Serj. Jeff. Here is all now, Gentlemen, but Dorman, Newman and Benjamin Alsop, and we don't go against them now. After they had done this, and his'd at the King, and cried, No King, no Lord Mayor, what Acclamations went these People off with?

Mr. Hammon. When the Court was broke up by the Sheriffs, they cried, God save our true Protestant Sheriffs; and in that manner they hollowed us.

Mr. Serj. Jeff. What say you?

Mr. Hammon. They hollowed us home, Sir, as far as Fishmonger's-Hall.

Mr. Serj. Jeff. They began with a Hiss, and ended with a Hollow.

Mr. Williams. Gentlemen, I am Counsel for the Defendants; and, my Lord, the Question is, under Favour, Whether these Persons taken for Defendants, whether they be guilty of this Riot, as it is laid in the Information. We are now upon a special Case, and the Question is, Whether guilty, or not guilty? My Lord, in the first Place, for the Cries; what the Cry was hath been too often mentioned; for those Cries, there is nothing at all fix'd upon any Person that is Defendant; all that is charged upon us, is, that we were in the Hall it seems, and because there

was this Noise heard, therefore we must be guilty. In this Crowd where we are, I hear hissing, especially at t'other End of the Hall; which of us are concerned in it, is a hard matter to judge; it is a hard matter, and it were very well, and it had been very happy, if some of those Persons had been apprehended for their hissing. I won't say, Gentlemen, that either one Party or t'other in the Contest made the Noise of hissing, but therein nothing of it fix'd upon any of us. Our Case is this, my Lord, with Favour; When we have stated our Case and proved it, we are very innocent, and not guilty of the Riot. In some measure it hath been stated on the other Side. They say in the Information, that the Lord Mayor called a Common Hall; we don't dispute that matter, we agree it, that the Lord Mayor of London is the King's Lieutenant; but to make such an Inference, That because the Lord Mayor is the King's Lieutenant in the City of London, that he must execute all the Offices in the City, is of no Credit in the World; so that they are mistaken in that. Men are bounded in their Offices. The Lord Mayor does not execute all the Offices in the City tho' he be Lord Mayor. The Question between us is this; Whether the Sheriffs, in this Case, did more than their Office as Sheriffs of the City of London. There is a Superiority due to the Lord Mayor. Another Thing we agree with them; we agree it is in the Lord Mayor only to call these Common Halls, and as Mr. Serjeant Jefferies, that hath been in a good Office in the City, he agrees it himself: and it is apparent, there are some fix'd Days for Election; but yet tho' there be fix'd Days for Election, yet there must be that Formality of a Summons from the Lord Mayor to the City, to meet in order to the Election of Sheriffs for the City of London and other Officers; that we do agree that my Lord Mayor hath the Power of calling Common Halls, and he is the proper Officer. We agree also, Gentlemen, that when the Business is done, for there is nothing in vain in Nature, and there is nothing in Government that should be in vain, when the Business is done, my Lord Mayor is to bid the Company, Fare them well, which you may call discharging the Common Hall; we agree That to be commonly and usually done by my Lord Mayor. But herein we differ, which we are to try, the Right of the Office of Sheriffs being the Question; it is a Question of Right, and I don't see the Government is concerned one way or other.

L. C. J. Upon my Word I do see it; and surely you must be blind, or else you would see it too: When a Company is got together, No God save the King, no King, no Lord Mayor.

Mr. Williams. My Lord, I thought I had opened it plainly, I speak before a great many People; I desire, my Lord, this may be very well heard. I thought I had said very well, from all these Noises and Cries we are all innocent, we justify nothing of it, only we would have been glad if they had apprehended any Man that made that Noise; it had been a very happy thing if one of them, or all of them had been Defendants to be tried. My Clients are Defendants, they are innocent and unconcern'd; it is a Crime committed by some where these Gentlemen were by, but they are innocent; we hear hissing at t'other End of the Room, it was an ill thing, and of a treasonable Complexion; but for these Gentlemen they are unconcern'd. The Question between the Lord Mayor and the Sheriffs of the City, is a Question of Right between the Mayor and Sheriffs, Whether it be the Prerogative of the Mayor, or the Right of the Sheriffs? And I say, under Correction again, this Question, Whether my Lord Mayor of London may adjourn the Common Hall to a certain Day, is a Question of Right; Whether he can do it, or the Sheriffs? and I don't see what Consequence it can have upon the Government. The Lord Mayor is the King's Deputy, the Sheriffs they are the King's Officers; and the Question is, Whether it be in the Lord Mayor or the Sheriffs of London to adjourn it? They are very good Subjects, I am sure this very Year they are so; therefore I wonder at these Gentlemen of the King's Counsel, that will meddle with the Government, and say the Government is concerned in this; I appeal to any Man if there be any more Concern in this; I say this, here was a Common Hall call'd, grounded upon Custom in the City of London, and here is a single Question, Whether these Sheriffs did any more than their Duty; whether they were guilty of a Riot in continuing this Poll? Gentlemen, this is the Method we shall take. First of all, it is not proved, that ever the Lord Mayor, before this Time, did ever attempt to adjourn a Common Hall to any certain time; all the Witnesses that were call'd, that pretend to be knowing in the Customs of London, the Common Serjeant himself, he does not pretend that it was adjourn'd to a Day.

Mr. Serj. Jeff. You mistake. Sir Robert Clayton did from Saturday to Monday.

L. C. J. What need if there had been no Precedent? If so be an Assembly of People are met about Business, and they can't make an End of it in a reasonable time, must they be kept all Night till they have? What Argument will you make of it? If a Man may call and dissolve, do you think if there be Occasion, but, by the Law itself, that he may adjourn to a convenient Hour?

Mr. Williams. That will be a Question between us. My Lord, what I say certainly of Fact carries something in it.

L. C. J. Not at all.

Mr. Williams. Then my Lord I have done.

L. C. J. Give us Leave to understand something, Sir.

Sir Fra. Winn. My Lord, by your Lordship's Favour—

L. C. J. I spake to Mr. Williams, and he takes it so heinously at my Hand that Facts signify nothing; I do again say it, the Fact signifies nothing. For I tell you again as Law, it is not denied the Lord Mayor may call, he may dissolve; then I say by Law without Fact, by Custom, he that can both call and dissolve, may adjourn to a convenient Time. Do not Judges of Assize of all the Counties of England do it, when a Cause is appointed to be tried in such a County such a Day, and it may be it is tried three Days after? And yet I pray find me the statute or Commission, or find me one thing or another, besides the very Law itself, that doth give them Leave to adjourn from time to time.

Mr. Williams. My Lord, there is a mighty Difference, but I am only upon Fact; these Gentlemen will agree it was never practised before Sir Robert Clayton's Time; what the Consequence in Law will be, that is in your Lordship's Breast; I am now speaking upon the Evidence that this hath not been practised. What the Law is, for that we are to have your Judgment, which I humbly crave, I will



will be judged by Gentlemen that are my Seniors, and better read in this Matter; but, my Lord, a Man may have a Power of calling or dissolving, and not of adjourning; it may be so. But, my Lord, admitting it to be so for this Time; yet, my Lord, whether we are guilty of a Riot, take the Circumstances of our Case. Whether the Right of adjourning be in the Sheriffs, yea, or nay; it is a Question of Right, and I had rather apply myself to your Lordship, than to the Jury. If there were a Question of Right between the Lord Mayor and the Sheriffs, it may be admitted by our Counsel, that it was his Right to adjourn the Court, and probably the Sheriffs might be in the Wrong, and the Lord Mayor in the Right. The Lord Mayor adjourns the Court, and they continue it; they go on with the Poll, and go on with the Execution of their Office, as they apprehended; if they were still for their Right, I hope your Lordship will not make this a Riot. My Lord, for the Circumstances that followed, the Noise that was made, which I don't love to mention; if, I say, they were guilty of this, I am silent; but if they did no more, as I hear no more proved upon them than continuing the Poll, then, I say, it will be hard to make them guilty of the Riot. And another thing is this; my Lord, we all know, if there were a thousand Electors, any Man knows, that when there is a Question upon an Election, it is impossible such a thing shall be carried on but there will be Reviling, ill Language, and the like; and to turn all these things to a Riot, a thing so common from the Beginning of Elections to this Time, if there be a Division and Polling, there will be something you may turn to a Riot. But, I say this, they have not instanced in any one Defendant, that he was guilty of any one particular Act that amounted to a Riot in itself, they have not instanced in one. They say of Alderman Cornish, that he was of the same Opinion with the Sheriff, that they did insist upon the Rights of the City, he took it to be the Right of the Sheriffs; And, says one of them, I will stand upon it, Babel that had been Sheriff. Now we will call our Witnesses, we will prove what hath been the constant Practice in the City, we will prove the Methods of Adjournment; and, my Lord, this is to be said, which your Lordship will observe, That the Sheriffs adjourned the Court to the very same Time with my Lord Mayor; so that it was no more than to bring the Matter to an Issue in this Case.

Sir Fr. Winn. Spare me a Word in this Case, my Lord. There is no Evidence produced against *Trenchard*, nor against *Jekyl* the younger, nor against *Bisfield*, nor — Of these there is no Question, but they are as if they were out of the Information; I must beg Leave for a Word or two as to those Defendants, that they have offered some Evidence against. The Question is now before your Lordship, Whether they are guilty of a Riot or no? My Lord, for aught I see, it will stand upon a Nicety of Judgment; yet, if there be not Matter enough, Gentlemen, to make the Defendants guilty of a Riot, then it will clear the Defendants. My Lord, as to those Words, that really were Words that ought to be inquired into, who they were that spoke them in relation to his Majesty; I think it was a very ill Thing of those Men that saw them, that they would not neglect all manner of Business to seize them, I think it was a Duty to fix upon them; but, my Lord, there is no Evidence to put it upon any of the Defendants. My Lord, that being pared off, now the Question is, that the Meeting together was lawful, that is agreed; then when they came together, my Lord. I do think, that if we do rely upon the Evidence, it will be a mighty hard thing to make this a Riot; setting aside those villainous Words that were spoken, which cannot relate to the Defendants. Suppose, my Lord, that among the Electors the whole Common Hall of the City, there doth a Dispute arise, before the Election is over, concerning the Adjournment of the Sheriffs or the Lord Mayor; some Men are of one Opinion, some are of another; and their Evidence, Mr. *Peter King* and another, Attorneys, I asked the Question several times, *Did the Lord Mayor of London ever interpose or concern himself in adjourning the Hall, till the Election was quite finished?* And they said, *No*. Then, my Lord, I must say it as to these particular Defendants, in such a Concourse of People as were met there, it is as slender a Proof of a Riot as ever was, and intimates that the Citizens of London, they that happen not to be the greater Number, they that lose the Election, may be found guilty of a Riot in choosing other Officers, as well as in the Business of Sheriffs; which being so tender a Point, I think it will be a very severe Exposition, my Lord, to make this a Riot. But now for the Matter: we will call to your Lordship several Witnesses, Men that have been Magistrates in the City, that it was always looked upon, that my Lord Mayor, as he is the principal Magistrate, he gives Notice for Common Halls; and when the several Electors are met, and the Business is over, he directs them to go home, and dissolves them; but my Lord Mayor meddles not in every little Administration of the Election of Officers, but leaves them to inferior Officers, the Sheriffs and others; that is their Duty; my Lord, with Submission, they poll them, and send them home during the Election, therefore by Law they do this; for, my Lord, the Custom of a City, and the Custom of a Place, is the Law of the Place; and if the Custom of the Place had been, that the Sheriffs have been the Persons that have managed it, it is their Right; but their Common Serjeant he says he hath the sole Management of it; then if it be as Mr. Common Serjeant says, if that must go, upon my Word, Gentlemen, your Privileges are reduced to a little Compass.

L. C. J. They did confer one with another who they took to have the most Voices, and so reported it; not that he did claim any thing in his own Right, but as an Officer of the City. Now it is plain, and I think there is no Inconveniency falls upon it, if an Officer acquaints my Lord Mayor, according to the best of our Judgment, we think such a Man hath the most Voices; that does not give him a Right for him to make an Officer, not at all.

Sir Fr. Winn. I say what he said in his Evidence; but one of the Attorneys swears, that they have all equal Power; I wonder then who should make an End of the Business. My Lord, we will call to your Lordship ancient Citizens, that have been frequent at Elections, to give you an Account that the Sheriffs always had the Management; that my Lord Mayor never concerned himself, till he had Notice it was determined; and if that be so, and the Practice hath been so, then I don't see, under Favour, my Lord, how they will make this a Riot; that is the Case.

Mr. Thompson. Sir Robert Clayton, will you please to tell my Lord and the Jury in what manner the Election of Sheriffs hath been, and how the Mayors have usually left it to the Sheriffs in that Case?

Sir Robert Clayton. My Lord, I have never heard this Matter hath been in Question till of late; so I cannot declare much upon my own Knowledge, how the Truth of Fact is or should be; I can only say this, what the Practice hath been. When I came to the Chair, I did endeavour to know my Duty, and to do it. The first time I had Occasion to take Notice of this Matter was in the Year of my Mayoralty; I did then, according to Custom, summon a Common Hall; when I had summoned it, there was a Person presented to the Hall I had drank to; the Hall did refuse him, and there was a great Noise and Hubbub upon it, and we found a way to accommodate that Matter, and left them to chuse two Sheriffs for themselves. I retired into this Court together with my Brethren, and Mr. Recorder that was then: We sent for the Sheriffs up to examine the Matter; they told us, that they could not agree the Thing, there were four Persons in Nomination, but they had granted a Poll. After this we went down into the Hall; of that Mr. Common Serjeant hath given some Account, and Mr. Serjeant *Jefferies*; I shall to the best of my Memory give the best Account I can of it: I shall only tell you what I did understand to be my Duty: I do not determine what the Practice was, but what I understood to be my Duty. When we came down into the Common Hall, to declare how the Matter stood, and that a Poll was agreed upon and granted, we would have adjourned the Court to a longer Time; but the People cried out, to go to the Poll presently. I was, as you have been told by Mr. Common Serjeant, to go to the Trial of one *Giles*, upon the Assassination of *Arnold*, to the *Old Baily*. I did twice or thrice attempt to get down out of the Hall through the Crowd, and was repulsed, the Crowd was so great I could not get through, but was fain to retire back again to the *Hustings*, as I remember, two or three times. There might be some such Discourse as Mr. Common Serjeant hath said; but thus far I can remember, that I did both myself, and the Common Serjeant, signify to them the Business I was about, and so many Aldermen as made up a Bench, together with Mr. Recorder, to manage that Business, must go; and that I would leave the Sheriffs to manage the Poll, which I thought was their Duty.

Mr. Thompson. Did you take it to be their Right?

Sir R. Clayton. I did not apprehend it to be my Right then.

Mr. Thompson. And therefore you left it to the Sheriffs as their Right?

Sir R. Clayton. I left it to the Sheriffs to manage the same.

Mr. Williams. Sir Robert Clayton, I suppose when you were Lord Mayor, you were as much for the Honour of the Chair as any Man, you would not have quitted the Right of the Chair?

Sir R. Clayton. I did not; there was a Trial of me in that Case.

Mr. Williams. Now, Sir, for adjourning the Poll: Did you know any such Question, whether a Poll was to be adjourn'd upon the Election of any Sheriffs?

Sir R. Clayton. There hath been a great Noise about Adjournments of late. That Poll was the most litigious of any that I know we have had before or since; that was adjourn'd for several Days.

Mr. Williams. Who adjourn'd that Poll?

Sir R. Clayton. The Sheriffs did adjourn it, I think, Gentlemen; I do think the Sheriffs did adjourn it, I was not present.

Mr. Att. Gen. Sir Robert, don't serve the Court thus.

Mr. Williams. Don't brow-beat our Witnesses, Gentlemen; I know, Mr. Attorney, you are an Example of fair Practice: We are examining our Witnesses.

Sir R. Clayton. Pray, my Lord, let me explain myself; I shall let Mr. Attorney General understand me. I did never appear at *Guild-hall*, unless upon the Account of a Court of Aldermen; I did never appear at *Guild-hall*, but the first Day we had Consultations here in this Court about the Adjournment, and upon the *Hustings* about going about the Business we intended, and the Hall was very intent upon the Poll; I twice attempted to go out, and could not get out; whereupon we were fain to acquaint the Hall, as well as we could for the Noise, of the Business we were to go about, and they let me go. I left behind the Sheriffs and the Common Serjeant; how long they stay'd, I can't tell; I can upon my own Knowledge give no Account of them. I was not consulted, to the best of my Knowledge, afterwards, nor did give any particular Directions for Adjournment. I did not do it for this Reason; I did not look upon it to be in my Power: If I had such a Power, I did not understand it.

Mr. Williams. Sir Robert, how many Days do you think that Poll continued?—Sir R. Clayton. About six Days.

Mr. Williams. Of those six, how many Days were you present?

Sir R. Clayton. I did not understand it to be my Duty, and so did not look after it.

Mr. Thompson. Sir Robert Clayton, I desire to ask you a Question, as to this Matter you have given in Evidence: Do you give it to the best of your Remembrance, or positively?

Sir R. Clayton. I tell you, I speak to the best of my Remembrance every thing that I say.

Mr. Att. Gen. Sir Robert Clayton, I beg your Favour, To the best of your Remembrance is no Evidence, it is so lately; if you please, Sir Robert, you are to give Evidence of a Thing about three Years ago. I ask you, upon your Oath, Who were your Sheriffs?

Sir R. Clayton. Sir *Jonathan Raymond*, and Sir *Simon Lewis*.

Mr. Att. Gen. I would ask you then a plain Question, Sir Robert, because you come in with your Remembrance: Did you give express Direction to the Common Serjeant or the Sheriffs to adjourn, upon your Oath?

Sir R. Clayton. I must, Mr. Attorney General, by your Favour, take in my Remembrance.

Mr. Att. Gen. Then you are no Evidence. Sir Robert, Did you give Directions or not, upon your Oath?

Sir R. Clayton. I can't say it was given.

Mr. Att. Gen. Did you, or did you not?

Sir R. Clayton. My Lord, I hope I have spoke *English* in the Case: We did discourse of the Adjournment in this Court, I believe it was discoursed below; but, as I said, I was engaged to go to the *Old Baily*, and I would leave that Matter to the Sheriffs, whose proper Business I understood it to be.



*Mr. Att. Gen.* I asked you, Sir Robert, one of the plainest Questions that ever was asked; I ask you, whether you gave the Sheriffs of the Common Serjeant express Order to adjourn?

*Sir R. Clayton.* I believe I did not.

*Mr. Att. Gen.* Did the Sheriffs tell you they had a Right then?

*Sir R. Clayton.* There was no Dispute who had the Right.

*Mr. Serj. Jefferies.* Sir Robert Clayton, if you please, I would ask you a Question or two. Do you remember that the Court was adjourned while you were there or not? Do you understand the Question, Sir Robert? Do you remember the Common Hall was adjourned while you were there?

*Sir R. Clayton.* Yes, Sir, if you give me Leave to explain myself, I think the Common Hall was adjourn'd; it was declared; but there was such a Noise in the Hall, that the People could not hear it.

*Mr. Serj. Jefferies.* But there was a sort of Declaration made by yourself, you did make an Adjournment; but the Noise was such, that the People did not hear: And if you remember, there was a Person affronted one of the Sheriffs, and I committed him to Custody upon it.

*Sir R. Clayton.* We desir'd to adjourn for an Hour or two, that we might go and refresh ourselves.

*Mr. Serj. Jefferies.* Then you remember there was an Adjournment: I ask you whether it was appointed to be made by you or the Sheriffs?

*Sir R. Clayton.* Truly I believe it was appointed by me.

*Mr. Serj. Jefferies.* Sir Robert, by asking a Question of two, Sir Robert, I know I shall bring some Things to your Remembrance.

*Sir R. Clayton.* My Lord, I don't know I have given any great Occasion of Laughter to my Brethren; these Adjournments have been very common with us, and I might agree to it, or order it, or direct it; but one of them I believe I did, or two of them.

*Mr. Serj. Jefferies.* Sir Robert, I would only have a Question or two asked, and I know by asking a Question or two, I shall bring Things to your Memory, which I am sure you cannot easily forget: Were there Directions given for Proclamation to be made for all Parties to depart in the King's Name?

*Sir R. Clayton.* I believe there might.

*Mr. Serj. Jefferies.* The next Question is, Whether the Sheriffs ordered that Proclamation to be made for all Parties to depart?

*Sir R. Clayton.* If it were done while I was present, I make no Doubt in the Case but I did direct it, I make no Question of that.

*Mr. Serj. Jefferies.* Very well: Now, Sir Robert Clayton, we are got to an Adjournment to a Time by your Direction, and Proclamation by your Direction. Now I will ask another Question, upon your Oath: Was not you in the Common Hall, and gave order for an Adjournment till Monday following; for I remember that Day to be Saturday?

*Sir R. Clayton.* Truly I don't remember that.

*Mr. Serj. Jefferies.* You do not! Sir Robert, you know very well that the Sheriffs of London, when the Lord Mayor and Aldermen come back to the Huggings, the Sheriffs sit remote, one on the Right-hand, and the other on the Left, furthest from the Lord Mayor; so that all the Aldermen sit nearer to the Lord Mayor than the Sheriffs do: Did you mind that the Sheriffs came to you to speak to you any thing of an Adjournment?

*Sir R. Clayton.* I never saw it.

*Mr. Jones.* I would ask you a Question or two: You know this Gentleman, don't you? [Pointing to the Common Serjeant.]

*Sir R. Clayton.* Yes.

*Mr. Jones.* Did he attend the Court at that Time?

*Sir R. Clayton.* Yes.

*Mr. Jones.* Sir Robert, I ask you a fair Question, Did you lay any Command on him to adjourn the Hall at that Time, from Saturday till Monday?—*Sir R. Clayton.* Pray, my Lord, give me Leave to answer Mr. Jones in my own way.

*Mr. Jones.* My Lord, I'm in your Judgment, it is a fair Question within his own Recognizancelately done, he ought to answer positively, Yes or No.

*Sir R. Clayton.* Am not I upon my Oath; can you tell me what I can say?

*Mr. Jones.* Ay or No. Any honest Man would do it.

*Sir Fr. Winn.* All Witnesses answer their own way, Don't they?

*Mr. Jones.* Let him answer then his own way.

*Mr. Att. Gen.* My Lord, you know there is a Rule in Chancery, if it be a Matter within seven Years, if it be not answer'd positively, it is no Answer: If one asks a Witness a Question that lies within a little while, if he will not answer either affirmatively, or negatively, he is no Witness.

*L. C. J.* I can't tell, Mr. Attorney.

*Mr. Jones.* Will you answer or no, Sir Robert Clayton, whether you commanded the Common Serjeant to go and adjourn the Hall or no?

*Sir R. Clayton.* I don't remember that I did.

*Mr. Jones.* Then I only ask you this further Question, Whether Mr. Common Serjeant did not tell you, that it was not his proper Business to do it, and that unless you would lay express Commands upon him, and put the very Words in his Mouth, he did desire to be excused, and did he not stand there? [Pointing to the Bar.]

*Sir R. Clayton.* I have heard, Sir, what Mr. Common Serjeant did say, and I cannot charge my Memory with it; but I have that Charity for Mr. Common Serjeant, to believe there might be Discourse to that Purpose.

*Sir Fr. Winn.* Mr. Love, in all your Experience, what do you remember?

*Mr. Williams.* How long have you known Guild-hall and Elections?

*Mr. Love.* I suppose, my Lord, these Gentlemen don't expect I should say any thing that was done that Day; but, my Lord, all that I suppose you expect from me is, what I did observe to be the Practice of the City; to the best of my Remembrance, I shall give you an Account. My Lord, about 22 Years ago, I did observe the Practice to be this; when I was call'd into this Office of Sheriff, I took it as a thing for granted, that it was the Sheriff's Office to manage the Common Hall, that I did, as my Lord Mayor's was to have a Sword borne before him; I have received it by Tradition from all before me, and my own Experience. My Lord, I remember when we came to chuse Sheriffs upon Midsummer Day, after the Lord Mayor and Aldermen had been there, my Lord Mayor said to me and my Brother Sheriff; Gentlemen, look to your Office. We accordingly went to it, and chose two Sheriffs, one Gentleman that had been drunk to by my Lord Mayor, I think it was Alderman —; but notwithstanding that Drinking to him, we took no Notice of that as a Cere-

mony, he was put in Nomination among others, and being a Senior sitting Alderman, we returned him; otherwise, my Lord, I assure you I would not have returned him, notwithstanding the Drinking. After once that the Lord Mayor and Aldermen withdrew to go to the Council-Chamber, they said to us, Now, Gentlemen, look to your Office.

*Mr. Thompson.* What was your Office?

*Mr. Love.* To chuse Sheriffs.

*Mr. Thompson.* Did my Lord Mayor meddle with the Election, or left it to the Sheriffs?

*Mr. Love.* Left it to the Sheriffs.

*Mr. Williams.* What was your Opinion, Sir, was it in the Lord Mayor or to take the Poll, or the Sheriffs?

*Mr. Love.* Truly, Sir, I am not a competent Judge of whose Right it was; but if my Lord Mayor had gone about to meddle in it, I should have prayed my Lord Mayor to meddle in his own Office, and let me alone with mine.

*Mr. Att. Gen.* Yes, Mr. Love, you were then the Tribunes of the People.

*Sir Fr. Winn.* Here are some say the Common Serjeant and the Common Cryer have a Power, nay, the whole Power of ordering the Hall during the Election. What is the Office of the Common Serjeant there?

*Mr. Love.* Truly, Sir, I look upon the Common Serjeant and the Common Cryer as Persons left to assist us, because they could not put us to the Trouble of Crying Oyes ourselves; and if any Common Serjeant or Common Cryer had durst to put a Question without my Direction, I would have known whether he could or no.

*Sir Fr. Winn.* Mr. Love, Was it ever discours'd to you when you was Sheriff, or before, or since, that ever my Lord Mayor did interpose before the Election was over?

*Mr. Love.* Since I was discharged of being a Magistrate, I never was at a Common Hall since. I have spent my Money for the City's Service, but never got a Penny by them; I never heard, that ever the Lord Mayor, till these late Times, interposed, but that the Sheriffs managed the whole Business of chusing Sheriffs.

*Mr. Att. Gen.* Mr. Love, I desire to have a Word with you; you speak of the Time of your Reign; I would ask you a plain Question, Was it before the King came in?—*Mr. Love.* It was that Year the King came in.

*Mr. Att. Gen.* Was you chosen before?—*Mr. Love.* Yes, I was.

*Mr. Att. Gen.* Do you remember an Act of Parliament in 48, then in Force, of shutting out my Lord Mayor?

*Mr. Serj. Jefferies.* I would ask him a Question or two. Hark you, Mr. Love, Let me ask you a Question or two.

*Mr. Love.* Sir George, I would give Mr. Attorney an Answer.

*L. C. J.* What would you make of it? If you ask him of an Act of Parliament, it is something.

*Mr. Att. Gen.* You speak of a Time when my Lord Mayor had no more to do with it than I had. There was an Ordinance of Parliament, did you never see that?

*Mr. Love.* To the best of my Remembrance I never saw it in my Life.

*Mr. Att. Gen.* Nor heard of such a Thing?

*Mr. Serj. Jefferies.* Hark you, Mr. Love, I perceive you would have disputed with my Lord Mayor; who was the Lord Mayor that you talk of?—*Mr. Love.* Sir Thomas Allen.

*Mr. Serj. Jefferies.* Now I would desire to know whether you remember the City before the King came in?—*Mr. Love.* For a little while.

*Mr. Serj. Jefferies.* Do you remember any thing of that Custom of the Lord Mayor's Drinking to Sheriffs; was not that used before the King came in?

*Mr. Love.* A long time.

*Mr. Serj. Jefferies.* It is well enough; a long time.

*Mr. Williams.* My Lord, we have seven or eight more to the same Purpose, but we are satisfied with these, Gentlemen: We will prove, if there was any thing like a Riot, we will prove my Lord Mayor, and those that were with him, were the Authors of it.

*L. C. J.* When Multitudes of People are gather'd together upon a lawful Occasion, supposing that they had a Right to be there, I do say, that in that case it would be much a Mitigation of the Fine, so for this same Riot; but on the other Side you must know, that these Men that do it, it doth not excuse them, for *ignorantia juris* is not an Excuse. It is true, if they had had a lawful Occasion to continue to do it, but in truth they had not, that will excuse them *à tanto*, but *non à toto*.

*Mr. Holt.* My Lord, I beg to put in this Case; there is a great deal of Difference where a Person does claim a Right to himself, and does an extravagant Action. Now, my Lord, these Persons did claim a Right to themselves to continue the Common Hall, and that it was not in my Lord Mayor's Power to adjourn it without them: Now, my Lord, they claimed this Right, if they used no Violence that is excusable. If I should claim a Right to another Man's Estate, tho' I have no Title, and say I have a Right, and give it out in Speeches, no Action lies against me; but if I do an extravagant Action, and say another Man hath a Title, there lies an Action against me.

*L. C. J.* Now go to your Fact.

*Sir Fr. Winn.* My Lord, put a Point to us, and we need not call more Witnesses.

*L. C. J.* I don't speak to hinder you from calling your Witnesses.

*Sir Fr. Winn.* I put this Case, we undertake to prove, that it was always looked upon, that it was the Right of the Sheriffs: Suppose, my Lord, upon the Dispute it should be found, that the Opinion of the Jury should be otherwise; will this turn to an illegal Act?

*L. C. J.* Call your Witnesses.

*Mr. Wallop.* I beseech your Lordship I may put one Case in this Point in a Point of Right, if they have a probable Cause to insist upon it. Suppose I send forty Men to a Wood, and take a Car or a Team, if they be a competent Number to cut down Wood, if we are mistaken in the Title that is no Riot. Lambert puts the Case.

*L. C. J.* But what if I had sent a great many Men to cut down the whole Wood?

*Mr. Williams.* We will call some Witnesses that will take us off from the Riot thus, if so be we can excuse ourselves of the Disorder, and put upon my Lord Mayor, then we are innocent.

*L. C. J.*



L. C. J. Very well, if you do that.  
 Mr. Sibley. Are you acquainted with the Manner of the Election of Sheriffs? How long have you known it?  
 Mr. Sibley. I have been of the Livery ever since 39; in all my Time, I speak, Gentlemen, to the best of my Remembrance; it hath been the Custom in all my Time, except here of late, that the Sheriffs of London have had the Management of the Election.  
 Mr. Sibley. Did my Lord Mayor ever interpose till the Election was over?  
 Mr. Sibley. I never knew my Lord Mayor interpose till lately.  
 Sir Fr. Winn. Did you ever hear my Lord Mayor pretend to it till of late?  
 Mr. Sibley. No, my Lord.  
 Sir Fr. Winn. Did the Mayor use to be present at any Election during the Election?  
 Mr. Sibley. I have been most commonly there.  
 Sir Fr. Winn. But the Mayor; would the Mayor be there?  
 Mr. Sibley. The Mayor and Aldermen went off the Bench.  
 Sir Fr. Winn. Who managed the Elections?  
 Mr. Sibley. The Sheriffs.  
 Sir Fr. Winn. Were the Common Serjeant and the Common Cryer there?

Mr. Sibley. The Common Serjeant and the Common Cryer are always there.  
 L. C. J. I pray thus; you have known the City, it seems, a great while. I would ask you this: Pray who did call the Assembly that was to chuse the Sheriffs, did the Sheriffs, or the Lord Mayor?

Mr. Sibley. We commonly received the Tickets by the Officers of the Companies.

L. C. J. Did the Officers of the Companies summon the Assembly? Hark you, pray, Sir, recollect yourself; Do you take it, that the Officers, the Beadles it may be, of the several Companies, did they summon the Livery-men, and so a Common Hall was call'd together; was it so in your Time?

Mr. Sibley. It hath been commonly so; we have received Tickets from the Beadle of the Company.

L. C. J. And my Lord Mayor had nothing to do with it then?

Mr. Sibley. What Order the Masters and Wardens had from my Lord Mayor, I never inquired into that.

L. C. J. When the Hall was dissolved, who ordered Proclamation to be made, the Sheriffs or the Lord Mayor?

Mr. Sibley. My Lord Mayor hath not used to be there.

Mr. Thompson. When they had done, they went away. He won't trouble your Lordship.

L. C. J. Pray, had my Lord any hand in Summoning; did he direct the Summoning of them?  
 Mr. Sibley. It is more than I know.

L. C. J. You bring a Witness that knows nothing of the Matter.

Mr. Serj. Jefferies. Mr. Deputy Sibley. Give me Leave to ask Mr. Sibley a Question or two: I shall set him to-rights presently. Mr. Sibley, if I be not mistaken, you are one of the Company of Tallow-Chandlers, and you have been Master of the Company, and you have been Warden of the Company. You very well know what Directions are given to the Beadle are generally by the Master or Wardens: Pray, upon your Oath, when you were Master or Warden, was there ever any Precept sent to you to summon a Common Hall?  
 Mr. Sibley. Indeed I don't remember that, Sir.

Mr. Thompson. If your Lordship please, we have done with our Evidence; I would beg your Lordship's Opinion in it.

Sir Fr. Winn. We do admit my Lord Mayor summons the Court.

L. C. J. But you bring a Witness that knows nothing in the World of it, but yet you would have it taken for Gospel, that the Sheriffs had all the Management before that time forty Years together, till now very lately. But when he comes to be asked, how is this Assembly or Common Hall call'd together, alas! he knows no more of that than one in Utopia.

Mr. Thompson. My Lord, we have several other Witnesses, but we will call no more.

Mr. At. Gen. If you have no more, we will call two or three more.

Mr. Thompson. We have some to prove, that my Lord Grey came to speak with Sir William Gulston, and went away again; and we desire to call Sir Thomas Armstrong.

Sir Fr. Winn. My Lord, if your Lordship pleases, thus, there will be it seems some particular Defences made. Your Lordship hath heard their Evidence, and what we have said; we desire to call two or three Witnesses to another Head. Your Lordship hath heard there was some Rudeness by some of the People, but who they were it doth not appear. We will call two or three Witnesses of the Behaviour of those Men and Company that came with my Lord Mayor; that whatsoever Disturbance was made, they were the chief Men that made the Disturbance, and my Lord Mayor could not help it, nor we neither.

L. C. J. Sir Francis, I believe those Men that would not have God save the King, my Lord Mayor could not hinder them; but will you undertake to prove, that those that came with my Lord Mayor, that they were the Men?  
 Sir Fr. Winn. They were with them, my Lord.

Mr. Serj. Jefferies. They were with them that cry'd, God bless the Protestant Sheriffs.

Mr. Sibley. My Lord, I desire to explain myself to what I said; it is several Years ago since I was Master of the Company; I do not remember, but I believe the Summons was directed from my Lord Mayor.

Mr. Freak. Mr. Winstanley, what Account can you give to my Lord and the Jury?

Mr. Winstanley. I have lived near the Hall, and I often came in, but I was not a Livery-man upon that Poll that was between Mr Kiffen and Sir Robert Clayton; the Sheriffs managed it.

Mr. Freak. Who managed it?  
 Mr. Winstanley. The Sheriffs.

Mr. Freak. Who declared?  
 Mr. Winstanley. The Sheriffs.

Mr. Freak. Did the Mayor come down to declare the Election?

Mr. Winstanley. The Mayor came down after the Poll, but the Sheriffs took the Poll.

Mr. Freak. Who was then Mayor?

Mr. Winstanley. Sir James Edwards was Sheriff, and Sir John Smith.

Mr. Freak. Who was Mayor?

Mr. Serj. Jefferies. It was Sir Samuel Starling.

Mr. Freak. Who put the Question upon the Hustings?

Mr. Winstanley. I can't tell.

Mr. Freak. What did you hear the Sheriffs say, or see them do?  
 Mr. Winstanley. The Sheriffs presently granted a Poll, and parted one to one Door, and the other to t'other.

Mr. Freak. And who took the Poll?

Mr. Winstanley. The Sheriffs took it.

Mr. Freak. Who declared the Election?  
 Mr. Winstanley. The Sheriffs.

Mr. Freak. Who were Sheriffs then?

Mr. Winstanley. Sir James Edwards, and Sir John Smith.

Mr. Serj. Jefferies. Mr. Winstanley, I would ask you this Question: Do you take it upon your Oath, that the Sheriffs declared the Election?

Mr. Winstanley. I declare upon my Oath, that the Sheriffs took the Poll.

Mr. Serj. Jefferies. Mr. Winstanley, you may guess pretty well what I mean by this. First of all, I ask you, Did the Sheriffs put the Question?

Mr. Winstanley. The Sheriffs took the Poll, Sir.

Mr. Serj. Jefferies. Nay, answer my Question: Did the Sheriffs put the Question, or did any body else?

Mr. Winstanley. Truly, Sir, I have forgot; you were there.

Mr. Serj. Jefferies. I know I was, Sir: I know very well: I ask you upon your Oath, who was it that declared the Election afterwards, upon your Oath?

Mr. Winstanley. Truly, Sir George, I don't remember.

Mr. Serj. Jefferies. Mr. Winstanley, one went out at one Door, you say; and t'other went out at t'other, you say; now I say; Who took Notice, and told the Names of those that went out at one Door and t'other?

Mr. Winstanley. The two Sheriffs.

Mr. Serj. Jefferies. Who else?  
 Mr. Winstanley. I can't tell.

Mr. Serj. Jefferies. Do you remember me there at the great Door, when they poll'd and went out? Do you remember who told them?

Mr. Winstanley. No, truly.

Mr. Serj. Jefferies. Pray, do you remember when one Mr. Broome, a Wax-chandler, was chosen Ale-conner?  
 Mr. Winstanley. I was in the Hall; but I do not charge my Memory with it.

Mr. Sol. Gen. Hark you, Mr. Winstanley, Who is it grants the Poll when it is demanded?

Mr. Winstanley. I do remember very well, Sir George Jefferies was in the Hall; they demanded a Poll, and so went out.

Mr. Sol. Gen. Who granted it?  
 Mr. Winstanley. The two Sheriffs.

Mr. Serj. Jefferies. I will put you a Case nearer home, Mr. Winstanley: You remember when Sir Thomas Player was chosen Chamberlain, when the Question was put, Who should be Chamberlain, between him and a Gentleman I see not far from me; Who, do you remember, managed the Poll then?  
 Mr. Winstanley. There was no Need, Sir George.

L. C. J. What do you mean to do with these little Witnesses? You call Witnesses that know nothing of the Matter, or nothing to the Purpose.

Mr. Serj. Jefferies. My Lord, let me ask him but one Question more: I know he hath been a very great Evidence in this Case; I remember when that Gentleman was in for Bridge-master: Who was the Poll demanded of at that Time?

Mr. Winstanley. Truly, Sir, I think it was demanded of the Court.

Mr. Serj. Jefferies. Of the Court?

Mr. Winstanley. Usually upon other Days, my Lord Mayor, and the Court come down; but upon Midsummer Day they go up.

Mr. Serj. Jefferies. But I ask you, of whom the Poll was demanded at that Time?

Mr. Winstanley. I don't remember it, I'll assure you.

L. C. J. You told us that Point would be granted, and you would not stand upon it.

Mr. Williams. My Lord, where there are so many Men, there may be many Minds: I would have your Lordship and the Jury hear them.

Mr. Jones. The Government is concerned, Mr. Williams.

Mr. Serj. Jefferies. This is not a Matter of Mirth I'll assure you; it reaches the Government.

Mr. Williams. My Lord Mayor hath the Power of adjourning the Hall, but not till the Business is done.

Mr. Thompson. My Lord, I would put you a Case \*--- \* Here Mr. Sure, Mr. Jones, I ought to be heard. If my Lord Mayor Jones offered to hath Power to call a Common Hall, he hath not to adjourn interrupt him. it before the Business is done.

L. C. J. If a Writ come to the Sheriffs to chuse Parliament-men, then the Sheriffs have it; but this is my Lord Mayor's Office, he hath Power to dissolve and adjourn.

Mr. Thompson. I speak to this Case, my Lord; I will shew your Lordship an Instance where it cannot be done. My Lord Mayor hath Power to call here, and he hath Power to dissolve, say they: My Lord; it cannot be, with Submission, in all Cases. He hath Power to call an Assembly when there is a Mayor to be chosen; and the Citizens have a Privilege to move their Mayor, or continue him: Now if it were in the Power of the Mayor, and there should happen a Question, Who they were? For, in a great Number of Electors, if it were in his Power to adjourn from time to time, he must continue Mayor.

L. C. J. It is plain he may do it for all your Objection. You know it was agreed by all Sides, that Sir Samuel Starling, the Lord Mayor, had well dissolved the Assembly, that is, in point of Law, and they could not say the Assembly was in Being; yet afterwards there was an Action brought against him; and there they laid, how that maliciously, and to the Intent that he who was chosen into the Place of Bridge-Master, to which he was duly elected, should be set aside, he goes and dissolves the Assembly, and denied to grant him a Poll, which they ought to have had; yet for all that the Assembly was well dissolved.

Mr. Serj. Jefferies. Conclude, Gentlemen, conclude.

Mr. Thompson. That which I have to say is a Point of Law.

Mr. Serj. Jefferies. Sir Fr. Winstanley, if you design to conclude, I tell you beforehand, I would not interrupt you; we will call a Witness or two.

Sir Fr. Winn. My Lord, because we would make an End, I will call two of those Men that came with my Lord Mayor, to shew that if there was any Rudeness, those very People that came with my Lord Mayor, were the Cause of it.

Mr. Sol. Gen. That they that came with my Lord Mayor caused them to stay after my Lord was gone?

Mr.



Mr. Thompson. Mr. Jackson, pray can you remember, whether any of the Defendants here were concern'd in any Affront to my Lord Mayor, or who it was that my Lord Mayor received an Affront from?

Mr. Jackson. I did observe, my Lord, as he went out of the Hall, I took my Back and set it against the Crowd, and had my Face towards my Lord Mayor; and I was crowded so, that I could scarce see myself one way or other, but got off the Steps at last, and went home with my Lord Mayor.

Mr. Thompson. Can you say who struck off the Hat?

Mr. Sol. Gen. Where do you live, pray?

Mr. Jackson. I live at Charing-cross.

Mr. Sol. Gen. With whom? Mr. Jackson. With myself, Sir.

Sir Fr. Winn. What is your Name?

Mr. Serj. Jefferies. Don't you know the sword-bearer of Bristol, Sir Francis?

Mr. Thompson. Mr. Roe, were you here when my Lord Mayor was crowded? Who offered any Affront?

Mr. Williams. Pray will you give my Lord and the Jury an Account of what you heard, and where the Disorder began?

Mr. Roe. My Lord, I was in Cheapside, and I heard a great Noise of huzzaing, and a terrible Noise indeed; and I met with a Fellow running, my Lord, and I stopp'd the Fellow: What is the Matter? Nothing, said he, but an old Fellow riding Shrimington and Skeleton; and in the Street I saw a matter of a Hundred with their Hats upon Sticks, crying, Damn the Whigs; said I, Gentlemen, What's the Matter? said they, The Work is done to stop the Poll; and that is all.

L. C. J. Hark you, Were you in Guild-Hall?

Mr. Roe. I followed them a little Way down the Street.

L. C. J. Hark you, Did you see my Lord Mayor's Hat down upon the Ground; and was he like to be thrown down; did you see that?

Mr. Roe. No, I saw nothing of that; I heard such a Noise, I was glad I had got rid of them.

Mr. Williams. My Lord, we have no more to say in the general; all that I have to say now is for my Lord Grey. The Evidence against my Lord Grey, was, that he was here: Now, my Lord, we have Witnesses more particularly to defend my Lord Grey.

Mr. Att. Gen. We shall call a Witness or two to clear what that Gentleman said when Sir Robert Clayton was Mayor.

Mr. Serj. Jefferies. Pray, Gentlemen, let us have a little Patience. Pray, my Lord, if your Lordship please---Here is such a horrid Noise---Upon all the Matter, I don't perceive, but Sir Robert Clayton does himself believe Proclamation was made by him; he does believe the Adjournment was made by him; but as to the Adjournment to Monday, he is not certain of that. But if your Lordship please, we have here both the Sheriffs, Sir Jonathan Raymond, and Sir Simon Lewis, that will shew the Court whether there was any such thing.

Mr. Att. Gen. Before Bethel came out of the North, no Sheriff ever pretended to it.

Mr. Serj. Jefferies. Pray, Sir Simon Lewis. I desire you would satisfy my Lord and the Jury concerning the Adjournment when you went to the Sessions House in the Old Bailey: Did you order the Adjournment of the Poll, or my Lord Mayor?

Sir Simon Lewis. We came and waited upon my Lord Mayor here, and told him they demanded a Poll without; we took his Directions, and my Lord Mayor did adjourn the Court, by reason that the Assassins of Arnold were to be try'd; and by reason of that it was adjourn'd till Monday, and my Lord Mayor and the Aldermen went thither; but indeed we were left as Prisoners, and I receiv'd a Blow on my Breast.

Mr. Att. Gen. Sir Jonathan Raymond, Did you pretend to have the Power then of adjourning the Court?

Sir Jon. Raymond. My Lord did adjourn the Court because of that Trial, and then afterwards we went upon the Poll; we were several Days upon it: We only appointed from Day to Day till we had made an End; and when we had made an End, we declared it to my Lord Mayor and the Court of Aldermen; and my Lord Mayor and the Court of Aldermen came upon the Hustings, and declared who it fell upon.

Mr. Att. Gen. Sir James Smith, When you were Sheriff, did you pretend to have any such Power?

Mr. Serj. Jefferies. Upon your Oath, Did you pretend to have a Power of adjourning Common Halls?

Sir J. Smith. No, Sir; we were Sheriffs immediately after Sir Robert Clayton; I never heard it questioned but my Lord Mayor had the Right of it.

Sir Fr. Winn. Sir Jonathan Raymond, I think you say the Sheriffs did adjourn from Day to Day at that Time?

Sir J. Raymond. We could not make an End of Polling; and we did appoint from Day to Day till we had made an End of Polling.

Mr. Com. Serj. My Lord, I will give your Lordship an Account of that whole Day's Proceedings: We came to the Hall, and after Mr. Recorder, Sir George Jefferies, had attempted to speak to the Hall, (for they were in such a Tumult they would not suffer him to speak) my Lord Mayor withdrew: There was a very great Clamour and Noise; but at last the Question was put; and I came up with the Sheriffs hither, and acquainted my Lord; that Mr. Bethel and Alderman Cornish had the most Hands, and that there was a Poll demanded between Mr. Box and Mr. Nicholson, and Mr. Bethel and Mr. Cornish; then the Dispute lay as between Box and Nicholson, and Alderman Cornish and Mr. Bethel: I acquainted my Lord Mayor that was, Sir Robert Clayton, that Mr. Recorder said he would not go down to make Declaration, they would not hear him: Upon that Sir Robert Clayton took a Paper and gave it to me, with these very Words: [It is the greatest Tumult I was ever in all my Life, and I have some Reason to remember it.] Pry'thee, says he, do you make Declaration to them; for if they will hear any body, they will hear thee: Sir, says I, because it is not the Duty of my Office, I desire your particular Direction: Then, says he, tell them I must adjourn it till Monday, because I must go to the Old Bailey, to try the Assassins of Arnold: Whereupon the Hall was adjourn'd, and in a great Tumult, and my Lord Mayor attempting to go out, he was beat back twice or three times; he spake something to them, and they went away, leaving me and the Sheriffs upon the Hustings, and there they kept us Prisoners till six or seven o'Clock at Night. On Monday, when we came to Poll again by his Direction, I

went to his House, and he gave me Direction to go with the Sheriffs to adjourn it: afterwards there was a Court of Aldermen purposely called, and, upon their Direction, I took the Poll and kept it, and every Adjournment was made by his particular Direction to me.

Sir Robert Clayton. Gentlemen, I do desire I may explain myself, because I was imperfectly heard: Some Part of the Story that Mr. Common Serjeant does say, I do remember, and will tell you what I do remember of it. I remember the coming up, and I remember, that Mr. Recorder was not willing to go down, there was such a Hubbub; I remember that very well. The particular Words I said to him, I cannot charge my Memory with; we had discoursed. I remember the Adjournment, and we discours'd of the Adjournment below; we made Proclamation, but the Noise was so great they could not hear; and upon my attempting to go out, I was beaten back twice or thrice, and then we were fain to let them know the Business we went about as well as we could, and then they let me go, and I left the Sheriffs with them to agree of the Manner and Methods of Polling. There were several Adjournments made afterwards; I can't charge myself with it: I might be particularly consulted; but for the particular Times of Adjournment, I did not think myself concerned in point of Reputation; if I thought I had been blameable, I should have concerned myself to have given more particular Directions.

Mr. Thompson. If your Lordship please, I have but this; admitting the Right to be in the Lord Mayor---

L. C. J. Do you make a Doubt of it now?

Mr. Thompson. Admitting it, those Gentlemen that came to continue the Poll, it is a Question whether they can be guilty of the Riot or not.

Mr. W. There are some three or four of the Defendants that have a particular Case; that stands by themselves; and it rests upon this Point, Whether my Lord Mayor hath this Power or not? For so much of the Evidence as concerns any Noise or Hissing, or any thing of that, That relates to the Time of Adjournment; for it was done at the Time of the Adjournment. As for Mr. Cornish, Mr. Goodenough, my Lord Grey, and one or two more, they did not come till within some three Hours after that, so that they cannot be engaged in the Noise, or That.

L. C. J. It is no matter, they came time enough.

Mr. Williams. We have done, my Lord, with the general Evidence; we have something to say in Defence of my Lord Grey; all the Evidence against my Lord Grey is this, that he was here about Seven a Clock at Night. For that, Gentlemen, we say this; that my Lord Grey had some Business here, and my Lord's Business was this; my Lord Grey was here about the Sale of a Manor in Essex with Sir William Gulton; my Lord, they had appointed this very Day for that Business, it was my Lord's Interest mightily to pursue it, and Sir William happened to be at Sir Thomas Player's, and knowing this to be an Election-day, my Lord dined that Day at an Eating-house in the Hay-Market, and afterwards came to Peter's Coffee-House in Covent-Garden, and staid there till between Four and Five a Clock in the Afternoon, when he thought the Heat would be over; and then he came to make Inquiry after Sir William, and took up in Brun's Coffee-house about Five or Six a Clock; there he continued quiet in the House till all the Noise was over; then he sent to inquire for Sir William Gulton, and hearing he was at Sir Thomas Player's, he and Sir William went to a Tavern, and there they treated, and finished the Affair. My Lord, we will prove it; Call Mr. Ireton.

Mr. Ireton. My Lord, I know that at this very Time my Lord Grey was treating with Sir William Gulton about the Manor of Corsfield in Essex, and my Lord Grey and Sir William Gulton had appointed to meet that Night at t'other End of the Town, if the Poll were ended. In the Evening I met my Lord Grey, who told me he had been with Sir William Gulton in London, and had dispatch'd the Business.

L. C. J. Did my Lord tell you so?

Lord Grey. He treated for me, my Lord, with him.

L. C. J. Pray, for God's-sake, you must lay your Matter a little closer together; if he was to treat about the Purchase of a Manor, was there no convenient Place for Company to treat about it, but while they were casting up the Poll-books with the Sheriffs and Goodenough? Was that Place fit?

Mr. Holt. My Lord had appointed to speak with Sir William Gulton that Day in Covent-Garden, if the Poll had been over; but not finding him there, came into the City.

Lord Grey. That Gentleman went between Sir William Gulton and I.

L. C. J. Where were you to meet?

Lord Grey. At the Rose Tavern in Covent-Garden.

L. C. J. What made you here then?

Lord Grey. Not finding him there, I came hither, and spake with Sir William Gulton in that very Room. The Poll was over, and the Company gone.

Mr. Williams. Mr. Ireton, Do you know there was any Treaty between my Lord Grey and Sir William Gulton about the Sale of any Land?

Mr. Ireton. Yes, Sir, I do.

Mr. Williams. When was that Treaty?

Mr. Ireton. About a Twelve-month since.

Mr. Williams. Do you know they had any Discourse about it?

Mr. Ireton. Sir, they had; I think it was Midsummer-day, the Day the Election of Sheriffs was.

Mr. Williams. Were they about that Treaty that Day?

Mr. Ireton. That Day, my Lord.

Mr. Williams. Where was the Treaty?

Mr. Ireton. In Sir Thomas Player's House.

Mr. Williams. What Time of the Day?

Mr. Ireton. About Twelve a Clock.

Mr. Williams. Where went my Lord afterwards?

Mr. Ireton. My Lord went to Dinner, as he told me, in the Hay-Market.

Mr. Williams. Did you know of any Appointment to meet again?

Mr. Ireton. I was informed so, but cannot positively tell.

Mr. Williams. Sir Thomas Armstrong, Pray, Sir, will you give an Account where my Lord was that Day?

Sir Thomas Armstrong. I came up this Way about Six a Clock, and was in a Coffee-house by Guildhall.



Mr. Williams. Do you know any thing about that Treaty?

Sir Tho. Armstrong. I saw them together that Night: I saw them together at Sir Thomas Player's about Twelve o'Clock, and again at Eight.

Mr. Williams. Do you know any thing of treating about this Land in Essex?

Sir Tho. Armstrong. No, I do not.

Mr. Att. Gen. You did not see them in the Chamber?

Sir Tho. Armstrong. Does any body say I did?

Lord Grey. My Lord, I will give you an Account of it.

Mr. Williams. My Lord, Mr. Ireton tells you this; my Lord Grey and Sir William Gulton were in Treaty about buying these Lands that very Morning together; says Sir Thomas Armstrong, about Noon; afterwards my Lord went to the Hay-Market, and staid there till Evening, and my Lord and Sir William were together again at Night. My Lord, this Case will depend upon your Lordship's Directions. It is very plain, that my Lord Mayor of London hath the summoning the Common Hall, and when the Business is done he hath the discharging them. My Lord, if it be true what Mr. Love and others say, they tell you, that in all their Time, their Opinion is so, that it belongeth to the Sheriffs, and not to the Lord Mayor; what may be the Consequence, lies in your Lordship's Opinion. Now for the Consequence of it, if it were no more than a Matter of Opinion and Right, and the Sheriffs insist upon it: Are these Defendants and the Sheriffs guilty of these Outrages? For there is nothing proved upon them. This don't make them guilty of any thing more than a bare continuing the Poll. Therefore, my Lord, I must submit to your Direction, how far the Jury will find us, or any of us, guilty of a Riot in this Case.

Sir Fr. Winn. My Lord, we agree they did continue the Poll, and the Defendants did apprehend it was lawful for them so to do; if the Jury should think they did misapprehend what was the ancient Usage of the City; if your Lordship should be of Opinion, that by Law the Lord Mayor ought to do it; yet I do say, it being so probable a Case, their insisting upon it will not make it a Riot: Your Lordship will be pleased, I hope, to take notice of it, if they find the Mayor hath Power to adjourn it.

Mr. Wallop. I humbly conceive, that the Information does in truth destroy itself, for it is agreed on all Hands, as the Information sets forth, that they came together upon very lawful Occasions; and the Information sets forth, that by Colour of their Office they did as if they were lawfully assembled. Now, my Lord, they have overthrown the Definition of a Riot, for a Riot is, when three or more are come together to do an unlawful Act, and they do it. So that it is a very hard matter to make this a Riot.

L. C. J. Does not this Matter appear upon Record?

Mr. Holt. No, no, my Lord, it don't.

Mr. Wallop. If Men do lawfully meet together, if by chance they fall together by the Ears, and commit many Misdemeanours, this can never be a Riot. But, say they, here was an Adjournment, a Command by my Lord Mayor to adjourn the Court, and they continue after Adjournment: Now, my Lord, the Question is, Whether he had Power to adjourn it or no, the Citizens did insist upon it, that he had no Power. Now, Gentlemen of the Jury, if you find in your Conscience, that the Citizens had a probable Cause, and they insist upon it, this can never be a Riot.

Mr. Holt. It doth appear that they were lawfully assembled together. And for the throwing off my Lord Mayor's Hat, suppose that my Lord Mayor hath a Power for to adjourn the Court, yet, my Lord, it must be agreed, that those that come thither must have a convenient Time to depart; for my Lord Mayor, as soon as ever he had adjourn'd the Court, he went away, and all the Hall could not go of a sudden, but must have a convenient Time to go; some followed him immediately, and the other Gentlemen that staid behind, not at all consenting to that rude Action about my Lord Mayor, cannot be guilty, for there is no Proof of any Misdemeanour committed by any of these Defendants; it may be there was some Discourse concerning the Power of my Lord Mayor. I only mind your Lordship of Sir Robert Atkins's Case, a late Case in the King's Bench; there can be no Assembly to choose an Alderman, as in that Case, unless the Mayor was there; the Assembly was held, and yet, Gentlemen, because it was not done in a tumultuous manner, but with a good Intent, it was held, that Sir Robert Atkins was not guilty of a Riot. There must be an evil Intention to do some Mischief.

Mr. — Turner brought his Action against Sir Samuel Starling for dissolving the Hall: And, my Lord, that being the Case of the Election of a Bridge-master, surely there is a parallel Reason for the Sheriffs.

L. C. J. That Case is against them.

Mr. — No, my Lord.

L. C. J. There the Lord Mayor hath a Power by Law to dissolve the Assembly, tho' in truth he should not have done it.

Mr. Sol. Gen. The Action was brought for denying a Poll, my Lord.

Mr. Thompson. It is laid in that Declaration, that it is the Custom of the City, that my Lord Mayor cannot dissolve.

Mr. Att. Gen. May it please your Lordship, and you Gentlemen of the Jury, you have now heard all the Evidence.

L. C. J. Gentlemen, you shall not over-rule me so: Because I am willing to hear every body, therefore you impose upon me. You shall have Law, by the Grace of God, as far as I am able.

Mr. Att. Gen. We have now done with the Evidence on both Sides, and you do now see the Right of the Lord Mayor, notwithstanding all the vulgar and popular Discourses is asserted; it appears now upon full Evidence, they themselves do not contradict it, that my Lord Mayor is the supreme Magistrate of this City, both for calling all your Assemblies, and for dissolving them; they won't pretend against this; but indeed they make a Question whether my Lord Mayor can adjourn or no. Necessity of Affairs requires it sometimes, if there be such a Tumult, such an Interruption, that they cannot proceed orderly; or if the Matter be so long that they can't determine it in one Day, there is a Necessity that there must be an Adjournment to another Time; and they give you no Instances, Gentlemen, that ever the Sheriffs in any Age did attempt it, never any Sheriffs made an Ad-

journalment of his own Accord. Mr. Love, he gives no Instance of an Adjournment, he only tells you of his Supremacy at that time when my Lord Mayor had nothing to do with it; and, Gentlemen, at that time you must remember when he was elected, the Law was otherwise when Mr. Love was elected; then the Sheriffs were the Tribunes of the People, and they had shut my Lord Mayor quite out of their Common Hall, and declared, that he had no Power to dissolve or adjourn them. The next Instance is that of Sir Robert Clayton's, and how do they make that out? Sir Robert Clayton swears only upon his own Memory, and what is that? He remembers just nothing. He does think the Common Serjeant does speak Truth in some Things, but he can't remember other Things. But we prove not only an Adjournment from Saturday to Monday, but other Adjournments by special Direction from Sir Robert Clayton. So that whatever Mr. Love did fancy of the Authority of Sheriffs, to tell my Lord Mayor he had nothing to do therewith; yet that my Lord Mayor is certainly the Chief Magistrate, we have proved all along to this present Time, till within these two or three Years, and whenever there was an Adjournment, we have proved it to you, that it was by my Lord Mayor. So that it is nothing like the Case put by the Gentlemen on the other Side; there was never any Shadow of Pretence for Right. Whoever knows London, must know the Sheriffs of London are not Officers of this Corporation as Sheriffs, but they are the King's Officers of the County, granted to be chosen by the Sheriffs: They are in their particular Cases Judges, for choosing Parliament-men, but in no Coporation Act whatsoever: So that, Gentlemen, you see there is no Pretence for that: But admit there were, what is it like the Case when a Man lays Claim to a wood, and he sends three or four Persons, or half a dozen Persons to cut it down? Yet, Mr. Wallop, notwithstanding your Authority, tho' that be not a Riot, it is a Rout, where you will send such a Number to raise Terror in the King's People, and they will continue together after they are commanded to depart by a Magistrate. But it is a different thing where Men will concern themselves in a Matter of publick Government, as if any Man should pretend he hath the King's Commission to take your Lordship off the Bench.

So that here is quite a different thing; this relates immediately to the Government; here the publick Peace of the City is in Danger, and if my Lord Mayor had been a Person of great Spirit, and had presently raised others to have suppress'd this Riot, then the City had been in a fine Condition, by these People that would have *No God bless the King*, but *God bless the Sheriffs*. There is no Pretence of Right can justify such a thing. Now, my Lord, for a Riot, this must be acknowledged to be; for many to meet together to do an unlawful thing, is a Riot.

Mr. Wallop. And do it.

Mr. Att. Gen. And do it, I put in that too, Sir. The Meeting here is unlawful, and it is as certain that my Lord Mayor hath Power to adjourn, that is a Consequence of Law, if the Adjournment be necessary, and he is the only Judge of Adjournment; and when he hath adjourn'd, I do say the continuing Persons together to do that, which if they had summon'd them to do had been unlawful, is as much an unlawful Thing, and a Riot, as that. I would fain know, if the Sheriffs had summon'd all the Citizens together to meet and choose Sheriffs, or any others, would any Man question but this is an unlawful Act, a Subversion of the ancient Government of the City, the usurping an Authority in the City contrary to the King's Grant and the Charter? And after they are adjourn'd, if they will make Proclamation, and order the People to stay, and go on with the Poll, is not that the same thing in point of Law? Surely no Man almost of common Sense but will say, it is the same thing. In the Case that Mr. Wallop puts, if there be any Disorders committed, precedent to the Magistrate's dissolving the Society; that will not amount to a Riot; but if the Magistrate comes and makes Proclamation for them to depart, and they stay after, it makes a Riot, if they continue still together, it is a Rout and an unlawful Assembly. But they say there is no Proof that these Gentlemen, that are in the Information, are guilty of the Riot; they are all Parties to the Riot, the very being there, and giving Countenance to it, is an unlawful thing. Pray, Gentlemen, if Ten Men should go to rob a House, and one stands off at a Distance, is not the Tenth Man guilty of the Burglary? If there be as many Persons together, and Three only do an unlawful Act, and the others give Protection, for Number is always a Protection, are not all these Gentlemen guilty? And therefore, Gentlemen, it is hoped you will settle the City by destroying this Pretence, which hath been fluttering in the Air, but hath no Ground for it.

L. C. J. Gentlemen of the Jury, this is an Information against several, for a Riot, and it sets forth, that there was a Common Hall that was call'd by the Lord Mayor for choosing several Officers, and that afterwards the Lord Mayor did dissolve that Assembly, and yet notwithstanding the Defendants (so many as by-and-by I shall name to you, that they have given Evidence against, they) kept together and committed a Riot; it is laid so particularly in the Information. For the Matter in Fact that hath been altercated between them, the Question is, whether the Lord Mayor for the Time being hath Power in himself to call an Assembly, and to dissolve it? And truly as to this Point, even the Counsel for the Defendants did one while grant it, but another while did bring Witnesses that did know nothing of the Matter, I must needs say. But for aught I see, even until this very time, the Lord Mayor did call the Assembly, and he did dissolve it, and that they did seem to grant even at the Beginning of the Cause: But then they make a Distinction, but he could not adjourn it to a certain Time. That was a very weak thing to say, that if the Lord Mayor may call and dissolve the Hall, that he cannot adjourn it to a convenient Hour. Suppose now the Business to be done was not dispatched sooner than this time a-night, so that upon the Matter they must be either adjourned till Tomorrow, or kept in the Hall all Night: Does any Man think, that that Magistrate that hath Power to call and dissolve, hath not Power to adjourn? There is no Man doubts of it in Fact or Law; and that it was so, Sir Robert Clayton did that very thing; if there had been no Precedent, it had been all one. But they make a great deal of Business of it, how that the Sheriffs were the Men, and that the Lord Mayor was nobody, and that shews it was somewhat of the Commonwealth's Seed, that was



like to grow up among the good Corn.—\* Pray, Gentlemen, that is  
 \* Here the People a very undecent Thing; you put an Indignity upon  
 the King, for you ought not to do it, if you knew your  
 rupted my Lord. Duty: Pray, Gentlemen, forbear it, it does not become  
 a Court of Justice.

I will tell you, when Things were topsy-turvy, I can't tell what was  
 done, and I would be loth to have it raked up now. They might as well  
 (as I perceive they have at another time said) have said, that the Power  
 of dissolving and adjourning might have been in the Livery-men, all  
 People, every body; and so then if they had been together by the Ears, I  
 don't know who must have parted them, that is the Truth of it. But I think  
 their own Counsel are very well satisfied both in Fact and Law, that the  
 Lord Mayor, for the Time being, hath this Power of calling, dissolving,  
 and adjourning the Assembly. Then there is another thing that is to be  
 considered, and that is this; the Defendants they say, We did mistake the  
 Law, it was only a Mistake of the Law, and nothing else; and we did do  
 all to a good Intent, and therefore it must not be a Riot. To give you some  
 Satisfaction in that: First, I must tell you, that a Man must not excuse  
 himself of a Crime, by saying he was ignorant of the Law; for if so be  
 that turn to an Excuse, it is impossible to convict any Man; if so be he must  
 be excused because he did not know the Law, then no Man would be found  
 guilty. But if it appear, that the Defendants did verily believe that the  
 Law was for them, that may be considered in another Place; if so be that  
 they were really ignorant, the Fine, it may be, may be the less, but it  
 won't excuse them from all. But truly, in the next Place, you must con-  
 sider, whether or no these Gentlemen were ignorant, or whether or no they  
 did not, in a tumultuary way, make a Riot to set up a Magistracy by the  
 Power of the People. For I must tell you, I have not heard by the Defen-  
 dants, and I will appeal to your Memory, I have not heard, before this  
 Time, that ever the Sheriffs did quarrel with the Mayor, or continue a  
 Common Hall after the Mayor had adjourned it. As for these Gentlemen,  
 they could not be ignorant of it, because the daily Practice before their  
 Eyes was for the Mayor to do it. But this was a new Notion got into their  
 Heads, tho' it was otherwise before, it must be so now; and one said, they  
 would have no Tory Mayor to be Mayor; thus the King should have  
 something to do to support the Mayor by his Power, for aught I know.  
 Now, Gentlemen, for the Parties that are accused to be in it, there is T.  
 Pilkington, Samuel Shute, Henry Cornish, Lord Grey, Sir Thomas Player,  
 Slingsby Bethel, Francis Jenks, John Deagle, Richard Freeman, Richard  
 Goodenough, Robert Key, John Wickham, Samuel Swinock, and John Jekyl  
 the elder; some Witnesses are to some, and others to others, but some of  
 them have seven or eight Witnesses. There is Pilkington, and Shute, and  
 Cornish, these had a great many Witnesses against them; others have two.  
 First, for the Sheriffs, and Mr. Cornish, that had been Sheriff but two  
 Years before, they kept them together after my Lord Mayor was gone;  
 and to see what People they were, No, *No God bless the King*, no, no, but  
 the Protestant Sheriffs; so that in truth the King must be put out of his  
 Throne, to put these two Sheriffs in it. It is not proved, that either of  
 these did say so, nor the others neither, but they were those that clung to  
 them, and they would help them, and they would set them to rights, and I  
 know not what; and there is no other way to know in this Case what  
 they were, but by these they kept Company with; and it may be, (I  
 would be loth to say ill, it may be) it was in order to dethrone the King  
 as far as they could; for my Lord Mayor, when truly he had adjourn'd  
 the Hall, and was going home, he had like to be trod under Foot himself,  
 his Hat was down, and that was the great Respect they gave to his  
 Majesty's Lieutenant in the City. It is true, it cannot be said who it was,  
 but those were the People that would have *No God save the King*, and  
 those the Mayor had nothing to do with. The Sheriffs they would go on  
 to poll, and cast up their Books, and would make a Disquisition who had  
 most Hands, and the like; three hours after my Lord Mayor was gone,  
 there were so many that did countenance and foment this sort of Proceed-  
 ings. There is a shrewd Act that was made since his Majesty came in,  
 that the Villany of some Men might be stopp'd, thirteenth-fourteenth of  
 the King, that for Words in some Cases makes High Treason; it is well  
 his Majesty does not take any severe Prosecution, but I can tell you, I  
 would not have Men presume upon it. It can't be said, You or you said  
 so; yet they kept them together, they were they that kept all this Rabble  
 three Hours together; the Lord Mayor does adjourn the Court, and they  
 must have some time to be gone, and thereupon would persuade us they  
 could not get away in three Hours; they ask for a Poll, and cast up the  
 Scrutiny, and I know not what. There are some, and that is my Lord  
 Grey and Mr. Goodenough, how these two should come there I know not,  
 they had nothing to do here, and therefore I doubt it will be worse upon  
 them than upon the rest, for they had nothing to do here, they must come  
 to set the Citizens together by the Ears. My Lord Grey he says, and  
 hath called some Witnesses, that he had Business with Sir William Gul-  
 fston, about the Sale of *Corsfield* in *Essex*; but I do not see any of his Wit-  
 nesses that do say he came to speak with Sir William Gulston here, he came  
 here to see how the Poll went. But, look you, Gentlemen, he hath given  
 some sort of Evidence, and the Counsel did open it very fairly, but the  
 Evidence did not come fully. If you think he did only come upon real Oc-  
 casions to Sir William Gulston, only to speak to him about that Business,  
 and concern'd himself no otherwise, then you will do well to find him Not  
 guilty; if you do not, you must find him likewise as well as the rest, for  
 Goodenough he was here to promote the Matter. There is one, and truly  
 he said, that for his part, as the rest would have *No God bless the King*, so  
 truly he would have *No Tory Mayor*. And all this Flame, I must tell you,  
 took Fire from this Spark, that the Sheriffs might do what they thought  
 fit about choosing Officers. Gentlemen, it hath been a long Trial,  
 and it may be I have not taken it well; my Memory is bad, and I am  
 but weak: I don't question but your Memories are better than mine;  
 consider your Verdict, and find so many as you shall think fit.

The Jury withdrew, and in some time returned.

Are you all agreed of your Verdict?

Jury. Yes.

Who shall speak for you?

Jury. The Foreman.

Do you find the Defendants Guilty of the Trespass and Riot? &c.

Foreman. We find them all Guilty in that Paper.

This is your Verdict?

Jury. Yes.

T. Pilkington, S. Shute, H. Cornish, Lord Grey, Sir Thomas Player, &  
 Bethel, F. Jenks, J. Deagle, R. Freeman, R. Goodenough, R. Key, J.  
 Wickham, S. Swinock, and John Jekyl the Elder, are Guilty.

You say they are all Guilty? &c.

Jury. Yes.

On the 15th of June following, Mr. Attorney-General moved in the  
 Court of King's Bench at Westminster, that Judgment might be awarded  
 against them upon their former Conviction, in order to their being fined  
 for the Riot, &c. But the Lord Chief Justice Saunders, and Mr. Justice  
 Raymond, by reason of their Indispositions, being neither of them on the  
 Bench, Mr. Justice Jones, with the Consent of Mr. Attorney General, re-  
 ferred it to the 19th Instant, when Mr. Attorney again moved for Judgment,  
 alledging the Heinousness of the Crime, viz. That it was an open Affront  
 to Justice and Magistracy, and might prove an evil Precedent, if it should  
 escape unpunish'd, which he prayed it might not do; but that since they  
 had been fairly convicted, the Court, in pursuance thereof, would award  
 such Fines as might deter others from the like Attempts, &c. Upon this  
 Motion Mr. Williams, of Counsel for the Defendants, moved, That see-  
 ing there had first a *Venire* been directed to Mr. Pilkington and Mr. Shute,  
 late Sheriffs of London, and afterward an *Alias Venire* to the present  
 Sheriffs, and yet that in the Information all the Defendants were joined,  
 tho', as he suggested, that at the time of the first *Venire* some of them were  
 not made known, and that since Mr. Pilkington, Mr. Shute, &c. had ap-  
 peared upon the first, and many of the others not till the second; he  
 humbly prayed, that an Error might be thereon assigned.

To which the King's Counsel reply'd, That if any Prejudice was  
 sustained in the Methods and Manner of Proceeding to the Trial of the Per-  
 sons convicted of the Riot and Battery, it was sustained on the Part of the  
 King; and seeing he was willing to dispense with it, that not in the least  
 affected the Defendants, unless in redounding to their Advantage; for that  
 they had a legal Trial, all of them pleading Not guilty, and putting them-  
 selves upon their Country, to try the Issue between the King and them,  
 which Country had found them guilty of the Offences before-mentioned,  
 and that now nothing remained but the Judgment of the Court in award-  
 ing their Fines, &c.

To this it was alledged, that seeing they were assembled in *Guild-hall*  
 upon a lawful Occasion, they could not be guilty of a Riot, or the like  
 Misdemeanour, the Legality of their first Assembling not admitting there-  
 of: But this Allegation was over-ruled for these Reasons; That altho'  
 an Assembly be never so legally convened, yet if they tumult or break  
 the Peace, the Legality of the Assembly cannot bear them out: And more-  
 over, that when the Lord Mayor had adjourned the Poll, the Assembly  
 was no longer a lawful Assembly, but ought immediately to have departed  
 to their respective Habitations, which the Defendants not only delayed to  
 do, but in Contempt of Authority continued the Poll, and in a riotous  
 manner assaulted the Person of the Mayor. And that for Inference, If a  
 Congregation be assembled at a Church, to hear Divine Service, which in  
 itself is lawful; yet if Blows happen, or a riotous or disorderly Tumult  
 is made, the Legality of the Meeting shall in no wise excuse the Au-  
 thors of such Disorders from the Penalties of the Law, &c. of which  
 Opinion were not only the Counsel for the King, but the Judges like-  
 wise.

These, and such-like, being the Arguments of this Day, Mr. Justice  
 Jones being indisposed, and Mr. Justice Raymond not coming upon the  
 Bench, the passing Sentence was deferred till Friday the 22d Instant, and  
 from thence till Monday the 25th Instant, at which time Mr. Justice Jones  
 being indisposed, it was put off till Tuesday, the 26th of June; when Mr.  
 Attorney moved for Judgment, requiring, that the Parties found guilty  
 upon the Information, might be fined; and was seconded by Mr. Serjeant  
 Jefferies; both of them praying, that they might have good Fines set on  
 them, as an Example to deter others from the like Attempts; as also did  
 Mr. Jones, of Counsel for the King; when, on the other Side, Sir Francis  
 Warrington, Mr. Williams, Mr. Wallop, Mr. Pollexfen, Mr. Thompson, and  
 Mr. Holt, of Counsel for the Defendants, urged many Arguments for the  
 Extenuation of the Fines, seeing they were at the Mercy of the Court,  
 alledging, That the Defendants, did that of which they were convicted  
 rather out of Ignorance than Malice, or any Design they had to injure or  
 affront the Government; as not being then capable to determine, whether  
 the Right to adjourn the Common Hall lay in the Lord Mayor or Sheriffs.  
 But after the Arguments on both Sides had been heard, Mr. Justice Jones  
 proceeded to declare the Heinousness of the Fact, and what an evil Prece-  
 dent it might prove if it should pass unpunished; and after some Confe-  
 rence with Mr. Justice Withens, he proceeded to award their Fines as  
 followeth:

On Thomas Pilkington, Esq; by reason of his being a Prisoner, only  
 500*l.* S. Shute, Esq; 1000 Marks, Ford Lord Grey of Werk 1000 Marks,  
 Sir Thomas Player, Kt. 500 Marks, Slingsby Bethel, Esq; 1000 Marks,  
 H. Cornish 1000 Marks, Francis Jenks 300 Marks, R. Freeman 300 Marks,  
 R. Goodenough 500 Marks. John Deagle 400 Marks, Robert Key 100  
 Marks, John Wickham 100 Marks, S. Swinock 500 Marks, and on John  
 Jekyl, senior, 200 Marks; all of them appearing in Court, except the  
 Lord Grey, Mr. Key, and Mr. Goodenough, and according as they ap-  
 peared to be of Ability, so were their Fines regulated.

This Judgment was afterwards reversed in Parliament, 1 *Wil.* and  
*Mary*; and the Defendants petition'd, that the Prosecutors and Judges  
 might be excepted out of the then intended Act of Grace.

To



To the KING's most Excellent MAJESTY.

*The humble Petition of Sir Thomas Pilkington, Knt. Lord Mayor of London, Slingsby Bethel, Esq; Samuel Swinock, John Deagle, Richard Freeman, John Jekyl, John Key, and John Wickham, in behalf of themselves, and of the respective Executors and Administrators of Sir Thomas Player, Kt. deceased, Henry Cornish, Esq; deceased, Samuel Shute, Esq; deceased, and of Francis Jenks, deceased.*

SHewETH,

THAT your Petitioners, and the said deceased Persons, were, in the Year 1682, and 1683, by the Contrivance and Confederacy of Sir John Moore, Kt. Sir Dudley North, Kt. Sir Peter Rich, Kt. Sir Edmund Saunders, Kt. late Chief Justice of the King's-Bench, and some others, prosecuted and convicted for a Riot; the Fact objected against them being no other in truth, than the peaceable doing their Duties as Citizens of London and Englishmen, in Election of Sheriffs for the said City and County of Middlesex.

That in the Proceedings upon the said pretended Riot, many notorious Violations of the Law were committed, and your Petitioners denied common Justice by the Combination and Confederacy of the Persons last above-named, and others; inasmuch that your Petitioners, and the said deceased Defendants, were by Judgment of the Court of King's-Bench, in Trinity

Term 1683, unreasonably fined 4100*l.* and were, by Imprisonment and otherwise, forced to pay the same; which Sum of 4100*l.* was long since paid into the Exchequer.

That at your Petitioners Prosecution, the said Judgment was reversed, the last Parliament, as erroneous; whereby your Majesty stands by Law liable to make Restitution of the said Sum of 4100*l.* as your Petitioners are advised.

Now forasmuch as your Majesty's generous Undertaking in coming into this Kingdom, tended only for the vindicating and establishing our Religion, Laws and Liberties, and for relieving the Oppressed; and for that it is agreeable to Equity, that such as did the Wrong should make the Restitution: And your Petitioners hoping the Parliament now assembled will take the whole Matter into their Consideration, and pass a Bill for Relief of your Petitioners out of the Confederates Estates, and not leave them to be satisfied by your Majesty:

*Your Petitioners therefore humbly beseech your Majesty, That the said Confederates, the Prosecutors of your Petitioners, and the Judges, and Others concerned therein, may be Excepted in the Act of Grace, intended by your Majesty, as to All they did in relation to the Prosecution and Judgment upon the pretended Riot above specified.*

And your Petitioners shall always pray, &c.

This Act of Grace is 2 Gul. & Mar. c. 10. but there is no such Exception in it, only of Sir Francis Withens, who was excepted upon other Accounts.

CXVI. *The Trial of Sir PATIENCE WARD, Kt. \* at the King's-Bench, for Perjury at the Trial between the Duke of York Plaintiff, and Thomas Pilkington, Esq; Defendant, on an Action † upon the Statute de Scandalis Magnatum. 19 May 1683. Paschæ. 35 Car. II.*

The JURY were,

Sir Thomas Bridges, Kt.  
Henry Reynell, Esq;  
Thomas Herriott, Esq;  
Thomas Airsby, Esq;  
Richard Paget, Esq;  
John Foster, Esq;

Thomas Eaglesfield, Esq;  
Edward Mapleden, Esq;  
John Sharp, Esq;  
James Suckle, Gent.  
John Olinger, Gent.  
Richard Fisher, Gent.

AN Information had been preferred by the Attorney General against Sir Patience Ward, for that he had maliciously and wilfully perjured himself in the Court of King's-Bench, upon the Trial between the Duke of York, and Thomas Pilkington, Esq; to which the defendant pleaded Not Guilty, and was tried May 19.

Cryer. Oyez: If any Man will give Evidence on the Behalf of our Sovereign Lord the King, against the Defendant Sir Patience Ward, let him come forth, and he shall be heard.

Mr. Dolben. May it please your Lordship, and you Gentlemen that are sworn, This is an Information of Perjury preferred against Sir Patience Ward. Whereas the most illustrious James Duke of York brought an Action upon the Statute de Scandalis Magnatum against Thomas Pilkington, wherein was declared, that, whereas he was the only Brother to our Sovereign Lord the King, the said Pilkington did speak in the hearing of divers of his Majesty's liege Subjects, these false and Scandalous Words, *He hath burnt the City*, (meaning the City of London) and *is* (meaning the said Duke) *come to cut our Throats*. Gentlemen, the Information sets forth further, that the Defendant Pilkington pleaded he was Not guilty, and that upon the Trial of this Issue, Sir Patience Ward was produced as a Witness upon the Behalf of the Defendant Pilkington; and that the said Sir Patience Ward then and there was duly sworn to speak the Truth, the whole Truth, and nothing but the Truth, in the Premises; and that the said Sir Patience Ward did falsely and corruptly swear and give in Evidence to the Jurors empannelled to try the Issue aforesaid, *That there was no mention at the Time of this Discourse aforesaid had between the said Thomas Pilkington and divers of his Majesty's Subjects, concerning the said James Duke of York, that there was no mention of cutting of Throats, and that before Mr. Pilkington* (meaning the said Thomas Pilkington) *came in*, (meaning the Time when the Discourse aforesaid was had) *the Discourse about the Duke of York was over; and further, that the Duke of York was not named*, (meaning at that Time when the Discourse aforesaid was had) whereas in truth at the same time there was mention of cutting of Throats; and whereas, before Mr. Pilkington came in, the Discourse concerning the Duke of York was not ended; and whereas the said Duke of York was named at the Time when the Discourse aforesaid was had, so that the said Sir Patience Ward in the Case aforesaid did commit wilful and flat Perjury.

Mr. Att. Gen. My Lord, and you Gentlemen of the Jury, Sir Patience Ward the Defendant stands accused for Perjury, committed in a Cause, that was between the Duke of York Plaintiff, and Mr. Pilkington Defendant, and in that Cause Mr. Pilkington was accused to have spoken false Words of the Duke of York, *He hath burnt our City, and is come to cut our Throats*; to excuse this, Sir Patience Ward he comes, and swears positively, first, *That the Duke of York was not mentioned in the Discourse, and therefore those Words could not be meant of the Duke of York*; this little Evasion we don't trouble you with; but they related to one Hubert, hanged many Years before; however we will lay that aside, and not trouble you with it. The next direct Matter, which proves it was maliciously done, that he was so ill a Man, and that he had spoken such Words, he swears, *That all the Discourse relating*

*to the Duke of York was over before Pilkington came into the Room. This Allegation is directly false, he swears positively, there was no mention made of cutting Throats. Gentlemen, we will first prove unto you the Words; then we will prove unto you that they were false, for Pilkington did speak these Words of the Duke of York. Gentlemen, we will leave it to you whether this Gentleman hath not forsworn himself.*

Mr. S. Jeff. If it please your Lordship, and you Gentlemen of the Jury, I must needs say, that this is a Cause of very great Consequence of one Side and t'other; it concerns a very great Person, a Man that has been Lord Mayor of London, and I think is still an Alderman of London; it is in its own Nature of very great Consequence, it is no less than the charging him with the Crime of wilful Perjury; it comes to a publick Audience, as it was very requisite it should. The Crime we charge this Gentleman with was committed in this very Place, in the Face of this Court, and I think to the Admiration and Astonishment of all Persons, that heard this Gentleman swear at that very Time: And therefore, that the thing may be intelligible to these Gentlemen, I shall crave your Lordship's Patience, to give an Account how this Matter was: This Matter was attended with Circumstances of Malice, which shew it was not a Slip in Evidence, but a malicious perjurying himself, Gentlemen; and they are these. Upon his Royal Highness's Return out of Scotland, and coming to Newmarket to his Majesty, a very loyal Gentleman, then Lord Mayor of London, Sir John Moore by Name, with some other Persons, that I have in my Eye, had it in Prospect, as it became them to do, to so great a Prince as he was, to wait upon him. My Lord, there being this Design of the Aldermen and Lord Mayor to attend upon his Royal Highness, to congratulate his Arrival from Scotland; in order thereto, upon a special Court-day, there was an Order made, that the Lord Mayor and Aldermen should attend his Majesty, to desire his Leave, that they might come and attend likewise his Royal Highness, to congratulate his late Arrival. This I think was upon a special Court, before they went to Church, upon a Sunday. In order to this, there happen'd another Meeting of the Lord Mayor and Aldermen, to prosecute this Design of their's, to wait upon his Royal Highness, to congratulate his Arrival; and thereupon an Intimation was given to Sir Patience Ward, with one of the Sheriffs, Pilkington, of their Intentions. At which time, Sir William Hooker, and another worthy Gentleman, Sir Harry Tulse, happening to be together in a Place, which I presume some of you do well know, in the Long Gallery or Anti-chamber to the Council Room, where the Lord Mayor and Aldermen most usually sit, some Discourse arose touching the Occasion of their then Meeting; whereupon a Question was proposed, Whether they should wait upon his Royal Highness or not? One of these Gentlemen was pleased to say, at that Time, that it was too late now the Court had determined it, there being then present this Sir Patience Ward, and these two Gentlemen along with Mr. Pilkington then Sheriff, who, in Objection to the Proposal of waiting upon the Duke of York, (after this Discourse was over, and after they had mentioned the Duke of York's Name to him) said, *He hath burnt the City, and is now come to cut the Throats of our Wives and Children*. This, Gentlemen, was to deter and fright the others from going, and given as a Reason why he would not go to attend the Duke of York. My Lord, this thing happening thus, an Action was brought for this, and came to a Trial before your Lordship. It is very true, in that Trial we did only produce Sir Harry Tulse, that was present, and he swore to all the Words about burning the City, and likewise to the cutting of Throats. But Sir Patience Ward, without any manner of Hesitation; nay, and not only that, (I appeal to the Memory of those that heard him swear at that Time) but boasting himself, as having as good a Memory as any Man in England, (though

\* Burnet's History of his Own Times, Vol. I. p. 536.

† In this Action the Duke of York had recovered 100,000*l.* Damages



he was cautioned at that time to have a Care what he swore) did positively say, *The Duke of York was not named after Pilkington was there; that the Discourse of the Duke of York was done before he came in.* He doubled his Evidence on purpose to make the thing more plain. But afterwards, when it came a little further to be discoursed of, I appeal to the Memory of the Court, and the Gentlemen at the Bar, whether he did not flutter about in *St. James's Park*, and out comes *Hubert*; the Duke of York was not named, but *Hubert*, *Hubert*, I clapped my Hand upon his Mouth, says I, you mean *Hubert*, and so we had got *Hubert* into the Cause on purpose to shuffle out the Business about the Duke of York. My Lord, after this (I do it to refresh the Memory of these Gentlemen) he was positive, and said, *I do positively say, there was not a Word of cutting of Throats*, even to the Surprise not only of all the Auditors, but even of all those People that were concerned in Affection for him, as well as they who were engaged in the Cause that they were to support. My Lord, in the first Place, we will give you an Account, that it was a designed and malicious Evidence, necessary for the bringing off that Man, for if there was not a Word spoken of the Duke of York, then our *Action* was no *Action*; if there was not a Word spoken of cutting of Throats, then, of consequence, the Verdict must have been against us; and therefore finding there was but one Evidence, which was *Sir Harry Tulse* against his Evidence, that made him swear so positively; but afterwards your Lordship may please to remember, we called *Sir William Hooker* a Gentleman of well known integrity to preserve the Credit of so great a Prince, maugre the Malice of all his Enemies. I speak this to shew it is fit, it is necessary to clear this Cause. In the first Place we will prove what is recited in this Record, and give you an Account what this Person did swear at the Time of the Trial. The Matters, that I have opened, I think they will sufficiently satisfy the Court and the Jury, as they did satisfy the Jury before, that what *Sir Patience Ward* swore then, is false now, and was false then.

*The Record of Pilkington's Trial read.*

Mr. S. Jeff. Read the Information. *The Record was Anno prædicto, but when it was recited in the Information, it was Anno ultimo supradicto.*

Mr. Ward. It is necessary, when we come by way of Recital of the Record, to recite the very Words in the Record, now in the Record it is *Anno prædicto*.

Mr. Williams. My Lord, they are reciting the Record.

Sir Edmund L. C. J. They do not recite it in *hæc verba*, the Substance *Saunders* is true, the Words are varying from the Record, in the Record they are *Anno prædicto*, but in the Recital, *Anno ultimo supradicto*.

Mr. Williams. That is not the same in Substance as to say *Anno prædicto*, the Year before said, there are many *Anni prædicti*, and that may refer to any of them; if there had been but one, it might have been so, but when there are several Years mentioned before, *Anno ultimo prædicto* restrains it to the last Year *prædicto*.

Mr. Attor. Gen. You may spend as much Time as you will; in the first Record there was but one Year mentioned.

Mr. Recorder. That the City of London was burnt in the Year 66; that was one Year mentioned before, I am sure.

Mr. Attor. Gen. There are several Years mentioned in this Record; there we must say *ultimo prædicto*.

L. C. J. The Objection is, That whereas it was in the Record *Anno prædicto*, here you have more, and when you recite *Anno prædicto*, you add *ultimo*.

Mr. S. Jeff. We could not do it otherwise, my Lord.

L. C. J. As if a thing could not be well except it were in such precise Words: That was *Anno prædicto*; this, you say, is *Anno ultimo prædicto*. Now if the first had been *Anno ultimo supradicto*, and in this you had said *Anno prædicto*, when several were mentioned, then it might have been an Objection; now it is not.

Mr. S. Jeff. If *Sir Patience* had been as exact in swearing, as you are in observing, he had done well enough.

Call Mr. Hatch.

[Who was sworn.]

Mr. Williams. Pray let's know your Name, Sir?

Mr. Hatch. My Name is Hatch.

Mr. S. Jeff. Pray, Mr. Hatch, was you present at the Trial between his Royal Highness and Mr. Pilkington?

Mr. Hatch. Yes, my Lord, I was present.

Mr. S. Jeff. Was *Sir Patience Ward* produced as a Witness?

Mr. Hatch. *Sir Patience Ward* was sworn.

Mr. S. Jeff. What did he swear?

Mr. Hatch. He did swear, upon his Oath, That the Sheriffs were not present; that there were some Aldermen at the Table in the matted Gallery in *Guild-hall* smoking a Pipe of Tobacco, and that they had some Discourse about waiting upon the King and the Duke, pursuant to an Order from my Lord Mayor the Day before, and he said, the Sheriffs were not present.

Mr. S. Jeff. What Sheriffs?

Mr. Hatch. The Sheriff: And he did afterwards say, he did positively affirm, upon his Oath, that *Pilkington* did not come in till all the Discourse was over about the Duke.

Mr. S. Jeff. What did he say about cutting of Throats?

Mr. Williams. Good Mr. Serjeant.

Mr. Jones. You say he positively said, there was no Discourse about the Duke of York after *Pilkington* came in.

Mr. Hatch. But then after, my Lord, he said; I do positively affirm, upon my Oath, that *Pilkington* did not come in till all the Discourse was over concerning the Duke of York. And further, there was Discourse about burning the City by the Papists, faith *Pilkington*, he hath burnt the City; with that *Sir Patience Ward* took him by the Shoulder, saying, Explain yourself: What! you mean *Hubert*, I warrant you? Yes, said he. He being asked the Question, Whether any thing of the Duke was named, he said, No: And further, Whether there was not any mention of cutting of Throats, he did positively say, *There was no mention made of cutting of Throats*.

Mr. Williams. Mr. Hatch, Where were you placed at the Trial?

Mr. Hatch. At the Trial, Mr. Williams, I stood just there.

Mr. Williams. Had you a Pen and Ink about you?

Mr. Hatch. Yes, Sir, I write Characters.

Mr. Williams. Pray, Sir, did you take the Words in Writing then, or no, in the Court?—Mr. Hatch. I believe I might, I can't positively tell.

Mr. Thompson. Have you your Notes here?—Mr. Hatch. I think I have not.

Mr. Thompson. A Man of a good Memory.

Mr. S. Jeff. We have a matter of some thirty or forty Witnesses; don't make such a Rout.

Mr. Pollexfen. Mr. Hatch, you are repeating what *Sir Patience Ward* said; Did he, in that Evidence, mention the Duke of York, or not?

Mr. Hatch. He said, there was Discourse about going to the King at *St. James's*, but not to the Duke. *Sir George Jefferies* asked him that very Question.

Mr. Pollexfen. Let him now repeat the Evidence which he swore just before.

Mr. S. Jeff. I thought that would not have been such a mighty Question at this Time of Day.

Mr. Williams. I desire he may say again what was sworn by *Sir Patience Ward*.

Mr. S. Jeff. Begin and repeat, Sir, in what manner he swore, in the very same Form he spake then.

Mr. Hatch. *Sir Patience Ward*, being sworn and examined upon the Account of Mr. *Pilkington*, did say, That there were some Aldermen met at the Matted Gallery, the Matted Chamber in *Guild-hall*, and smoking a Pipe of Tobacco, and there was Discourse of waiting upon the King, and the Duke, pursuant to an Order of the Lord Mayor the Day before; and being asked, Whether Mr. *Pilkington* was not present; he said, The Sheriffs were not present, but at the Court of taking Licences in *Guild-hall*, and that there was a Discourse about burning the City by the Papists, and, says Mr. *Pilkington*, Hath he burnt the City? Hath he burnt the City? Upon that, *Sir Patience Ward* took him by the Shoulder, and bid him explain himself: You meant *Hubert*, I warrant you, faith he. Yes, faith *Pilkington*; and being asked, Whether there was any Discourse about the Duke of York, he said No; but positively said, that there was no mention made of cutting of Throats.

Then Mr. Buxton was sworn.

Mr. Williams. Your Name, Sir.

Mr. Buxton. My Name is Buxton.

Mr. S. Jeff. Mr. Buxton, will you tell my Lord and the Jury, whether you remember what was said by *Sir Patience Ward*?

Mr. Buxton. My Lord, I was present at his Trial, I happened to return the Jury.

Mr. S. Jeff. Pray will you tell my Lord and the Jury, what was said by *Sir Patience Ward*?

Mr. Buxton. My Lord, I was present at this Trial, having returned the Jury that was to try that Cause of his Royal Highness: I was above in the Gallery, and I could not so well understand it; but as that Gentleman said before, he was saying, he heard no mention made of cutting of Throats; I can't say the very Words, for I took no Notes.

Mr. Williams. You were in the Gallery then?

Mr. Buxton. Yes, Sir.

Mr. S. Jeff. Pray, Mr. Aston, I think you was present.

Mr. Aston. I was present in the Court that Day, and I do remember, that *Sir Patience Ward* did swear, I think positively, to the best of my Remembrance, that the Duke of York was not named while Mr. *Pilkington* was by. That is all I do remember.

Mr. S. Jeff. What do you mean by positively? that he used the Word positively?

Mr. Aston. I think I am pretty sure he did take it positively, or upon his Oath.

Mr. S. Jeff. What he did take positively?

Mr. Aston. That the Duke of York was not named while Mr. *Pilkington* was by.

Mr. S. Jeff. Do you remember any thing else?

Mr. Aston. As to cutting of Throats, I do not remember it. Several People have asked me, and I gave them that Relation, or else I believe, that had been out of my Mind.

Mr. Wood sworn.

Mr. S. Jeff. Mr. Wood, pray will you give my Lord and the Jury an Account of what you heard *Sir Patience Ward* swear, in the Cause between his Royal Highness and Mr. *Pilkington*.

Mr. Wood. My Lord, I was in Court when *Sir Patience Ward* gave Evidence for Mr. *Pilkington*, and I heard *Sir Patience Ward* say, that the Duke of York was not named; and that the Discourse concerning the Duke was over before Mr. *Pilkington* came in, and that there was no mention of cutting of Throats.

Mr. Jones. Did he swear these Things positively, or as he believed, or heard?

Mr. Wood. To the best of my Remembrance, I think he clapt his Hand upon his Breast, and said positively there was no mention of cutting of Throats.

Mr. Attor. Gen. Do you speak of your best Remembrance as to his Posture, or to the Word?

Mr. S. Jeff. Did he say that Word positively?

Mr. Wood. To the best of my Remembrance, he said positively, or upon my Oath; one of them he did say, I can't tell which.

Mr. S. Jeff. Either he said positively, or upon my Oath. Now, my Lord, if your Lordship pleases, we have given your Lordship and the Jury, a sufficient Account how positive this Gentleman was; but as positive as he was at that Time, we will give you an Account, that he did forswear himself.

Swear Sir James Smith (which was done).

Mr. Attor. Gen. Pray will you tell the Court what you can say?

Sir James Smith. I did little think to be called to give any Evidence upon the Account of *Sir Patience Ward*, considering the Relation that is between us, as Aldermen. I did not take particular Notice, but I do remember, that he used that kind of Posture as they say, and did positively, or upon his Oath, say, I can't be certain of the Words he used, that Mr. *Pilkington* was not there while they were discoursing concerning going to *St. James's*, for he did declare, the Duke of York was not talked of, and I do remember a very good Circumstance that he did swear so, for my Lord Chief Justice *Pemberton* was pleased to apply himself to *Sir Harry Tulse* upon it; and I remember *Sir Harry Tulse* made Answer, I am very sorry to say it, he was there all the while.

Mr.



Mr. Att. Gen. Did you hear any thing about cutting of Throats?

Sir James Smith. I don't remember that.

Sir William Rawsterne sworn.

Mr. Serj. Jeff. What say you, Sir William Rawsterne?

Sir Will. Rawsterne. My Lord, I was here, but I took no particular Notice, but I do remember, that Sir Patience Ward did say, that the Duke was not named when Pilkington was in the Room; I can say nothing else.

Mr. Jones. Did you hear him swear it?

Sir Will. Rawsterne. Yes, Sir.

Mr. Serj. Jeff. Sir James Smith, did he swear it upon his Oath?

Sir Jas. Smith. My Lord, I said before, I cannot say the Word he expressed it in, but either positively, or upon his Oath, he was not there all the while that Discourse was.

Mr. Pollexfen. First he says, the Discourse was of going to St. James's.

Sir Jas. Smith. My Lord, as I said before, he did declare, that the Sheriff that then was, Mr. Pilkington, was not by while they were discoursing of going to St. James's; for he said they did not speak of the Duke of York; but the Discourse was about going to St. James's and that Discourse was at an End before Mr. Pilkington came in; and while they were talking about firing the City, upon that Mr. Pilkington saying, he hath fired the City, he desired him to explain himself, whether he did not mean Hubert.

Sir John Peake sworn.

Mr. Serj. Jeff. Sir John Peake, I desire to know what you can say?

Sir John Peake. I was present at the Trial, and Sir Patience, I do remember this, laid his Hand upon his Breast, and either said positively, or upon his Oath, I cannot tell which, one of the two I am certain of, That Mr. Pilkington was not by when the Duke of York was mentioned.

Mr. Serj. Jeff. What about cutting of Throats?

Sir John Peake. There was something said of cutting of Throats, but I am not so positive.

Mr. Serj. Jeff. Sir Thomas Field, I think you was one of the Jury that tried the Cause.

Sir Tho. Field. Yes, Sir, I was upon the Jury.

Mr. Serj. Jeff. Pray do you remember that Sir Patience Ward was a Witness?

Sir Tho. Field. Yes, I do remember it.

Mr. Serj. Jeff. Do you remember what he swore?

Sir Tho. Field. I do remember he swore the Duke was not named; that I can remember.

Mr. Att. Gen. Do you remember any thing else?

Mr. Serj. Jeff. Do you remember any thing about cutting of Throats?

Sir Tho. Field. There was something, I cannot positively say that.

Mr. Serj. Jeff. Do you remember what other Words he said?

Sir Tho. Field. He did say likewise, that Mr. Pilkington was not in the Room when any thing was spoken relating to the Duke of York.

Mr. Serj. Jeff. Sir Francis Butler, Pray will you please to give my Lord and the Jury an Account whether you were of the Jury, in the Cause between his Royal Highness and Mr. Pilkington?

Sir Fra. Butler. I was of that Jury.

Mr. Serj. Jeff. I think you were the Foreman, Sir.

Sir Fra. Butler. I was the Foreman.

Mr. Serj. Jeff. Pray, do you remember Sir Patience Ward was produced as a Witness?

Sir Fra. Butler. He was produced.

Mr. Serj. Jeff. Do you remember any thing he swore? and what?

Sir Fra. Butler. The Evidence he swore (which I thought we had reason to observe, for the great Question was, Whether the Words related to the Duke of York, or no?) was, that it did not relate to the Duke of York; and Sir Patience Ward was proving Alderman Pilkington was not in the Room while they discoursed of the Duke of York, and that the Duke of York was not named.

Mr. Serj. Jeff. Did he swear that positively?

Sir Fra. Butler. To the best of my Remembrance, positively; I heard nothing of Qualification at all.

Mr. Serj. Jeff. This is a Gentleman of great Worth, and the Foreman of that Jury.

Sir Fra. Butler. We did debate it after we went out of the Court, among ourselves, before we brought in our Verdict, and I remember something more in it; for we should have laid a little more Weight upon his Evidence, if he had not said, that when Sir William Hooker took some Exceptions at his Words, and asked, What do you mean? Sir Patience Ward then laid one Hand upon Alderman Pilkington's Mouth, and, as I remember, t'other upon his Breast, and asked, What do you mean? And t'other answered, Hubert. That made us believe his Evidence was to be laid by.

Mr. Serj. Jeff. Now, my Lord, if your Lordship please, I think we have sufficiently satisfied your Lordship, and the Jury, what Words he swore; now we will prove that they were false.

Mr. Att. Gen. Sir Harry Tulse, pray, will you acquaint my Lord, and the Jury—we will ask you first; Sir Harry Tulse, were you present when this Gentleman swore?

Sir H. Tulse. I was present; I sat down on a Fore-seat, and he gave his Evidence behind: I never saw him touch the Book, nor kiss it.

Mr. Att. Gen. What did you hear him say?

Sir H. Tulse. I was a little discomposed at what I had heard him say, and so I am not able to give an Account, and I thought I had some Reason for it.

Mr. Serj. Jeff. Why, what Reason? Was it because he swore truly or falsely?

Mr. Thompson. Good Mr. Serjeant, don't lead so.

Mr. Williams. I think it is a Reflection upon an Alderman to be led by any.

Mr. Att. Gen. Mr. Williams, I can shew you, you have led Aldermen, and against Law too.

Mr. Sol. Gen. Will you please to give my Lord an Account whether Mr. Pilkington was by when there was any Discourse about the Duke of York?

Sir H. Tulse. Gentlemen, I don't know whether you expect the Account I formerly gave; that I think I have very perfect in my Memory.

Mr. Att. Gen. Give an Account of that Passage.

Sir H. Tulse. The Evidence I gave was this: Upon the Tenth Day of April, (I will not be positive, I think it was that Day) according to an Order of Court made the Day before, we met at Guild-hall; there was Sir William Hooker, Sir Patience Ward, Sheriff Pilkington, and myself, I remember no more; and Alderman Pilkington said, He burnt our City, and is come, or will come, one of these two Words, to cut our Throats. This was the Evidence that I gave, this was true. I was asked by the Court, what was the preceding Discourse, whether made by Alderman Pilkington, or Sir Patience Ward, I can't be positive; but it was concerning an Order of going to St. James's, or to the Duke of York, one of the two; he did complain of that Order, they were complaining of that Order, and seemed to me as if they would have it re-debated; I made Answer, it was too late, for the Court had agreed it.

Vol. III.

Mr. Att. Gen. Was there any Discourse concerning the Duke of York while Mr. Pilkington was by?

Sir H. Tulse. Alderman Pilkington was by all the while the Discourse was.

Mr. Att. Gen. And was there any Discourse about the Duke of York?

Sir H. Tulse. I did never hear the Duke of York named by Alderman Pilkington at all, as I remember; they complained of the Order made the Day before, that is, concerning going to St. James's, or to the Duke of York, seeming to me as though they would have it re-debated; upon which I made Answer it was too late now, for the Court had agreed it; and then came these Words, He hath burnt our City, and is come, or will come, to cut our Throats.

Mr. Att. Gen. Do you say Pilkington was there when the Discourse was?

Sir H. Tulse. Yes, Sir.

Mr. Serj. Jeff. Sir Harry Tulse, I would ask you a Question, by your Favour, you say there was then mention of cutting of Throats, and you say Mr. Pilkington did not name the Duke of York himself, that you can't say; but you say he was there while there was a Discourse about going to congratulate the Duke.

Sir H. Tulse. I cannot be positive of that; we discoursed about the Order, that was the Order that was made before, to congratulate the Duke of York I cannot say that Alderman Pilkington did ever name the Duke of York, but he was present at that Discourse.

Mr. Sol. Gen. Sir Harry Tulse, you say there was mention made concerning debating the Order, was there mention made of the Order? Did they name what Order they would have re-debated?

Sir H. Tulse. Yes, Sir. The Order was this, an Order made the Day before, that we should go and congratulate the King's safe Return, and with the King's good Leave or Licence, we should then congratulate the Duke of York, that was the subject Matter.

Mr. Serj. Jeff. Pilkington was present then?

Sir H. Tulse. He was present there.

Mr. Serj. Jeff. And upon that Discourse, pray, Sir Harry Tulse, did Pilkington say these Words, He hath burnt the City, and is come to cut our Throats?

Sir H. Tulse. No, Sir, that did not immediately follow.

Mr. Sol. Gen. Sir Harry Tulse, what Order did they say they would have re-debated?

Sir H. Tulse. I took it for the Order made the Day before.

Mr. Sol. Gen. Did they name the Order?

Sir H. Tulse. I did make mention of the Order, that the Court had agreed it, and it was too late for that.

L. C. J. He says it was too late to be debated or spoke of in Court, I apprehend it so.

Mr. Just. Jones. Was the Duke named, or not?

Sir H. Tulse. At that Time, truly, Sir, I cannot positively say he was named; for the Debate was about the Order made to congratulate the Duke of York, or of going to St. James's; one of them, I am sure, was named, but I cannot be positive.

Jury-man. I desire to know whether this Gentleman was there all the while.

Sir H. Tulse. My Lord, I believe I was there all the Time that there was a Word spoke in this matter, the whole Time.

Mr. Serj. Jeff. Sir Harry Tulse, I would ask you another Question: Who did you apprehend to be meant, when Pilkington said, He hath burnt the City? Who do you think he meant by that?

Sir H. Tulse. I will answer any thing that the Court thinks fit I should answer. I humbly pray my Lord and the Court would ask me Questions.

L. C. J. Sir Harry Tulse, it was said the City was burnt. Pray who did you apprehend was meant that burnt the City? Who did they mean?

Sir H. Tulse. Who did I apprehend, my Lord? Truly, my Lord, I think I was the Man that made Answer, that it was Hubert that burnt the City, because he was hang'd for it.

Mr. Just. Withins. Did you apprehend it was Hubert?

Sir H. Tulse. My Lord, there was a Talk of Hubert; and I remember Sir Patience Ward took hold of it, and bid him explain himself; Who do you mean? Hubert? And then there was a little Stop among us; and, as I remember, I made this Answer, I think, that Hubert burnt the City, for that he was hang'd for it.

L. C. J. Hark you; I would ask you one Question, if you please; You heard the Expression of cutting of Throats, he is, or will come to cut our Throats?

Sir H. Tulse. Yes, my Lord.

L. C. J. Pray who did you apprehend should be meant by that? He could not mean Hubert, surely, for that?

Sir H. Tulse. My Lord, I must give my Opinion, that it was the Duke of York.

Mr. Thompson. Did you understand that he meant so at that Time?

Mr. Serj. Jeff. Sir William Hooker, will you give an Account of it?

Sir W. Hooker. My Lord, I will, as near as I can, tell the very Words; I may lose some Words, but of the Matter of Fact, I am confident I shall miss nothing. We met in pursuance to an Order made the Day before; the Order was made to meet on the Monday following, to wait upon the King and the Duke of York. My Lord, accordingly, when I came into the Gallery, I found Sir George Waterman sitting on one Side, and I sat opposite to him, and Sir Henry Tulse at the End of the Table; not long after, came in Sir Patience Ward, my Lord, Sir Patience Ward sat down close by me, and Mr. Pilkington stood at the other End of the Table opposite to me. My Lord, to the best of my Remembrance and Belief, Sir Patience Ward did move, that we might consider this Business of waiting



waiting on the Duke, and, my Lord, Answer was made, I do believe by Sir Henry Tulse, that it was now too late, for my Lord Mayor was come, and would be going; upon his saying it was too late in this manner, Pilkington standing at the End of the Table, said these Words; *Hath he burnt the City, and is he come to cut our Throats?* Upon this, my Lord, I reply'd; Brother Pilkington, said I, thou art infinitely mistaken in this Point; thou mayest as well charge it upon a Child unborn as upon him; for the Duke of York was as careful in the Fire to preserve the City at the same time, in a Yard in Coleman-street, as any who was by was; though the Ashes came upon our Heads; and I never knew a Man look more carefully than he did at the same Time. This, my Lord, is the Substance, but I can't say that Mr. Pilkington made a Reply either one Way or other, but I think there was something of Hubert spoke besides. Then Sir George Waterman went away, and I went away afterwards.

Mr. Att. Gen. So that you are positive that Pilkington did say, *he is come to cut our Throats?*

Sir W. Hooker. *Hath he burnt the City? And is he come to cut our Throats?*

Mr. Serj. Jeff. And did you immediately tell him this of the Duke of York?—Sir W. Hooker. Immediately.

Mr. Sol. Gen. I think you say it was pursuant to an Order about waiting on the Duke of York?

Mr. Att. Gen. Did you name the Duke of York?

Sir W. Hooker. I did name the Duke of York to Pilkington, after these Words were spoke.

Mr. Serj. Jeff. Pilkington was there then before the Discourse of the Duke of York. Was Sir Patience Ward there while the Discourse was, concerning cutting of Throats?

Sir W. Hooker. I am not able to swear whether Sir Patience Ward did hear it or no; undoubtedly he was there.

Mr. Sol. Gen. Sir William, do you think that Sir Patience Ward did wink when he stopt his Mouth, or no?

Sir W. Hooker. Truly I did not see him stop his Mouth.

Mr. Sol. Gen. Sir William, was it plain to you that he meant the Duke of York?

Sir W. Hooker. I am not able to know other Men's Thoughts; but certainly nothing could appear more plain.

Mr. Sol. Gen. Was the Subject-matter of Discourse concerning the Duke of York?

Sir W. Hooker. About that, and nothing else.

Mr. Serj. Jeff. He named the Duke of York, did he?

Sir W. Hooker. He did not name the Duke of York; I don't say that.

Mr. Serj. Jeff. But you named him.—Sir W. Hooker. Yes, Sir.

Mr. Att. Gen. Was that all you discours'd of?

Sir W. Hooker. This is all.

Mr. Serj. Jeff. Here is the Order.

Mr. Williams. We agree the Order.

Mr. Serj. Jeff. For the present we will rest here, and see what Account they will give.

Mr. Recorder. May it please your Lordship, and you Gentlemen of the Jury; I am of Counsel for Sir Patience Ward, the Defendant. My Lord, as the Counsel for the King say they will rest it here, so if we should rest here too, I think there is nothing proved that sticks upon us. My Lord, I observe first, that of all their Witnesses they produce concerning the Words in Court, there is not one of them all, but the first, pretends to be a Penman, and he says he believes he did write, he can't tell whether he writ or no, and he can't tell whether he hath his Notes about him, and this is all we can have of him. And the Truth is, they vary so much among themselves, that that is enough to make any one wonder, on the whole speaking of the Words. And we see these worthy Aldermen are very cautious; they did expect to be call'd upon their Oaths, I did take particular Notice of it. The Truth is, my Lord, for this Matter, it is certainly as great and heinous a Crime as any can be, and I believe these Gentlemen will think, that in this Case, they should have no less Evidence to convict this Gentleman of this foul Crime of Perjury, than to convict him of any Crime that concerns his Life. The Truth of it is, if such a foul Disreputation and Scandal should stick, yet the Jury must have plain Proof. If there were a rash Word, if there were a Mistake in a Person's Remembrance, it is not every Slip that will criminate a Man of Perjury, it must be a wilful and corrupt forswearing a Man's self against his own Knowledge, and nothing less than that is sufficient. My Lord, it is agreed on all Hands, the Record shews it, that the Duke hath recovered a Verdict. The Cause went for him. If the Duke would have had a Verdict, he hath it; if he would have had more Damages, for aught I know he might; he hath more than an 100,000*l.* for he hath all Coists, to the utmost Farthing. My Lord, in Cases of this Nature, a Man's Words must be taken together. Your Lordship will acquaint the Jury, that if there be any thing in any Part of his Evidence, that does explain, that does limit, that does qualify it, the whole Discourse must be taken as one entire Evidence, and that he shall have the Advantage of it in every Part. My Lord, the Use I would make of this is to this Purpose, that whatever these Witnesses fix upon him, they do it by culling and picking out Pieces of Words; they don't pretend upon their Memory, much less upon Writing, that they are able to repeat the whole Evidence. Your Lordship does very well remember the Lady Carr's Case, a greater and plainer Instance than this, if it were proved as it was pretended, in Chancery; she swears she never received Money of such a Man, and she made a second Answer, and there she says she received no Money after such a time, and it was resolved, that that should be taken together, and that that was no Perjury. My Lord, we shall insist upon the two Things: First of all, that the Words were not spoken as they are laid, that they were not sworn by Sir Patience Ward as they are laid and charged in the Information, for they are charged there positively and directly; but we say they were spoken with all the Caution that any Man can speak them with, as *he believed*, and to the best of his Memory, and as *he apprehended*; and this, I say, circumscribed with great Caution and great Tendernefs. If they had been spoken as they are laid, yet this could not be Perjury; that is the second Thing. So that if it fall out that he was mistaken in this, your Lordship will acquaint the Jury, that a *rash Oath* is not Perjury, if it were so. My Lord, as to the latter Part, Sir Harry

Tulse does go a great way; for he says, that he can't take upon him to say that Sir Patience Ward ever saw Mr. Pilkington; if he did never see Mr. Pilkington, how can he be charged with Perjury then, for saying he was not there? Under Favour, if he did not see him there, he must swear according to his Senses, that he was not there, and you cannot charge Perjury upon that. It demonstrates the Uncertainty of these Words, that when they come to lay the Declaration, they are fain to lay these Words four several Ways, as they do. And yet these two worthy Aldermen say, they took down the Words that very Day. If these Words were so uncertain then, though they were writ down, what should make them otherwise now?

Mr. Att. Gen. There hath not been such a Word said yet.

Mr. Recorder. We will prove it, Sir. As to the third Point, we say this: It is charged there was no cutting of Throats, no mention of cutting of Throats; as to that, my Lord, I take it from one of their Witnesses Mouths, that is, Mr. Buxton; he says, that Sir Patience Ward swore, that he heard no mention of cutting of Throats; under Favour, Sir, to say that there was no mention of cutting of Throats, that is positive, that there was no such thing spoken; but their own Witness says, that there was no such thing heard. Can there be a greater Difference than for a Man to say, there was no such Word spoken, and to say, there was no such Word heard by me? This of cutting of Throats, if it were spoken at all, tho' I believe it was; for I have that good Opinion of these worthy Aldermen, I mean Sir William Hooker and Sir Henry Tulse, that I presume there was something about cutting of Throats; but I answer, that Sir Patience Ward might not hear it. And I think they have given a very good Ground for it: Says Sir Harry Tulse, Is he, or will he, come to cut our Throats? Whether it were *is*, or whether it were *will*, that he cannot tell. Sir William Hooker, says he, *is come* to cut our Throats: One speaks affirmatively, the other interrogatively. Sir Henry Tulse says it was *our Throats*; says Sir William Hooker, the *Throats of our Wives and Children*. Do not these two Aldermen differ as much between themselves, as either or both of them do with Sir Patience Ward, when Sir Harry Tulse shall say, there were no *Wives and Children* mentioned? It is no Reflection at all, and I hope there will be no Cause to reflect upon the other Alderman. The next Point is, that there was a Discourse concerning the Duke of York, and that it was before Mr. Pilkington came in. Here the Witnesses vary extremely; one says before he came in; another says, before he came to the Table; another says, while he was in the Room; all these Varieties we find in the Witnesses that swear the Words out of Sir Patience Ward's Mouth; and certainly Sir Patience Ward would never say these Words; it is impossible to say the Discourse concerning the Duke was ended, when in the very next Words he says, the Duke was not named at all: For, my Lord, Sir Henry Tulse says, he was never named. But, my Lord, besides this, if I say he was not there in the Sight and View of Sir Patience Ward, he is not guilty, be it true or false, that he was there before the Discourse ended; for it is a long Room, and no Man can say but a Man might be behind Sir Patience Ward as he sat at the Table. The second Thing, my Lord, is this, that the Duke was not named; that he is charged to have sworn. My Lord, the Evidence that he delivered was, that the Duke was not named in his Hearing. Now Sir Harry Tulse says the very same that Sir Patience Ward did, that there was a Discourse about an Order, he says, but nobody named the Duke, and Sir William Hooker says, the Duke was not named.

Mr. Just. Withins. He says he cannot say he was named.

Mr. Recorder. 'Till after the Words spoken; and, my Lord, it was so doubtful, that it seems there was need of Explication; for the Words, (under Favour) as proved, do not relate to cutting of Throats, but to the burning of the City; and what Sir William Hooker says afterwards, makes it more plain. If we prove these Things, that Sir Patience Ward carried himself thus, if he expressed himself with so much Caution, under Favour, that doth clearly avoid this Charge in the Information. But, my Lord, if there were Perjury, it was committed at the Trial of Mr. Pilkington, and at that Trial when it was committed, it was best understood; for here is no new Evidence as to the Words spoken in the Gallery; therefore, under Favour, the Perjury was as observable then, and more, because it was fresh then. Now it is said, that it was with great Astonishment; we shall give in Evidence, that there was no such Apprehension that the Court, that the Counsel, that every body did apprehend it as delivered with that Caution as I have opened it to your Lordship: First, Sir George Jefferies, in the very Conclusion, asked him, if there were nothing spoke of the Duke while Mr. Pilkington was by. No, saith he, not to the best of my Memory, saith Sir Patience Ward. Saith Sir George Jefferies, by Reply, Your Invention is better than your Memory. Surely that were the most impertinent Thing in the World, if it had been otherwise. And every body knows Sir George Jefferies is a Man that would not have said such a Thing, if he had not wholly referr'd to his Memory, and given him an Occasion for that Reply. And Mr. Solicitor, he says these Words, in repeating the Evidence to the Jury: Sir Patience Ward goes a great way to confirm that of the other Aldermen, and that shews, that they did observe it far enough from Perjury; and my Lord Chief Justice, my Lord, when he came to direct the Jury, he says, that Sir Patience Ward had said, that, as he conceived, there was no mention of cutting of Throats, and so on; and says he, it is easy to forget such Circumstances. If, in the Judgment of my Lord Chief Justice, it were an easy thing to forget, can it be wilful Perjury in any Man to testify that which was spoken as he conceiv'd? And truly, my Lord, it is the more for that my Lord Chief Justice was upon his Oath as well as the Witnesses: And your Lordships, that sat with him, would have rectified my Lord Chief Justice, if he had misapprehended him: And the Jury did apprehend it so, and looked upon Sir Patience Ward's Evidence as a Confirmation. My Lord, all these things are negative, and they do refer to the Memory, and that my Lord Chief Justice said a Man may easily forget, and that is enough to excuse him. Besides, my Lord, this was given in Evidence seven or eight Months after the Time that the Words were spoken; and if any Man were to repeat what was said at this Bar, no doubt but in seven or eight Months they would differ more than Sir Patience Ward did from these Gentlemen. Besides, my Lord, he is a Man of good Reputation and Credit, he hath born great Offices in the City, Mayor and Sheriff of London.



and this a Crime for mean Persons, and we think much less Evidence than this will satisfy your Lordship. We will prove what was said at the Trial, not by the imperfect Memories of People that did not write, or cannot tell whether they writ or not; but by some that did take very exact Notes, and especially by one that wrote the whole.

Mr. Williams. My Lord, the Question is, what was spoken by Sir Patience Ward. My Lord, if Sir Patience Ward did not swear as they have said in the Information, Sir Patience Ward is not guilty. They have said the Information thus: That as to the cutting of Throats it was sworn positively by Sir Patience Ward; but if Sir Patience Ward did only speak by Hearsay, as he heard, that there was no mention of cutting of Throats in his hearing, then we are not guilty. My Lord, how far then the Evidence doth touch us in this Matter, how far they have proved us guilty, is to be considered. I do not find, that any one Witness in this Trial says, that Sir Patience Ward did swear positively, that there was no mention of cutting of Throats. Every Man that speaks, speaks to the best of his Memory, and to the best of his Knowledge, and no otherwise; and I will appeal to your Lordship, upon what every Witness hath said, whether any Witness can be convicted of Perjury; for every Man hath appealed to his Memory. Observe every Witness, and not any of them do agree. The two Aldermen that were then sworn, one of them Sir Harry Tulse, tell you of the Discourse concerning coming to burn the City, and cutting of Throats: as I take it, Sir Harry Tulse said it by way of Question, *Is he come, is he come to cut our Throats?* Sir William Hooker tells it positively, *he is come, he is come to cut our Throats.* If Gentlemen do vary, as these two Witnesses, and have several Apprehensions of the same thing, it ought to have no Influence upon this. In this Case, we are here for wilful Perjury. If it be a Mistake of the Memory, that will never come up to Perjury. We will make it out, that it was spoken with great Caution and Restriction. And then for the other of the two Assignments, if this be true, that there was no Discourse of the Duke of York, then the second will naturally fall. The first thing is this, that he should swear there was no Discourse of the Duke of York; if this be true, that there was no Discourse of the Duke of York, then the second will fall. If the Discourse of the Duke of York was done before Mr. Pilkington came into the Room, if there were no Discourse of the Duke of York, it is impossible that should be the Meaning. And here I must observe, Sir Harry Tulse is a Thousand Witnesses in this Case; he tells you expressly, that there was no Discourse of the Duke of York, he hath told you plainly there was no Discourse of the Duke of York, nor any Discourse of the Duke's Name; and what says Sir Harry Tulse? He says very plainly, there was a Discourse of an Order made the Day before. We allow the Duke is mention'd in that Order, but the Question is, whether there was mention of the Duke's Name at this Time. If you believe Sir Harry Tulse, there was no mention of the Duke's Name.

Mr. Just. Jones. He did not remember that there was. He did not remember that the Duke of York was named.

Sir Fra. Winn. By any body.

Mr. Just. Jones. He does not say, that the Duke was not named.

Mr. Williams. Sir Harry Tulse is as much obliged to remember in this Case as any Man here. This will be a mighty Evidence to justify my Client, then the Perjury will certainly fall upon these, but we will clear this too. In this Matter Sir Patience Ward was a most cautious Evidence, so is he, he did not say positively, that there was no mention of the Duke's Name, but he says, to the best of his Remembrance. So that there is nothing proved against us. We will call Mr. Blaney, Mr. Blaney is a thousand Men in this Case.

Sir Geo. Jeff. Is he so?

Mr. Williams. He takes Notes exactly. We will tell you what was sworn by Sir Patience Ward.

Sir Geo. Jeff. I have known him out in a Verdict.

Mr. Pollexfen. That the Duke of York's Name was named in the Discourse is not proved; nobody says it was before the Words spoken.

Mr. Just. Jones. After the Words spoken; it was then he tells you; but it was not before the Time of the Discourse.

Mr. Pollexfen. There was a Discourse of going to St. James's, and upon this Discourse these Words were spoken, that Pilkington did speak; but the naming the Duke was after the speaking of the Words in the Declaration; therefore, there being nobody that does prove, that the Duke was named in any Discourse preceding the Words spoken by Pilkington, I think it is no Evidence at all.

L. C. J. You make things so intricate, that no Man shall be able to understand what another says, but must take it as you would have it. When it was said he had burnt the City, well, what says t'other? Sir William Hooker I think, makes Answer, says he, the Duke is as innocent as a Child, and he was one that endeavoured to save it. Must not we understand, now, that this was a Discourse of the Duke all this while?

Mr. Pollexfen. My Lord, the Question is, whether there were any such Discourse preceding the Words, or any thing in Question, but what happened after the Words?

Sir Geo. Treby. If the Duke were not named before the Words, can the Name of the Duke refer to the expounding of them?

Sir Geo. Jeff. No; but Hubert, ten Years after he was hang'd.

Sir Fra. Winn. My Lord, I see we are in Question for corrupt and wilful Perjury.

L. C. J. You had best call your Witnesses; for aught appears you are so yet.

Sir Fra. Winn. We will call our Witnesses, and shew what he did swear.—Mr. Blaney, will you acquaint my Lord and the Jury, whether you were by at that Trial; and give an Account of what you know Sir Patience Ward did swear, and whether you took any Notes?

Mr. Blaney. I was present at the Trial between his Royal Highness and Mr. Pilkington; I did sit upon one of those Stools there, and I did take Notes, to the best of my Skill.

Sir Geo. Jeff. Have you your Notes?—Mr. Blaney. Yes, Sir.

Mr. Williams. First of all, acquaint my Lord and the Jury, what was sworn by Sir Patience Ward.

Mr. Blaney. Having received a Subpœna from Sir Patience Ward about this Matter, I looked over my Notes, and turned down the Leaves in several Places.

Mr. Williams. Tell what Sir Patience Ward swore concerning cutting of Throats; and what that was; Recollect yourself about what was sworn by Sir Patience Ward concerning cutting of Throats.

Mr. Att. Gen. Pray, Sir, don't look upon your Notes.

Sir Fra. Winn. Your Witness don't remember whether he writ Notes or no.

Mr. Blaney. I have read my Notes To-day, again, and looked upon them; I do find it is thus, and I do really believe to be true; for I don't know I never altered any Man's Evidence, either in Substance or Form. He did then say, *Upon my Oath, if it were the last Word I was to speak, I did not hear one Word of cutting Throats.*

Mr. Williams. Pray, Sir, say as he said.

Mr. Blaney. These were the Words: *Upon the Oath I have taken, if were the last Word I was to speak, I did not hear one Word of cutting of Throats.* Sir Fra. Winn. Was it writ so in your Notes at that Time.

Mr. Blaney. It is so in my Notes.

Sir Fra. Winn. Are your Notes alter'd since?—Mr. Blaney. No, Sir.

Sir Fra. Winn. There was no Thought of Perjury then?

Sir Geo. Jeff. Not by him, but by others.

Mr. Williams. Are these the Notes that were then taken?

Mr. Blaney. These are the Notes that were then taken.

Sir Fra. Winn. I ask you this; did you take them as he said them?

Mr. Blaney. I did, to the best of my Skill, neither added nor diminished; Sir Patience in the Beginning of his Evidence did say these Words: That there was nothing mentioned of the Duke, but of St. James's, in his Hearing.

Sir Fra. Winn. Are you sure the Words are there?

Mr. Blaney. They are here. Any Man that could read my Short-hand may see it.

Sir Fra. Winn. Were the Words then taken?

Mr. Blaney. They were then taken.

Sir Fra. Winn. Are they altered since?—Mr. Blaney. They are not, Sir.

Sir Fra. Winn. How are the Words?

Mr. Blaney. That there was nothing mentioned of the Duke's Name, but of St. James's in his Hearing.

Mr. Williams. If this be true, it shuts out the second Assignment; but however we will ask him concerning the other Assignment, whether there was any Discourse concerning the Duke after Pilkington came in.

Mr. Blaney. If you please, Mr. S. Jefferies was pleased to press it upon Sir Patience Ward. Sir, you were pleased to ask the Question, Was all the Discourse over concerning going to St. James's, or the Duke of York, before Mr. Pilkington came in? Was it all over before Mr. Pilkington came in? And Mr. S. Jefferies then said—

Sir Geo. Jeff. What did he answer to my Question? Was there nothing said of it while he was by?

Mr. Blaney. Sir Patience Ward said, *Not one Syllable of it to my Memory;* whereupon Sir George Jefferies said, *Your Invention is better than your Memory.* And he reply'd, my Lord, *I thank God, I have a good Memory, though perhaps that Gentleman hath not.*

Mr. Williams. Was this written down in your Book?

Mr. Blaney. It was then taken by me in Writing, in my Book.

Mr. Williams. Is any thing altered?—Mr. Blaney. Not one Word.

Mr. Williams. Did you write them sitting there as they were spoken?

Mr. Blaney. Just as he said them: There I sat where Mr. Owen sits now.

Mr. Att. Gen. Do you swear you remember any Part of it?

Mr. Blaney. Sir, this I do remember, as well as I can remember any thing in the World.

Mr. Att. Gen. Blaney, tell me positively what he said.

Mr. Blaney. He said, *Not one Syllable of it to my Memory;* I do remember it.

Mr. Att. Gen. Upon what Question?

Mr. Blaney. Sir, of the Duke's being not named, but St. James's, I do remember likewise; but I can't well say any thing of the Business of cutting of Throats; I find it in my Book unaltered, I do not know that I am mistaken.

Mr. Serj. Jeff. Hark you, Mr. Blaney; I know his Notes have been mistaken sometimes; I remember once upon *Raree-show* Business, they were mistaken. Upon your Oath, Sir, did you hear Sir Patience Ward speak at that Time any Words concerning a Law-suit? Look upon your Notes.

Mr. Blaney. Sir, I will so.

Mr. Pollexfen. What have we to do with *Raree-show*? Are we trying that?

Mr. Just. Withins. Gentlemen, don't be angry, let the Cause be tried fairly.

Mr. Serj. Jeff. I may ask a Question, I hope. I ask a fair Question, I would fain meet with that among his Characters.

Mr. Blaney. Sir, I would not have looked it over, if I had met with any such thing in my Notes.

Mr. Att. Gen. Can you swear any thing positively upon your Notes?

Mr. Serj. Jeff. It is some Discourse near the Question.

Mr. Blaney. Then, Sir, indeed it is not in my Notes.

Mr. Serj. Jeff. Did Sir Patience Ward use the Word *positively* at any time in your Notes; and tell us to what?

Mr. Att. Gen. Whether he was positive to any one Thing?

Mr. Serj. Jeff. Did he swear positively to any one Thing? And tell us to what? I desire to be satisfied by Mr. Blaney's Notes. Some Men can take Notes on the one Side, and forget Things on the other.

Mr. Williams. Come, Mr. Beaver.

Mr. Blaney. I don't see the Word *positive*.

Mr. Serj. Jeff. No, not at all.

Mr. Blaney. I don't pretend to say I have written every Word.

Mr. Serj. Jeff. But you do pretend to write more than he said.

Mr. Williams. What he writ is true.

Sir Fra. Winn. He does not undertake to say he writ every Word that pass'd, but whether or no he writ any Word that was not said. Is all that you writ true?

Mr. Blaney. I verily believe it is true.

L. C. J. Is that any manner of Satisfaction when he hath not taken all that was said, and so spoiled the Sense, by leaving out some of the Words?

Mr. Just. Withins. How is it possible for a Man to be a good Witness, that comes and swears in one Part, I know nothing of any such Words; and at another Time says he does not write all in his Notes?

Sir



Sir G. Treby. Let that pass for a Rule, and then no Witness they produce can be believed.

Sir Fr. Winn. They have given Evidence by Witnesses *visu voce*, without Notes, and make an Objection, because he does not remember every Passage; therefore he signifies nothing. We urge it in point of Evidence, my Lord; he is known to be a Man very dexterous in writing Short-hand; in a material Thing he swears to the best of his Remembrance. He took them from the Mouth of the Person that swore at that Time. My Lord, we asked him whether he writ any thing that was not said. We leave it in point of Evidence, my Lord, to encounter theirs.

Mr. Williams. We would give our Evidence in, if they would give us Leave.---Richard Beaver, Were you by, at Mr. Pilkington's Trial?

Mr. Beaver. My Lord, I was by all the while.

Mr. Just. Jones. Did you take Notes?

Mr. Williams. Were you present at the Trial of Mr. Pilkington?

Mr. Beaver. I was present.

Mr. Williams. Can you remember what was sworn by Sir Patience Ward upon that Trial?---Mr. Beaver. Yes, Sir.

Mr. Williams. Can you remember what Sir Patience Ward swore concerning cutting of Throats?

Mr. Beaver. My Lord, he did say, That to his best Remembrance the Discourse was over before Pilkington came into the Room. To the best of my Remembrance, my Lord, that Discourse concerning the Duke was over before Pilkington came into the Room.

Mr. Williams. How did he express it? Pray swear what Sir Patience Ward spake; tell how he expressed himself.

Mr. Beaver. Sir Patience Ward did say, to the best of his Remembrance, That the Discourse concerning his Highness the Duke of York was over before Sheriff Pilkington came into the Room, where they were smoking Tobacco.

Mr. Williams. He said these Words to the best of his Remembrance?

Mr. Beaver. He did so. Upon which Sir George Jefferies said again to him, that he had a good Memory, and he said he had, and my Lord Chief Justice said, You may thank God you have a good Memory; my Lord Chief Justice himself said so.

Mr. Williams. What did he say?

Mr. Beaver. To the best of his Knowledge, he did not hear any thing of cutting of Throats.

Sir Fr. Winn. Can you remember the Way of his Expression?

Mr. Beaver. The Way of his Expression was, as I remember, to the best of my Remembrance, he did strike his Hand upon his Breast, and said, When Sheriff Pilkington came in, he struck his Hand upon his Breast, and asked him if he meant Hubert, so he said, upon his Salvation, or to the best of his Knowledge.

Sir Fr. Winn. What did he say?---Mr. Beaver. He said-----

Sir Fr. Winn. What did he say concerning cutting of Throats?

Mr. Beaver. He said he did not hear any thing, as he believed.

Mr. Just. Jones. Of what?---Mr. Beaver. Of cutting of Throats.

Mr. Just. Jones. Is that all he said, he did not hear any thing of cutting of Throats?

L. C. J. You Friend; you said that Sir Patience Ward said he did not remember any thing of cutting of Throats; did you say so?

Mr. Beaver. Yes, my Lord.

L. C. J. And thereupon you say, My Lord Chief Justice did commend his Memory for it; pray thee, how came he to be praised for such a great Memory, when he said he did not remember any thing? Thou hast not laid the Plot well together.

Mr. Just. Withens. Was he commended because he said he did not remember?

Mr. Just. Jones. Where did you stand?

Mr. Beaver. I stood over-against Sir Patience Ward.

Mr. Just. Jones. Did you hear well?

Mr. Beaver. Yes, my Lord, I heard every Word. He said he got Honour by speaking Words against the Duke of York.

Mr. Just. Jones. What is that?

Mr. Beaver. That Pilkington had got Honour by speaking against his Highness the Duke of York.

Mr. Serj. Jeff. In the mean time look that Part out in your Notes, that he speaks of. Now I would ask you a Question, Friend.

Mr. Att. Gen. Pray will you recollect yourself? Did you hear Sir Patience Ward say, to the best of his Remembrance, the Discourse concerning the Duke of York was ended before Pilkington came in? Pray what did he say, touching the Discourse of the Duke of York?

Mr. Beaver. Sir, he said to his best Remembrance, that Discourse was over.

Mr. Att. Gen. What Discourse?

Mr. Beaver. Concerning his Highness, that it was over.

Mr. Serj. Jeff. Mr. Beaver, I would ask you a Question, because I know you will remember it presently. Do you remember any thing Sir Patience Ward swore, that he never had a Law-suit in his Life? Do you remember any thing of that?

Mr. Beaver. If you please, Sir, there was something said of that.

Mr. Serj. Jeff. Then look that in your Notes too, Mr. Blaney---Pray, upon your Oath, do you remember he used the Word *Positively*?

Mr. Beaver. Nothing at all, *positively*.

L. C. J. Upon my Word your Memory must be commended.

Mr. Serj. Jeff. Mr. Beaver, where do you live, Mr. Beaver?

Mr. Beaver. I live, Sir! You know well enough, Sir: What would you say to me?

Mr. Serj. Jeff. I only desire to know where you live, Sir.

Mr. Beaver. I live in Seaper-Lane, Sir.

Mr. Williams. He is an honest Man. He was commended when he was Church-warden.

Mr. Serj. Jeff. Many a wife Man hath been in that Employ.

Mr. Williams. Mr. Crisp, you were present at the Trial between his Royal Highness and Mr. Pilkington.

Mr. Crisp. My Lord, I was present here.

Mr. Williams. Can you remember, Sir, what was sworn by Sir Patience Ward concerning cutting of Throats, and how he swore it?

Mr. Crisp. I cannot give any perfect Account: I was here, and a great

many Expressions I did hear, a great many I did not hear. I heard Sir Henry Tulse give some Account, and Sir William Hooker, that Mr. Pilkington should say such Words about the Duke's being come---

Mr. Just. Withens. Go on, pray, Gentlemen.

Mr. Williams. Can you say any thing of what Sir Patience Ward swore about cutting of Throats?

Mr. Crisp. Sir Patience Ward was speaking whether or no such Words were spoken that were swore; he did say there was something said, that he was come to burn the City, that he did confess: but as to cutting of Throats, there was not a Word spoken in my Hearing, or to the best of my Remembrance, or something to that Purpose, I cannot be positive.

Mr. Williams. Can you be positive in this, Sir, that he said in his Hearing, or I cannot be positive?---Mr. Crisp. I took it in that Way, Sir.

Mr. Williams. Pray, Mr. Crisp, I would ask you this? Do you remember any thing he said, whether Mr. Pilkington was in the Room, when there was any Discourse of his Royal Highness, or the Duke of York?

Mr. Crisp. To the best of my Memory, he spake it thus: We were discoursing together about going to wait on his Majesty, and then to go to his Royal Highness; and we entered into some other Discourse; and when we were discoursing of that, Mr. Pilkington came to the Table to us: It was concerning the Work of the Day; and when we were about that Discourse, Mr. Pilkington came to us to the Table. Whether he said he was not in the Room, or came into the Room then, I can't tell; but I remember he said he came to the Table to us when we were about this Discourse.

Sir Fr. Winn. Do you remember any thing that my Lord Chief Justice said to Sir Patience Ward's Evidence?

Mr. Crisp. That I remember more than any other Particular, because Sir George Jefferies had made some Reflection upon Sir Patience Ward, and my Lord said, Sir Patience, that is usual with Counsel to speak so to Evidence; but do you go on with your Evidence for all that, says my Lord Chief Justice; Sir Patience, recollect yourself; it is supposed by your Evidence, that you leave out those Words, either about the Duke of York's being named, or about cutting of Throats; therefore, Sir Patience, recollect yourself. Says Sir Patience, I do speak it to the best of my Memory. Says Sir George Jefferies, upon that or some other Time, Your Invention is better than your Memory, which I took more Notice of than other Things.

Sir Fr. Winn. When my Lord Chief Justice bade him recollect himself, how did he express himself? Did he say, to the best of his Memory?

Mr. Crisp. That he did, positively.

Mr. Williams. Mr. Crisp, recollect yourself, as near as may be: When my Lord Chief Justice made that Answer, either to those Words of cutting of Throats, or the Duke of York's being mentioned; was it in the Conclusion of his Evidence?

Mr. Crisp. It was towards the Conclusion; for I went away, being very much sweltered.

Mr. Serj. Jeff. Mr. Crisp, did you hear Sir Patience Ward say, in his Evidence, that he never had any Suit?

Mr. Crisp. He did speak something when you did reflect upon him, I don't remember that ever I had any thing to do with Courts; my Business is at Home.

Mr. Serj. Jeff. A further Question I ask.---Mr. Crisp, can you tell, upon your Oath, whether Sir Patience Ward swore any thing positively?

Mr. Crisp. I don't know, Sir; I took no Notes at all; I cannot swear, or declare those Words were not spoken; but still it was in his Hearing, or the best of his Memory.

Mr. Serj. Jeff. Do you remember he ever used the Word *positively*, or was positive in any Part of that Trial?

Mr. Crisp. I do remember he spoke it very positively; but whether he said the Word *positive*, I can't say: But still it was with this Reservation.

Mr. Serj. Jeff. Hark you, Mr. Crisp, I will ask you one Thing more. Do you take it upon your Oath positively, that he used either to the best of his Memory, or the best of his Belief, in any thing he said?

Mr. Crisp. In his Answer to my Lord Chief Justice he did.

Mr. Serj. Jeff. In any other Part, will you take it upon your Oath, positively, that he ever used the best of his Remembrance, or the best of his Belief?

Mr. Crisp. I said before, I did not fix it in my Memory.

Sir Fr. Winn. My Lord, he thinks it convenient to say to the best of his Memory too---Call Mr. Wright.

Here the King's Counsel attempted to remark on the Evidence.

Mr. Williams. Pray, my Lord, when we have given all our Evidence intire, if they have any Observation, we will submit to it; but to remark upon every Witness, would occasion too many Interruptions. We would give our Evidence intire.

L. C. J. You will agree, that they may ask a Question when you have done with them?

Mr. Holt (to Mr. Wright.) Was you present at the Trial between his Royal Highness and Mr. Pilkington?

Mr. Wright. Yes, Sir; and Sir Patience Ward, I remember, was asked this Question, Whether he heard any Words concerning killing, or cutting of Throats; and Sir Patience Ward said, For killing I heard that Discourse, but for cutting of Throats, he never mentioned.

Mr. Williams. You are a Gentleman that exercise your Memory; pray, Sir, did he say any thing of cutting of Throats?

Mr. Wright. It was to his Hearing, or the best of his Remembrance; he did it very cautiously.

Mr. Williams. Was it as he believed or remembered, Mr. Wright? Did he say positively there was no Discourse of cutting of Throats, positively, or with any Reference to his Hearing?

Mr. Wright. As far as I can remember, thus he said, There was a Discourse concerning firing the City, but not concerning cutting of Throats.

Mr. Williams. Did he say that positively, or to the best of his Understanding?

Mr. Wright. The Occasion of it was this, Sir, whether Mr. Pilkington was present when the Discourse was about waiting on his Majesty, to congratulate his coming to Town from Newmarket, and his Royal Highness; Sir Patience Ward did believe he was not then present when the Discourse was; he was in Guild-hall, with the Lord Mayor, licensing of Ale-houses.

Sir Fr. Winn. When he did mention that about cutting of Throats, how did he express himself?



Mr. Wright. I believe, or do think, there was no such Word spoken.

Mr. Serj. Jeff. I would ask your Parson one Question.

Mr. Wright. What you please, Sir George.

Mr. Att. Gen. Can you swear yourself positively what he said?

Mr. Wright. I swear thus far, according to my Remembrance.

Mr. Serj. Jeff. I would ask him a Question—

Mr. Att. Gen. All Issues must be tried by Belief or Memory; what new Practice is this? Can you swear this upon your Oath, or do you only say, I think or believe it?

Mr. Wright. I speak to the best of my Remembrance.

Mr. Serj. Jeff. Mr. Wright, I would ask you a Question. If I take you right, at the Beginning, there was a Talk concerning killing and cutting of Throats; my Lord, I appeal to the Memory of the Court and the Jury, if he did not say it two or three times over. Mr. Wright, remember what I say.

Mr. Recorder. He did say it cautiously.

Mr. Just. Jones. He did not insist upon it.

Mr. Serj. Jeff. Was there any Discourse, upon your Oath, when Sir Patience Ward gave his Testimony, that there was any Discourse concerning killing and cutting of Throats?

Mr. Wright. He believed that the Word killing was not spoken in Mr. Pilkington's hearing.

Mr. Serj. Jeff. Now I ask you another Question. Now, Mr. Wright, pray do you remember that there was any Discourse concerning Sir Patience's having a Law-suit, or no Law-suit?

Mr. Wright. Sir Patience said this when you made a Reflection upon him. My Lord, I hope you will not suffer me to be abused; for I never remember I was in any Court upon any Occasion of Law before.

Mr. Serj. Jeff. Now I would ask you another Question, Mr. Wright, because you have remembered more than other People have remembered; you have, by your Profession, an extraordinary Occasion to use your Memory; do you take it upon your Oath, that he did give any Evidence positively?—Mr. Wright. I do not remember he used the Word positively.

Mr. Serj. Jeff. Did he swear any thing positively?

Mr. Wright. I do not know what you mean by positively.

Mr. Serj. Jeff. Do you take it upon your Oath, that he did positively declare any thing in that Trial? Methinks a Man of your Profession should understand that.

L. C. J. Did he speak positively, or the best of his Remembrance? Do not you understand that Word?

Mr. Serj. Jeff. Or directly, or categorically, or any Word you use; I perceive you do not understand positively, therefore I put another Word.

Mr. Att. Gen. Did he swear any thing positively?

Mr. Wright. The most of his Evidence that I heard, was with cautionary Words, to the best of his Remembrance.

Mr. Serj. Jeff. Do you remember he swore any thing positively?

Mr. Wright. I cannot remember, Sir, the whole Trial.

Mr. Serj. Jeff. Did he swear any thing directly or positively?

Mr. Wright. Thus far he said, To the best of my Remembrance, to the best of my Knowledge, this Discourse was over.

Mr. Serj. Jeff. Did he directly swear it?

Mr. Wright. My Lord, he spoke cautiously, those Words he spoke directly.

Mr. Att. Gen. Did he swear any thing indirectly?

Mr. Serj. Jeff. Where does my Parson live? Where do you live, Mr. Wright? Upon your Oath, where do you live, before you go?

Mr. Wright. If it be a material Question, I will answer it.

Mr. Just. Raymund. You must do it.

Mr. Wright. My Lord, I live in Essex at Walthamstow.

Mr. Serj. Jeff. Are you the Minister of the Place?

Mr. Wright. Yes, Sir.

Mr. Serj. Jeff. He hath heard the Word killing, which nobody else heard before.

Mr. Williams. Pray call Col. Birch.

Mr. Holt. Come, Col. Birch, will you come over on this Side?

Mr. Williams. Thus, were you at the Trial between his Royal Highness and Mr. Pilkington?

Col. Birch. I was — My Lord, I am sworn to speak the Truth, and the whole Truth, and nothing but the Truth. As for speaking nothing but the Truth, I shall be sure to do; as to speak the whole Truth, I cannot. My Lord, I stood where those Gentlemen do. Sometimes I could hear, sometimes I fell back, and could not hear, so that indeed I cannot speak to any one Sentence as it was delivered. This is all I can say.

Mr. Williams. Then say what you can.

Mr. Holt. Colonel, please to go your own way.

Col. Birch. My Lord, that which I took Notice of was the Caution that I observed Sir Patience Ward to give his Evidence with, that was the principal Thing; I heard some Pieces of other Things, and then by-and-by I was put out of Hearing. But methought it was something strange, because I have not usually heard the like, and therefore I charged my Memory with it; that is, Some Things he said to the best of his Memory, other Things as he remembered, or to the best of his Knowledge; these were the Things that I charged my Memory withal, but to what Sentence he applied, I am not able to give your Lordship an Account, upon my Oath.

Mr. Williams. Colonel Birch, did you observe this in giving his Evidence, generally: Was it according to his Remembrance, or cautiously?

Col. Birch. That was the main Thing he spoke of; what he did in the general, was with Caution.

Mr. Att. Gen. Can you judge of that by what you heard?

Col. Birch. I am very ancient, Mr. Attorney; but I can judge of a Man's Caution by his speaking.

Mr. Att. Gen. Colonel, did you see him strike his Hand upon his Breast?

Col. Birch. I do not remember. I cannot apply it to any Sentence; but from henceforth I will never give Evidence, but what I can do directly.

Mr. Williams. Mr. Northey, were you at the Trial between his Royal Highness and Mr. Pilkington?

Mr. Northey. My Lord, I was there, and stood behind there, but I could not hear very perfectly, to know any Sentences fully.

Mr. Williams. What did you observe?

Mr. Northey. I do remember that Sir Patience Ward did several times say, to the best of his Memory, and to the best of his Knowledge, one Time par-

Vol. III.

ticularly, Sir George Jefferies did particularly say, that his Invention was better than his Memory.

Mr. Thompson. Was that towards the Conclusion of his Evidence?

Mr. Northey. He did it several Times.

Mr. Thompson. But that time, Sir?

Mr. Northey. He did swear very cautiously, to the best of his Remembrance; I cannot, my Lord, say what he swore.

Mr. Serj. Jeff. You heard my Question: When I said to him his Invention was better than his Memory, upon your Oath, upon what Occasion was it?

Mr. Northey. Really I cannot say, Sir George, what; but your Voice being much louder than other Men's I heard you plainly.

Mr. Holt. Mr. Nelson, were you at the Trial?

Mr. Nelson. My Lord, I was present at the Trial; and in some Cases Sir Patience Ward did rely upon his Memory, for Sir George told him, his Invention was better than his Memory.

Mr. Williams. Do you remember generally he did so?

Mr. Nelson. I had not remembered this, Mr. Williams, if it had not been for Sir George Jefferies's Reply.

Sir Fra. Winnington. Mr. Baker, pray will you tell my Lord what you know of Sir Patience Ward's giving Evidence?

Mr. Baker. My Lord, according to the best of my Remembrance, my Lord Chief Justice Pemberton did say, Sir Patience, Sir Patience, you speak to the best of your Memory, to the best of your Remembrance; I say, my Lord Chief Justice Pemberton did speak to Sir Patience Ward, Sir Patience, Sir Patience, you speak to the best of your Memory. My Lord, says he, I do it to the best of my Remembrance, my Lord, all that I can say.

Mr. Williams. Can you remember the Occasion of this, or the Time?

Mr. Baker. My Lord spoke to him once or twice; as I remember, he said once, Mind your Evidence, Sir Patience; Sir Patience was angry a little at somebody.

Mr. Williams. Can you say what was it?

Mr. Baker. Some Words, as I remember, passed between Sir George Jefferies and Sir Patience.

Mr. Williams. And what was the Occasion?

Mr. Baker. I cannot remember, indeed.

Mr. Williams. Did you observe upon the Trial, that Sir Patience Ward did swear generally positively, or to the best of his Remembrance?

Mr. Baker. I apprehended him to swear to his Hearing and Memory sometimes.

Mr. Just. Jones. Do you remember the particular Things he swore?

Mr. Baker. No, my Lord.

Mr. Serj. Jeff. I would ask Mr. Blaney this: I know you exactly take Notice of what he says; find out in your Book, Sir Patience, Sir Patience, you speak to your Memory.

Mr. Williams. Mr. Bennet, pray can you remember what was sworn by Sir Patience Ward?

Mr. Bennet. Sir, I was here, and I could hear very little; but then some time after, something towards the latter End, I got my Head in, and could hear a little, and that was that Mr. Pilkington was not at the Table, and the Discourse was ended before he came, of waiting upon his Royal Highness, about going to his Majesty, and after to St. James's.

Mr. Williams. How did he speak that, positively, or to his Remembrance?

Mr. Bennet. He was asked both by you and Sir George Jefferies. He did not answer you, but he answered Sir George; for Sir George asked him this Question, Was this Discourse quite over before Mr. Pilkington came in? He did declare—(I will tell you immediately, if you will give me Leave) He did declare not one Tittle was spoken, or to that Purpose. It was the latter Part, near it I am sure.

Sir Fra. Winnington. How did he express himself in that?

Mr. Bennet. He declared, as I have told you, that not one Syllable was spoken in his Hearing.

Sir Fra. Winnington. He says, my Lord, that not one Syllable was spoken in his Hearing.

Mr. Serj. Jeff. The Court hears what he says.

Sir Fra. Winnington. Sir, that agrees with the Notes of Mr. Blaney.

Mr. Serj. Jeff. The Word that he said was, to the best of his Memory. How was the Word, Sir Patience, Sir Patience?

Mr. Blaney. That was not in, Sir.

Sir Fra. Winnington. My Lord, now we will go to another Part of the Evidence; we will call Persons of Quality, that have long known Sir Patience Ward, that will give your Lordship an Account, whether he be a Man likely to forswear himself corruptly and wilfully.—Sir William Ruffel, are you sworn? Pray how long have you known Sir Patience Ward?

Sir Will. Ruffel. Near upon twenty Years.

Sir Fra. Winnington. Pray will you give an Account what you know of him?

Sir Will. Ruffel. I have had several Transactions with him for considerable Sums of Money, I never found but very fair, and honest, and reputable Dealing. I have known him almost twenty Years, I have dealt with him for several Sums of Money, and have found him very fair, just and reputable in all Transactions between him and me.

Mr. Williams. Do you think he would wilfully or corruptly forswear himself?

Sir Will. Ruffel. I never had that Opinion of him: I was impannelled upon the Jury, but the Court refused me, and I went away.

Mr. Williams. Sir, did you observe him to be a Man of Truth in his Trading?

Sir Will. Ruffel. Ever, Sir.

Mr. Williams. Was he given to tell Lyes, or prevaricate?

Sir Will. Ruffel. I always found him a Man of Truth and Justice in his Dealing, all the Time I dealt with him.

Mr. Serj. Jeff. Sir William, I know you will speak the Truth; you are a civil Gentleman. Have you not taken him to be a factious seditious Man? Did you look upon him to be a Man well-affected to the King and Government?

Sir Will. Ruffel. I never did concern myself in those Affairs much, I never had any Converse with him about them.

Mr. Serj. Jeff. I know you were a Common-Council-man in his Mayoralty.



*Sir Will. Ruffel.* I was a Common Council-man in his Time.

*Mr. Att. Gen.* Pray, upon your Oath, did you look upon him to be a Man well affected to the Government?

*Sir Will. Ruffel.* I do not understand, *Mr. Attorney*, that I ought to pass my Opinion upon Persons in that Point.

*Mr. Att. Gen.* Have you not observed in the City his Actions there?

*Sir Will. Ruffel.* I was concerned at that time when he was Mayor.

*Mr. Att. Gen.* How did you observe him?

*Sir Will. Ruffel.* I do not know that I have heard him speak in a Court of Aldermen.

*Mr. Att. Gen.* I ask you, Sir, would he strain a Point to serve a Party?

*Sir Will. Ruffel.* I do not know, Sir.

*Mr. Williams.* I think you have known *Sir Patience* a great while: Do you take him to be a good Subject to the King, or no?

*Sir Will. Ruffel.* I never knew otherwise by him.

*Sir Fra. Winn.* *Mr. Johnson.*

*Mr. Just. Jones.* This kind of Evidence doth weigh very little.

*Mr. Recorder.* It is a very improbable thing, that a Man that hath borne so many great Offices, that hath represented the King in that great Office of Lord Mayor, should be guilty of this.

*Mr. Att. Gen.* My Lord, if they talk of Reputation at large, we will call all the Court here for the Reputation of our Witnesses.

*Mr. Just. Jones.* For a Man that hath been so eminent as *Sir Patience* hath been, there is very little more to be said for his Reputation.

*Sir Fra. Winn.* *Mr. Johnson*, do you know *Sir Patience Ward*?

*Mr. Johnson.* Yes, Sir.

*Sir Fra. Winn.* How long, *Mr. Johnson*, have you known him?

*Mr. Johnson.* Ten or twelve Years, Sir.

*Sir Fra. Winn.* Have you had Dealing with him?

*Mr. Johnson.* Yes, Sir, for considerable Sums, for Thousands of Pounds.

*Sir Fra. Winn.* Has he dealt with you as a just Man?

*Mr. Johnson.* A very honest just Man as ever I dealt with in my Life.

*Sir Fra. Winn.* Do you think he would forswear himself?

*Mr. Johnson.* I don't think he would tell a lie.

*Mr. Att. Gen.* No, not for a Party?

*Mr. Johnson.* No, not for a Party. Said I, *Sir Patience Ward*, you are looked upon to be a Person disaffected to the Government. Says he, It is my Misfortune; I am as loyal as any Man in England.

*Mr. Just. Withins.* Hark you, Sir, pray how came you to question whether he was or no?

*Mr. Johnson.* Being intimate with him, Sir.

*Mr. Just. Withins.* What made you doubt, to ask the Question?

*Mr. Pollexfen.* Do you apprehend him to be a Man that would forswear himself?—*Mr. Johnson.* No, truly, he was a Man of few Words.

*Mr. Pollexfen.* Was he cautious?

*Mr. Johnson.* Yes, Sir, as exact a Man as ever I dealt with in my Life.—I am very well known in the Court, I don't come to serve a Party. I can serve his Majesty as well as some in Court.

*Sir Fra. Winn.* *Mr. Toriano*, how long have you known *Sir Patience Ward*?

*Mr. Toriano.* Thirty Years.

*Sir Fra. Winn.* In all the Time have you looked upon him as fair in his Dealing?

*Mr. Toriano.* I have known him a Man of Truth, one that would not be false, to his Knowledge.

*Sir Fra. Winn.* Do you think he would forswear himself?

*Mr. Toriano.* I don't think he would tell a Lye to his Knowledge.

*Mr. Serj. Jeff.* You say how long you have known *Sir Patience Ward*: Have you not wondered within three or four Years?

*Mr. Toriano.* I have not meddled with Things. He hath by his Discourse been as loyal a Man as any.

*Mr. Williams.* *Mr. Pickering*, how long have you been acquainted with *Sir Patience Ward*?

*Mr. Pickering.* My Lord, I have been acquainted near forty Years. We have dealt together as long as he did follow a Trade.

*Mr. Williams.* Pray, in your Conversation and Dealing with him, did you observe him a Man given to Lying, or Falshness, or Deceitfulness, in his Conversation and Dealing?

*Mr. Pickering.* I never in all my Life did observe him guilty of any thing inclining that way, but of a fair Conversation, never given to many Words.

*Mr. Williams.* Do you think he would corruptly forswear himself upon any Account?

*Mr. Pickering.* Truly I believe not willingly do it, nor any thing that way.

*Mr. Att. Gen.* *Mr. Pickering*, you have observed him to be swerving of late?

*Mr. Pickering.* Truly I have been a Common Council-man in the Ward where he is Alderman, and all the Discourse I heard from him was very loyal truly.

*Mr. Serj. Jeff.* By his Actions you have looked upon him to be a Man very well affected to the Government?

*Sir Geo. Treby.* (To *Capt. Griffith.*) Do you know *Sir Patience Ward*?

*Capt. Griffith.* I have known him ever since he hath been Alderman of that Ward.

*Sir Geo. Treby.* How many Years, Sir?

*Capt. Griffith.* About thirteen or fourteen Years.

*Sir Geo. Treby.* In all that Time how have you looked upon him?

*Capt. Griffith.* I have looked upon him in that Repute he was in as an Alderman. I never had any Dealing with him.

*Sir Geo. Treby.* Did you think he would forswear himself?

*Capt. Griffith.* No truly, I think no Man of Honour would forswear himself.

*Mr. Att. Gen.* Captain *Griffith*, upon your Oath, how hath he carried himself towards the Government?

*Mr. Williams.* *Sir Harry Tulse*, in all your Time did you find him to be a Man given to tell Stories for Truth?

*Sir Harry Tulse.* Sir, I never had any Dealing with him in Matter of Trade.

*Mr. Williams.* How did you find him in his Conversation?

*Sir Harry Tulse.* Truly, Sir, I never heard any thing ill of him.

*Mr. Williams.* Did you find him a Man of Falshy or Truth in his Conversation?

*Sir Harry Tulse.* I never had any Dealing; so can speak little; I never heard any thing amiss of him; I have heard he is a very considerable Merchant, and I believe he is so, and accounted a very civil Gentleman. I have had the Honour to sit in the Court of Aldermen ten Years with him, and we have had sometimes some Difference in Judgment.

*Sir Geo. Treby.* Would he wilfully forswear himself, do you think?

*Sir Harry Tulse.* Truly, I believe not.

*Mr. Serj. Jeff.* Do you believe every thing he swore at the last Trial was true? You are upon your Oath, *Sir Harry Tulse*.

*Sir Harry Tulse.* I believe they were not true.

*Mr. Serj. Jeff.* *Sir William Hooker*, we would give you no more Trouble.

*Mr. Williams.* Because they called you, *Sir William*, I would ask you a Question, what do you think of *Sir Patience Ward*?

*Sir William Hooker.* Truly thus, according as it hath been said; but truly when I consider what a Condition *Sir Patience Ward* was in, when he delivered his Evidence; for to my Remembrance, he looked like a Man three quarters dead—

*Mr. Serj. Jeff.* Do you believe whatever he swore was true?

*Sir William Hooker.* I do not remember any thing he swore then.

*Mr. Just. Jones.* Have you done?

*Mr. Williams.* We have done, we leave it to the Court.

*Mr. Serj. Jeff.* *Sir Francis Lee*—*Sir Francis*, were you at this Trial, and do you remember what *Sir Patience Ward* said at the Trial?

*Sir Fra. Winn.* Always you come with Drops at last.

*Mr. Williams.* This is a new way of going to Work.

*Sir Fra. Lee.* I was upon the Jury between his Royal Highness and *Mr. Pilkington*, and *Sir Patience* did swear, that *Mr. Pilkington* was not in the Room, when the Discourse concerning the Duke of York was mentioned; but afterwards did swear, when *Mr. Pilkington* said, he hath burnt the City, said he, I clapp'd my Hand upon his Mouth, and t'other upon his Breast, and bid him explain himself; who do you mean? *Hubert*? *Sir Francis Butler*, who was our Foreman, and stood next to me, jogg'd me, and bid me take Notice of that; and so I did: And after we had this Discourse together, he said, *Sir Francis*, I would have had you to take Notice: Did you take Notice of it? I told him I did. Truly, it seemed clear to me, That he should swear he was not present at the Discourse about the Duke of York, and afterwards he must infer he meant the Duke of York; or else what should he have stopp'd his Mouth for?

*Mr. Williams.* My Lord, here are Gentlemen that heard all the Trial, they might have been called certainly in Order. But, my Lord, to come in at last, when the thing is heard on both Sides, then to come in with Witnesses again, I don't understand.

*L. C. J.* They may call theirs, when you have done with yours.

*Sir Fra. Winn.* My Lord, I will but put this one Instance; in a civil Cause it hath been denied, much more in Perjury.

*Mr. Williams.* We will leave it to the Court; if *Mr. Attorney* says he will, we will.

*Mr. Just. Withins.* Take your Liberty on both Sides, I pray.

*Mr. Att. Gen.* If *Sir Patience* did not know it to be false, then it is no Perjury.

*Sir Geo. Treby.* I said no such Words.

*Mr. Just. Withins.* They resolve they will conclude; therefore, Gentlemen, take your Time.

*Mr. Att. Gen.* I remember what you propos'd t'other Day, you made a Speech after two or three o' th' Clock in the Afternoon.

*Sir Geo. Treby.* Who, did I?

*Mr. Just. Withins.* Nay, good Gentlemen, don't quarrel.

*Sir Geo. Treby.* I desire to say a Word or two. That your Evidence doth not at all encounter ours, it stands with it; let them have as much Reputation as they will. They say, *Sir Patience Ward* did say thus and thus, as concerning cutting of Throats, and as concerning the Discourse being ended, and as concerning the Duke's being not named; ours say the same too: but they say more; they say, he said with all the Caution in the World, from the Beginning to the End. My Lord Chief Justice bids him recollect himself; he says, he speaks to his Memory. Upon *Sir George Jefferies's* Question, he says, he speaks to the best of his Remembrance, and thereupon is that memorable Reply of *Sir George*, Your Invention is better than your Memory. One of their own Witnesses says it was so, and so says *Mr. Blaney*, and so says another Witness. While the Discourse continued, whether he was there or no, *Sir Harry Tulse* doth agree, that he cannot say he did see him. Now, under Favour, if he did not see him, he might say he was not there, for no Man can swear otherwise than according to his Senses; what a Man does not see, may be behind his Back, although he had not limited himself with that Caution, as he did limit himself with the greatest Caution, and said, as he did believe, he was not there. My Lord, none of their Witnesses will undertake to say he used the Word *Positive*: They don't deny the Thing, it is impossible any Man should; but that there were these Words of Limitation, they might be said, and not heard by them, they might be said, and not observed by them. None of them did pretend to write Notes, except the first; and from the Evidence of the first, I have all the Reason in the World to believe, that his Notes did contain all those Cautions, and all those Qualifications, that we speak of; why else should he be to seek to that written Short-hand? He did not know whether he had Notes here; he did know, whether he had consulted the Notes since. Would any Man in the World lay by Notes at this rate, that intended to give full Evidence? Though I will say that for him, he does not undertake to say positively, but according to the best of his Memory, and according to his Belief. *Sir William Hooker* says, he was in a great Confusion. Here are a great many Gentlemen beyond all Exception in the World, that do his Dealing was so fair, that he never told a Lye, that he was exact and most just in his Dealing. It is impossible that a Man should avoid such an Evil as this is, for so long a Time, and in so great Places and Offices, and should now at last be guilty of such a vile and base Sort of Crime as Perjury is, which no Man ought to presume



another, unless there be the greatest and plainest proof to the contrary. But, my Lord, on our Side is the plainest Proof that can be, by Witnesses that remember the Words as well as the Qualifications; and one of our Witnesses is worth Abundance of their Witnesses that did not write, especially such a one as *does not shew his Notes*. But as I said before, they were testified by Sir *Patience Ward*, with all those Cautions; and we do think, that there is no Colour in the World that this should be Perjury.

Mr. *Williams*. Gentlemen, I am of Counsel for the Defendant, and the Question is, Gentlemen, Whether Sir *Patience Ward* be guilty of the wilful and malicious Perjury that is laid to his Charge in this Information? Gentlemen, it is agreed on all hands, and that will appear to you, there hath been no manner of Evidence given for the King against Sir *Patience Ward*, either as to his Honour, or Reputation, or Truth: There is nothing, Gentlemen, endeavoured to be charged upon him, but this particular Crime. The Gentlemen that prosecute him do not offer any one Thing against his Reputation or his Dealing; so that, Gentlemen, for aught appears to you yet, before this was laid to his Charge, he was a very clear Man. Gentlemen, he hath borne great Offices in the City of London; he hath been Lord Mayor of London; he is now in a considerable place of Magistracy; he is an Alderman. We have proved by several Gentlemen, he is a Man of great Value, a Man of great Reckoning and Dealing, a Man of Truth, a Man of Veracity, a Man, that they believe, would not forswear himself for a World: Gentlemen, the very Witnesses against us, they say it. Sir *William Hooker* tells you, he was under that Consternation, he was like a Man three Parts dead, so that there could be nothing of Malice in that Man; he was without Sense, without Passion; and if any thing was done, it was done as it were by a dead Man, a Man that was senseless. Sir *Harry Tulse* believes, he would not willingly have perjured himself; then he is not guilty of wilful Perjury, and that is the Question you are to try. Now I have said this, Gentlemen, as to the Condition of the Person. And now for the Imputations that are laid upon him. The second Observation that I make, is from the Nature of the Crime; we are accused of Perjury, *first*, that we have perjured ourselves. That in any one casual Thing done upon any Account whatsoever, to prove the Fact done, that a Man is perjured, it is an easy Matter. Men are subject to mistake; the Words spoken, Gentlemen, were spoken in a very few Moments. Consider what a Thing the Memory of Man is, how subject Men are to mistake Words. To say, that Men shall not differ, that there shall be no Variation between Man and Man, it is to put an End to all Conversation, there would be no bringing of Witnesses, if there might be no Variation. Nay, Gentlemen, to justify what I have observed to you, observe these two Gentlemen: Sir *H. Tulse*, he tells you, that the Words were by way of Question, *Is the Duke come?* That *Pilkington* should speak the Words by way of Question, *Is he come? Is he come to cut our Throats?* So that he tells you, *Pilkington* said these Words by way of Interrogation. This is the Evidence of Sir *Harry Tulse*; and both of them agree, Gentlemen, that they were spoken at one Time. What says Sir *William Hooker*? How does he apprehend these Words? He tells you they were positive in the present Tense: *He is come, he is come to destroy our Wives and Children*. So that if these Gentlemen mistake, one takes them by way of Question; t'other says, they were delivered positively, in the present Tense. Suppose this were brought against these Persons, no Man will say this is Perjury. As these Gentlemen have misremembered, so might Sir *Patience Ward* have misremembered; and if he had, it is his Infirmary, no Crime: For any Man is subject to mistake. We are now upon the Perjury, and it is not any thing that is Affirmative, but they are Negatives. The first Negative is this, that he should say there was no Mention of cutting of Throats. Say? The Question is, What was the Discourse about cutting of Throats? Say I there was no Discourse about cutting of Throats; it is natural to a Man to say, I heard no such Thing, and every Man must speak to his Hearing; it is that which must pierce your Ears; that Organ must be touched. There was no Discourse, I heard no Discourse; I could say no otherwise, nor any Man that goes by common Reason. It must be by Hearing, it is not natural: Won't you believe what they say, that Sir *Patience Ward* did say, and Mr. *Blaney*, and other Witnesses with him, there was no such Discourse? Is it not rational for a Man to believe there was no such Discourse? So that, I take it, was the Nature of the Thing. For the other Thing, there is not one Man that hath proved it to you, that he said there was no Discourse of cutting of Throats. Let them shew me that Witness that he did positively say it, and then I will give up the Cause, for my Share. I am sure Mr. *Aston*, a Clerk in the Court, he says it was, to the best of his Observation. Mr. *Aston* is a Man that uses to be here, and a vigilant Man in the Court; he does not take it upon him positively. These worthy Gentlemen, the Aldermen, don't take upon them positively. Their Witnesses were wary in it. Are there any two of them agree how the Words were spoken? So that, Gentlemen, there is no positive Proof against us. Now the Proof lies on our Part. We prove very plainly by Mr. *Blaney*; and can any Man do better in this Case? The same Evidence runs to the other two Instances, as to this; therefore I do not love to multiply Words. Now our Evidence is to justify this. Here is Mr. *Blaney*, he sat in a most proper Place, and the most likely to hear of any Man in the Court; he sat in the Middle, between the Court and the Jury, near the Witnesses, heard as much as any about the Court. He tells you directly, he did refer his Evidence to his Hearing; he tells you, he refer'd all the Parts of it either to his Memory or his Observation. He does not trust to a frail Memory; but he tells you he took it in Writing, and tells you that Writing is here; he produces it here. He is a Gentleman that uses to take Writing; so that if you give Credit to this Gentleman, certainly he is in the right. Mr. *Blaney* is not alone in this Matter; we have called several, and they agree with Mr. *Blaney*. Every Witness that speaks justifies Mr. *Blaney*. So that we have so many Witnesses that justify every thing, or most of the Things that we have said. Now, Gentlemen, when I have said all this to you, consider; for there are some Things remarkable in all Causes, and the Truth is, all the Witnesses give you one remarkable Instance, and that is, of Sir *Geo. Jefferies*, that he made a

Comment upon the Word *Memory*; he admired his Invention, but lessened his Memory, as if the Gentleman had been troubled, that he had not remembered; for I remember it was a Reflection upon his Memory, that his Memory was not better; but commended his Invention mightily. So that this, Gentlemen, is a remarkable Thing. They give you that Instance to justify what was said by Mr. *Blaney*. Now, Gentlemen, I have said all this to you, we must rely upon these Things. They ask, Whether any thing that was said, was positive? It was a Trial lasted some Hours; and I think Sir *Patience Ward* was an Hour in examining. Did he say any Word positively? Can any Man answer such a Question? It is an impatient Question. Gentlemen, upon those three Matters that are assign'd, whereof he was accused; as for those three Things, they are answered particularly. Gentlemen, now we are in your Hands, and the Question is, What you will do in our Case? Here is a positive Proof for us; all the Presumptions that can be for us; here is the Proof of our Reputation; here is nothing against the Gentleman's Reputation; and a Man of Honour had rather be tried for his Head, than for his Ears. I know, Gentlemen, you are Men of Value, Men that value your own Reputation; I leave it to you, whether you can in Conscience say, upon your Oaths, that this Gentleman is guilty of wilful Perjury.

Sir *Fr. Winn*. My Lord, this is a Cause of great Importance, not only now, but in point of Example hereafter. My Lord, the Information is, that Sir *Patience Ward*, by his Consent, and out of a wicked Mind, did falsely, voluntarily, and corruptly swear so and so: So that if so be that he hath not sworn wilfully and corruptly, I know your Lordship and the Court will tell the Jury, he is not guilty of Perjury. Truly, my Lord, in this Case, I must observe to your Lordship and the Jury, that we are now contending what Witnesses have the best Memory; for the Thing is not in controversy for any Act done, but our Defence is, what Sir *Patience Ward* did swear at the Time when he was at the Trial. I must say, there are no Memorials in this Cause given on the other Side, of any Man that did undertake to write down at that instant Time for the King; but one Man says, he cannot very well tell whether he took Notes or no. So that I do say, my Lord, with your Lordship's Leave, that of all the Witnesses they have produced, there is not any one of them but does vary in Words; they are not consistent in Expression, even to any particular Questions that were asked; and can it be said to be wilful and corrupt Perjury, upon such an uncertain Evidence? I don't doubt, Gentlemen, but you will take great Care of it. My Lord, I will mention but two Particulars to your Lordship, that I think, go through the Case. My Lord, Mr. *Blaney* hath told you several Particulars that have been remembered; he writ it at that Time, without any Variation; it hath a great Advantage over the other Side, that have only retain'd it in their Memories, and their Memories might fail them, and differ from the Time of speaking; but here the Writing remains, that was writ at that very Instant; here it was fresh written out of his Mouth. The Question was asked, Can you swear, Mr. *Blaney*, you writ every Word, or no? It was asked the Witnesses, Can you swear, that he swore nothing positively? I must confess, my Lord, it is a Question that is strange for a Man to answer. Any thing positive! Does he know what a Man means? He must reduce it to Particulars. But, my Lord, I have asked Mr. *Blaney*, Did you take it as it came from his Mouth? He swears these Words he spoke, and there is no Variation, but written instantly at that very Time. My Lord, I do think this is a Thing goes a great way. My Lord, there is one thing more that I think goes through the Cause, and that is Mr. *Crisp*; for *Crisp* acquaints your Lordship, that when there was some Variation between the Assertion of Sir *Harry Tulse* and Sir *Patience Ward*, my Lord Chief Justice gave an Admonition to Sir *Patience Ward*, Sir *Patience*, Sir *Patience*, recollect yourself. My Lord saith he, what I deliver, I do according to the best of my Remembrance; and then this afterwards (for this was at the End of his Evidence) is a Qualification quite through the Cause. This being to weigh it with t'other Side. But I would say one Thing more; to what End should this be? Is any Man damnified by this Oath? Is there any Man can say this Oath hath prejudiced any Man in his Reputation or Estate? It was very strange, that a Man that hath brought so many Witnesses, and those very worthy Persons, that say they believe he would not forswear himself, should do this for nothing, that a Man should be the wickedest Man in the World at one Jump, that you can hear nothing of any Act of Falsity of him before. Now when there are such plain Evidences, undubitable Evidences, it is a Thing of great Consequence. And Colonel *Birch* says, generally, as he does remember and believe, he did cautiously speak. And Sir *William Hooker* says, he was under Consternation at this Time. So that it appears he had much Caution; and if so, it is of mighty Consequence, and concerns any Witnesses to come. Here is a Man perjured, and a great many Witnesses may. You are not to mind what is said by the Counsel of both Sides, but what is said in point of Proof. It will make all Men cautious, because they may infer Danger by a positive Assertion. My Lord, this is a Case of Perjury, in which I, and every honest Man, that values his Reputation, should be tender. If this Man be guilty, it is a great Crime; I must leave it to your Consciences.

Mr. *Pollexfen*. The Nature of the Case I do humbly pray your Lordship to take into Consideration, and the Jury. It must be wilful and corrupt; for so are the Words in this Information, and in all Indictments: It must be wilful and corrupt Perjury. My Lord, if so be that several Witnesses interfering one with another, one remembering one Parcel of Words that were spoken at the same time, any Man should be perjured in this Case, by remembering, and not remembering, no Man almost durst be a Witness. What discourse hath pass'd, let us but observe in this Matter. Here were three Aldermen present; one of them swears there was no Discourse of cutting of Throats; it is a Negative, not an Affirmation; and no Man that hears him, but must say of it, no Discourse that he heard. When I say there was no Discourse of such a Thing, any Man will understand, No such Discourse came to my Observation or Hearing. For the others that say there was such Discourse, they vary themselves; one says it was cutting our Throats; t'other, cutting the Throats of our Wives and Children. I only say this to shew the Weakness and Fallibility of Men's Memories, that carry Things so in an Uncertainty. Two or three Men

sweat



swear a Man said so, t'other says he did not; no Man can understand it in any other Sense, but he did not hear him say so: For a Man can say no more of what another says, than what he heard. So, my Lord, considering the Circumstances of the Case, it is so that Men may perjure one another upon Omissions. One Man may bring one little Part of a Discourse, and another another; it will be a very unsafe Thing for a Man to be a Witness so. But my Lord, the next Thing is this of positive Evidence, and upon Remembrance. My Lord, if so be there must be positive Evidence to convict a Man of Perjury, I would leave it to your Lordship in the Cause, whether there be any among all their Witnesses, have proved it positively? Next, my Lord, if so be that we must have of t'other Side positive Evidence, we have more positive Evidence than they, under Favour, considering that Mr. Blaney hath his Notes. This I answer to that Objection of theirs, Did he say any thing positive? Did you write down this or that? That is not the Matter; there is no Man that writes all: But the Question is of that he did write, Whether that be true? If that be true, it is more certain, being written at that Time, being written here in Court, when there was no Thought of being made use of as an Evidence, is stronger than many Men's slippery Memories. But he in this is back'd with a great many other Witnesses that do speak it, though not so positively as he does, because he hath his Notes to help him; and he says particularly to one Thing, that he does particularly remember it. And, so, being they were written at that Time, that is, under Favour, a better Evidence than twenty slippery Men's Evidence can be. So that taking all this together, considering the Person accused, and the great Offices he hath borne, considering the great Shame and Scandal of the Crime, all Men that have known him for twenty Years together, saying he was not any false Man, better a Man had taken his Head from him, than taken away his Reputation. Unless, my Lord, there be plain and full Evidence, I hope it will not affect us, nor Witnesses that shall come afterwards.

Mr. Att. Gen. The Matter, Gentlemen, before you, is, Whether or no Sir Patience Ward, for swearing these Words, be guilty of wilful or corrupt Perjury? I shall admit that; but it is the first time I ever heard of, that we must go to prove the Intentions of this Gentleman, that if he did not intend to swear wilfully, or voluntarily false, that it will not be a corrupt or wilful Perjury. My Lord, therefore I must observe this to the Jury; if the Matter that he swears be false, the Law construes it to be corrupt and wilful: If the Matter, I say, does directly come in Issue, and he in that Issue swears that which is false, so that it hath an Influence upon that Issue, the Law construes it corrupt and wilful: For that is the Reason, my Lord, why that Regard is given to all Oaths in Causes, that they may be plain and direct; and a great Punishment is upon them, if they are not true; that is the only Reason for it, and no other. For without Doubt, we have nothing to prove the Case, but these two Things; for we cannot search into a Man's Intentions, that when he speaks of the Duke of York, he intends *Hubert*; but we must take Things as they are, whatever a Man intends. So the Jury are to inquire but of two Things; Whether or no these Words were spoken by him, as they are laid? The next is, *Whether they are false?* We have nothing more to do: But if we prove these two Things, that the Words that were spoken, were spoken by him as they are laid, in that Manner, not as these other Witnesses would have, with the Words, *I believe*, and, *as I remember*, but that they were plainly and positively spoken, my Lord, that we are to prove, and we have proved it. The next Thing we are to prove, is, that the Words are false; that they are false, they do admit by all the Witnesses; they don't go about to encounter that Proof at all; they have not at all endeavoured it, but that these Words, as they are laid, are absolutely false; and they were contrary to the Matter that was in Issue in that Case. That this Gentleman spake them, my Lord, the very Thing speaks; for he was heard by the Court as a Witness, and as their Evidence in the whole Cause; and the Court, after he was examined, put it upon this Gentleman, *What do you swear?* If it had been all, *as I remember*, and, *as I believe*, the Court would have declared it was no Evidence. My Lord, if a Matter be in Issue, and a Man comes and says, *as I remember*, and *believe*, this doth not encounter the Issue, nor the Proof that is for that Issue, when there were two positive Witnesses, that positively swore the Words, that the Court should then refer it upon the Testimony of Sir Patience Ward to the Jury, the Court would give Judgment he was no Evidence; it is plain he was no Evidence, if he swore to his Memory and Belief. That that is no Evidence, the Reason is plain; for there would be an End of all Trials, if ever that sort of Doctrine be admitted: No Man can be perjured upon his Remembrance, nor upon his Belief; who can tell he believes contrary to what he says? So that there is an End of that which ought to be the Cure of all the false Witnesses in England; for I take it in point of Law, the best of Remembrance in this Nature, or *as I believe*, is no Evidence at all; and therefore the insisting much upon that, is to charge the Court with Injustice to put that upon the Jury, and the Jury need not have given any Reason why they would not believe him; for there had been an End, if he had said, *as I remember*; the Jury might have said presently, there are two positive Witnesses against him. The two first Witnesses we have call'd, *Hatch* and *Wood*; they do swear as to those Words of *cutting of Throats*; they swear it positively, both of them. Whether he used the Word *positively*, or whether it was upon his Oath, that, indeed, they could not speak to, but they were positive, without any Reference to his Belief or his Memory. To the other Point of the Duke of York and Pilkington being there, that they speak positively to, and I think Sir James Smith doth speak as positively that he was sure his Words were, either *I do positively say*, or upon my Oath, one of them; but without any Words of Reference. Mr. Aston, who is a Clerk of this Court, and sat there in this Place, he speaks to that positively.

Sir Fra. Winnington. I think I am pretty sure, I think, these are the Words.

Mr. Att. Gen. The Foreman of the Jury he repeats the same positively, and gives a plain Reason; if it were not positive, it were an idle Thing.

Mr. Williams. Will you do us Injury in the Cause?

Mr. Aston. If he spake any Words of Mitigation, they were so low, I could not hear; and I think I could hear them all.

Mr. Just. Withins. Pray go on.

Mr. Att. Gen. I say, my Lord, several Witnesses we produced, and Sir William Hooker particularly; for we had never made use of him, if there had been only so idle an Evidence, for we did not call Sir William Hooker till after his Evidence was given, to encounter this positive Evidence. We then produced Sir William Hooker, after he had given positive Evidence; and Sir William Hooker did swear it positively upon him again; then the Court asked him, *What do you swear?* My Lord, after this, he might be shy in his Evidence, and say, *I remember*, and *I believe*. After this, we put it upon him again, and then we say the Words, were sworn positively; for by way of Hear-say and Belief is no Evidence. Now Mr. Blaney is all in all, and I think now Mr. Blaney will signify nothing. I say, my Lord, Mr. Blaney, what is his Evidence? He pulls out his Notes, and there he tells you, to such a Question there was such an Answer, and there indeed it is to the best of his Remembrance. But what does Mr. Blaney tell you? Mr. Blaney positively tells you, that these are but short Notes, many Things omitted, and I perceive whole Sentences omitted; a great deal of Discourse omitted; and that appears by that Passage of Sir George Jefferies's Interrogation: Then, my Lord, in one Place he comes and says, *to the best of my Remembrance*; afterwards he is press'd; for surely it was to no Purpose we would let such an Evidence pass, but when he is press'd; Mr. Alderman, is it so, or no? For Belief is no Evidence. There, my Lord, he answers positively, and that is omitted out of Mr. Blaney's Book: This was necessary, my Lord, we should do, and not let such a Thing pass, as that *to the best of my Remembrance*. My Lord, then to see what Mr. Blaney himself says, he took Notes, he did not answer one Thing positively throughout the Whole; for which he is to be rejected, I think, as no Witness in the Case, as a Person that comes and swears by Hear-say; and it was so remarkable a Thing, my Lord, that we who are of the King's Counsel, should take Notice of it to the Court. He is no Witness; he swears nothing positively: It is an Art, my Lord, was never invented till of late, and if it be allowed, it will make an End of all Trials; for you will have as much *forswearing*, as you have *lying*. Here is one gives Evidence he never told a Lye in his Life, and I care not whether the Jury believe that or no. Surely, my Lord, we should not let a Man go away with such an Answer as this, *to his Remembrance*. If they take upon them this Way of Swearing, I tell you plainly they are no Witnesses at all. My Lord, I must appeal to the Court, if such a Thing be allowed, what will become of all Trials? The Punishment of Perjuries does make Men cautious in Swearing; and so it was from the Beginning, ever since Swearing was allowed to decide Causes, Perjury was to be punished. By the Law of God it was severely punished. If there be a new way introduced of giving Evidence, *to the best of my Remembrance*, you have shut out the Punishment. Can you convict any Man of all their Witnesses, when none of them swear? Colonel Birch and others, they come and say to some Things, there were these qualifying Words; if it had been to material Things, my Lord, were we so senseless, or the Court so senseless, to let *the best of my Remembrance* pass for Evidence? So that, my Lord, they do not tell you plainly, they speak nothing at all express. When they are ask'd, Can you swear that he added these Words, *to the best of my Remembrance*? they say he did to some Things, but are not positive to what. So that your Lordship sees we have plain Testimony, they have no Proof. So you see what sort of Evidence this is. Now, my Lord, for his Crime. He hath been a fair Dealer, surely, in the World, or else he could never have gain'd such an Estate; but when Men are engaged in Parties, we see what a Man will do for a Party, and to help a sickly Brother, that was falling into the Pit, over the Hedge. But I say, my Lord, it is impossible, that their Evidence should encounter ours. And, indeed, if we had had Notice, that this would have been given as material Evidence, truly we could have given a great deal to shew the many Blots in this Gentleman; but, my Lord, I say this is not material, of what Reputation a Man hath been, but whether or no he spake these Words in this Manner; and whether they are false; that they are false is granted, and that he spake them as they are laid, that we have proved.

Mr. Sol. Gen. The Questions that we were to prove were, Whether Sir Patience Ward did give his Evidence at the Trial between the Duke of York and Pilkington? Whether or no he did swear positively, that Pilkington did not come in till the Discourse concerning the Duke of York was over? Whether he did swear positively, that there was no mention made of *cutting of Throats*? Sir Patience Ward, we say, did take upon him to swear this before positively, and not with that Restriction that they would have pass'd upon them. We call'd two Witnesses, and they are both very positive in it; for they swear, That Sir Patience Ward did swear, That all the Discourse concerning the Duke of York was over before Mr. Pilkington came in; that they swear positively, that he did it positively; both of them do swear, that Sir Patience Ward did take it upon his Oath, and to the Manner of it, positively; though he did not use the Word *positively*, yet they swear them without any such Restriction. These are the two Witnesses, *Hatch* and *Wood*. Then there is Sir Fra. Butler hath given you an Account of his Evidence, and they did debate it among themselves, and give you the Reason why they did not believe Sir Patience Ward. Now, first, they encounter us with the Evidence of Mr. Blaney, and his Notes must be the Measure of the Truth of his Case, and nothing must be taken for true but what he hath writ; he tells you at the same time he had not writ all. Mr. Attorney made a full Observation upon that: Suppose he did say he did not hear any mention of *cutting of Throats*, or did say to the best of his Remembrance, yet surely that doth not contradict our Witnesses, that take upon them to swear positively, that he swore it without any such Restriction; and it is reasonable to believe he might be press'd to say something to the Questions that were asked; for if he said he did hear it, it had been an immaterial Evidence. Sir Fra. Butler doth take upon him to say, that he did say it without Restriction; and their considering the Weight of it to reject it as untrue, doth make good what our Witnesses have said, that he did swear it without any Restriction. But after all this, they say he cannot be found guilty, for this might not be wilful and corrupt Perjury; nay, they go so far, that they are setting up a Doctrine, that I dare say no Man shall be guilty of Perjury for any Words he shall swear wilfully and corruptly. If a Man



is conscious to himself, that the Truth is otherwise, or if he be uncertain whether it be so or no, yet if he take upon him to swear it, that is wilful Perjury in him, for he did not know it to be as he did affirm. Now, my Lord, I shall offer but one Circumstance more: Consider how this Discourse did rise; it was upon a Debate concerning waiting upon his Royal Highness upon his Return, they were all present in the Gallery at Guildhall; and it is reasonable to be presumed, that every one must hear the whole Discourse. And Sir Patience Ward, by the Action he did in this Case, must be presumed to hear every Particular of it. When Mr. Pilkington came to these Words, *He hath burnt the City, and is come to cut our Throats*, Sir Patience Ward catches him, and stops him immediately upon his saying this. Now he that was so near him as to lay Hands upon him, surely it cannot be presumed but he must hear what he said, and he check'd him for what he said, and would fain have fetch'd him off by an Invention that serves to little Purpose; but did verify this, that he had spoken Words of the Duke of York, and therefore did administer an Excuse to him; therefore I say it cannot be presumed but that he must hear it. But however, if he took upon him to swear a thing positively, that he was not certain of, it will be wilful and corrupt Perjury in him. But, they say, though he should say it positively, it must be understood *he did not hear it*; that he swears there was no such Discourse as *he did hear*. At this Rate, my Lord, no Man will be found guilty of Perjury, but there will be all the Mischief in the World introduced; for a Man that swears to the best of his Remembrance, there will be no Danger of that Man's being indicted of Perjury, that is no Evidence. But a Man that will take upon him to swear positively there was no such Discourse, he is an Evidence, and a material Evidence in the Case. Suppose, my Lord, there were Witnesses concerning the Publication of a Man's *Last Will*; that there were two Witnesses did sit upon the sick Man's Bed, one swears he did hear him publish it in that Form, and that this was his *Last Will and Testament*; the other comes and says positively, he said no such Words; certainly this is a very material Evidence. Shall that Man come off from a Conviction of Perjury in this Case, by saying he did not hear? What a dangerous Case are all Men's Inheritances in at that Rate? My Lord, I will not trouble your Lordship, only there is one Observation they have made, which I cannot let pass, that there is no Damage in the Case. If a Man should forge a Deed, and the Jury detect this Forgery, there is no great Damage, shall the Man be accused, because he is discovered? Shall no Perjury be punished, but what is successful?

Sir Geo. Jefferies. I should not have troubled you in this Cause, but that Mr. Solicitor was call'd into another Court. My Lord, I shall not offer any thing in this Cause, nor repeat any thing that hath been said. My Lord, I shall say of this Cause, what the Gentlemen of the other Side said; it is a Cause of very great Consequence, and it is a Cause of that Consequence, that I know it hath a very great Impression upon your Lordship, and likewise upon the Jury; and they are not now come to try whether or no Sir Patience Ward did deal very fairly between Man and Man in a Matter of Money, but whether or no Sir Patience Ward did swear what we have alledged in the Information he did swear, and what he did swear was true: And for that Matter, my Lord, I must needs agree with them; nay, I cannot believe the Gentlemen of the Jury will take any thing to be Evidence that is said by us that are Counsel at the Bar, but only so far forth as they have Evidence proved to them in Court; for in case we were to guide Juries, I confess Mr. Pollexfen hath determined it, by saying the Jury's Verdict must be false, if they find against Sir Patience Ward; which I think is a pretty strange Inference, and one of the sharpest Inferences for such a way of Reasoning, that I confess my poor Sense won't reach it. In the next Place, I say, the Gentlemen of the Jury ought not to take any Consideration in this of his Reputation, notwithstanding all his Dealings before this Cause; for certainly till such time as Sir Patience Ward came to be called upon his Oath, any Man of Conscience and Justice, and common Charity, had he been asked the Question, he must have said he did not believe, that Sir Patience Ward would wilfully forswear himself. God forbid any Man should have such a Thought of him, if he were a Man of less Quality than Sir Patience Ward! But I must conclude, that after Sir Harry Tulse was of that Opinion, so I must conclude with Sir Harry Tulse, if in our Case he be to be believed, at that Time he did believe he did forswear himself. Pray, good Sir, give me Leave, I will not, to the best of my Remembrance, do you any thing of Injustice. My Lord, I do say, in this Case, that though he hath been Lord Mayor of London, and borne the Office of Sheriff, and though he is now an Alderman, yet, I do say, Persons that have borne these great Offices, have been guilty of greater Crimes, that is, Crimes that have greater Punishments, than this Gentleman is now accused of; I mean that of Rebellion, and all that Mankind can be capable of: So that it is not the Dignity of Place excuses Men from Offence. But certainly upon his Evidence, Sir Patience Ward ought to be believed by the Jury guilty of wilful Perjury, rather than three or four Aldermen that swore against him. Gentlemen, the next Thing is, the Observation of Mr. Williams, of the Variance and Difference of Expression between these two worthy Aldermen, Sir Harry Tulse, and Sir William Hooker; one comes and says as though it were positive, t'other as though it were a Question. If it can be expressed, my Lord, either one way or t'other, or both, he would be guilty of Perjury; for your Lordship remembers the Record mentioned in this Record, and all the Words that were sworn by Sir Harry Tulse, were Part of the Action that Pilkington was charged with; all the Words Sir William Hooker swore, were likewise Words put in the Record; so that both of them were material to the Issue. Now what comes Sir Patience Ward to do? Does Sir Patience Ward come and testify it to make a Difference between these two Gentlemen? You see both of them agree there was a Talk of cutting of Throats. Says Sir Harry Tulse, *Is he now come to cut our Throats*? Says Sir William Hooker, *Is he now come to cut the Throats of our Wives and Children*? What says Sir Patience Ward as a third Man? He says there was no such Discourse of cutting of Throats, that is the thing these Gentlemen have a Mind to forget; one says *he is come to burn the City*. *Is he come to burn the*

*City*, says t'other? That is not the main Question; these are little minute Differences. It is the Prudence of Mankind to take all Words in their Affirmations, rather than to make Contradictions between them. In this Case he finds there was a Necessity to serve a Turn, and he comes positively, and says, all the Discourse about the Duke of York was ended before such time as Pilkington came in; and there is an End of all, in case he swears true; for in this Oath he absolutely contradicts what both these Gentlemen swore; for this is not such a little Variance as these Gentlemen would have you to believe. But, Gentlemen, I shall apply myself to the Evidence they have offered, which is designed to overthrow ours. The first is, Mr. Blaney, and there is a great Value put upon Mr. Blaney; he sat in a convenient Place, just in the Middle, and there he took Notes, and believes he did not alter them. Now I appeal to your Lordship, and the Court, I appeal to the Jury, whether or no their own Witnesses did not hear Sir Patience Ward say, *he had never been in a Trial*; he never took notice of a Word of that. And another Man (Mr. Baker) says, that my Lord Chief Justice said, Sir Patience, Sir Patience, *have a Care; you speak according to the best of your Remembrance*. Now, my Lord, Mr. Blaney takes not the least Notice of that in his short Notes. The Question was asked Mr. Blaney, Can you take, upon your Oath, that he swore any thing positively, or that he did not? *Truth, I can't tell; not in my Hearing*, are his Words. Next comes Beaver; his Word was, *In my Hearing*. It was Mr. Blaney's Short-hand Remarks that Mr. Beaver prefaces all his Discourse with, to the best of my Remembrance. They have called Witnesses that could not be positive! I appeal to your Lordship, and the Memory of the Jury, whether ever any one of them was able to say, that the Words, *to the best of my Remembrance*, were annex'd to this, or that, or t'other Sentence! But, my Lord, on the other Side, I must say, that there are here Aldermen that have sat upon the Bench, and have behaved themselves with Loyalty and Integrity to the King and Government; these very Aldermen here do positively say, Sir James Smith, Sir John Peake, Sir William Rawsterne; it is true he cannot be positive as to the Business concerning cutting of Throats; but as to the first, does not Sir James Smith particularly say, *I cannot say whether he did say positively, or whether he did say, upon my Oath*; but he did undertake to say, that either the one or the other he was positive in, that he was very express that the Duke of York was not named after Pilkington came in. And for the saying, that Blaney took Notes at that very Time, therefore Mr. Blaney must be a Man of Ten thousand, as they call him; he is worth Ten thousand Witnesses, because he took Short-hand Notes: I would have you consider what Sir Francis Butler says, that was Foreman of the Jury at that Time, that bid Sir Francis Lee take notice of it at that Time; he did it positively: He says, Sir Francis took notice of that, and says he, *we debated it immediately among ourselves*. And I remember, particularly, Sir Francis Lee, Sir Francis Butler, and Sir Thomas Field, all three do agree together; this positive Oath they swear Sir Patience Ward did make. They did debate immediately after, among themselves, two Witnesses swearing against him was the Occasion of the Debate. But, my Lord, I must come to another Thing: Mr. Aston, a Clerk in the Court, a Man very well us'd both to Writing and Hearing; Mr. Aston, as well placed as Mr. Blaney, he gives this Account: *I do positively say, That the Duke was not named after such time as Pilkington came there*. But his being a frail Memory, as they would have it, and no Notes to refresh him, they put no great Value upon it: But I remember what Mr. Aston said; I have several Times asked the Question, and that makes me contain this Thing in my Memory. This does Mr. Aston positively speak to. So there, Gentlemen, all these five or six several Witnesses do positively swear to it: The two first Witnesses they are positive, Hatch and Wood; they do directly swear to every Particular. Gentlemen, you are not to mind the Flourishes that are made by the Gentlemen at the Bar; here is a Lord Mayor of London, here is an Alderman, can you believe him guilty? But do you think that these Gentlemen of Quality, that have acquitted themselves so dutifully, and so loyally, as they have done, and so faithfully, that no Man can lay a Blemish upon them, will you take it upon your Oaths, that these Gentlemen are forsworn? Will you take it upon your Oaths? That will be a strange Thing! The Laws and the Exercise of Justice are concern'd, and are to be maintain'd. I beg your Lordship's Pardon, that I have taken up so much Time. My Lord, I say, Justice is to be done; there is no Man so big as to be exempted from Punishment: The greater the Person is, the greater is his Crime. One that will come and tell an Untruth in a Court of Justice, the greater the Person, the more is the Crime. We have given your Lordship, and the Gentlemen of the Jury, an Account of the Matter before you, and we shall leave it to you.

L. C. J. Gentlemen of the Jury, this is an Information against Sir Patience Ward for Perjury; and the Information doth set forth, that there was an Action that was brought by his Royal Highness against Thomas Pilkington, and it was for speaking scandalous Words of his Highness, saying, *he burnt the City*, and that *he was come to cut their Throats, and cut their Wives and Childrens Throats*. These were the Words that were laid in that Action. That Action was in this Court in Michaelmas Term last. The Information that now is before you, is this: Sir Patience Ward he was sworn to give Evidence, and that he in his Evidence, upon his Oath, did positively swear, upon mentioning the Discourse concerning his Royal Highness, by Pilkington, and concerning his burning the City, and cutting of Throats, Sir Patience did say, that there was not any mention of cutting of Throats at all, and that before Mr. Pilkington came in the Discourse of the Duke of York was over. And upon this Mr. Attorney General hath assigned a Perjury, that this was false; whereupon the Defendant hath pleaded Not guilty. The Question is, whether Sir Patience Ward is guilty of this Perjury, or no. In the first Place, I must aver to you, that if so be this was false, then this must be what the Law calls a wilful and malicious Perjury. For it was the very Point in Question then, it was an Action brought against Pilkington; the Question, Whether he said these Words or not? And Sir Patience Ward he did come, and did swear, that there was no such thing. Plainly, that was to acquit the Defendant.



So that it was the principal Matter that was to be considered. Now for aught I do perceive plainly. Pray do not go with any Mistake, for I would be loth to do wrong in this; but as far as I do perceive, one Side and t'other upon the Matter do agree, that if Sir *Patience Ward* did swear it positively, it is agreed on both Sides that it was false; it is agreed; for aught I see, there is nothing at all said to the contrary. Here are three substantial Men; Men of very good Quality, that do all say there was a Discourse of his Royal Highness in *Pilkington's* Presence, and in the Presence of Sir *Patience Ward*; they do likewise all of them swear, that there were such Words. So that I say it is agreed, for aught that I see, that it is plain, that it was so in Fact, that there was a Discourse of the Duke, and that it was in *Pilkington's* Presence, and that there was likewise mention of cutting of Throats. Now the Matter that you are to consider; I will tell you, you are to consider, whether or no this was spoken by Sir *Patience Ward* positively, or, as the Defendants would have it, that it was not spoken in his Hearing, or as he remembered; for they would qualify it, and say that the Defendant did not say it positively, but with those Qualifications; and if with those Qualifications, then it is plain he cannot be convicted of Perjury; because no Man can be convicted for saying he did not remember. This I must observe to you, though, by the way, suppose now that Sir *Patience Ward* comes here, and says that it was not spoken in his Hearing, or in his Remembrance, take it that way, there is this considerable; Why Sir *Patience Ward* did hear it spoken, and so far heard it, that he took notice of it, and would restrain it, and put an Interpretation upon it? Would any Man, that had minded his Oath, would he have said, that nothing was said in his Hearing, when even he himself was present; nay, and so take away the Excuse of his not hearing, tho' he were by? He himself takes notice of it, and if I take it right, he puts an Interpretation upon it when he talk'd of burning the City; Oh, it is, *Hubert*. It is very hard for a Man to swear it was not in his Hearing.

Pray let me right, if I mistake; do not build upon that. Mr. *Pollexfen*. No Man denies but these Words were spoken, but the going to St. James's, and the Duke of York, whether that were not before he came in?

Sir *Geo. Jefferies*. It was one entire Sentence, my Lord.

L. C. J. I do take it, the Evidence was, that *Pilkington* did say, he had burnt the City, and he was, or would, come to cut their Childrens Throats; that was in one Sentence: For the burning the City, Sir *Patience Ward* being there at that Time when *Pilkington* said the Words, Ob, says he, you mean *Hubert*; ask'd the Question, Who he meant by it? he meant *Hubert*.

Mr. *Williams*. He did not hear t'other Part.

L. C. J. That I will leave to the Jury; that is to say, there were upon the Matter but two Clauses, burning the City, and coming to cut our Throats. And now it is, for aught I perceive, agreed, that Sir *Patience Ward* did hear one Part of the Sentence, and did not hear t'other. But this I will make an Observation on by-and-by. But surely he did not so well, if it were no more than that for a Man to say he did not hear any such thing, when it is plain he took notice of it at the same time. For that, Gentlemen, that they say here is no Man that hath any Harm; if a Man does commit wilful Perjury, though no Man is injured by it, hath not he committed a Crime? And though he had not injured any Man by his Perjury, it might have fallen out, that he might have done it; and if so be it hath not Success, it is the same Crime: For it is very plain, if so be the Jury had given a greater Credit to Sir *Patience Ward*, than they did to the other two Gentlemen, then it is very plain it had gone another way, and that had been an Injury. And therefore, Gentlemen, that is nothing at all. But that you must lay aside, and you must come to this Matter, that is the Principal Point. The Question is, Whether or no Sir *Patience Ward* did give his Evidence with Qualification, as he did believe, or as he had heard, or believed, or whatsoever it was, or whether he did give the Evidence positively. At the Trial there was two, I think three, but two that were at first examined, that did prove the Words spoken by him against the Duke of York, and swore they did reprove him for it. Sir *Patience Ward* was produced by the Defendant, for to defend the Issue on his Side, and to prove him to be not guilty in that Action, that he had not said the Words. Now it is plain, if so be Sir *Patience Ward* said only, I don't believe such a Thing, I don't remember it, or any such thing, that certainly had not been an Evidence that had been worth the Consideration of the Jury; for that was no more Evidence than any Men that they might take up; the next Man in the Court might have said, he did not believe it, or the like. Now for the King, in this Case, there are several, I think there are eight or nine; and they all of them do say, that they remember it very well; nay, and some of the Witnesses do say, they took special Notice of it then, for they were something astonish'd to hear such Evidence. It is true, all of them don't come to both Parts, but either to one

Part, or to both; they all agree in this, that it was positive Evidence, and not as he believed, or heard. There was a Question about Mr. *Allen*, and he was asked himself; he says it was positive; if he did qualify it, it was so low, he could not hear it; and that he might do as he pleased. I think there is none of these Gentlemen, that any thing at all is to be alleged against. That eight or nine Gentlemen, and some of them of very good Quality, and all of them of very good Credit, that they should join together to perjure themselves, for a Revenge upon Sir *Patience Ward*, is strange. For aught appears, there is not any Man appears, but is sorry for him, and some of them have a Kindness and Respect for him. That is the Evidence the former give; I can't go to every one of the Evidences, to open what they say; that will make it very long; and I think there is no Occasion for it. You have heard it well, and I believe remember it better, possibly, than I do. On the other Side, for the Defendants: They do bring you, in the first place, Mr. *Blaney*; and he does say, That he hath taken Notes, and in his Notes it was by Qualifications that Sir *Patience Ward* did speak, that it was according to the best of his Knowledge, and that he was here, and sat here in a Place where he could very well hear all that was said, and that he took it from Sir *Patience Ward's* Mouth. This is said against him, that it is plain he did not take every thing; and whether or no this was taken truly, or not, is still a Question for you to consider on. They, when they did call him, did say he was as good as *Ten thousand*. They would have his Witnesses to be of more Value than Nine thousand that did swear upon their Memories, and they had some Reason to say so too, for to observe there is never a Man that does come positively; but he does say, as he takes it, and he was sure it was right, although in some other Parts it is plain he did miss. But he does say, it was true. But then for the next Witnesses, Mr. *Baker* and Mr. *Crisp*, they do come and say, how that the Defendant did interlard his Discourse, as he believed, and as he heard. But when he came to be pinched upon that Point, Do you swear this Thing positively, or according to the best of your Memory, then every one of them, (pray correct me, if I be mistaken) every one of these Witnesses did say, it was according to the best of Memory. And, Gentlemen, the nine Witnesses on t'other Side, every one of them did take it upon them.

Council. No, no.

L. C. J. Look you, look you, Gentlemen, one spake to one Part of the Words, another to another; but these Witnesses did swear positively to what they did swear.

Mr. *Williams*. They were upon their Memories still.

Mr. *Just. Withins*. Sir *Francis Butler*, Sir *Henry Lee*, was not, nor Sir *Thomas Field*; and *Hatch* and *Wood* was not.

L. C. J. But did take it upon them positively. For your Witnesses, there was *Bewer*, and *Crisp*, and *Wright*, these three they did say, that Sir *Patience Ward* did say, as he believed, or according to the best of his Memory; but they would not take it upon their Memories precisely, but according to the best of their Memories. And now for Colonel *Birch*, and *Northey*, and *Nelson*, and *Baker*, and *Perry*; they said, that he said, according to the best of his Memory, but they could not hear very well what was said; so that they could not say any one Sentence that was said, and that is, I think, the most of the Evidence, all your Evidence, as to Words. You have brought some Persons to testify for Credit; truly, I think, that of all the Aldermen, one that hath pass'd the Chair, should not have brought under an Alderman, at least, to have justified him. But 'tis plain there are others come and say, he was a fair Dealer, and they have known him for a great many Years. Nay, I must confess, here was one of his Brethren, Sir *Harry Tulse*, and truly he looked upon him as a fair Dealer, and did not look upon him as stain'd with any enormous Vice whatsoever. When he was asked by the King's Counsel, whether he did believe he had sworn true in this Particular, he could not say so there. But, Gentlemen, for all this, I do not see any thing whatsoever hath been said, that doth stick upon his Reputation, only this very Thing that he must be tried upon. And, Gentlemen, upon the Evidence you have heard, you are to consider the Merits of the Cause, and not the Person, one way or other, any otherwise than doth relate to it. If you believe the Witnesses that have sworn for the King, that he did swear this positively, then it is agreed, that it was false; if he did swear it positively, then you must find the Defendant Guilty. If so be you believe the Evidence that hath been given on the Defendant's Part, against the King's Evidence, if you do believe that, and not the King's Evidence, then you must acquit the Defendant. It is a great Crime, that is the Truth of it.

The Jury withdrew, and after some Time return'd, and brought the Defendant in Guilty; but before the Day for Sentence, he thought it best to go out of the Way, having had Intelligence they intended to set him in the Pillory.

## CXVII. The Trial of Captain THOMAS WALCOT\*, at the Old Bailey, for High Treason, July 12, 1683. 35 Car. II.

THURSDAY July 12. 1683. at the Sessions-House in the Old Bailey, London: The Court being met, and Proclamation made for Attendance, the Proceedings were as follow:

Thomas Walcot being set to the Bar, and after having held up his Hand, the Indictment was read as follows:

London. The Jurors for our Sovereign Lord the King, upon their Oaths, present, That *Thomas Walcot*, late of London, Gentleman, as a false Traitor against the most Illustrious and Excellent Prince, our Sovereign Lord Charles II. by the Grace of God, of England, Scotland, France and Ireland King, his natural Lord, not having the Fear of God in his Heart; nor weighing the Duty of his Allegiance, but being moved and seduced by the Instigation of the Devil; and the true Duty, and natural Obedience, which True and Faithful Subjects of our Sovereign Lord the King, to-

wards him our said Lord the King, do bear, and of Right ought to bear, wholly withdrawing; and with his whole Strength intending the Peace and common Tranquillity of this Kingdom of England to disturb, and War and Rebellion against our said Lord the King to move and stir up, and the Government of our said Lord the King within this Kingdom of England to subvert, and our said Lord the King from his Title, Honour and Kingly Name of the Imperial Crown of this his Kingdom of England to put down and deprive, and our said Lord the King to Death and final Destruction to bring and put, the second Day of March, in the Year of the Reign of our Sovereign Lord Charles II. King of England, &c. the Five-and-thirtieth, and divers other Days and Times, as well before as after, at the Parish of St. Michael Bassishaw, in the Ward of Bassishaw, London, aforesaid, maliciously and traitorously, with divers other Traitors, to the Jurors aforesaid unknown, did conspire, compass, imagine and intend our

\* *Burnet's History of his own Times*, Vol. I. p. 558.



said Lord the King, his Supreme Lord, not only of his Kingly State, Title, Power, and Government of this his Kingdom of England to deprive and throw down, but also our said Lord the King to kill and to Death to bring and put, and the ancient Government of this his Kingdom of England to change, alter, and wholly to subvert, and a miserable Slaughter amongst the Subjects of our said Lord the King, through his whole Kingdom of England, to cause and procure, and Insurrection and Rebellion against our said Lord the King to move, and stir up, within this Kingdom of England: And to fulfil and perfect the said most horrible Treasons, and traitorous Compassings, Imaginations and Purposes aforesaid, the said Thomas Walcot as a false Traitor, then and there, and divers other Days and Times, as well before as after, maliciously, traitorously and advisedly did assemble, meet together, and consult with the aforesaid other Traitors, to the Jurors aforesaid unknown, and with them did treat of and for the executing and perfecting their Treasons, Compassings, Imaginations and Purposes aforesaid; and that the said Thomas Walcot as a false Traitor, maliciously, traitorously, and advisedly, then and there, and divers other Days and Times, as well before as after, did take upon himself, and to the aforesaid other Traitors did promise to be aiding and assisting in the Execution of the Treasons, and traitorous Compassings, Imaginations and Purposes aforesaid; and in providing Armour and armed Men, to fulfil and perfect the said Treasons and traitorous Compassings, Imaginations and Purposes aforesaid. And the said most wicked Treasons, and traitorous Compassings, Imaginations and Purposes aforesaid to fulfil and bring to pass, he the said Thomas Walcot as a false Traitor, maliciously, traitorously and advisedly, then and there did procure and prepare Arms, to wit, Blunderbusses, Carbines, and Pistols, against the Duty of his Allegiance, against the Peace of our Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statutes in that Case made and provided, &c.

Cl. of Cr. What sayst thou, Thomas Walcot? Art thou Guilty of this High Treason, whereof thou standest indicted, or Not guilty?

Capt. Walcot. Not guilty.

Cl. of Cr. Culprit, How wilt thou be tried?

Capt. Walcot. By God and my Country.

Cl. of Cr. God send thee a good Deliverance.

Then were William Hone, John Rouse, and William Blague arraigned, who pleaded Not guilty to their Indictments; and the Court adjourn'd till the Afternoon. When Thomas Walcot being again brought to the Bar, after some Exceptions, the following Jury was impannell'd.

Nicolas Charlton,  
Christopher Pitts,  
Robert Beddingfield,  
John Pelling,  
William Windbury,  
Thomas Seaton,

Jur.  
William Rutland;  
Thomas Short,  
Theophilus Man,  
John Genew,  
John Short;  
Thomas Nicholas.

Crier. Oyes, If any one can inform my Lords the King's Justices, &c. L. C. J. Mr. Sheriffs, This is an extraordinary Case; it is reasonable the Evidence should be well heard: I require you both to keep the Court quiet. — Mr. Tanner, swear the King's Evidence one at a time.

Clerk. Thomas Walcot, Hold up thy Hand. You of the Jury, look upon the Prisoner, and hearken to his Charge: He stands indicted by the Name of Thomas Walcot, Gent. prout in the Indictment before, mutatis mutandis. Upon this Indictment he hath been arraigned, and therunto pleaded Not guilty, and for his Trial put himself upon his Country; which Country you are. Your Charge is to inquire, &c.

Mr. North. May it please your Lordship, and you that are sworn, the Prisoner stands charged, That he being a false Traitor to the King, and intending to raise War and Rebellion against the King, and to bring his Majesty to an untimely Death, did on the second of March, in the five-and-thirtieth Year of the King, at the Parish of St. Michael Bassishaw, meet with other Traitors like himself, and there conspired to bring these Treasons to Effect; and accordingly promised to be aiding and assisting to provide Arms for it; and did actually provide several Arms, as Carbines, Blunderbusses, and Pistols, for the perpetrating this Treason. This is the Charge, to which he says he is Not guilty. We will call our Witnesses and prove it, and then you are to find it.

Sir Robert Sawyer. Mr. Att. Gen. Gentlemen of the Jury, the Prisoner at the Bar is accused of the highest of Crimes, High Treason against his Sovereign Lord, in compassing the Murder of the King, in raising Rebellion within this Kingdom, to the overthrowing of the best constituted, and the most excellent Government in the World. Gentlemen, he does not stand alone; and therefore he is charged in the Indictment with a Conspiracy with many others; I am heartily sorry to say there are many. Indeed there is hardly any Kingdom or Nation, wherein there are not discontented Persons, whose narrow Fortunes, or malevolent Spirits, render them uneasy in that Condition God Almighty hath put them; but to find Men that pretend to be Christians, or to have any thing of Virtue, and under the best of Governments, that indeed is a matter of Wonder; and indeed it casts so great a Stain and Reproach upon the Protestant Name, that it is not to be wiped off, but by the severest Justice of the Kingdom. Gentlemen, this Design was for a general Rising, and at the same time to assassinate the King and the Duke of York: This is the Design which the whole Course of our Evidence will open to you, and lies so naked, that I hope no Englishman that lives, but will see through these Men, that have made such a Noise and Tumult in these latter Days. This Design to assassinate the King, and the Rising, was designed to be in October last, upon the King's Return from Newmarket; and at that time there was a Noble Lord, that is gone now to his own Place, as will appear by the Evidence, that furnished them with considerable Sums of Money, for the providing Men and Arms for the assassinating the King at that time; but the Assassins were not then ready, as God appointed they should not be ready; and so at that time they were disappointed. Then the general Rising was put off till Queen Elizabeth's Day, which will open your Eyes to see upon what Grounds the tumultuous Meetings were encouraged in the City, to the

Terror of all honest Men: But that Rising was also disappointed because some of the Conspirators were not ready with their Men in the Country. And then, Gentlemen, though it was press'd on by the Person I mentioned, he then thought it high time to leave these Confederates to themselves. Gentlemen, after this we shall trace them in their several Meetings and Consultations; for there was a time, that they struggled with themselves, which should be effected first, whether they should first kill the King and the Duke; or whether they should first rise, and prosecute him in an open Rebellion, and destroy him that way. And the Course of our Evidence will shew, how ingenious these Men were; for it appears there were Men of great Ingenuity and Courage, as appears by the Prisoner at the Bar; and they would discourse of these Matters in Phrases, that common Persons should not understand them.

Capt. Walcot. I do not understand you.

Mr. Att. Gen. I speak as loud as I can. At their Meetings, for cutting off the King, that was the executing of a Bargain and Sale; and a short Conveyance, to come to their End. The raising of a War, that was under the Notion, and so to be discours'd of, of executing a Lease and Release, to work both upon the Possession and upon the Reversion: And under these mystical Terms they discours'd of all these Subjects, when they were in publick Places.

Capt. Walcot. I do not hear.

Mr. Att. Gen. You will hear the Witnesses, and that will concern you more. Then, Gentlemen, in these several Meetings they contrived to allot every Man in his Part; some were to provide Arms, others were to provide Men to do the Execution, which was last resolved upon to be at the Rye, upon the King's last Return from Newmarket. Gentlemen, in all these Parts, which I hope to prove, the Prisoner will appear to have a principal Part in them all: In all the Consultations and Advising for the raising Men, wherein he was to be a principal Commander, according to the Skill he hath; but for the Assassination at the Rye, Rumbold was to conduct the Men hired for that Purpose. Gentlemen, accordingly the Time was appointed for his Majesty to come, and the Assassins to meet him there: But it pleased God, that that was disappointed by a miraculous Fire; for so all Englishmen may call it: And whereas they were to go down on Friday to Rumbold's House, and the King to come up on Saturday, the Fire brought him to Town on Tuesday: But notwithstanding this great Providence to divert them, Rumbold and others of the Confederates resolv'd to go on with it still; and several Places were appointed, and several Officers were appointed to view those Places, either between Hampton-Court and Windsor, or else to do it at the Play-houses, or upon the King's Passage from the Play-house, by Bedford-wall at Covent-Garden; but if these should fail, they were resolv'd to do it at the Bull-fest. Gentlemen, they went further; they provided Arms; which very Arms opportunely fell into our Hands: We seized those very Arms that were bought for that Purpose to kill the King and the Duke. We shall go through with it; I will name you the material Places of their Meetings, that so you may understand the Witnesses; the Green-Dragon Tavern on Snow-hill, the Salutation Tavern in Lombard-street, the Angel Tavern near the Exchange, and Mr. Wells's Chamber in the Middle-Temple; these were some of the principal Places; tho' they had several other Places, wherein all these Matters were consulted und transacted. They had prepared a new Model of Government; and they were for overturning all, as all these Politicians do; tho' they had a most excellent Government, yet they had a better in their own Brains; or, at least, their Share would be greater in it, as all Rebels have a Prospect of. Gentlemen, for the other Parts, we shall have less Occasion to give Evidence of now; for every one had their particular Part; some for the great Design of the Rising, some for the Killing of the King, whereof that Gentleman, the Prisoner, was one; and there were other Parts assign'd to others, for taking and surprising the Tower. We will call our Witnesses, and prove all that we have opened, and make it as clear to you as the Sun shines: Such a prodigious Villainy nothing but a Firebrand from Hell could kindle in Men's Minds, to kill the best of Kings, and to destroy the best Frame of Government. Gentlemen, I do not question your Justice, but that this Man shall pay what is due to the Justice of the Kingdom.

Mr. Serj. Jefferies. My Lord, I only desire to give an Account of the Method of our Evidence.

Capt. Walcot. My Lord, I desire I may have the Favour of Pen and Ink.

L. C. J. That you shall have.

Mr. Serj. Jefferies. My Lord, and you, Gentlemen of the Jury, Mr. Attorney hath already given you an Account of the Design that was to be put in Execution by a Parcel of evil Men, whereof the Prisoner at the Bar we charge to be one. We shall not detain you longer with opening the Matter, but beg the Favour of the Court, that we may acquaint you a little with the Method we intend to follow in calling our Evidence for the King against the Prisoner at the Bar. In the first place, my Lord, we will call our Witnesses, to give your Lordship and the Jury Satisfaction, That there was a Design in general, and that that Design was first intended to be a general Rising over all the Kingdom; in which Design the Prisoner at the Bar had a very considerable Share; and was look'd upon to be a very proper and fit Person for the Managery of that Part of the Design: For other Meetings, and at what Places, Mr. Attorney hath already opened to you. We will then come to more particular Agreements that were between them, in order to the carrying on this admirable good Work, as it hath been truly stated, for the Destruction of the best and most merciful of Kings, and for the Destruction of the best of Religions, the Religion of the Church of England. I take Notice of it, because all Men may know, The most of these Persons, nay all of them, concerned in this hellish Conspiracy, were Dissenters from the Church of England.

And the better to effect this horrid Villainy, (I am sure I want Words, and so does any Man else, to express the Baseness of these Crimes, the better to effect this Thing) the way it was to be done, was by taking off the King, and by taking off his Brother too. At length after several Debates, and some Proposals made between these Persons, they came to a Determination, and an actual Resolution, to take off the King, and his Royal Brother. My Lord, we will prove generally, that this was the Intent of the Design, or the Plot in general. My Lord, we will then give you an Account, That they entered into several Consultations for a new Model



Model and Frame of Government; for they intended to set up the People, and they had even fix'd a certain Superiority, and resolved, as all People of their Principles have a mind, according to their several Inclinations, to fix the Power in the People; Gentlemen, an old Tenet, that brought the King's Father to that untimely and horrid End, by fixing the Power in the People. These Gentlemen had a mind to insinuate and engage the People, by fixing the Power in them, and saying, that publick Proclamations were to be made. And after this horrid and barbarous Murder intended upon the King and the Duke, there were Declarations to be made in the Names of such and such Lords, and the Associating Members of the last House of Commons; these were the Persons thought fit, in whose Hands the Power of the whole Kingdom should be lodged. Gentlemen, after we have given you an Account of the several Meetings, then we will come to the Prisoner at the Bar, and prove against him, That he had not only an Hand in the first Part of the Plot, about the Raising, but he was also to be one of those Villains that were to murder the King: I cannot express myself in more moderate Terms, and I am sure no Man can blame me that hears the Proof. Gentlemen, when we have thus given you this Evidence, I hope we shall satisfy the Court, and all Mankind, That Persons that have been thus guilty, under Pretence of Religion, or under any other Pretence whatsoever, are fit Objects of the Severity of human Laws. If we prove against the Prisoner at the Bar, That he had an Hand in this horrid Conspiracy, I make no Doubt but you will shew yourselves to be *Englishmen*, loyal Men, and overtake all Men that thirst after the King's Blood.

Mr. Sol. Gen. Gentlemen, we will call our Witnesses; Mrs. Finch, and as no Man can doubt, but the Murder of the King, that vile design, would have been seconded by a Power to back that horrid Villany; so we shall shew you, That this Gentleman was concerned in both Parts, in the immediate Assassination of the King, and the raising of Arms. We need not go about to give you an History of the Thing any other way than in applying it to this Person, for there is no Part of this Conspiracy he can clear himself from, and all the Evidence that speak of this Design, speak of this Man as a chief Actor in it.

Mr. Att. Gen. Call Col. Rumsey. [Who was sworn.]

Mr. Sol. Gen. Col. Rumsey, Pray, give my Lord and the Jury an Account of what you know of the Prisoner at the Bar, whether he were concerned, either in relation to the Murder of the King, or the raising Arms.

L. C. J. Mr. Rumsey, raise your Voice so audibly, that you may be heard.

Col. Rumsey. The first Meeting I had with this Gentleman was at Mr. West's Chamber.

Mr. Att. Gen. Before you begin to tell of your Meeting, give an Account of any Raising that you heard of.

Col. Rumsey. Sir, about the latter End of October, or the Beginning of November, I was with my Lord Shaftesbury late at Night, and he told me, That the Duke of Monmouth, my Lord Russell, my Lord Grey, and Sir Thomas Armstrong, were at one Mr. Shepherd's House, near Lombard-street. He desired me to go to know what they had done about the raising Arms at Taunton. I did go, and Mr. Shepherd carried me up to them, and they told me, That Mr. Trenchard had failed them about the Men, and they could proceed no further at that time.

L. C. J. What Shepherd was this?

Col. Rumsey. Mr. Shepherd, the Merchant, near Lombard-street, one Mr. Thomas Shepherd. And so I came to my Lord the next Day, and told him of it; and then he made his Preparation to be gone for Holland.

L. C. J. What Discourse had you with my Lord Shaftesbury thereupon? What did he say? What made you believe he made Preparation to be gone?

Col. Rumsey. My Lord, he said there was no Dependence upon those Gentlemen that met, and he would leave England. After that, a Fortnight or three Weeks, there was a Meeting one Day at Mr. West's Chamber, and there was Mr. West, and Mr. Goodenough, and Mr. Wade, and somebody else there was, but I cannot remember his Name. Captain Walcot was in Holland then. There it was proposed nothing was to be done by a general Raising; but there was no surer way than to take off the King and the Duke; and that to that Intent and Purpose they could not carry it on without Mr. Ferguson; and so he was writ for into Holland; and he came out of Holland upon that Letter, and Captain Walcot with him. After Mr. Ferguson's coming back from Holland, there was very suddenly a Meeting again, and then it was concluded, that nothing was to be effected without taking off the King and the Duke, or to that Purpose. Mr. Ferguson was not at that Meeting. There were two or three Meetings before Captain Walcot was there, to find out Men, and they could not find out a Number of Men, without which Mr. Rumbold would not undertake it. So, about three or four Meetings after, Captain Walcot came; and he was resolved at last to join in the Matter; but he would not have any hand in attacking the Coach, but he would command a Party that should charge the Guards.

L. C. J. What did he say?

Col. Rumsey. He would not meddle with the King in the Coach, but he would command a Party that should charge the Guards that came along with him.

Mr. Att. Gen. After what manner was it settled that it should be done?

Col. Rumsey. There were several Parties; one small Party was to have killed the Postilion, another to kill the Horses, and Mr. Rumbold with a certain Number to seize the Coach, and Capt. Walcot the Guards.

Mr. Att. Gen. Where was it to be done?

Col. Rumsey. At Mr. Rumbold's House.

L. C. J. Where is that?

Col. Rumsey. Near Hodsdon.

L. C. J. For what Purpose was Mr. Rumbold and those other Men to attack the Coach?

Col. Rumsey. To murder the King and the Duke.

L. C. J. How was it design'd to be done, by Pistol, or how?

Col. Rumsey. By Blunderbusses, and if they missed, then Swords.

Mr. Att. Gen. Did they give any Directions about preparing Arms?

Col. Rumsey. When that time fail'd, after the Fire fell out at Newmarket—

L. C. J. When was this to be done?

Col. Rumsey. When the King returned from Newmarket.

L. C. J. About what time?—Col. Rumsey. The Saturday before Easter.

L. C. J. I don't ask you the Day; but was it when the King was last at Newmarket, or before?—Col. Rumsey. Last at Newmarket.

L. C. J. When he was last at Newmarket, in his Return from thence?

Col. Rumsey. In his Return from thence.

L. C. J. Whereabouts?

Col. Rumsey. At Rumbold's House, which is near Hodsdon.

L. C. J. In Hertfordshire?

Col. Rumsey. In Hertfordshire.

L. C. J. And you say, those Methods were chalked out by them, that Rumbold and some others were to attack the Coach, others to kill the Postilion, others to kill the Horses; and this Gentleman, with a commanded Party, was to fall upon the Guards? You say this?

Col. Rumsey. Yes, my Lord.

Capt. Walcot. I would beg Leave, my Lord—

L. C. J. Stay, Captain Walcot, you shall have Leave to ask him any thing by and-by; but you must first let the King's Counsel have done with him.

Mr. Att. Gen. I would ask you what you know of a Design at any other time?—Col. Rumsey. I do know nothing, I heard by Mr. West, but I knew nothing before.

L. C. J. Mr. Rumsey, About what time was this Resolution taken up, as near as you can? I ask neither the Day nor the Week, but about what Month?

Col. Rumsey. The Beginning of it was in February.

L. C. J. Last February?

Col. Rumsey. Last February. Mr. Ferguson, and Captain Walcot, came to this Town upon Ash-Wednesday.

Mr. Serj. Jefferies. What other Meetings were you at, Sir?

Col. Rumsey. This was the first, when the Prisoner at the Bar came in. The first Time was at Mr. West's Chamber, where he came: There it was considered and debated.

Mr. Serj. Jefferies. Very well, you say that was the first Time Capt. Walcot came in?

Col. Rumsey. It was at Mr. West's Chamber: This was before the King came from Newmarket that they were to do this, and the Number of Men could not be got ready; so there were several Meetings afterward at Mr. West's Chamber, to consult whether they could raise the Number they resolved upon; and there were Notes brought by Mr. Goodenough, and Mr. Rumbold, of many Names, I cannot say who else brought Notes of the Men's Names, to see that they might not be deceived in the Number; and that Time Captain Walcot was there, and did undertake to go to Mr. Rumbold's House; and I think did go down to the very Place.

L. C. J. Look you, Sir, Was there any Number of Men insisted upon for doing this Villainy?

Col. Rumsey. Capt. Rumbold did insist upon 50 Men.

L. C. J. But Capt. Walcot, How many was he to have?

Col. Rumsey. It was not divided to a perfect Number.

Mr. Serj. Jefferies. What other Meetings were you at with Captain Walcot?

Col. Rumsey. I was at the Salutation with him, and the Green-Dragon with him.

Mr. Serj. Jefferies. Where is that?

Col. Rumsey. The Green-Dragon is upon Snow-hill.

Mr. Serj. Jefferies. Where is the Salutation?

Col. Rumsey. In Lombard-street.

Mr. Serj. Jefferies. Now tell what Discourses you had there?

Col. Rumsey. That was about dividing the City into 20 Parts, to see how many Men could be raised out of every Part, and they were to be divided into Fifteenths, and every Man to lead a Fifteenth, that they might not be at a Loss.

Mr. Att. Gen. Who was intrusted with this to do it?

Col. Rumsey. Mr. Goodenough, Mr. West, and Mr. Wade.

Mr. Att. Gen. What Account did they give of what they had done?

Col. Rumsey. Mr. Goodenough gave an Account of 7 Parts of the 20, and said out of them would be raised 2900 Men, and made an Estimate, that the other 13 would not raise above as many more; for those were the most considerable Parts, as Wapping and Southwark.

Mr. Serj. Jefferies. Mr. Rumsey, Pray what Consultation had you afterward, and what was done after?

L. C. J. Pray let us go on a little *gradatim*. What was the Reason, that this was not effected when the King returned from Newmarket?

Col. Rumsey. The Fire happened, and brought the King sooner from Newmarket than the Men could be got ready.

L. C. J. Was there a Day appointed for the doing this? Had you a Prospect when the King would return?

Col. Rumsey. Yes, it was commonly talked that it would be the Saturday before Easter, but he came on the Tuesday before.

L. C. J. Then give us an Account how that Design was disappointed at that time.

Col. Rumsey. The Fire happened in Newmarket, and they were all in Confusion, and could not get their Men ready by Tuesday; the News came upon Friday to Town.

L. C. J. Of the Fire?

Col. Rumsey. Of the Fire, and there was a Meeting. Mr. Ferguson lodged then in Covent-Garden, and sent to several to come to him, to see if Men could be got together against Tuesday, when the King was to come in; and it could not be done, and it was laid aside for that time.

Mr. Att. Gen. Upon that, what Resolution was taken?

Col. Rumsey. Then they had a Meeting, and Ferguson was not there, there was Capt. Walcot, Mr. West, and Mr. Goodenough; this was immediately after this Disappointment: I am not certain whether it was in Mr. West's Chamber; and that there might no Accident happen afterwards to hinder it, it was resolved, that Money should be raised for the buying of Arms; and Mr. Ferguson undertook to raise Money to buy Arms, and Mr. West did undertake to provide them.

Mr.

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Mr. Att. Gen. Who undertook to provide Men?  
 Col. Rumsey. Mr. Goodenough and Mr. Rumbold.  
 L. C. J. Look you, Colonel Rumsey, after this Disappointment, when this next Meeting was, had you any further Design upon the King then?  
 Col. Rumsey. Yes, my Lord.  
 L. C. J. Give us some Account of that.  
 Col. Rumsey. It was to be done a coming from Windsor to London, or from Windsor to Hampton-Court, or the Play-house; and therefore that Arms should be ready against any Opportunity that should happen, let it be what it would. And Mr. West did undertake to provide Arms, and he told me he bought them, and did not get his Money in six or seven Weeks after. A Day or two after, going to Ferguson, he told him now he might have his Money, if he would send a Note to Major Wildman; but after, he was told, that Major Wildman would not pay it by Note, but he must send Mr. Rumbold to him for it; for he would trust nobody else but him. And so Mr. West did send Mr. Rumbold, and he was there at his House by six o'Clock in the Morning, but he was gone out of Town an Hour before; so Mr. West went to Mr. Ferguson, and he then told him, that he should have Money in two or three Days, if he would come to him; and Mr. West did go to him, and he paid him an hundred Pounds.  
 Mr. Att. Gen. Was there any Provision made for a Rising now again?  
 Col. Rumsey. Yes, this general Rising, by this Division of the City, was intended to be ready against the first Opportunity that happened.  
 Mr. Att. Gen. Before this Discovery, did you keep up these Meetings?  
 Mr. Sol. Gen. When was your last Time?  
 Col. Rumsey. My Lord, I think it was the very Thursday before the Discovery; but then on Friday or Saturday we had Inklings that this was discovered, and did meet at the George upon Ludgate-Hill.  
 L. C. J. Who met then?  
 Col. Rumsey. I think it was the very Thursday before; I am not very certain; we met at the Salutation in Lombard-street, and there was Captain Walcot, Mr. West, Mr. Wade, the two Goodenoughs, and Mr. Nelthrop, and myself.  
 Mr. Att. Gen. What did it come to, pray, what was your Discourse then and Resolution?  
 Col. Rumsey. The Resolution was still to carry it on. We went thither to know of Mr. Goodenough what was done about the other thirteen Parts; he told us he had no Account, but he said, he thought he should have a Meeting on Saturday in the Afternoon at Ludgate-Hill, at the George, to have his Answer; but the Discovery coming, there did only meet Mr. Norton, Mr. Bourn;—there was another, I don't know who the other was; there was a fourth.  
 Mr. Att. Gen. Mr. Rumsey, Pray, after the Discovery, What did you resolve upon? What Meetings had you upon your Flight?  
 Col. Rumsey. We met at Capt. Tracy's.  
 Mr. Att. Gen. What Day was that?  
 Col. Rumsey. That was upon the Monday after the Discovery.  
 Mr. Serj. Jeff. Who was there?  
 Col. Rumsey. There was Capt. Walcot, Mr. West, Mr. Wade, Mr. Nelthrop, the two Goodenoughs, and Mr. Ferguson.  
 Mr. Att. Gen. What did you Discourse of there?  
 Col. Rumsey. There was exclaiming against Mr. Keeling, and taking Resolutions to be gone.  
 L. C. J. Mr. Keeling! What was Keeling?  
 Col. Rumsey. Mr. Keeling was he that made the Discovery.  
 Mr. Serj. Jeff. Have you ever been in Keeling's Company?  
 Col. Rumsey. I was that time we met at the Salutation; he came in there for a quarter of an Hour.  
 L. C. J. Look you, Sir, Do you know Capt. Walcot? Are you sure it is that Gentleman at the Bar?  
 Col. Rumsey. Yes, my Lord.  
 L. C. J. Hath he owned always the Name of Walcot?  
 Col. Rumsey. Yes, my Lord.  
 L. C. J. What did he say to Mr. Keeling, when he came to the Salutation?  
 Col. Rumsey. There was in that very Day's Gazette a Report of the Rising at Cologne, and one Gulick that headed them; and said Mr. West to Keeling, he should be our Gulick.  
 Mr. Att. Gen. Pray, how did he interpret it at that time?  
 Col. Rumsey. Mr. West said, that Gulick was Keeling, Gu was Keel, and Lik was ing.  
 Mr. Serj. Jeff. A Quirk upon his Name.  
 Mr. Att. Gen. When you resolved to fly, had you any Discourse of making a Stand, and fighting the Government then?  
 Col. Rumsey. Not that I know of, I was not all the time with them.  
 L. C. J. Look you, Colonel Rumsey, let me ask you this: What was Keeling to do? Was there any Post assigned to Keeling in this?  
 Col. Rumsey. I never saw him before.  
 L. C. J. How long was it before the Discovery that you did see him?  
 Col. Rumsey. The Thursday before.  
 L. C. J. At the Salutation Tavern?  
 Col. Rumsey. Yes: He was there call'd Gulick.  
 Mr. Serj. Jeff. If Capt. Walcot will ask him any Questions, he may.  
 L. C. J. Look you, Mr. Walcot, Now you may ask Col. Rumsey; tell me what Questions you would have asked, and I will ask him.  
 Capt. Walcot. I desire Colonel Rumsey may be asked, Whether I ever met at Mr. West's Chamber, till after his Majesty's Return from Newmarket?  
 L. C. J. Look you, Sir, you hear the Question; it is, Whether ever Mr. Walcot met with Mr. West, till after the King's Return from Newmarket?  
 Col. Rumsey. Till after?  
 L. C. J. Till after the King's Return.—Col. Rumsey. Yes, Sir.  
 Capt. Walcot. My Lord, I have sufficient Evidence against that.  
 Mr. Serj. Jeff. I think that he was to undertake the Guards; that was before the King came from Newmarket.  
 L. C. J. He hath given this Evidence, He was there, and he would not attack the Coach; he would not meddle with the King, but he would fall upon the Guards.

Capt. Walcot. Shall I speak a Word, my Lord?  
 L. C. J. Look you, I will tell you, you shall have your Answers to these things; you have Pen, Ink, and Paper.  
 Capt. Walcot. But I have a bad Memory, and I am afraid I shall forget this very Thing.  
 Mr. Serj. Jeff. I hope the Jury will not forget it.  
 L. C. J. Look you, Mr. Walcot, we must not admit you to break in upon the King's Evidence. When that is heard, you shall have your Liberty to make your Answer to any thing, and call any Witness.  
 Col. Rumsey. My Lord, I will give one Instance more: There was one Meeting at the Five Bells in the Strand, where there was only Ferguson, Captain Rumbold, Mr. West, Goodenough, and myself: And Mr. Ferguson told us that Night, that Captain Walcot would come the next Meeting we had at Mr. West's Chamber.  
 L. C. J. Then Captain Walcot was not with you at the Five Bells?  
 Col. Rumsey. Mr. Ferguson told us he would come in the next time at Mr. West's Chamber, and there he did come.  
 L. C. J. And that was before the King went to Newmarket. Pray, Sir, answer this, Was this before the King went to Newmarket, or not?  
 Col. Rumsey. No, my Lord, this was when he was at Newmarket; for the King was at Newmarket when he and Mr. Ferguson came from Holland, the King was then at Newmarket.  
 Mr. Serj. Jeff. Now we will call Mr. Keeling. [Who was sworn.  
 Mr. Att. Gen. Pray, will you acquaint my Lord, and the Jury, what you know of these Conspiracies touching this Man.  
 Mr. Keeling. Some time, my Lord, before the King went to Newmarket, I was at the Sun-Tavern, and in company with Richard Rumbold, Richard Goodenough, and some others. Goodenough calls me forth of the Room, and asked me, what Men I could procure? I asked him, For what Purpose? He said, To go down towards Newmarket. I asked, for what End? He said, To kill the King, and the Duke of York. I told him, I thought none. Before the King came from Newmarket he renewed his Question to me again several times: I had in the Interim some Discourse with Burton and Thompson. Burton told me, That Barber would be concern'd; and he also told me, Thompson would. The Saturday after the Fire happened at Newmarket, Rumbold came down to my House on the Friday, the Day that the News was of the Fire, the Day that he commonly came to Town, he came to my House; it was on the Friday, to see those Men I could procure, and he desired to see them on the Morrow, which was the Saturday before the King returned. The Saturday after the Fire I went into London, and met Mr. Rumbold that Day at the Exchange, and he then put me in Mind of the Matter again. I did go to Burton and Thompson, and Barber; the Place appointed on Saturday was the Mitre-Tavern, at the Corner of Duke's-place within Aldgate. He did meet there, where there was some Discourse happened tending to that Matter by Rumbold; the Substance of which was, Whether they were willing to go down? I think he called the Place by the Name of The Rye, that is his House; there being, says he, no greater Conveniency than in that, I believe scarce in England, for the executing such a Design, being an House very intire to itself, and very remote from Neighbours, besides the Advantage that belongs to it of a Court or Wall. And, among other Discourse, this was an Argument to prevail with those Persons: For, saith he, it will be a keeping one of the Commandments, to kill the King and the Duke of York; for, says he, if that be not done, there will be otherwise a great deal of Bloodshed committed. He also told us the way that he design'd to effect this at his House; That he had a Conveniency for our Horses; and that there would be so many to shoot at the Postilion and the Horses; and there would be so many appointed at the Coach, and so many Men to attack the Guards: and if there was a Failure in shooting the Coach-horses, that then there should be Men in the Habit of Country-men, with a Cart in the Lane, and they should run this Cart athwart the Lane, and so stop the Coach. I believe there might be some other Particulars, which, at present, I do not remember. From thence we went to the Exchange, and there we met in the Afternoon at the Dolphin-Tavern in Bartholomew-Lane; there was Rumbold, West, Goodenough, and Hone the Joyner. And after we had been there a little, West asked Rumbold, Whether he heard the King would come home that Night? He said, Yes, he heard so; but said West, I believe he won't come till Monday, and I hope he won't come till Saturday; for that was the Day appointed to go down to the Rye, to meet the King and the Duke of York. Said Rumbold, I hope they will not come till then: But, said West, if they do come, How many Swan-quills must you have? How many Goose-quills? And how many Crow-quills, with Sand and Ink, must you have? Said they, Six Swan-quills, Twenty Goose-quills, and Twenty or Thirty Crow-quills.  
 L. C. J. Explain that.  
 Mr. Keeling. I am coming to it. I asked West or Rumbold, or both of them, what they intended by it? They told me Swan-quills were Blunderbusses, Goose-quills Muskets, and Crow-quills were Pistols, Sand and Ink, Powder and Bullet. This is all, my Lord, as I remember in general as to the Design.  
 L. C. J. What can you say concerning the Prisoner at the Bar?  
 Mr. Keeling. I was at the Salutation-Tavern, and Captain Walcot was there; and when I came in, there was some Person called me Culing, and I a little stranged at it, not knowing the Meaning. Says I, Gentlemen, What do you design by it? Says one, Here's a good Health to our English Culing. Says West, Culing in Dutch is Keeling in English. And says Mr. West, I hope to see Mr. Keeling at the Head of as good an Army in Wapping, as Culing is at Collen. I suppose Captain Walcot remembers it very well. I can say no more, Sir, to the Prisoner at the Bar; I remember not to have seen him any other time upon this Design.  
 Mr. Serj. Jeff. Would the Prisoner at the Bar ask him any Questions?  
 Capt. Walcot. My Lord, I don't remember any such thing. If you please, my Lord, to ask him, whether I call'd him Culing, or said any thing more or less to him.  
 Mr. Keeling. I don't say you did, but you were by, that I say.  
 Mr. Serj. Jeff. I think, Mr. Keeling, you were the Person that made the Discovery; give an Account of it for the Satisfaction of the World.  
 L. C. J. Upon what Occasion did you reveal this?



Mr. Keeling. If your Lordship please, I will give you an Account. There was something happened before that time. Some time before this thing was discovered, *Goodenough* came down to my House, and I went with him to drink a Dish of Coffee, and there was in Company with him *Richard Rumbold*, and his Brother *William*, that I believe Mr. *Walcot* knows; and when we were by ourselves, he pulls out some Papers out of his Pocket, and gave me one. I asked him what he meant. He told me he had divided the City and Suburbs into twenty Parts, and there were three Divisions: And, says he, you know the Persons better than I, and who you can trust with it. One is for yourself, and I would have you take to your Assistance nine or ten Men, more or less, that you may communicate it safely to; and they were to go to several Persons, and ask them, Supposing that the Papists should rise, or that there should be a general Insurrection, or a French Invasion, are you in a Posture of Defence? This was all we were to communicate of the Matter to them, and this was to feel them, and see how many Men they could raise. And he told me there was a Design to kill the King, and the Duke, which was designed to be done at the Bull-feast; for Mr. *West* had told me it was to be done between *Windsor* and *Hampton-Court*. I asked him, If that Design went on; and he said No; for the Duke of *York* seldom came with the King from *Windsor* to *Hampton-Court*, but it was to be at the Bull-feast. And says he, these Men are to be in a Readiness, and it's design'd, that the thing should be laid upon the Papists as a Branch of the Popish-plot. He also told me, there was one drawing a Declaration which would relieve poor People of that which seemed most burdensome to them, which was the Chimney-money: and then the common People would fall in with them more readily.

Mr. Att. Gen. How came you to discover it?

Mr. Keeling. I will tell you, Sir: I was troubled in my Mind about it, and do declare that was the only Reason. I thought I did very ill in not discovering it, and I had no Peace, nor Satisfaction, nor Content, nor did I mind my Business, nor could I take the Rest that at other Times I did, and that was the moving Cause, and no other. I thought, if it were a Sin in *David* to cut off the Hem of *Saul's* Garment, it was a Sin in me much more to kill my King.

L. C. J. Was there any Post in this Case assign'd to you? Was it requir'd of you to do any thing yourself, more than to raise those Men, and know whether they were in Readiness? Were you design'd to go down to *Rumbold's* House? Tell what Part you were to act.

Mr. Keeling. In the first place, I was to raise some Men; but I thought they looked upon me for one to go down myself with some Men I raised; but I remember not that I was ask'd the Question.

L. C. J. Were any of those Men to go down?

Mr. Keeling. Those three I named were to go down, *Burton*, *Thompson*, and *Barber*.

Mr. Att. Gen. Call Mr. *Bourn*.

L. C. J. Tell us the Manner of your revealing and discovering this, who you discovered it to?—Mr. Keeling. I revealed it to one Mr. *Peckham*.

L. C. J. Who did he bring you to?

Mr. Keeling. To my Lord *Dartmouth*.

L. C. J. And so you did discover the whole Business to him?

Mr. Keeling. I had offered to discover it to another Man before, but I thought he was careless; so I did not tell him positively what I thought to tell him, because I saw he slighted the Matter. He was a Minister of the Church of *England*. Then I went to Mr. *Peckham*, knowing he was intimate at Court, and from thence to my Lord *Dartmouth*, and then I was carried to Mr. Secretary *Jenkins*.

Mr. Att. Gen. Was there no Design to take off the Mayor or the Sheriffs in particular?

Mr. Keeling. I will tell you: *Goodenough* did tell me, That the Design was to secure the Lord Mayor, and the Sheriffs; and he told me, they had a Design to secure the Tower.

Mr. Att. Gen. Were you employ'd to arrest my Lord Mayor?

Mr. Keeling. I did arrest my Lord Mayor.

L. C. J. What are you? How come you to arrest my Lord Mayor? What are you by Profession?

Mr. Keeling. A White Salter, or Oyl-man.

L. C. J. How came you to arrest my Lord Mayor?

Mr. Keeling. I was put upon it by *Goodenough* and those Men.

L. C. J. As a special Bailiff?

Mr. Att. Gen. He was a special Bailiff.

Mr. Keeling. Under the Coroner?

Mr. Serj. *Jeff*. A special Bailiff under a Special Coroner.

Mr. Bar. *Street*. Was this Coroner at any time of your Meetings?

Mr. Keeling. No, my Lord.

Mr. Bar. *Street*. I am glad he was not.

L. C. J. What say you, Capt. *Walcot*?

Capt. *Walcot*. My Lord, I have nothing to say.

Mr. Sol. Gen. Call *Zachary Bourn*. [Who was sworn.]

Mr. Att. Gen. Pray will you recollect yourself, and tell what Knowledge you have of the Prisoner, what Meetings you had, and what was agreed?

L. C. J. Raise your Voice a little.

Mr. *Bourn*. The Occasion of my knowing Capt. *Walcot*, was Mr. *Ferguson's* lodging at my House. Capt. *Walcot* used to come thither, but it was some time before I changed any Words with him.

Mr. Att. Gen. Speak aloud, Mr. *Bourn*.

Mr. *Bourn*. Mr. *Wade* came presently after I came to Town from the *Wells*, and said I must needs meet in such a Place, it was at the *Dragon* upon *Snow-hill*, where we met several others besides Capt. *Walcot*: The Business was a Design to raise Men, and divide the City into twenty Divisions, in order to the securing of his Majesty, and the Duke of *York*, and setting up the Duke of *Monmouth*.

L. C. J. Was it securing, or killing?

Mr. *Bourn*. It was not killing, I think; we never expressed it killing at those Meetings. I think, every time I met them, Capt. *Walcot* was there. Once I was at the *Salutation* in *Lombard-street*.

L. C. J. What was the Result of your Meetings?

Mr. *Bourn*. To make all Expedition imaginable.

L. C. J. Was it discours'd how, or in what manner, those Persons were

to be raised? Don't refer yourself to the Evidence that went before, but tell it yourself.

Mr. *Bourn*. The City was to be divided into twenty Divisions, and to raise as many Men as they could out of them; but they were not to tell the direct Business, but if there should be Occasion, or the Papists should rise, they might know their Strength, and what they were able to do.

Mr. Att. Gen. This was their Pretence, because it should not be told those Men.

L. C. J. Did Mr. *Goodenough* bring any Account of it?

Mr. *Bourn*. Mr. *Goodenough* brought an Account of about four thousand; three, I think it was, or very near, out of those Divisions he had an Account of.

L. C. J. Was Capt. *Walcot* there at that Time?

Mr. *Bourn*. Yes.

Mr. Serj. *Jeff*. When the Discourse was about securing the King, and the Duke, was Captain *Walcot* there?

Mr. *Bourn*. Yes.

L. C. J. Did you hear what Parties were design'd to be in this Act?

Mr. *Bourn*. They were not come to that.

L. C. J. Did you break off from them before that?

Mr. *Bourn*. No, the Discovery prevented it.

L. C. J. When was your first Meeting? About what Time?

Mr. *Bourn*. About ten Days before the Discovery was made.

L. C. J. Was Mr. *West* at any of your Consults?

Mr. *Bourn*. Yes, at some of them, and Captain *Walcot* was at three of them, if not at all, I think.

L. C. J. What was to be done?

Mr. *Bourn*. They were to have seized my Lord Mayor, and the two Sheriffs, and some of the Aldermen, and the chief Ministers of State about Town.

Mr. Bar. *Street*. Was there any body designed for that particular Business?

Mr. *Bourn*. No, not then, it was not come to that.

Mr. Att. Gen. Was there any thing about my Lord Keeper?

Mr. *Bourn*. Yes, Mr. *West* did say to me, it should be my Business to secure my Lord Keeper. I told him, I did not care to meddle with any of my Neighbours. He said he would call him to Account with all his Heart, he would put him in mind of *Colledge*.

Mr. Att. Gen. Pray were you employed to speak with any of the Non-conformist Ministers about it?

Mr. *Bourn*. I would have spoke to two of them, and Mr. *West* was unwilling; for he said, the Ministers had destroyed all Designs, ever since *Constantine's* time, and he would have nothing to do with them now.

Mr. Att. Gen. When was your last Meeting, before the Discovery, that you were at?

Mr. *Bourn*. The Saturday before the Discovery we met at Captain *Tracy's*, and that Evening we had some Intimation that there was a Discovery made. And I went again on Monday Morning.

Mr. Att. Gen. Who was there?

Mr. *Bourn*. Captain *Walcot*, Mr. *Ferguson*, Mr. *Goodenough*, Mr. *West*, Mr. *Norton*, and myself; one Captain *Kettle* came in, but he did not stay.

Mr. Att. Gen. Colonel *Rumsey* was there too, was not he?

Mr. *Bourn*. Yes, Sir.

L. C. J. And what did you resolve upon then?

Mr. *Bourn*. Truly they resolved upon nothing; I left them upon the Debate of killing Mr. *Keeling*.

Mr. Att. Gen. Why would they kill him? Was that debated among them?

Mr. *Bourn*. Yes; because he made the Discovery.

Mr. Att. Gen. Did you hear them talk of standing to it with Swords in their Hands?

Mr. *Bourn*. Yes, rather than be hang'd, they thought that was the better way, and to have *Keeling* dispatched out of the World.

L. C. J. Look you, Sir, did any of them talk of securing themselves?

Mr. *Bourn*. The next Morning I went again, and they were all gone but Mr. *West*, they had all secured themselves.

L. C. J. Was the Prisoner at the Bar there at that time, when they consulted about killing Mr. *Keeling*? Was he there at that Meeting on Monday Morning?

Mr. *Bourn*. He was there at Captain *Tracy's*; he was there, I think, all the while, while I was there; for I was not there all the time.

L. C. J. (To *Walcot*.) Now, Sir, what Question would you have?

Capt. *Walcot*. My Lord, if you please, I would ask whether he ever heard me say any thing, more or less, of assassinating the King?

L. C. J. In the first place, did you hear any thing in general of assassinating the King?

Mr. *Bourn*. I did hear of it, my Lord, when the thing was over. And as to his Question, I did never hear him discourse of that Matter. I understood the Design was prevented.

L. C. J. Who did you understand that from?

Mr. *Bourn*. From one Mr. *Row*, and Mr. *Ferguson*.

Mr. Att. Gen. Pray, in all your Meetings, was there no Discourse of killing the King and the Duke?

Mr. *Bourn*. Very little.

Mr. Serj. *Jeff*. The Discourse was about securing the King, while *Walcot* was there?

Mr. *Bourn*. There was such Discourse in several Meetings. It was said, it would be well if they were off, and the Discourse was about Lopping.

Mr. Att. Gen. Pray tell my Lord, what Discourse you had of Lopping, and the general Point.

Mr. *Bourn*. They said, there was no way like Lopping them.

Mr. Att. Gen. What was understood by that?

Mr. *Bourn*. The taking off the King, and the Duke of *York*.

L. C. J. Was that the usual Phrase among you to signify that?

Mr. *Bourn*. Yes, my Lord.

L. C. J. Was he there?

Mr. *Bourn*. I have heard it several times, and I suppose he was at the hearing of it.

L. C. J.



L. C. J. (To *Walcot*.) Look you Sir, he speaks of the time of Discourse of securing the King, and says you were there then.

Capt. *Walcot*. I had no hand in it.

Mr. Att. Gen. We will nail it home upon you; we will call Mr. *West*.  
[Who was sworn.]  
Mr. Serj. *Jeff*. Come, Mr. *West*, do you tell my Lord and the Jury the whole Story.

Mr. *West*. My Lord, I came acquainted with the Prisoner at the Bar last Summer Vacation, by the Knowledge of one *Wilcocks*, who, I suppose, return'd his Money out of *Ireland*. I heard a very fair Character of him, and he, I suppose, met with such an one of me; which did incline us both to an Intimacy, and to talk freely with one another. About the Middle of *October*, I observ'd a general Discontent in the City, and was afraid there was some Design in hand, and was very inquisitive to know it: I was unwilling to be involved and surpris'd into a sudden Ruin, and so thought fit to inquire of them that were most likely to be concerned. I took Capt. *Walcot* for one, being inform'd that my Lord *Shaftesbury* had sent for him out of *Ireland*; and Capt. *Walcot* told me, that my Lord was also sending for some *Scottish* Gentlemen, on occasion of *Carolina*; but that he was very cool in *Carolina* Business, and that that was but a Pretence. My Lord, one Morning Capt. *Walcot* came to my Chamber, and we discours'd concerning the Election of Sheriffs carried on in the City, contrary, as we thought, to the Justice of it: Says he, Will the People do nothing to secure themselves? With that he told me a Secret, and said there was a Design of an Insurrection to be made within three Weeks or a Month, that would make us free, or worse. I told him, I thought it was a certain way to bring us in a worse Condition, and that it was very full of Hazards. He told me then, he did not know whether he should be concerned: But a little while after he told me, my Lord *Shaftesbury* was engag'd in such a Design, and he had engag'd him in it, and he told me, he had an Expectation of being a Colonel of Horse, and ask'd me, If I would have any Command under him? I told him, I knew some Gentlemen of the *Temple* that I might engage in it; but told him, I had not a Constitution to bear the Toils of War. My Lord, he told me then, That my Lord *Shaftesbury*, to the best of my Remembrance, had another Design upon the King and the Duke, as they came from *Newmarket* in *October* last; but he told me he abhor'd any such thing, it was ungenerous, and he would not be concern'd in it; but only in a general Insurrection. But this he did tell me, I think, before the thing was to be executed. I imparted it to nobody, till after the Time of both was past: But in the Discourse of the Insurrection, he told me, I should lend him a Suit of Silk Armour, which I bought about four or five Years ago, when the Popish Plot broke out; and he would have had me kept that, and used it myself, which I did decline. Then he told me he had very good Swords in *Ireland*, but he wanted them here. Says he, I am a Man that am observ'd, because I have a Correspondence with my Lord *Shaftesbury*; and ask'd me, If I would provide him a good stiff Tuck. I told him I would, and I did bespeak one; but before it was done, the Design was laid aside, and the Tuck was left upon my Hands. I came to understand, that the Design was put off by means of Mr. *Trenchard*, who had discours'd about a Fortnight before of great Forces he could raise in the *West*; and the Duke of *Monmouth* sent for him, but his Heart fail'd him, and he could not raise any Men; upon which, my Lord *Grey* called him *Coxcomb*. This was about the 19th of *November*.

Mr. Att. Gen. What Time of *November*?—Mr. *West*. The 19th.

Mr. Att. Gen. But upon what Day?

Mr. *West*. *Queen Elizabeth's* Day.

Mr. Att. Gen. No, Sir, that is the 17th.

Mr. *West*. Now after this I understood by Capt. *Walcot*, that Mr. *Ferguson* had the Management and Conduct of the Assassination in *October*, and that he likewise was acquainted with the Insurrection, and was a great Man in it. I met with Mr. *Ferguson*, and fell into Discourse with him, and he treated me, as he always did, with a long Story of the Miseries of *Scotland*, and that the People were all in Slavery and Bondage, and would be so here, if they did not free themselves: And, says he, there are two ways thought upon for it; one is by a general Insurrection, and that is gone off; the other is a much more compendious way, by killing the King, and the Duke of *York*. My Lord, I told him, I thought the first way was a very dangerous way, that the People were in no sort of Capacity to carry it on, that the Government had the Navy and the Militia, and this would at the best entail a long War. He told me he thought the other was the best way, and we went to a Tavern, where Col. *Rumsey*, and one *Row*, and he and I, went divers times. They propos'd to meet at my Chamber as a Place of Privacy, and little Observation. My Lord, when they came to my Chamber, Mr. *Ferguson* propos'd several ways of doing it. One way was, as the King and Duke had their private Visits in *St. James's*, where it was an easy thing for Sword-men to kill them. There is one thing I have omitted, and that was after the Design of *October* had miscarried, I think, to the best of my Remembrance, Capt. *Walcot* told me, there was another Design of attacking the King and the Duke at my Lord Mayor's Feast in the Hall, or in their Return home, in *Paul's Church-yard*, or at *Ludgate*; and Mr. *Ferguson* did likewise tell me the same thing, but the King not dining there, the thing was wholly disappointed. Another way that he propos'd was, that they should do it as the King and the Duke went down the River, they should lie behind some small Ships within a Hey, or some such thing, and so over-run their Barge; and if that fail'd, they should break a Plank with their Blunderbusses, and so sink them. Another way was at the *Play-house*, and that was to be done in this manner; there should be 40 or 50 Men got into the Pit with Pocket-blunderbusses, or Hand-blunderbusses, and Pistols and Swords; and when the Music struck up between the Acts, they should be upon the Box; but this they thought was hazardous, and therefore they thought it better to do it as he came back, and pitched upon *Covent-Garden* under *Bedford-Garden* Wall, because there was a Conveniency for great many Men to walk in the *Piazza*, and there might be another Parcel of Men planted at *Covent-Garden* Church-Porch, and within the Walls, where Horses could not come; and while the Men within the

Rails fired, the Men in the *Piazza* might engage the Guards, and they in the Church-porch to come down, and secure them from escaping.

Mr. Sol. Gen. When was this Time?

Mr. *West*. I think it was before Mr. *Ferguson* went for *Holland*. And, my Lord, there was another thing propos'd: I think it was Colonel *Rumsey* did say, He wonder'd that the Lords and great Men, that were so fond of the thing, did not raise a Purse, and buy somebody an Office, who should rail against the Duke of *Monmouth*, and the *Whigs*, and by that means get himself an Opportunity of Access to the King's Person. My Lord, after these Discourses, when my Lord *Shaftesbury* retir'd to *Holland*, Mr. *Ferguson* thought fit to do so too: He was afraid of a Book that he had printed, and away he went, and Captain *Walcot* with him. In the mean time I met Col. *Rumsey* several times, and several things were offer'd but nothing resolv'd upon. A little after *Christmas* we met at the *Salutation* Tavern in *Lombard-street*, and there it was agreed we should send for Mr. *Ferguson*; and there I writ a canting Letter, that he would come over for his Health; for he was the only Man that could manage the Affair. When he came over, there was one Meeting at the *Five-Bells*, but I came just as they were coming away, and cannot say what pass'd there. After that, they came several times to my Chamber; and there Mr. *Ferguson*, Mr. *Goodenough*, and Mr. *Rumbold*, undertook to provide the Men.

L. C. J. The Men, for what?

Mr. *West*. The Men for the Assassination: That I was not concern'd in, either in Person or Purse, or to procure any body for it. And they did agree to do it in the going to or from *Newmarket*, and thereupon were several Debates, whether it should be done at their going, or coming back. Against doing it going down, it was objected, That the Guards were left here and there, and they went together; but very often they returned apart, and therefore it was not the safest way going down; and nothing also being prepared, so it was resolv'd to be done coming back. Then it was consider'd what Arms should be provided: Mr. *Rumbold* was the Man to manage that Matter, and was to procure some Blunderbusses, some Carbines, and some Pistols; but there was nothing to be prepared, as I know of, by other Persons, but every Man was to provide himself. Several Meetings there were, they brought their Notes, and conferr'd together about the Men; but I remember no Names, but *Keeling*, and *Burton*; and Mr. *Goodenough* said, he had spoke to one *Hone* a Joyner; and, I think, he spoke of one *Manning*, and these are all the Names I can remember. After they had conferr'd their Notes, I ask'd Mr. *Ferguson*, what Provisions of Money he had made. Says he, I shall have Money when the Men are provided, but not till then: For, said he, the last time there was some Money rais'd, and put into a Man's Hand, who never returned it; but since I understand it was paid to Mr. *Goodenough*. And Mr. *Ferguson* said, Mr. *Goodenough* call'd him Fool, for returning some Money he had, and not keeping it for his own Use; and my Lord *Shaftesbury* had often complain'd of that Injustice done him: The Colonel said, Mr. *Charlton* should pay the Money. There was a further Debate, how these Arms would be got down to Mr. *Rumbold's*: It was propos'd, to send them down by *Smithfield* Carts in Chests: Others, to send them down by trusty Watermen, who were to cover them with Oysters: Others, that the Men should carry them; but no Resolution taken: Then it was consider'd, how they should get off. The next thing was, how they should execute this; and it was propos'd, That one Party was to fall upon the Coach-horses, a second upon the Coach, a third upon the Guards: Captain *Walcot* would not undertake any thing but the Guards.

Capt. *Walcot*. What do you say, Sir?

Mr. *West*. Sir, I do say, you were at my Chamber, and did say, you were to command that Party of Horse that were to attack the Guards. It was to be done at *Rumbold's* House; they were to lie there *Perdue*, till the King just came down upon them.

Mr. Serj. *Jeff*. At the Time of the Assassination?

Mr. *West*. Yes, Sir.

Mr. Att. Gen. Where were these Arms to be carried?

Mr. *West*. To *Rumbold's* House. I did not see it: But he said he could keep them all private, where nobody could see them till the Time of the Execution; and that there was a Gate they were to pass through, that he could shut upon the Horse-Guards, that they should not be able to come in for their Relief. Mr. *Rumbold* said, he would bring them off; and said, he thought it dangerous for them to go the Road-way; but he would bring them over the Meadows, and come in by *Hackney-marsh*: But the way which the Prisoner did most approve of, was, That they should retire within his Wall, there keep till Night, being a Place they could defend against any Force for a Day's time.

Mr. Att. Gen. Where was this Resolution taken?

Mr. *West*. This Resolution was taken at my Chamber: My Lord, as to the Attempt, when they design'd to make it upon the King's coming from the *Play-house*, one Mr. *Row* said, he had discours'd with one *Gibbons*, that was the Duke of *Monmouth's* Servant, about it, and ask'd him, If any of their Family knew of it? Yes, says he, they all know of it, but they will not be seen in't; and said, that he shew'd him the Place. My Lord, in one of the Discourses I had before Mr. *Ferguson* went for *Holland*, I had a mind to be rid of the thing, but I did not know how; so I created Difficulties, and said, I suppose the Duke of *Monmouth* is to get most by it: What Security will you have, you shall not be hang'd when the thing is done? He is bound, said I, in Honour to hang us all, and make Inquisition for this Blood, otherwise they will say he is a Party. Says he, What if I get it under his Hand? But, said I, Engage his Servants, and that will stick upon him. There is one thing I have omitted, which was in the first Discourse with Captain *Walcot* about the Insurrection of *November*; he told me, that my Lord *Shaftesbury* was preparing a Declaration to be published, in case of an Assassination or Insurrection; and he ask'd me, if I would undertake to do one too? For, says he, I would have several People draw it, to pick one good one out of all. And he told me he had made some Collections towards it, and shew'd me a Paper, which was a Collection of all the Passages in the Three King's Reigns, King *James*, *Charles* I. and this King's, that he call'd Attempts to introduce



roduce arbitrary Government and Popery; and concluded, taxing them with some personal Vices, and that the Government was dissolved, and they were free to settle another Government: These I perceiv'd, were the Topicks my Lord *Shaftesbury* laid Weight upon. I told him that this did require an exact knowledge of the history of those times, and I would not undertake a thing to which I was not competent; and so he desired me to burn the Paper, which I did; But for any other Declaration, my Lord *Shaftesbury* kept his Paper to himself; and I never did see it, tho' I desir'd it.

Mr. Serj. *Jeff.* Can you remember in whose Name the Declaration was to run?

Mr. *West.* No, I do not remember that.

Mr. *Att. Gen.* After the Disappointment, what Meetings had you?

Mr. *West.* Sir, I will tell you: When the News of the Fire came, they adjourn'd to my Chamber, and there consider'd what they should do: they were in no Readiness, nor had any Horfes; nay, I believe the thing could not have been effected, if the Fire had not happened; and I was very glad it could not; but for that, I am in the Charity of the Court. They did endeavour to put Things in a Posture, to see if it could be done another Day; I think they met on *Thursday* Night, and *Friday* Night; but they said, the King would be at home the next Day, and the thing was laid aside. My Lord, a Day, I think, or two after, I went into the City, and went to the *Dolphin* Tavern, where I met with Colonel *Rumsey*, and this Mr. *Keeling* came in, he was there talking of Blunderbusses and Pistols in downright *English*: I told him, it was a foolish thing to talk so before Drawers, and that was the Occasion of calling them by the Names of *Swan-quills*, *Goose-quills*, and *Crow-quills*. After this thing we met the next Week, not at my Chamber, Colonel *Rumsey* was mistaken in that, but at the *George and Vultur*. There was Capt. *Walcot*, Mr. *Goodenough*, Mr. *Ferguson*, one *Norton*, and one *Ayliff*: They discours'd of the late Disappointment; and that one Reason was, they had not Arms in Readiness. Then they agreed, that Arms should be bought, and the Number was ten Blunderbusses, that should be twenty or two-and-twenty Inches in the Barrel: Thirty Carbines, eighteen Inches: And thirty Cases of Pistols, to be fourteen Inches. My Lord, it was put upon me to provide them, for this Reason, because I was serviceable to them no other way, and could have a Pretence for buying them, because I had a Plantation in *America*; but Mr. *Ferguson* was to pay the Money. My Lord, I did bespeak the Arms, and paid for them with my own Money, and was not paid again a great while; Mr. *Ferguson* disappointed me; but at last told me, if I would send to Major *Wildman*, he would pay me. But he told me before that, one Mr. *Charlton*, when he came to Town, would pay me, but I had none of him. So I told him, I bought those Arms upon a Pretence I intended to use them, and had spoke to a Sea-Captain to carry them off to a Plantation where I had a Concern myself. After that, Mr. *Ferguson* sent to me to take my Money: So I came to him; and found with him Mr. *Charlton*, and another Gentleman, whom I could not distinguish, because it was duskish. Mr. *Charlton* went down, and then says Mr. *Ferguson*, I have your Money for you; and he paid me in fourscore and thirteen Guineas, which was something more than the Arms cost; and said, He had not the Money above half an Hour in his Hands; by which I did guess, it was Mr. *Charlton's* Money. Another thing was, at last meeting with Mr. *Ferguson*, he did say, There was a Man employ'd to see what Convenience there would be for an Assassination between *Windsor* and *Hampton-Court*; but that was never reported, and so laid aside. This is all I can say concerning the Assassination; but I believe they did intend to carry it on; for Colonel *Rumsey* did tell me, He saw the Hearts of all the great Men were upon it; and it would be convenient to have an Army to back it. But in case this Assassination had gone on, these things were to be done. It was design'd, the Lord Mayor and the Sheriffs should be kill'd, and as many of the Lieutenantcy as they could get; and the principal Ministers of State, my Lord *Halifax*, and my Lord *Rocheester* that now is, and my Lord Keeper; for which they gave this Reason, because he had the Great Seal; and my Lord *Rocheester*, as like to stand by the Duke's Interest; and my Lord *Halifax*, as being one that had profess'd himself of the Party before, and turn'd from the right Side, and had put the Court upon that which otherwise they never would have acted, nor had the Courage to have done. As for my Lord Keeper, They said they would hang him for the Murder of *Colledge*, and upon the same Post *Colledge* had hung. Sir *John Moore* was to be kill'd, and to be hung up in *Guild-hall*, as a Traytor of the Rights and Liberties of the City: And your Lordships to be slay'd and stuff'd, and hung up in *Westminster-hall*, and a great many of the Pensional Parliament hang'd up, as Traytors of the Rights of the People.

L. C. J. How was this to be done? to slay them and stuff them?

Mr. *West.* Yes, I understood it so.

Mr. *Att. Gen.* At these Discourses was this Gentleman present?

Mr. *West.* He was not at my Chamber so often as the rest; he came not there till towards the latter End; but he was there sometimes when these things were discours'd of.

L. C. J. But you say he did at last undertake to fight the Guards?

Mr. *West.* Yes; Upon the News of the Fire, says he, I believe God shews his Disapprobation of the thing. Says Mr. *Ferguson*, I believe he reserves them for worse Punishment. Mr. *Walcot* said, He desired to have his Name conceal'd. Why, says *Ferguson*, why should you be ashamed? It is a glorious Action, and such an Action as I hope to see publicly gratified by the Parliament; and question not, but you will be famed for it, and Statues erected for you, with the Title of *Liberatores Patrie*.

Mr. Serj. *Jeff.* What was this *Ferguson*?

Mr. *West.* He is an Independent Parson.

Mr. Serj. *Jeff.* He preached excellent Gospel.

Mr. *West.* Says he, I have told some Nonconformists, and they desired me to forbear; but says he, they are silly People, that do not know how to distinguish between killing a Prince for Difference in Opinion about Religion, and destroying a Tyrant, for Preservation of the Rights and Liberties of the People. He said, it was an Action that would make

all the Princes in the World tremble, and teach them to use their Subjects kindly. My Lord, they did design, at the same time when the Mayor and the Sheriffs were to be kill'd, that Mr. *Papillon* and Mr. *Dubou*, should be forced to take the Office of Sheriffs upon them; and if they would not take it, they would use them as they did the other: And that Sir *Thomas Gold*, or Sir *John Shorter*, or Alderman *Cornish*, should be set up for Lord Mayor; but rather Alderman *Cornish*, as the fitter Person. I asked them further, What they would do with the King's Natural Sons? Says he, They are good lusty Lads; I think we had as good keep them for Porters and Watermen; and for my Lady *Anne*, they had as good marry her to some Country Gentleman for a Breed to keep out Foreign Pretences.

Mr. Serj. *Jeff.* I perceive they left nothing unconsidered.

Mr. *Att. Gen.* Mr. *West.* To repeat all their Passages would fill a Volume; but as to the Continuation of the Rising, and whether it was continued?

Mr. *West.* I have a great many Particulars, but have them not in Method.

Mr. *Sol. Gen.* Answer Questions then.

Mr. *West.* When Mr. *Rumbold* came to Town, he said, he saw the King come by but with six Guards, and believed he could have done it with six Men, if he had been provided with Arms. This is all I can say, except some little Discourse, which I have not time to reduce into Method. About *Christmas*, Colonel *Rumsey* told me, there was a Design carrying on among the Lords, and great Men, by whom I always understood the Duke of *Monmouth*, my Lord *Russel*, my Lord *Grey*, Lord *Howard*, Colonel *Sidney*, Major *Wildman*, Mr. *Hambden*, for an Insurrection; and that this was designed to be done about *March*. Colonel *Rumsey* and I were discoursing of it; and Colonel *Rumsey* thought it fit to draw up some things, that we should require of them to do for the People; and a Paper was drawn up, but my Lord *Russel* said, they were rejected, and all should be left to the Parliament. And Colonel *Rumsey* said, The Duke was inclin'd to gratify the Parliament; but the Lords about him were for great Places, and they would suffer him to do nothing.

Mr. Serj. *Jeff.* Now tell us about *Culing*.

Mr. *West.* I dined at a Tavern with Colonel *Rumsey*, Mr. *Wade*, Mr. *Nelthrop*, Mr. *Goodenough*, Capt. *Walcot*, and Mr. *Norton*.

Mr. Serj. *Jeff.* What was your Discourse there about?

Mr. *West.* There was no Discourse that had any particular Point.

Mr. *Solicitor.* Was there nothing of Division of the City?

Mr. *West.* Sir, *Goodenough* gave some general Account, but nothing was done upon it. While we were there, in came Mr. *Keeling*, to speak with Mr. *Goodenough*, and Mr. *Nelthrop*; and in the *Gazette* that Day was an Account of the Insurrection at *Collen*; and Mr. *Nelthrop*, when he came in, called this Man, *Culing*. What is that? what do you mean? says he. I was then writing a Letter, and told him, *Culing* in *Dutch* was the same as *Keeling* in *English*. Mr. *Nelthrop* took me aside, says he, What will you say, if I, and some Friends of mine, deliver the City, and save the Charter, and nobody shall know of it till it be done? But, says he, shall not I be hang'd for it? Said I, Take heed what you do; nobody will be hang'd for any good thing. As to the Delivering of the City, there was a Treaty between the *Scots*, and our Persons of Quality here; and Col. *Sidney* and Major *Wildman* had the Management of it, as I understood. At last, they came down to some Terms: They would have had 10,000*l.* to buy Arms, and came down at last to 5000*l.* and the Earl of *Argyle* was to head them: But when Mr. *Ferguson* paid me for the Arms, he told me, The *Scots* Business was quite off, and *Wildman* and *Sidney* had done ill with the *Scots*; for after they had kept them, and treated with them two or three Months, they broke off, because the *Scots* would not declare for a Common-wealth the first Hour, and extirpating of Monarchy, and the Family of the *Stuarts*: and that the *Scots* Answer was, That would be to destroy all their Interest among the Lords, and Providence might order it so, as to bring it to a Common-wealth: but that was a Business of Time. When this broke off, Mr. *Ferguson* told me, That the Duke of *Monmouth* was willing to speak with me, and *Goodenough*, and some others. I told him, I never had, nor was willing to speak with him. Then he said, Sir *Thomas Armstrong* would. I told him, I was not willing to speak with him neither. Mr. *Goodenough*, I believe, did speak with Sir *Thomas Armstrong*. We met at *Richard's* Coffee-House, and adjourn'd to the *Young Devil-Tavern*; there was Capt. *Walcot*, Col. *Rumsey*, Mr. *Wade*, Mr. *Goodenough*, and myself, and one *Holloway* a Merchant at *Bristol*. Mr. *Holloway* did propose, since the *Scotch* Business was broke off, that they should try what Forces they could raise here. And Mr. *Ferguson* did say, if three thousand Men could be had, he believed the Duke of *Monmouth*, and my Lord *Russel*, would appear at the Head of them. They were to divide the City into 20 Parts, each 20th Part into 14ths and 15ths, and to divide it into Streets and Lanes; one principal Man was to have a 20th Part, and to have Men under him; and that they should not interfere one with another, they bought a great Map of the City of *London*. My Lord, I did not read one Line in it, but Mr. *Goodenough*, being a Man of publick Acquaintance, by reason of his Office did undertake it. I think he did propose Mr. *Bourn* for one, and one Mr. *Grains* for another, and said he would speak with Mr. *Keeling*. We had several Meetings after this, and Mr. *Goodenough* did report, that there were 1300 Men out of two of the Hamlets. My Lord, I stood here while Mr. *Bourn* gave his Evidence; but I suppose he hath a little forgot himself; for he told me he had spoken to one Parson *Lobb*, and he said to him, he would try what his Congregation could do; that he had two in *New-prison*, and he would set them out to see what they could do; that they were poor Men, but zealous in their way. I think Mr. *Bourn* hath forgot himself; for he did mention, that he had spoken to Parson *Lobb*.

Mr. Serj. *Jeff.* Then Parson *Lobb* was in; there was another Parson in.

Mr. *West.* Yes, and he mentioned *Lobb's* Pound.

Mr. *Att. Gen.* The Prisoner was at those several Meetings, was he not?



Mr. West. Yes, and did shew himself ready to act his Part. About a Fortnight before the Discovery brake out, Mr. Rumbold told me they had a great Jealousy Mr. Keeling would discover all the Business; that Mr. Keeling's Wife and Mother cried mightily, and charged him for neglecting his Business, and said they were afraid he would do a great deal of Mischief to honest People; for he had replied to them, he would not want Money, and he would be hang'd for nobody. Upon which Rumbold told me, If I were sure of this, says he, I would dispatch him; I would get him into the Country, and kill him; but, says he, I will not kill an innocent Man: If I thought the thing was not so, I would not kill him for all the World. Mr. Keeling told him he had an Overture from one Shoot, of fourscore Pounds a Year.

Mr. Att. Gen. After you had notice of the Discovery, did you meet?

Mr. West. The Saturday before the Discovery I dined with Mr. Rumbold, and he took Mr. Keeling along with him. Says he, We won't discourage him too much; it may be, 'tis not so. Mr. Keeling told him he never wanted Money so much in his Life. Mr. Rumbold, and one Gale, that was to be one of the Assassins, contrived to help Keeling to Money, and lent him 100l. Upon the Sunday I had notice the Thing was discovered, and that Keeling had accused me, and Mr. Goodenough, and Mr. Nelthorp. On the Monday Morning early I thought fit to retire; but we did agree to meet at Captain Walcot's Lodging. My Lord, I came thither pretty early, and all the People came afterwards, that had agreed to come thither, but they designed to go beyond Sea. I had no mind to go. They had hired a Boat, and gave 5l. in Earnest; but the next Morning it was said the Messengers were abroad, and that it was believed the River was beset, and there was no getting away. Then every Man shifted for himself, and I shifted by the means of Mr. Bourn, who, I thank him, helped me to a Convenience for two or three Days. When we were all retired, they got Mr. Keeling in the City, and Rumbold discoursed him in the Presence of several People, where he wished a great many Imprecations upon himself, if he had discovered. I told them I did not understand him; for if he had made a Discovery, it was a fine way to catch People in. Then there was a Discourse of killing him. They proposed to him to go out of Town. He refused them, but said, he would go in a few Days. That Night they followed him, and upon tracing of him they found he had called out his Brother, and that he and his Brother were gone to the Secretary's; and then it was taken for granted, that Discovery was made, and every Man must shift for himself. Had not Keeling deceived them at that Meeting at the Tavern, by the Protestations he made, somebody had killed him there. Then Mr. Wade said, If the Duke of Monmouth would go into the West, we might try a push for it; and the Prisoner at the Bar said, I am satisfied God will deliver the Nation, though he does not approve of the present Instruments.

L. C. J. Have you done as to this Gentleman at the Bar?

Capt. Walcot. When was it that I should say these Words? Then I desire your Lordship would ask him, how many Months ago it was he says I gave him the Paper?

Mr. West. It was in October.

Capt. Walcot. Then whether I did not then lie ill of the Gout?

Mr. West. Not at that time, my Lord. This that I say of the Paper, was given me at my Chamber, and then I think he was pretty well.

Capt. Walcot. My Lord, I am not so natural a Fool to think, for me to charge the Guards, when another Man kills the King, but I am as guilty as he that kills him.

L. C. J. No doubt of it.

Mr. West. Capt. Walcot, I would not take away your Life to save my own; but I do take it upon me, that you did agree to command, or be one of those that were to fight the Guards.

L. C. J. What was the Reason he would not kill the King?

Mr. West. He said it was a base thing that way, being a naked Person, and he would not do it.

L. C. J. So the Point is the same; but only you distinguished in the Point of your mistaken Honour, and thought to kill the King was not so honourable a Point as to fight his Guards.

Capt. Walcot. There is no Difference between the one and the other; to do one and the other is the same thing.

L. C. J. Your Judgment is now rectified; but what say you to the Matter? For now you hear what is fastened upon you, that is, several Consults about the securing or killing the King; and your Advice was to kill him, and you did go down to Rumbold's House, to view the Place where it might be done the more securely; and you did undertake, as several Witnesses say, not only Mr. West, but Col. Rumsey, and another of them, (Bourn I think it was) That you would fight the Guards, if you might have a considerable Number of Men.

Capt. Walcot. My Lord, if ever I was at Mr. Rumbold's House, unless it was when I travelled from York by Norwich, and came to London; if ever I was there since, then I am guilty of all the Roguery imaginable.

Mr. West. I never heard, my Lord, Mr. Rumbold say he was there, but Col. Rumsey told me so.

Col. Rumsey. My Lord, he bought an Horse, and he said, he did intend to go down; and indeed, to the best of my Remembrance, he did say he was down; but I am not certain: But he did buy an Horse that cost him, I think, Twenty Pounds.

L. C. J. For that Purpose?

Col. Rumsey. Yes.

L. C. J. Now you hear, this is a little more particular than the other; Colonel Rumsey did say before, that you did agree to go down, and, as he believes, you did go down.

Col. Rumsey. I believe Mr. West may remember he bought an Horse for that Purpose.

Mr. West. I remember he bought an Horse for Service, but I can't say it was to go down thither.

L. C. J. It does import you tell us upon what Account you met so often, and what was your Meaning in hearing these Things, and consulting of them, and what your raising of Men was for, and the Declaration written for the People, to please the People when this Assassination was over?

Capt. Walcot. The Declaration, Mr. West says, was in October last.

Mr. West. I take it to be so, my Lord, to the best of my Remem-

VOL. III.

brance; there was this Passage: Says he, I believe in a Month or three Weeks you will be better or worse; so that I measure it by that.

Capt. Walcot. My Lord, Mr. West does tell your Lordship a very long Story, and sometimes he names one Gentleman, and sometimes another. I am very fearful the Jury will be very apt to apply all to me, who was the Man least concerned; for I had the Gout for several Weeks together, and Mr. West came several times to my own Lodging to see me: And for that of assassinating the King, it never entered into my Thoughts more or less; but here are four Gentlemen, who, by their own Confession, are sufficiently culpable; they, to wipe off their own Stains, are resolved to swear me out of Life.

L. C. J. What made you among them?

Mr. West. I do take it upon me, he was there three or four times.

Capt. Walcot. I did not stir for three Weeks or a Month. I came to Town on Ash-Wednesday, and then fell ill of the Gout, and that continued for divers Weeks. For a Month's Time that the King was at Newmarket, I am confident, I was not out of my Chamber, unless I made a Shift to scramble to Stepney, and dipped my Foot in every Well of Water I came by.

Mr. West. My Lord, I do remember this Passage, That he was afraid he should not be able to draw on his Boot, because he had the Gout.

Capt. Walcot. I desire to know, my Lord, When is the Time Mr. West speaks of, that I gave an Account of killing the King at my Lord Mayor's Feast.

Mr. West. I do not charge you positively with it: but I had it from you or Mr. Ferguson; but I must do the Prisoner Justice, he said, he would be no way concerned in it.

Mr. Att. Gen. Pray swear Mr. Blaithwait.

[Which was done.]

Mr. Blaithwait, Pray tell my Lord, and the Jury, whether Captain Walcot owned that to be his Hand.

A Letter being then produced from Capt. Walcot to Mr. Secretary Jenkins.

Mr. Blaithwait. My Lord, I remember, when Captain Walcot was examined before the King, he did own this to be his Hand.

Mr. Serj. Jeff. Give it in.

Cl. of the Cr. Honoured Sir, July 5th. 83.—

L. C. J. Who is it directed to?

Cl. of the Cr. There is no Direction.

Mr. Blaithwait. It was directed to Mr. Secretary Jenkins, as I find by the Minutes I then took of it.

L. C. J. Here is the Cover, it seems.

Cl. of the Cr. To the Right Honourable Sir Leoline Jenkins, &c.

Honoured Sir,

I BEING in the Country, and to my great Trouble seeing myself in his Majesty's Proclamation, I came last Night to Town, resolving to lay myself at his Majesty's Feet, let him do with me what he pleaseth: This is the first Crime I have been guilty of since his Majesty's Restoration, and too soon by much now. If his Majesty thinks my Death will do him more good than my Life, God's Will and his be done. Until I sent your Honour this Letter, my Life was in my own Power, but now it is in the King's, to whom I do most humbly propose, That, if his Majesty desires it, I will discover to him all that I know relating to England, Scotland or Ireland, which I suppose may be something more than the original Discoverer was able to acquaint his Majesty with, especially as to Ireland: There is not any thing his Majesty shall think fit to ask me but I will answer him the Truth as pertinently and as fully as I can. My Intimacy with a Scotch Minister, through whose Hands much of the Business went, I judge occasion'd my knowing very much. And I do further humbly propose, That if his Majesty thinks it advisable, I will follow those Lords and Gentlemen that are fled into Holland, as if I had fled thither, and had made my Escape also; and will acquaint the King, if I can find it out, what Measures they resolve of taking next: I do assure his Majesty, the Business is laid very broad, or I am misinform'd. And I am sure as to that Particular, if my being with his Majesty and your Honour be not discovered, I shall be ten times abler to serve him than either Mr. Freeman or Mr. Carr, for they will trust neither of them. There's scarce any thing done at Court, but is immediately talk'd all the Town over: Therefore if his Majesty thinks what I have presumed to propose advisable, I do then further most humbly propose, That my waiting upon his Majesty may be some time within Night; that your Honour will acquaint me the Time and Place where I may wait upon you, in order to it, that it may be within Night also, and that nobody may be by, but his Majesty and your Honour: And if his Majesty pleaseth to pardon my Offences for the Time past, he shall find I will approve myself very loyal for the future; if not, I resolve to give his Majesty no further Trouble, but to lye at his Mercy, let him do with me what he pleaseth. I purpose to spend much of the Day in Westminster-Hall, at least from Two of the Clock to Four. I beg your Pardon I send your Honour this by a Porter: I assure your Honour, it was for no other Reason, but because I would not have a third Person privy to it; and that I might have the better Opportunity to make good my Word to his Majesty, and to approve myself.

Your Honour's most humble Servant,

THOMAS WALCOT.

Mr. Att. Gen. Swear Captain Richardson.

[Which was done.]

Capt. Richardson. My Lord, On Sunday at Night Mr. Walcot desired to speak with me, and he seemed very desirous to wait upon his Majesty, and unboast himself to the King: Mr. Attorney said, I should give him Notice to prepare for his Trial, which I did, and told him, he should want nothing to prepare himself for his Trial. Yesterday Morning his Son came, and I sent my Clerk to stand between them, and he had prepared this little Paper tied close with a Thread, which my Man told me he did intend to give his Son; and he desired me, since I had discovered it, I would make no Use of it. The Letter was to Capt. Tracey, that was his Landlord, to speak to Col. Rumsey, that he would be tender of him, and tell him, he had Ground enough to serve the King upon other Men; and also to speak to Mrs. West, to desire the same thing of her Husband. The last Words in the Note were, If you cannot be private, leave the Issue to God.

L. C. J. Mr. Walcot, have you any thing to say for yourself, against this plain Evidence?



Capt. *Walcot*. My Lord, They have taken a great deal of Pains, and made long Speeches, tho' very little of them relating to me, tho' too much. Col. *Rumsey* tells your Lordship of a Design they had to assassinate the King, and carry on a War, or something like it, when I was out of the Kingdom: That at Mr. *Shepherd's* House they drew up a Declaration; and that upon Mr. *Trenchard's* saying, Things were not ready. This was before I came into *England*, and he says this was agreed at Mr. *West's* Chamber before I came out of *Holland*, that Mr. *Rumbold* undertook it. Then he says, that after I came over, I undertook to charge the Guards while the King was killing. My Lord, that was a very improbable thing; for I look upon it, there is no Difference between killing the King, and securing his Guards. These Gentlemen, by what they have said, do sufficiently convince the Court, and all that hear them, that they are sufficiently dipp'd themselves. Here they combine to take away my Life to save their own. Then they tell you, that Mr. *Goodenough* and Mr. *Rumbold* brought Notes about Men that were to assassinate the King; but they do not tell your Lordship I was privy to any of these Notes, nor that I knew any of them. 'Tis in itself very improbable, that I would engage in so desperate an Undertaking with Men I never saw nor heard of in my Life. Then he tells you, that Mr. *Ferguson* had been at a Place where I was, and there inquired what Mr. *Goodenough* had done; and withal, they told you, they met at my Lodging: Now that their meeting at my Lodging was by Col. *Rumsey's* Appointment, I knew nothing of it. Most of these Meetings were by Col. *Rumsey's* Appointment, or Mr. *West's*: I accidentally came amongst them sometimes, but all my Business was only to hear News; nothing was agitated concerning killing the King, or levying of War, more or less, as I know of. I must confess, I did hear that there was a Design by a great many Lords and Gentlemen, and others, for asserting of their Liberties and Properties; but I was never in any Consultation with them, or any Message to them, nor I never saw one of these Lords, that I know of, that are said to be concerned. Therefore, I say, 'tis very improbable I should be so far concerned as they seem to represent it. They met at the *Five-Bells*; they allow themselves I was not at that Meeting. For Mr. *Keeling*, he does not at all charge me. What I said to Mr. *West* relating to the Business he talks of in *October* last, that, my Lord, is out of Doors, in point of Time. I pray God forgive him for what he has said. I can't say more than I have.

L. C. J. Pray where do you live? Where is your Habitation?

Capt. *Walcot*. My Habitation is in *Ireland*, my Lord.

L. C. J. Pray what do you do here?

Capt. *Walcot*. I was invited by my Lord *Shaftesbury* to go Governor to *Carolina*.

L. C. J. That Design was a great while ago frustrated.

Capt. *Walcot*. My Lord, it was some while before I came over, and so my Lord gave his Commission to another. But being in *England*, my Lord *Shaftesbury* invited me to go to *Holland* with him, which I did; and when he died, I came to *London*; I had not been here a Fortnight but I fell ill of the *Gout*, and that continued three Months: Another thing was, my Son was here, and I design'd to marry him, and make Provision for my younger Children: My Lord, I have a competent Estate; I hope it is no great Crime for a Man of an Estate to be here.

L. C. J. You confess, you heard some Discourse of these things; what made you to frequent their Company, when you heard these things?

Capt. *Walcot*. It was my Folly to do it.

L. C. J. Ay, but you are to understand, that Folly in these Cases is Treason.

Capt. *Walcot*. I conceive, my Lord, 'tis only Misprision of Treason. I did hear of a great deal that these Gentlemen have said, and that there would be an Insurrection; but I had no Hand, directly or indirectly, in it; nor did it enter into my Thoughts, either directly or indirectly, the Death of the King. When some Gentlemen have talked to me about it, I abominated it, and told them, it was a scandalous thing, a Reproach to the Protestant Religion: For my Part, I had Children would bear the Reproach of it, and I would have no hand in it.

L. C. J. Look you, Captain *Walcot*, that you did deny to do the Fact, to assassinate the King, that is very true; they say so, that you did always deny it; for you stood upon this Point of Gallantry, a naked Man you would not assassinate. And then you talk of Misprision of Treason: For a Man to hear of Treason accidentally, or occasionally, and conceal it, is but Misprision; but if a Man will be at a Consult where Treason is hatched, and will then conceal it, he is guilty of Treason therein; therefore do not mistake your Case. So that your Point of Law fails you, and every thing fails you in this Case. It appears plainly by them, that you were not only privy to the Consult as an Auditor, but as an Actor; you chose your Post, and upon this Point of Gallantry you would venture yourself, not upon a naked Man, but upon Persons that would oppose you.

Capt. *Walcot*. Certainly no Man that knows me, would take me for such a very Fool, that I would kill the King's Guards; as if I were not sensible, that was equal Treason with the other.

Mr. *Att. Gen.* Ill Men are always Fools.

Capt. *Walcot*. 'Tis clear they have laid their Heads together, they have contrived to take away my Life, to save their own; 'tis plain enough.

L. C. J. There is nothing more reasonable, nothing more just in the World, than to make use of some Traitors to discover and convict the others, else would Treason be hatched securely. There's nobody capable (where Treason does not take Effect) of making an Evidence in such a Case, but some of you that are Conspirators. You do not publish it at the *Market-Cross*. And if you could gain but this Point, that none that are concerned with you in the Conspiracy should be Witnesses, it would be the securest thing in the World to hatch Treason. For you would be upon this Point; either it shall take Effect, and then 'tis too late, or if it do not, and the Conspirators are not to be believed, then I am secure, nobody in the World can convict me.

*Juror.* We desire he may be asked what he says to the Letter.

L. C. J. Well, what say you to it? You have made Proposals you will discover others, and you will give Intimation to the King of the Measures

the rest of the Conspirators were taking in *Ireland*, and other Places, upon what Design did you write that? And what induced you to it?

Capt. *Walcot*. My Lord, I have told your Lordship, that I have heard a great many Discourses relating to that thing, and heard it mostly by Mr. *Ferguson*, with whom I had a very great Intimacy, and I did according to my Promise give that Account of it; but if his Majesty would not believe me, I can't help it; but the King was not pleased with me, because I could not descend to particulars; and I could not, because I never had been in their Company, nor knew nothing but what I had once by a private Hand. I dealt ingenuously and truly with the King, and told him what I knew.

L. C. J. Pray observe the Contents of your Letter. You made this Proposal, That you being in the Proclamation, you were one of the fittest Men to understand and smell out the Measures of the other Persons. By this it is plain, you took yourself to have an Intimacy, and some Intrigue, with the other Persons that you thought were impeached: Your Letter does import, that you had such an Interest with those Persons, that they would have communicated their Counsels to you.

Capt. *Walcot*. My Lord, I never spake but with Mr. *Ferguson*, who was a Man they did much confide in; and I knew very well, that by my Interest in Mr. *Ferguson*, I should have an Interest in the rest. But truly, whether the Duke of *Monmouth* be there, or not, I know not. I do not know him if I meet him. I was never at any Consult, never at any of these Debates.

L. C. J. What did you mean by this, that this was your first Crime? You knew what you was charged with; it was for High Treason.

Capt. *Walcot*. My Lord, 'Tis my first Crime. My Lord, I have heard there was an Insurrection intended, I have heard of the Persons that were to carry it on; I did look upon this as a Misprision of Treason; but that I ever acted in it, or intended it, I utterly deny.

L. C. J. The last Question is, Whether you have any Witnesses?

Capt. *Walcot*. I have only a young Man or two, if he be here, to prove the Time that I was ill of the *Gout*, and therefore 'tis improbable I should be so far concerned.

L. C. J. I must tell you before-hand, that an Argument from the Topic of Probability, will do you but little Service, when there is positive Evidence against you. This it will import you to make a little Answer to, if you can, What you meant by your Application to Colonel *Rumsey*, desiring Captain *Tracey* to speak to him and Mr. *West*; what do you mean by that?

Capt. *Walcot*. My Lord, would not any Man in my Circumstances desire a Man to deal tenderly with him?

L. C. J. Well, is this young Man come in? Come, Sir, what have you to say on the Behalf of the Prisoner at the Bar? Or will you ask him any Questions?

Capt. *Walcot*. Only about what Time I fell ill of the *Gout*, and how long I continued so?

L. C. J. Do you know about what Time he fell ill of the *Gout*, and how long it continued?

Wit. My Lord, I can't remember certainly the Time, but I believe it was about three Months; I can't tell certainly when it began.

Capt. *Walcot*. My Lord, it is very improbable, that when I was not able to put a Shoe on, nor wear a Boot, I should engage in so hazardous and desperate an Undertaking.

L. C. J. Have you done, Sir?

Capt. *Walcot*. Yes, my Lord.

Mr. *Sol. Gen.* May it please your Lordship—

Capt. *Walcot*. The Jury will take notice, here are four Men, to save their own Lives, swear me out of mine.

Mr. *Sol. Gen.* May it please your Lordship, and you, Gentlemen of the Jury, the Evidence you have heard has been very long, and I observe that Capt. *Walcot* has complained of it; it has been delivered mostly in general Terms; and is afraid you should not apprehend it aright, to see those Parts wherein he is concerned, but mistake what is said in general to be spoken against him. I will therefore do him the Justice as to recapitulate that Part of the Evidence that does immediately concern himself. It has been very full, and given by every one of the four Witnesses that have been produced against him, besides the Letter under his own Hand, which is twice as many more.

The first Witness I shall remind you of is Mr. *West*, tho' not produced first, yet because his Evidence goes further backward; his Acquaintance began with him in last Summer Vacation, he became soon intimate with him, and Captain *Walcot* did unbosom himself, and tell him, that there was a Design to make an Insurrection; that it was my Lord *Shaftesbury's* Design that he was to be an Officer, I think he said a Colonel of Horse; he invited Mr. *West* to partake with him in that Design, and did propose to him the Advantage of a Command in the Army; but he not being qualified declined it. He tells you further, that he did acquaint him there was a Design to assassinate the King; and 'tis easy enough to be believed, if there was one designed, the other was too. And you see all along the only Dispute was, whether the Assassination should be first, or follow; for to raise Arms against the King is directly to assassinate the King; for it cannot end any other way with Security to those that raised it. He told Mr. *West* he would not be concerned directly in the Assassination, but in the Insurrection he would; he was persuaded to come in. This was, last *October*, discoursed with Mr. *West*; they were to rise in *November*. Then Col. *Rumsey* comes in, and he tells you, that there was a Design to rise in *November*. The Lord *Shaftesbury* sent him to Persons concerned in the Conspiracy, to know in what Readiness it was; but they being disappointed of Men, whom they expected to rise in the Country, they did defer it at that Time; at which my Lord *Shaftesbury* being concerned, went into *Holland*, and I think the Prisoner himself hath told you he went with him. The Design was not then laid aside, but still carried on; the most material Man, Mr. *Ferguson*, being in *Holland*, there was some little Stop put to it, that is, to the swift Progress of it; and therefore he was sent for over to manage it, as being the only Man in whom all Persons had Confidence. When he comes over, he brings

Captain



Captain Walcot along with him. Mr. Ferguson meets at Mr. West's Chamber; this Mr. West and Col. Rumsey give an Account of, they both swear it. Several Meetings there were in which Capt. Walcot was not, and possibly at those times he might be sick of the Gout, and that might occasion his not being there. But afterwards both tell you, that Capt. Walcot did meet at Mr. West's Chamber, and there was debated particularly the Assassination of the King; and it was agreed to be at Rumbold's House called the Rye, looking upon it as a very convenient Place, as those that know it say; there being a narrow Passage that it was easy to assault, and hard for Persons to escape; and with 40 or 50 Men, thereabouts, it was a Design very likely to have succeeded. Capt. Walcot's Share in this was not directly the Assassination of the King, that he would not be concerned in, being a Soldier, it was beneath him to do that; but his Part was to fight the Guards, he looked upon that as the more honourable Employment; Men that were armed to engage them. This is proved both by Mr. West and Col. Rumsey.

In the next Place, Gentlemen, when this did not succeed, but was prevented by the great Providence of God Almighty, as you have heard, they carry on the Design still, and take it into their Councils, and resolved to carry it on, either at Windsor, or in his Passage from Windsor to Hampton-Court; but no Place was certainly fixed upon; and I think the latter Resolution was, that it should be done at the Bull-Feast, an Entertainment that was designed here in the Fields. Now, Gentlemen, while this was carrying on, it was necessary to carry on the other Part too, that is, the Insurrection; and that Capt. Walcot is all along concerned in. He is present at the Meetings in the Taverns, where they discoursed concerning Men to secure the King. This is Mr. Bourn's Evidence, That at the Dragon-Tavern on Snow-hill, there they met to consult to secure the King and the Duke. That he was present at the Meeting in London, this is sworn by all, by Col. Rumsey, Mr. West and Mr. Bourn, where Goodenough was to give an Account what Success he had in the List made of dividing the City in several Parts, and raising Men out of every Division, and Capt. Walcot met for to know what Progress they had made in it. Gentlemen, every one of these are overt Acts, to declare his Intention to kill the King, and are all High Treason.

The Gentleman at the Bar cannot attempt to mitigate his Offence, by saying he would not directly assassinate the King, but would be the Man to assist in raising Arms; this makes him equally guilty. To conspire to raise Arms against the King, certainly that is as great a Declaration of his Imagination of his Heart to kill the King, as any thing in the World: And this being proved upon him, there is no room for any Objections for him to make; some he hath made, not worth the Mention; but because they are those he thinks to put his Life upon, I will take notice of them to you.

He says, the Witnesses are not to be credited, because they have been concerned in the same Conspiracy.

Gentlemen, because they have been concerned, therefore they are to be believed; for who should know this but those that were so concerned? I think, Gentlemen, there is no good Man, no honest Man, would desire a better Evidence; for better Evidence could not have been had, unless the thing had taken Success; and I am sure that is far from the Heart of any Man, that has the Heart of a Christian, to wish. Does he pretend to intrap these Witnesses in any Contradictions? Does he pretend to say these Witnesses have consulted together to make up this Story to accuse him for his Life? There is nothing pretended of it, but on the contrary he owns he met these Men; but the End of his going there was only to hear News. I thought that had not been the proper Place to hear News in; certainly no Man that comes there would have been admitted merely for Curiosity; certainly he must bring a Mind to accompany them in all their Villainy: but his own Confession you have for that. I think he hath hardly Confidence to deny, but he was at several Consults for raising Arms at Mr. West's Chamber. You were, when Goodenough gave an Account, at the Green-Dragon Tavern. You were where Discourses were of raising Arms to secure the King; and nothing he has said, Gentlemen, to clear himself.

Gentlemen, here is that above all Evidence; here is almost the Confession of the Prisoner, the Letter of his own Hand. That Letter (when he sees his Name in the Proclamation) acknowledges it is his first Crime, he says: What was that Crime? He was proclaimed as a Traitor. He says in his Letter, that his Life was at the King's Mercy; that if his Death would do the King more Service than his Life, God's Will be done; that if his Majesty would admit him to come in, and use Mercy, he would tell all he knew concerning England, Scotland and Ireland, which he thought would be more material than any thing that another Discoverer could tell. This shews he hath a deeper Hand than any of these Men that have given this Evidence. You see they accuse themselves; they confess this, and 'tis a great Mercy they have so done; for all your Lives and Liberties in the Person of the King are preserved; and God be thanked, that you are here this Day to sit in Judgment upon him that would have deprived you of them.

L. C. J. Look you, Gentlemen of the Jury, here is the Prisoner at the Bar indicted of High Treason, and 'tis for conspiring the Death of the King, and for endeavouring to raise Arms within his Kingdom against him. You hear he denies himself to be guilty; you have heard the Evidence, and this does plainly appear upon what you have heard, that there was a dangerous and desperate Plot upon the King, to have destroyed him, that is most certainly plain, the Prisoner himself confessed it; that there were several Consults and Meetings concerning it; and that this had a great Progress from time to time, for near half a Year, is very plain; that he was at many Consults, is very certain; that there was a Design to raise an Insurrection and War within this Nation, is as plain by them all; it was design'd the last Winter to have done it. The Witnesses (who are certainly the Persons most capable of giving Evidence) tell you there were several times appointed, and still they were by one Providence or another disappointed. All of them tell you, there was a Design to kill the King and Duke at the Rye in Hertfordshire, as they came from Newmarket: This is very plain too, that this Gentleman at the Bar knew of this; this he himself confesses, that he was at several of the Consults; and this he excuses it by, that that was Misprision of Treason, if he did not undertake to do any thing. As to that, Gentlemen, we do tell you, the Law is, that those that are at a Consult for the killing the King, or doing of a traitorous Act, that is in them High Treason, his being at the consulting of it. 'Tis true, it would excuse and mitigate the Fact, if they should come afterwards and discover it, it might intitle them to the King's Mercy; but to be at a Consult upon a treasonable Design, to meet for that Purpose to hear the Plot laid, and a Design to take away the King's Life, or to raise Arms against him, and to say nothing of this, this is downright Treason, and 'tis not Misprision of Treason; his Law that he relies upon, fails him there. 'Tis very plain by his own Words, he heard of this Conspiracy, and he kept it secret, and says nothing of it; and this he says is his Crime that he mentioned to the King; so he would mitigate it by saying, 'tis but Misprision of Treason. But without doubt, the Meeting at several Times upon this Design, if he had promised and undertaken nothing in it, his keeping of it private, as he has done, makes him guilty of High Treason; so that out of his own Words 'tis plain that he is Guilty.

But then, consider what two Witnesses positively prove upon him: They prove, that he did there deny to be any of them that should assassinate the King; thus says Col. Rumsey, and thus says Mr. West; but he would be one of them that should fight the Guards, and he did undertake to fight the Guards, as both of them positively swear. This is done with Circumstances of overt Acts too, as the providing of Horses, and a Tuck was to be prepared in order to it, and a Tuck he did prepare: Whether he did go down, that is a little dark, but he did agree to go down.

Gentlemen, 'Tis plain by what Mr. West said of him, that he had a Design formerly in my Lord Shaftesbury's Time to have raised War; he had undertaken to be a Colonel of Horse under my Lord Shaftesbury, and he offered Mr. West to be one of his Officers under him. This is a Design to raise War against the King, and declares it sufficiently. That which makes the Evidence further plainly and greatly clear, is a Letter whereby he does submit to the King's Mercy, but proposes that himself is abler to instruct the King in these Matters, than any of those that had made former Discoveries; and therefore if his Majesty should think fit, he would make him a full Discovery, not only of things in this Kingdom, but of the Transactions with other Kingdoms, that is, Scotland and Ireland, in which he takes himself to be more capable of discovering to the King than any body else, because he was concerned with the Agents there; which shews this Plot hath gone a great Way: This Design hath gone into other of the King's Dominions, and it is to be feared 'tis larger than the King knows. 'Tis Time to nip these Treasons when they are gone so far; certainly a more barbarous Design was never thought of by Mankind. We have had certainly as many Engagements to the King, as any Subjects ever had to any Prince whatsoever; he has done as many Acts of Grace; we have lived as peaceably as any People under a Prince can ever expect to do; he hath shewed himself with as much Kindness, with as much Lenity, even to his very Enemies, as any Prince that ever we read of; the Preservation of our Religion, and the Laws of the Kingdom; our Laws and Liberties, and all our Happiness, depend as much upon his Life, as they ever did upon the Life of any Prince, or ever can do; so that we ought all to be concerned, even to the last Drop of our Blood, to preserve him: But how this mischievous Design should enter into the Hearts of Men, to undertake to kill him in such villainous and barbarous a Manner as this, may justly make us astonished.

Gentlemen, You hear your Evidence, you have a very strong Evidence in this Case, and stronger, I think, than could be expected in the Case of Treason.

The Jury went out for about Half a Quarter of an Hour, and returned, and brought the Prisoner in Guilty.

## CXVIII. The Trial of WILLIAM HONE \*, at the Old Bailey, for High Treason, July 12. 1683. 35 Car. II.

WILLIAM HONE being brought to the Bar, and having held up his Hand, the Indictment was read, as follows:

London. The Jurors for our Sovereign Lord the King, upon their Oaths, present, that William Hone, late of London, Labourer, with other false Traitors, as a false Traitor against the most Illustrious and Excellent Prince, our Sovereign Lord Charles II. by the

Grace of God, of England, Scotland, France and Ireland King, his natural Lord; not having the Fear of God in his Heart; nor weighing the Duty of his Allegiance, but being moved and seduced by the Instigation of the Devil; and the true Duty, and natural Obedience, which true and faithful Subjects of our Sovereign Lord the King, towards him our said Lord the King do bear, and of Right ought to bear, wholly withdraw-

\* Burnet's History of his Own Times, Vol. I. p. 559.



ing; and with his whole Strength intending the Peace and common Tranquillity of this Kingdom of England to disturb, and War and Rebellion against our said Lord the King to move and stir up, and the Government of our said Lord the King within this Kingdom of England to subvert, and our said Lord the King from his Title, Honour and Kingly Name of the Imperial Crown of this his Kingdom of England to put down and deprive, and our said Lord the King to Death and final Destruction to bring and put, the second Day of March, in the Year of the Reign of our Sovereign Lord Charles II. King of England, &c. the Five-and-thirtieth, and divers other Days and Times, as well before as after, at the Parish of St. Michael Bassishaw, in the Ward of Bassishaw, London, aforesaid, maliciously and traitorously, with divers other Traitors, to the Jurors aforesaid unknown, he did conspire, compass, imagine and intend our said Lord the King, his Supreme Lord, not only of his Kingly State, Title, Power and Government of this his Kingdom of England to deprive and throw down; but also our said Lord the King to kill, and to Death to bring and put; and the ancient Government of this his Kingdom of England to change, alter and wholly to subvert, and a miserable Slaughter amongst the Subjects of our said Lord the King through the whole Kingdom of England to cause and procure, and Insurrection and Rebellion against our said Lord the King to move, and stir up, within this Kingdom of England; and to fulfil and perfect the said most horrible Treasons, and traitorous Compassings, Imaginations, and Purposes aforesaid, he the said William Hone, and many other Traitors, as a false Traitor, then and there, and divers other Days and Times, as well before as after, maliciously, traitorously and advisedly, he did assemble, meet together, and consult with divers other evil-disposed and discontented Subjects of our said Lord the King, to the Jurors as yet unknown, and had Discourse, and did treat, of and for the executing and fulfilling their Treasons, and traitorous Compassings, Imaginations and Purposes aforesaid; and that the said William Hone, (together with many other Traitors) as a false Traitor, maliciously, traitorously, and advisedly, then and there, and divers other Days and Times, as well before as after, did take upon himself, and promise to be aiding and assisting in the executing of the Treasons, and traitorous Compassings, Imaginations and Purposes aforesaid; and in providing of Arms, and men armed, to fulfil and perfect the said Treasons, traitorous Compassings, Imaginations and Purposes aforesaid. And to fulfil, and bring to pass, the said most horrid Treasons, and traitorous Compassings, Imaginations and Purposes aforesaid, he the said William Hone (with many other false Traitors) as a false Traitor, maliciously, traitorously and advisedly, then and there, did procure and prepare Arms, to wit, Blunderbusses, Carbines, and Pistols, against the Duty of his Allegiance, against the Peace of our Sovereign Lord the King, &c. and against the Form of the Statutes, &c.

Cl. of the Cr. How sayest thou, William Hone? Art thou Guilty of this High Treason, whereof thou standest indicted, or Not guilty?

Hone. In some measure I am guilty.

Capt. Richardson. You must say, Guilty, or Not guilty.

Sir Francis Pemberton.

confess all, or deny all.

Hone. I know nothing of the Arms.

L. C. J. Are you guilty of the Treason, in conspiring the Death of the King, and providing Arms for that Purpose?

Hone. I never provided Arms; I am guilty of the Conspiracy.

L. C. J. We can take notice of none of these odd kind of Words you talk of, but either plainly Guilty, or Not guilty.

Hone. My Lord, I can truly say, I am Not guilty, for I know nothing of it.

L. C. J. If you say so, you say as much as is required of you at present.

Hone. In that understanding of it, I am Not guilty.

L. C. J. Well, he says he is Not guilty.

Cl. of Cr. Culprit, How wilt thou be tried?

Hone. By God and my Country.

Cl. of Cr. God send thee a good Deliverance.

Friday, July the 13th in the Morning, the Court being set, and Proclamation made.

Sir Robert Sayer.

Mr. Att. Gen. Set William Hone to the Bar.

Cl. of Cr. You the Prisoner at the Bar, hold up your Hand.

Hone. I desire I may retract my Plea: I would plead Guilty.

L. C. J. Do you confess the Indictment?—Hone. Yes, my Lord.

L. C. J. That is, That you did conspire the Death of the King, and in order to that, that you did provide yourself with Arms to do this wicked Act.

Hone. I never did that, my Lord, I never provided any Arms.

L. C. J. What were you to have done?

Hone. That Deposition I gave before Sir William Turner is true.

L. C. J. Tell us what you were to have done in this bloody Matter.

Hone. I was asked by one Mr. Richard Goodenough to go along with him, and I asked him whither, and he would not tell me; but I understood it was to kill the King and Duke of York, but he did not tell me the Place.

Mr. Serj. Jeff. He does not confess fully; we desire to try him.

L. C. J. Look you, you have pleaded Not guilty to this Indictment: The King is willing, that if you be Not guilty, you shall not be condemned; and therefore he does desire and command the Evidence against you should be publicly given, that all Persons may see, that you are not without Cause brought to Trial. Therefore swear the Jury.

The Prisoner challenged none; but the Jury that were sworn were,

Nicolas Charlton,  
Christopher Pitts,  
Robert Beddingfield,  
John Pelling,

William Windbury,  
Thomas Seaton,  
William Rutland,  
Thomas Short,

Theophilus Man,  
John Genew,  
John Short,  
Thomas Nicholas.

Then Proclamation for Information, and for those that were bound by Recognizance to appear, was made.

Cl. of Cr. William Hone, hold up thy Hand. (Which he did.) You Gentlemen of the Jury that are sworn, look upon the Prisoner, and hearken to his Cause; he stands indicted by the Name of William Hone, &c. *antea*, in the Indictment, *mutatis mutandis*; upon this Indictment he hath been arraigned, and hath thereunto pleaded Not guilty; and for his Trial, &c.

Mr. Jones. May it please your Lordship, and you, Gentlemen of the Jury, the Prisoner stands indicted for the most horrid Treason that ever was endeavoured to be committed in this Kingdom, for traitorously conspiring to kill the King, and consulting how and in what Manner it should be done, and for preparing Arms for the doing of it. We shall prove this to you, and then I hope you will find him Guilty.

Mr. Att. Gen. May it please your Lordship, and you, Gentlemen of the Jury, the Part the Prisoner at the Bar was to act in this Treason, was the killing of the King; he was one of the Persons that were to be assisting in assassinating the King's Person. We will not trouble you with the large Evidence of the Riling, as we did Yesterday; but we will prove these things upon him, that he undertook to do it, that he was concerned with the rest of the Confederates: We shall shew you this is not a new Thing, but he hath been an old Rebel; for this hath not been a new Project, but hath been acting several Years. Five Years ago, when the King attended my Lord Mayor's Show, he undertook to kill him off of Bow Church. We shall call our Witnesses, and prove it fully upon him. Mr. Keeling, and Mr. West.

Mr. Josias Keeling sworn.

Mr. Att. Gen. Do you tell my Lord and the Jury, what you know of this Prisoner at the Bar.

Mr. Keeling. The first Time I saw him was at the Dolphin Tavern, when the Arms were agreed upon, he was there then.

Mr. Att. Gen. Who was there then?

Mr. Keeling. Mr. West, Mr. Goodenough, and him I remember particularly, and some others, whom I do not at present remember, and since that he hath taken notice of me.

Mr. Att. Gen. Was Mr. Rumbold there at that Time?—Mr. Keeling. Yes.

Mr. Att. Gen. Pray at that Meeting tell the Jury what Discourse you had; for many of these Gentlemen are not the same that were on the Jury Yesterday.

Mr. Keeling. It was discoursed then of the King's coming home from New-market the Saturday after the Fire. Mr. West told Mr. Rumbold, he heard the King would come home that Day; But, says he, I don't believe it. Says Rumbold, I hear he will come home on Monday. Says Mr. West to Mr. Rumbold, then, How many Swan-quills, Goose-quills and Crow-quills, and how much Sand and Ink, must we have? I think the Prisoner at the Bar must needs remember it as well as I. It was agreed by Mr. Rumbold. I think I am exact in the Number, and he was by and heard all the Discourse.

Mr. Att. Gen. What did they mean by this?

Mr. Keeling. By Swan-quills they meant Blunderbusses; by Goose-quills, Muskets; and by Crow-quills, Pistols; and by Sand and Ink, Powder and Bullet. He took Acquaintance with me after that Meeting, (for I never saw him, as I know of, before) and after some time he told me, he was one of them that was to go down to the Rye to assassinate the King. And since that, at a Coffee-house in Switwin's-Alley, he told me, it would never be well till the Blackbird and the Goldfinch were knocked on the Head. They being Terms I did not understand, I asked him what he meant; he said the King and Duke of York.

Mr. Serj. Jeff. You are sure that is the Man?

Mr. Keeling. I am sure that is the Man, William Hone.

Mr. Serj. Jeff. What, is that the Man that talked of the Blackbird and Goldfinch?

Mr. Keeling. I am sure that is the Man.

Mr. Att. Gen. Now swear Mr. West.

Mr. Serj. Jeff. If Mr. Hone has a mind to ask him any Questions, he may.

Hone. My Lord, this I deny: As to the Blackbird, I own it; as to the Goldfinch, I never heard a Word of it till this time.

Mr. Serj. Jeff. You had only a Design upon the Blackbird then? Mr. West sworn.

Mr. Att. Gen. Tell the Court what you know of the Meeting at the Dolphin Tavern.

Mr. West. I was there, and Mr. Keeling came in. There were several things said of Swan-quills, Goose-quills, and Crow-quills, but this Man did not come in till this Discourse was over, and I am sure I did not speak of any thing of this Nature before this Man in my Life. But Mr. Goodenough did undertake to provide the Men, and Mr. Goodenough said, he would try him, if he would make an Attempt upon the Duke without the King. And I asked him, whether he had seen Mr. Goodenough. He told me he had. Says he, he spoke to me about a little Jobb for the Duke. Mr. Goodenough said, he had spoke to him fully about the thing. And I saw him often in the Company of Mannius, that was design'd to be another of the Assassins. He was at my Chamber once; says he, Master, shall we do nothing? I think he used these Words, That if the Duke of Monmouth would be true, and appear, he could bring fifty or sixty honest Men of the other Side the Water, to do the Business. I asked him, What Business? Says he, Either a brisk Push (that I took for an Insurrection) for the two Brothers: Says I, what Brothers do you mean? Says he, the Captain and Lieutenant; those were the two Terms they used since the Van-berry was printed. I think he was a pretty honest Fellow before this Time; he was deluded by Goodenough, I think, in the thing.

L. C. J. (to Mr. West.) Do you come to justify these things?

Mr. West. My Lord, he hath been deluded basely, and I am sorry for the poor Fellow.

L. C. J. It is a very unusual thing, for one in your Condition to use such Expressions in such a Case.

Mr. Serj. Jeff. Mr. West, You have been deluded.

Mr. Att. Gen. Captain Richardson and Sir Nicolas Butler.



Mr. Serj. *Jefferies*. I find he is not worthy of the Mercy the King hath shewed him.

Mr. *West*. It was a Word I put from me unawares.

Mr. Serj. *Jefferies*. My Lord, we will give you an Account of a Design this Man had long ago to kill the King.

*Sir Nicolas Butler sworn.*

*Sir Nicolas Butler*. My Lord, I know the Prisoner at the Bar very well. I have known him many Years: I have always known him guilty of Plotting and Contriving, and ready upon all Occasions to embrace any thing for these Purposes laid to his Charge; particularly, when *Sir Francis Chaplain* was Lord Mayor, his Majesty and the Duke stood at Mr. *Waldoe's* House, by reason of the *Angel* House being shaken: And he came to my House, and told me, he would discourse me upon some private Matter; I called him into a Closet, and he told me, they had a fair Opportunity to take off the King and the Duke at once: I told him, that would do very well, but how will you do it? Says he, We will do it with Cross-bows; we are to be half a Dozen, and we will go into the Steeple, where there is a Window just opposite to the Balcony: And a great deal of Discourse we had to this Purpose. My Intent was to divert them from this Design, and told him how impossible it was they should escape the Foot Guards and Horse Guards, and Multitude of People: And if he did not do the Business effectually, he would be undone, and all the Party. I rested satisfied he would have desisted upon this. But I knew the Principles of these Fifth-Monarchy-Men, and their Associates, and thought it not safe to trust to his bare Say-so, that he would desist; but I went to the King and the Duke of York, into my Lord Chamberlain's Chamber, where they came to me, and I gave them this Account, and desired them to set some to watch the Place, and to search if any were got into the Steeple before they came; and there was one *Horsfall* appointed, that did accordingly watch them, but none came: Upon which some Good-willers to it have reported, that it was a Sham-business; but I think that was not well done. But the thing was real, and when he was examined before the King in the Secretary's Office, he did confess all these things that I charged him with.

Mr. Att. Gen. *Sir Nicolas Butler*, Had you any Discourse of killing the King at this time?

*Sir Nicolas Butler*. No: At last they did understand I kept a Correspondence at Court, and then they would tell me no more.

Mr. Att. Gen. Since he was taken, what did he say about this Matter?

*Sir Nicolas Butler*. About this Matter he did acquaint divers; he was one that was to kill the King and the Duke.

*Captain Richardson sworn.*

Capt. *Richardson*. *Sir Nicolas Butler* asked him in my Presence (I went along with *Sir Nicolas* when he examined him) as to this thing, how he was concerned? He said, Mr. *Goodenough* came to him, and told him he wanted Labourers; he asked him, for what? At last he did confess, that Mr. *Goodenough* did tell him, it was to kill the King, and the Duke of York; he did confess, that he did agree to it, and that he would be one of them. He did likewise say, that after, at another Meeting, he was for killing the King and saving the Duke; but *Goodenough* was for both.

*Sir Nicolas Butler*. He said he was to have 20 l.

Capt. *Richardson*. He said, he did not desire to stir, and *Goodenough* told him he should have 20 l. to buy him Horse and Armour: And told us the Business of the Rye, the Place he did not know, but said, it was the Place where the King was to be murdered. This is the Substance of the Examination taken.

Mr. Serj. *Jefferies*. Tho' the Prisoner at the Bar did partly make a Confession; yet for the Satisfaction of the World, my Lord gave us leave to call our Witnesses.

Capt. *Richardson*. That which *Sir Nicolas* says about the Cross-bows he did own, but —

L. C. J. What say you to this treasonable Design of your's, in undertaking to kill the King, in hiring yourself out to be one of the Persons that should have executed this traitorous Design, this horrid Murder, to have killed the King at the Rye?

Hone. I say, I did not know the Place where, nor when, at the time it was proposed about the Rye.

L. C. J. But what do you say as to the undertaking to kill the King? The other is but a Circumstance, this is the material Point.

Hone. My Lord, I was drawn into it by Mr. *Richard Goodenough*.

L. C. J. You hear what *Sir Nicolas Butler* says of the Cross-bows you designed to kill the King with, what say you to that?

Hone. I say, there was a Person told me of such a thing; and I told *Sir Nicolas* immediately of it. The Person that told me was a Shop-keeper, and I don't know him.

*Sir Nicolas Butler*. You named three Persons to the King that were Confederates with you, but you came to me of yourself.

L. C. J. Look you, yourself was one of the wicked Undertakers in that traitorous Design.

Hone. No, I did never design it, but I was told it.

L. C. J. Ay, that yourself and some other good Fellows were engaged in the Design.

Hone. I was not engaged, only as I was told by a Fellow, that there was a Shop-keeper lived hard by that would do such a thing, and I immediately told *Sir Nicolas Butler*.

L. C. J. Come, 'tis in vain for you to mince the Matter, for here is a full Evidence against you: The best you can do for your Advantage now, is to consider well with yourself, and repent of this wicked Design. What Religion do you profess?

Hone. Religion, my Lord?

L. C. J. Ay, any or none?

Hone. My Lord, I hear several sort of Men, sometimes Baptists, sometimes Independents, and sometimes the Presbyterians.

L. C. J. But regard none. Look you, Gentlemen of the Jury, you hear a plain Case of a barbarous Murder designed upon the King, one of the horridest Treasons that hath been heard of in the World, to have shot the King and the Duke of York in their Coaches, as they were coming upon the Road. You have had full Evidence of this Man's being one of them; and therefore I am of Opinion, that you must find him guilty.

*So the Jury brought the Prisoner in Guilty, without going out of Court.*

## CXIX. *The Trial of Lord WILLIAM RUSSEL*\*, *at the Old Bailey, for High Treason,* July 13. 1683. 35 Car. II.

THE Lord *Ruffel* was set to the Bar, and placed within the Bar.

Cl. of Cr. *William Ruffel*†, hold up thy Hand (*Which he did*): Then the Indictment was read, as followeth:

London. The Jurors of our Sovereign Lord the King, upon their Oaths, present, That *William Ruffel*, late of London, Esq; together with other false Traitors, as a false Traitor against the most Illustrious and Excellent Prince, our Sovereign Lord *Charles II.* by the Grace of God, of England, Scotland, France and Ireland King, his natural Lord; not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance, but being moved and seduced by the Intigation of the Devil; and the true Duty, and natural Obedience, which true and faithful Subjects of our Sovereign Lord the King, towards him our said Lord the King do bear, and of Right ought to bear, wholly withdrawing; and with his whole Strength intending the Peace and common Tranquillity of this Kingdom of England to disturb, and War and Rebellion against our said Lord the King to move and stir up, and the Government of our said Lord the King within this Kingdom of England to subvert, and our said Lord the King from his Title, Honour and Kingly Name of the Imperial Crown of this his Kingdom of England to put down and deprive, and our said Lord the King to Death and final Destruction to bring and put, the second Day of November, in the Year of the Reign of our Sovereign Lord *Charles II.* King of England, &c. the Four-and-thirtieth, and divers other Days and Times, as well before as after, at the Parish of *St. Michael Bassishaw*, in the Ward of *Bassishaw*, London, aforesaid, maliciously and traitorously, with divers other Traitors, to the Jurors aforesaid unknown, he did conspire, compass, imagine and intend our said Lord the King, his Supreme Lord, not only of his Kingly State, Title, Power and Government of this his Kingdom of England to deprive and throw down; but also our said Lord the King to kill, and to Death to bring and put; and the ancient Government of this his Kingdom of England to change, alter and wholly to subvert, and a miserable Slaughter amongst the Subjects of our said Lord the King through his whole Kingdom of England to cause and procure, and Insurrection and Rebellion against our said Lord the King to move, procure and stir up, within this Kingdom of England; and to fulfil and perfect the said most horrible Treasons, and traitorous Compassings, Imaginations and Purposes aforesaid, he the said *William Ruffel*, together with

other false Traitors, as a false Traitor, then and there, and divers other Days and Times, as well before as after, maliciously, traitorously and advisedly, between themselves, and with divers other Traitors, to the Jurors aforesaid unknown, they did meet together, consult, agree and conclude, and every of them, then and there, did consult agree, and conclude, Insurrection and Rebellion against our Sovereign Lord the King, within this Kingdom of England, to move and stir up, and the Guards for the Preservation of the Person of our said Lord the King, to seize and destroy, against the Duty of his Allegiance, against the Peace &c. and also against the Form of the Statutes, &c.

Cl. of Cr. How sayest thou? Art thou Guilty, or Not guilty?

Lord *Ruffel*. My Lord, May I not have a Copy of the Matter of Fact laid against me, that I may know what to answer to it?

L. C. J. My Lord, we can grant you nothing till you have pleaded. Therefore that which is put to you now is, *Pemberton*.

Whether you say you are Guilty, or Not guilty?

L. *Ruffel*. My Lord, I am Not guilty.

Cl. of Cr. *Culprit*, how wilt thou be tried?

L. *Ruffel*. By God and my Country.

Cl. of Cr. God send thee a good Deliverance.

L. *Ruffel*. My Lord, I thought a Prisoner had never been arraigned and tried at the same time. I have been a close Prisoner.

L. C. J. For Crimes of this Nature, my Lord, we do it continually.

L. *Ruffel*. It is hard, my Lord.

Mr. Att. Gen. My Lord hath no Reason to complain for want of Notice; for since Monday seven-night he had Notice of his Trial, and the Matters alledged against him he had Notice of; for Questions were put to him about this Matter: He hath been very fairly dealt with, he hath had the Liberty of Counsel to advise him; there hath been no sort of Liberty denied him, which becomes any Subject to have in this Condition.

L. C. J. My Lord, I do not know whether you hear Mr. Attorney: He says, your Lordship hath had a great deal of Favour shewn you already, in that you have been acquainted with the Crimes for which you are now indicted, that you have had a great deal of Warning given you, that you have had the Liberty of Counsel, which hath not been known granted to any under your Lordship's Circumstances. He says, he doubts not but your Lordship is prepared for your Defence, because you have had so much

\* *Burnet's History of his Own Times*, Vol. I. p. 553—558. 560—561.

† He was Lord only by Courtsey, being eldest Son to the Earl of Bedford.



Knowledge, and Warning of the Time and Matter for which you were to be called in Question.

*L. Ruffel.* My Lord, I am much to seek; I only heard some general Questions, and I have Witnesses that I believe are not yet in Town, nor will be, I believe, till Night. I think it very hard I can't have one Day more.

*Mr. Att. Gen.* Monday se'nnight your Lordship had Notice.

*L. Ruffel.* I did not know the Matter I was charged with.

*Mr. Att. Gen.* Yes, certainly; for I was with you myself, my Lord; and those Questions you were examined upon, were a Favour to you, that you might know what the Matter was you were accused of.

*L. C. J.* My Lord, without the King's Consent, we can't put off the Trial: If the King's Counsel think not fit to put it off, we can't grant your Lordship's Request in this Case.

*L. Ruffel.* I would desire a Copy of the Panel of the Jury, that I might consider of it; for how else can I make any just Challenge? I thought the Law had been very favourable to Men upon their Lives; and therefore it had allowed People to have some little Notice.

*L. C. J.* Hath not your Lordship had a Copy of the Panel? I think your Lordship was allowed one. We gave Order your Lordship should have a Copy of the Panel.

*Mr. Att. Gen.* We did indulge him so far, that he might have a Note of all the Men returned.

*L. Ruffel.* I never had a Copy of the Panel.

*L. C. J.* It was the Fault of your Lordship's Servants then; for I gave Order for it myself. 'Tis such a Favour, that in regard a Man's Life lies at Stake, we never did deny it\*, to my Knowledge. And therefore in this Case I gave Order to the Secondary to deliver a Copy. I know the King did not design to be hard upon my Lord in his Trial, but that he should have as fair a Trial as ever any noble Person had.

*L. Ruffel.* I pray I may have a Copy then.

*Mr. Serj. Jefferies.* If my Lord had sent his Agents, and it had been refused, there had been something in it.

*Mr. Att. Gen.* Secondary Normanfel was with me, and I gave him my Allowance, tho' it was not his Right.

*L. C. J.* That my Lord may not be surpris'd, what think you of giving my Lord Time till the Afternoon, and try some of the rest in the mean time?

*Mr. Att. Gen.* Truly, my Lord, if I could imagine it were possible for my Lord to have any Witnesses, I should not be against it.

*L. Ruffel.* 'Tis very hard.

*Mr. Att. Gen.* Do not say so; the King does not deal hardly with you; but I am afraid it will appear you would have dealt more hardly with the King: You would not have given the King an Hour's Notice for saving his Life.

*Secondary Trotman.* I gave my Brother Normanfel a Copy of the Panel on my Side, and hear that my Brother Normanfel hath said that he delivered a Copy.

*Then Secondary Normanfel was sent for, and the Court staid for him some time.*

*Mr. Atwood.* My Lord, a Gentleman told me, he did not know whether it was fit, till he had consulted the *Attorney General*; afterwards I had a Copy as it stood then, not as it is now.

*Mr. Att. Gen.* I desire my Lord may be asked, who he sent for it?

*L. Ruffel.* I did not send for it; I inquired, and they said it would be refused.

*Mr. Atwood.* No, the Gentleman had it with the fair Periwig.

*L. C. J.* It was delivered to your Servant or Agent. What did you do with it?—*L. Ruffel's Gent.* Sir, The Gentleman gave me out of a Book some Names.

*Mr. Serj. Jefferies.* What did you do with them?—*L. Ruffel's Gent.* I writ them down; they were not perfect; I did not know what they were.

*L. C. J.* Sir, you were to blame not to deliver it to my Lord.

*L. Ruffel's Gent.* I was not bound to deliver an imperfect thing to my Lord.

*L. C. J.* Sir, you should have consulted your Lord's Advantage, so as to have delivered any thing for his Good.

*L. Ruffel's Gent.* My Lord was in the Tower, I was not admitted to my Lord.

*Mr. Att. Gen.* Did you give it to my Lady?

*L. Ruffel's Gent.* Yes, those Names I had, my Lady had.

*Mr. Serj. Jefferies.* How long ago was it?

*Mr. Atwood.* Tuesday or Wednesday last.

*L. C. J.* (to Lord Ruffel's Servant.) Look you, Sir, when had you this?

*L. Ruffel.* I had no Panel, I will assure you, delivered me; I had some Names of People that they said were usually on Juries.

*L. C. J.* They were the Names of the Jury.

*L. Ruffel.* They were only the Names of them that were like to be of the Jury; no other Panel came to me.

*L. C. J.* My Lord, there can be no other Copy given, but the same that was delivered; for your Lordship does know in this Case, any Person accused, as your Lordship is, may challenge Thirty five; and therefore there is a Return generally of Three or Four score, and these are returned in case of your Lordship's Challenge. When you have challenged so many as you please, then the twelve Men that stand after your Challenge are to be of the Jury. And therefore this is not like a Panel made up by the Sheriff, in ordinary Causes, between Man and Man; there they make a formal Panel, from which they cannot depart, when that is once returned; but here in criminal Cases, because of the Challenge, they return either Sixty or Eighty: And I presume your Lordship was attended with the Names delivered.

*Mr. Serj. Jefferies.* How many Names were delivered?

*Mr. Atwood.* Above a Hundred.

*L. Ruffel.* I had nothing of a Panel delivered to me, but some Names.

*L. C. J.* There was never any formal Panel delivered to any Person accused: The Copy of it is in Paper always.

*L. Ruffel.* How can I know who to challenge?

\* But it had been deny'd in *Colledge's Case*; and was afterwards deny'd to *Mr. Cornish*, till the Time of his Trial, when it could be of no Service to him.

† But the Resolution of the Court extended to all Trials, even in a County at large, and was so cited and followed in *Colonel Sidney's Case*, p. 736.

*L. C. J.* My Lord, the Copy of it is in your Hands; your Lordship hath been deceived in this, by not understanding the true Nature of these Things. If we were to give you a new one, we could give you but such an one.

*L. Ruffel.* I had no Paper from the true Officer.

*L. C. J.* No, but from your Servant.

*Mr. Att. Gen.* My Lord, you will have Cause to complain, if they are not the same Men we now shall call.

*L. C. J.* My Lord, that Paper will guide your Lordship in your Challenges.

*L. Ruffel.* My Lord, I did not mind it: I put it away. My Lord, with your Favour, I must needs insist upon having a Panel, and that you will put it off till the Afternoon; I have a Witness that is not in Town. My Counsel told me it was never done, or very seldom, arraigning and trying at the same Time, except in case of common Malefactors.

*L. C. J.* *Mr. Attorney*, Why may not this Trial be respited till the Afternoon?

*Mr. Att. Gen.* Pray call the Jury.

*L. C. J.* My Lord, the King's Counsel think it not reasonable to put off the Trial longer, and we can't put it off without their Consent in this Case.

*L. Ruffel.* My Lord, 'tis hard: I thought the Law had allowed a pretty deal of Favour to a Man when he came upon his Life. How can I know to except against Men that I never heard or saw one of them?

*Cl. of Cr.* You the Prisoner at the Bar, Those good Men that have been now called, and here appear, are to pass between you and our Sovereign Lord the King, upon your Life or Death; if you challenge any of them, you must speak as they come to the Book to be sworn, before they are sworn.

*L. Ruffel.* My Lord, May I not have the Use of Pen, Ink and Paper?

*Court.* Yes, my Lord.

*L. Ruffel.* My Lord, may I not make use of any Papers I have?

*L. C. J.* Yes, by all means.

*L. Ruffel.* May I have somebody write to help my Memory?

*Mr. Att. Gen.* Yes, a Servant.

*L. C. J.* Any of your Servants shall assist you in writing any thing you please for you.

*L. Ruffel.* My Wife is here, my Lord, to do it.

*L. C. J.* If my Lady please to give herself the Trouble.

*Mr. Att. Gen.* My Lord, you may have two Persons to write for you, if you please.

*L. Ruffel.* My Lord, here hath been a Name read, that I never saw in the List of the Jury I had: I heard Sir *Andrew Foster* called.

*L. C. J.* He is not called to be of the Jury.

*Cl. of Cr.* Call *John Martin*.

*L. Ruffel.* Are you a Freeholder of 40s. a Year? I hope none are allowed in the Panel, but those that have Freeholds.

*L. C. J.* There is no Panel made in London by Freeholders; we have very few Freeholders capable of being impannell'd, because the Estates of the City belong much to the Nobility and Gentlemen that live abroad, and to Corporations: Therefore in the City of London† the Challenge of Freeholders is excepted.

*L. Ruffel.* My Lord, I thought it had been always so, and the Law had been clear in that Case throughout England, that no Man ought to be tried for his Life, but by those that have Freeholds. My Lord, I remember I read a Statute of 2 H. 5. where 'tis positive, that no Persons shall be judged in case of Life and Death, but by those that have 40s. a Year.

*L. C. J.* My Lord, that Statute extends not to this Case. Read the Statute.

*Cl. of Cr.* *Whereas Perjury is much used in the City of London, upon Perjures, &c.*

*L. C. J.* Is this the Statute your Lordship has read?

*L. Ruffel.* This is not in the Case of Life and Death.

*L. C. J.* It is not, my Lord.

*L. Ruffel.* That that I read is positive. And if your Lordship will not allow of it, I desire my Counsel may come and argue it; for 'tis a Matter of Law, and I can't argue it, Whether the Jury are not to be Freeholders?

*Mr. Serj. Jefferies.* There is nothing mentioned in that Statute with relation to the City of London indeed; but the Necessity of the Thing requires it.

*Mr. Att. Gen.* It will not be material; 'tis a collateral Point; for most of the Jury have Freeholds.

*L. C. J.* Do you allow the Exception?

*Mr. Att. Gen.* No, my Lord.

*L. C. J.* Therefore we must, if my Lord stand upon it, hear his Counsel. My Lord, we will hear your Counsel: What Counsel do you desire, my Lord?—*L. Ruffel.* The Counsel that were allotted me.

*L. C. J.* No, you must have Counsel assign'd by us. The Counsel that was assign'd elsewhere signifies nothing.

*L. Ruffel.* *Mr. Pollexfen*, *Mr. Holt*, and *Mr. Ward*.

*The said Persons were called, and came into Court.*

*L. C. J.* (To the Counsel.) Gentlemen, my Lord here desires Counsel: you are here assigned as Counsel for my Lord *Ruffel* that is at the Bar, concerning a thing wherein he doubts the Law; he would except to the Jury upon this account, to the Poll, because they have not Freehold within the City of London; and he desires you may be assign'd his Counsel to make it out, that this is a Cause of Challenge.

*Mr. Att. Gen.* 'Tis a Case of Treason, *Mr. Pollexfen*.

*Mr. Ward.* We take it so.

*Mr. Pollex.* My Lord, perhaps if we had more Consideration of it, we should speak more; but if your Lordship pleases to hear us what we can say: First, we take it, with Submission, at Common Law, a Freehold was necessary to make a Man a Jury-man. But that which falls out in this Case, is the Statute of 2 H. 5. c. 3. which Statute, I suppose, is here in Court. That Statute says this, (if you please, I will quote the Substance of it) That none shall be admitted to pass upon any Inquest upon the Trial of the Death of a Man, except he have Lands and Tenements of the yearly Value of 40s. Now we are here, I think, within the Words



of the Statute, and I take it to be no Question at all, were we not in a City and County. I think this would be no Question upon any Trial in any County at large. The Statute does not make any Exception or Distinction between Cities and Counties at large; but the Words are general, as I have opened them. My Lord, the Statute does also provide in Cases of Freehold or Forty Marks. Now, my Lord, to prove this Statute extends to London, tho' a City and County, there are other Statutes that have been made subsequent, make it plain that it does so extend. But before I speak to them, there is 1. *Inst. Fe. 157.* that takes Notice of this Statute, and speaks it generally, that the Freehold ought to be in the same County, nor do I remember to have seen any Book that distinguishes between Counties at large, and Cities and Counties. But Statutes that have been made concerning Cities and Counties are a plain Declaration, that this is meant of Juries both in Cities and Counties. I will mention the Statute 7. H. 7. c. 5. The Substance of the Statute is this: It takes Notice, that there were Challenges in London, for that they had not 40 s. per Ann. and that this Challenge was to be made in the Wards, which are the same with Hundreds in the Counties; so this Statute is made to take away the Challenge of 40 s. Freehold. This Statute of 7 H. 7. that takes away the Challenge in London, for not having 40 s. is, with Submission, a strong Evidence and Authority that it was before that Time a good Challenge; for otherwise to what End should they make a Statute to take away the Challenge, unless it were before a good Cause of Challenge? In the next place, 4 H. 8. c. 3. that extends to Civil Causes in London, and says, That the London Jurors shall (but provides only for London in Civil Causes) be admitted in Civil Causes, that have Goods to the Value of 100 Marks. My Lord, if that first Statute, or the Common Law, had not extended to require Freeholds in London, then there would have been no need of this Statute that was made to enable Men to be Jurors that had Goods to the Value of 100 Marks. So that we take it to be good Authority, that by the Common Law Freehold was required in all Civil Causes. Then there is another Statute 23 H. 8. c. 13. and that will be a strong Evidence to shew what the Law is: For the Statute says, in Cities and Boroughs, in Trials of Murder and Felony, if a Freeman of the City of London is to be tried, the Freeman shall be upon the Jury, though they have not Freehold; and then there is a *Proviso*, that for Knights and Esquires that are out of the Borough, though they are arraigned in the Borough, that extends not to them, though in Cases of Murder and Felony. As for this Statute, we take this Sense of it, first, That it does not extend to Treasons; for when it only names Murders and Felonies, that makes no Alteration as to Treason, therefore that stands as before: But if there be any Alteration, that extends only to Freemen and Burgesses that are to be tried, but not to Knights and Esquires; so that if we were in a Case of Felony and Murder, I think we are not concerned in this Statute; for we are no Freeman nor Burgesses, but we are an Esquire, and therefore ought to be tried by Freeholders: So that for the Law we rely upon these Statutes, that we have looked upon as strong Evidence, that there ought to be in the Trial of the Life of a Man, especially for Treason, Freeholders. First, If it were in Civil Causes, if this Qualification be not in Jury-men, then an Attaint would lie. The Penalty in an Attaint is, that their Houses should be pulled down, &c. This is provided by the Law, to the Intent the Jury may be careful to go according to their Evidence. 'Tis true, no Attaint does lie in Criminal Causes; but if so be in Civil Causes there be required Freeholders, and an Attaint lies, if there be not, 'tis not reasonable to think but there should be as great Regard to the Life of a Man as to his Estate. Next, my Lord, I do not know any Law that sets any kind of Qualification but this of Freehold; so that be the Persons of what Condition or Nature soever, (supposing they be not outlawed) yet these Persons, if this Law be not in Effect, may then serve and be put upon the Life of a Man. These are the Reasons, my Lord, for which we apprehend they ought to be Freeholders.

Mr. Holt. My Lord, I would desire one Word of the same Side: We insist in this Case upon these two Things: First, We conceive by the Common Law, every Jury-man ought to have a Freehold; we have good Authority for it, *Coke's First Institutes*; but if that were not so, I think the Statute Mr. Pollexfen hath first mentioned, 2 H. 5. c. 3. to be express in this Point. My Lord, the Statute in the Preamble does recite all the Mischiefs; it says, great Mischiefs ensued by Juries that were made up of Persons that had not Estates sufficient. In what? As well in the Case of the Death of a Man, as in the Case of Freehold between Party and Party: The Statute reciting this Mischief does in express Words provide two Remedies for the same in these Cases: First on the Life and Death of a Man, the Jury or Inquest to be taken, shall have 40 s. per Ann. and so between Party and Party 40 Marks; so that this being the Trial of the Death of a Man, it is interpreted by *Stamford*, 162 a. that is, in all Cases where a Man is arraigned for his Life, that is within the express Words of the Statute. Besides this Exposition that hath been put upon the Statute, my Lord, it does seem, that the Judgment of several Parliaments hath been accordingly in several Times and Ages. My Lord, to instance in one Statute that hath not been mentioned, and that is the 33 of H. 8. c. 23. that does give the King Power to award Commissions of *Oyer and Terminer*, for Trials in any County of England: And that (says the Statute) in such Cases no Challenge to the Shire or Hundred shall be allowed; that is, you shall not challenge the Jury in such a Case, because they have not Freehold, are not of the County where the Treason was committed; but that, upon the Trial, Challenge, for lack of Freehold of 40 s. a Year, shall be allowed, though it alters the manner of trying Treason by the Common Law: So that, my Lord, here is the Opinion of every Parliament, that though it took away the usual Method of Trials, yet it saves the Prisoner's Challenge for want of Freehold. Now, indeed, that Statute is repealed; but I mention it as to the *Proviso*, that it shews the Judgment of that Parliament at that Time. My Lord, those other Statutes that have been made to regulate Cities and Towns Corporate, why were they made? 33 H. 8. That no Freehold should be allowed, that shews that 2 H. 5. did extend to these Cases. But, my Lord, these Statutes that shew the Judgment of the Parliament sufficient for our Purpose, do not extend to this Case;

the Statute goes only to Murders and Felonies, but not to Treasons: And we are in the Case of a Penal Statute, and concerning the Life and Death of a Man, which ought to be taken strictly, it ousts the Prisoner of a Benefit; and by Parity of Reason, if Treason be not mentioned, your Lordship can't by Equity extend it to it, when it only mentions inferior Offences, and takes away the Benefit in lower Cases: Like the Case of the Bishop of *Winchester*, where the Statute set down Dean and Chapters, and other Ecclesiastical Persons, it shall not extend to Bishops, because it begins with Persons of an inferior Nature: No more shall Murder and Felony extend to Treason. But further, the Statute only concerns Freemen; for there is an express *Proviso* in the Case: For in case any Knight or Esquire come to be tried in the Place, he has his Benefit as before. My Lord, we are in this Case, as in the Case not mentioned in the Statute, we are not a Freeman of London. My Lord, there is another thing, 7 H. 7. c. 5. why there was not only requisite at the Common Law, that the Jurors had sufficient Freehold, but it was required it should be in the Hundred; and Freehold in the Wards in the City is the same with Freehold in the Hundreds in the Country: So that the Want of Freehold in the Hundred was a good Cause of Challenge. So that I think it will hardly be denied, but that a Jury that passes upon the Life of a Man ought, by the Law, by the Statute, and by the Judgment of the Parliament, to have Freehold. Where is there then any Statute whatsoever that makes a Difference in this Case, between London and other Counties? We are in the Case of Treason, we have taken our Exceptions, and on Behalf of the Prisoner at the Bar we pray the Challenge may be allowed.

Mr. Ward. My Lord, I shall be short, because Mr. Pollexfen has observed these things so particularly already. I observe the Statute of H. 5. is a general Statute, and extends throughout the Realm: Now when the thing is thus general, there is no room to except Particulars. And in this Case 'tis within the very Words of the Law; if the Words be so generally penned in the Negative, then we conceive there is no Construction to be made upon them, unless some subsequent Parliament alter it. *Coke's Institutes*, 157. where 'tis said in Treason as well as any thing else, upon H. 5. there shall be Freeholds; if they have provided in Civil and other Criminal Causes, it were strange that this should be *Causus omisus*; but there is no Construction against a Negative Law: For the Parliament taking care of the City of London, (as the subsequent Statutes say) that he that hath a hundred Marks shall pass in Civil Causes, and then it says in Murders and Felonies, and that only confined to the Freemen of the Place, does sufficiently explain the Law, where 'tis not altered by any subsequent Act; therefore I desire the Challenge may be admitted.

Mr. Att. Gen. My Lord, These Gentlemen's Foundation is not good; for they prove it not by any Books, that at Common Law it was requisite for a Jury-man to have Freehold. My Lord, I deny their Foundation; there is no such Law; and at this Day, in all Criminal Cases, where the Statute does not direct it, as for Riots and other Informations for Misdemeanour, there is no Law restrains them, and they may be tried by any Man they have no Exception against. Then 2 H. 5. says, None shall be admitted to pass upon the Death of a Man, (I take it to extend to all Capital Matters, though it is pretty oddly expressed; for when a Man is accused of other Felonies and High Treasons, 'tis of the Death of a Man) unless he have Lands or Tenements of the yearly Value of 40 s. But I will take it as these Gentlemen do at this Time, it not being so at Common Law, nor in other Criminal Cases, but what are provided for by the Statute: As to other Matters of Felony and Murder, no doubt there these Challenges are to be taken upon the Statute, but not for Treason, because the Statute of Queen Mary does expressly repeal that Statute; and no Statute since takes away the Force of that of Queen Mary; that all Trials for Treason shall be as at the Common Law; and according to this the constant Practice, in all Cities (not only London) where Persons have been indicted for High Treason, hath been. There was never any such thing pretended: Most of these Gentlemen have Freeholds, but we would not have this Point lost to the City of London; so that the Statute they speak of, and the Interpretations of the several other Statutes too, are to no Purpose; for we say by Common Law, all Causes might be tried by any Persons, against whom there is not sufficient Cause of Challenge; and the Common Law is by that Statute restored in this Point.

Mr. Sol. Gen. My Lord, I have little to say; Mr. Attorney hath given a true Answer to it; the Foundation Mr. Finch does fail them. It was not necessary at Common Law for a Jury-man to have Freehold: But then they must shew you, my Lord, it is altered and made necessary. The Statute of H. 5. does not seem to extend to Treason; but if it did, 'tis now out of Doors, by that of Queen Mary, whereby all Trials of Treasons are reduced to the Common Law. This is that we answer, they fail in their Foundation, they do not make it out, that it was necessary for a Jury-man at Common Law to have Freehold.

Mr. Serj. Jefferies. My Lord, I confess they have cited several Acts of Parliament, and upon them lay their Foundation, and draw Inferences from them: But they will find, that in several Acts of Parliament, which they have quoted, there is a particular Regard had for the Preservation of the constant Usage and Customs for Trials within the City of London. That notwithstanding several Acts of Parliament have in other Places ascertained the Value of Jurors; yet they had still an Eye, that the City of London should continue in its Usages. I think it will be necessary to put you in mind of the Case of the City of *Worcester*. It would be very hard, say they, because an Attaint does not lie in Criminal Matters; if you intend by that to have People of Ability, 'tis well known, that the ablest People in the City of London have scarce any Freehold in it; for that most of the Inheritances of the City of London remain in the Nobility and in Corporations. Now, in the Case of my Lord *Ruffel*, he hath a peremptory Challenge to 35; and I think I may adventure to say, there can scarce be 35 more that can call themselves Freeholders in London: Consider the Consequence then; Treason should be committed in the City of London, and there would not be enow in the

City



City of London to try it. In the Case of the *Quo Warranto* brought against the City of Worcester, to know by what Warrant several took upon them the Offices of Aldermen, the Gentlemen at the Bar objected, that it was reasonable, that no Freehold should be determined but by Freeholders. But the Judges of the *King's Bench* (the Court being full) for the Necessity of the thing, left there might not be sufficient Freeholders in that City, having sent one of the Judges of that Court to your Lordships of the *Common Pleas*, for that Reason did agree the Challenge was not good. I know these Gentlemen will please to remember the Case; so that I say, as in one Case we ought to be tender of the Life of the Prisoner, so we ought surely to be tender of the Life of the King; otherwise it may so happen, that the King's Life may be encompassed, and Treason committed in the City, and there would be no way in the World to try it: Therefore we pray for the King the Challenge may be over-ruled.

Mr. North. My Lord, It is the Practice to make the *Venire facias*, without mentioning Freehold; for it does not command, that they return so many Men that have Freehold, but *probos & legales homines de vicineto*; therefore at the Common Law, those were good Inquests to try any Man, that were not excommunicated, nor under any Out-law. 'Tis true, there are Statutes that say, all Jurymen shall have Freehold; but we say, these Statutes do not extend to the City of London, but that it is governed by its own Customs; and we say it is the Custom, that Citizens of Ability have been returned that have no Freehold. But granting what we do not, by way of Supposal, my Lord, it does not extend to this Case, because Trials are to be according to the Use at Common Law, by the Statute of Queen Mary, which does set them at large again; and that is the Reason the Prisoner, in this Case, hath his Challenge for 35, and is in other Cases restrained to 20; so that we say, these Men of Ability are good, and there is no Statute affects them.

L. C. J. Mr. Pollexfen, Do you find any Judgment that in Cases of Treason, by Common Law, they might except for want of Freehold? Have you any Resolution in the Case?

Mr. Pollexfen. I think there are Books that say, at Common Law there must be Freehold.

L. C. J. What, in Treason?

Mr. Pollexfen. No, my Lord.

L. C. J. Unless you speak of Treason, you do not speak *ad idem*: For I do take it, that in Cases of Treason, or in Cases of Felony, at the Common Law, they had no Liberty to except to Jurors, that they had not any Freehold; but that at the Common Law any good and lawful Men might pass. Then take as introductory of a new Law the Statute of H. 5. I am of the mind, that this Statute of H. 5. peradventure, may extend to Treasons and Felonies; but when the Statute of Queen Mary comes and says, all Trials shall be by such Evidence, and in such Manner, as by Common Law they ought to have been, I do not see how it is possible to make an Objection afterwards of this Nature. For, admitting this Act of Parliament of H. 5. had altered the Common Law, and given a Challenge, why then when the Statute of Queen Mary comes and sets all Trials at large in the Case of Treasons, then certainly the Challenge is gone again; and I doubt you will not find one Exception in this Case, ever since that Statute concerning the Jury's Freehold in Cases of Treason, but it hath generally passed otherwise, and there hath not been any ever excepted. I doubt it will be a very hard thing to maintain such a Challenge now. Here my Lords and Brothers will be pleased to deliver their Opinions. It is a Business of great Consequence, not only for this noble Person at the Bar, but for all other Persons.

L. C. Bar. I agree with your Lordship perfectly; but if the Counsel had laid a right Foundation, that it had been so at Common Law, there had been much said; but I take it at Common Law there was no Challenge for want of Freehold, and I am induced to think so; for otherwise what needed the Statute of H. 5. been made? But whether it extend to Treason or no, I am not so clear. And if it did, 'tis wiped off again by that of Queen Mary, which reduces all to the Common Law Trial.

Mr. J. Windham. I am of the same Opinion: I conceive at Common Law, lack of Freehold no good Cause of Challenge. 'Tis true, that Challenge is given in some Cases by Act of Parliament, yet I doubt whether it extend to a thing of so high a Nature as Treason; for other Statutes have not mentioned any thing of Treason. But suppose 2 H. 5. did extend to it, yet it is very plain, the Statute of 1 and 2 Queen Mary hath set all at large again, they are to be good and lawful Men; and I do not find that any thing of the Lawfulness must be the Freehold. And therefore I conceive this is no just Exception in this Case.

Mr. J. Jones. My Lord, I am of the same Opinion. I am of Opinion, that the Common Law did not require Freehold to be a good Cause of Challenge in the Case of Treason, and the rather, because at the Common Law, a Man that was indicted of High Treason had Liberty to challenge, preemptorily, to the Number of 35 Persons. My Lord, if the Common Law be altered by the Statute of H. 5. yet I take it, that the Statute of 1 and 2 Ph. and M. does restore the Common Law in this particular Point. For whereas there was a Statute H. 8. to restrain the Prisoner to the Number of 20 for his Challenge, now the Statute restoring it to Common Law, the Prisoner hath his Challenge to 35, as he had before that Statute of H. 8. So I take it the King shall have his Privilege also to try a Prisoner for Treason, by Persons that have not Freehold.

Mr. J. Charlton. I am of the same Opinion: And truly the rather, because no Precedent hath been offered of any such Challenge before, and many Men have suffered, and sure, if it could have been, many would have made use of it.

Mr. J. Levins. I am of Opinion, 'tis not to be allowed. I do not think myself driven to the Necessity to determine now, whether Freehold was a good Challenge at Common Law in point of Treason. I think the Statute of Ph. and M. hath restored the Trials to the Common Law. What was the Common Law? The Common Law is the Custom of England, which is other in Cities than in Counties, and the Custom of London is Part of that Common Law. So, tho' it be a Cause of Challenge in a County at large, yet it is not a Cause of Challenge in Cities, where Freeholders are not to be found. Now that which satisfies me is, That

this Custom is restored by the Statute of Ph. and Mary; because never such a Challenge hath been. And it is known when 20 were tried for Treason together in this very Place, and one of them a notable cunning Lawyer, and if such a Challenge were to have been allowed, no doubt he would have made use of it; but the Challenge was not taken, and if he had made such a Challenge, and it had been allowed, perhaps he could not have been tried: That was Cook. I have heard several Persons tried for Treason myself, and never heard it taken. Therefore I am of Opinion, that before any Statute was made in this Case, it was the Custom in London to try without Freeholds, and since by the Statute of Queen Mary 'tis restored.

Mr. Bar. Street. I think there was no such Challenge at Common Law. The Jury were only to be *probos & legales homines*, and no more, till the Statute made it so; but there is a particular Reservation to Corporations. And certainly, if this should be admitted to be a good Challenge, tho' it were between Party and Party, there would be in some Corporations a perfect Failure of Justice. So that, without doubt, at Common Law there was no such Challenge. As for the Statute of H. 5. 'tis gone by that of Queen Mary. If this were admitted within London, nothing would be more mischievous to this Corporation. Methinks we have been very nice in this Matter, when the Life of the King is at Stake, and all the Customs and Privileges of the City of London seem to be levelled at in this Point. I am of the Opinion with the rest of the Judges, that this Challenge ought to be over-ruled.

J. Withins. I am of the same Opinion.

L. C. J. My Lord, The Court is of Opinion, upon hearing your Counsel, and the King's, that it is no good Challenge to a Jury in a Case of Treason, that he has not Freehold within the City: But I must tell your Lordship withal, that your Lordship has nothing of Hardship in this Case; for, notwithstanding that, I must tell you, you will have as good a Jury, and better than you should have had in a County, of 41. or 40s. a Year Freeholders. The Reason of the Law for Freeholds is, That no slight Persons should be put upon a Jury, where the Life of a Man, or his Estate, comes in Question; but in the City, the Persons that are impanelled are Men of Quality and Substance, Men that have a great deal to lose. And therefore your Lordship hath the same in Substance, as if a Challenge was allowed of Freehold. It will be no kind of Prejudice to your Lordship in this Case. Therefore, if you please, apply yourself as the Jury is called, and make your Exceptions, if you shall make any.

L. C. J. Mr. Pollexfen, You shall have Liberty to stay any-where here, if you please.

Counsel. Here is such a great Croud, my Lord, we have no Room. Then the Jurymen were called, and after the Lord Ruffel had challenged One, and thirty of them, the Jury sworn were as follows:

John Martin,	Thomas Short,	Thomas Jee,
William Rouse,	George Torriano.	Hugh Noden,
Jervas Seaton,	William Butler,	Robert Brough,
William Fashion,	James Pickering,	Thomas Oneby.

Then was made Proclamation for Information.

Cl. of Cr. William Ruffel, Esq; hold up thy Hand. (Which he did). You of the Jury, look upon the Prisoner, and hearken to his Cause: He stands indicted by the Name of ———— prout before in the Indictment. Upon this Indictment he hath been arraigned, and thereunto pleaded Not guilty, and for his Trial hath put himself upon his Country, which Country you are: Your Charge is to inquire whether he be Guilty of this High Treason whereof he stands indicted, or Not guilty: If you find him Guilty, you shall inquire, &c.

Mr. North. May it please your Lordship, and you that are sworn, The Prisoner at the Bar stands charged in this Indictment with no less than the conspiring the Death of the King's Majesty; and that, in order to the same, he did, with other Traitors named in the Indictment, and others not known, November 2. in the 34th Year of this King, in the Parish of *Bassishaw*, within the City of London, meet and conspire together to bring our Sovereign Lord the King to Death, to raise War and Rebellion against him, and to massacre his Subjects: And in order to compass these wicked Designs, there being assembled, did conclude to seize the King's Guards, and his Majesty's Person. This is the Charge: The Defendant says he is not Guilty; if we prove it upon him, it will be your Duty to find it.

Mr. Att. Gen. My Lord, and you, Gentlemen of the Jury, Most of our Evidence against this Honourable Person at the Bar is to this Purpose: This Person, the Duke of Monmouth, my Lord Grey, Sir Thomas Armstrong, and Mr. Ferguson, they were the Council of State, as I may call them, to give forth Directions for the general Raising that hath appeared was to have been within this Kingdom. The Raising was of great Concern and Expence, and must be managed by Persons of Interest, Prudence, and great Secrecy. These Gentlemen had frequent Meetings in October and November last, (for then, you may refresh your Memories again, was the general Raising to be) and there they did consult how to manage the Raising they consulted how to seize the King's Guards; and this Noble Person being mixed with these others, especially with Ferguson, who with others of an inferior Rank was also engaged in a Cabal for managing worse Things, (tho' this is bad enough) at several Meetings they receive Messages from my Lord Shaftesbury touching the Raising; they being looked upon as the Persons that were to conclude and settle the Time, and all Circumstances about it.

We shall make it appear to you in the Course of our Evidence, that those Underlings (for this was the great Consult, and moved all the other Wheels) who managed the Assassination, did take Notice, that these Lords and Gentlemen of Quality were to manage and clear the whole Business of the Raising. It seems these Gentlemen could not give the Earl of Shaftesbury Satisfaction to his Mind; for he pressed them to keep their Day, which was the 17th of November last; but the Honourable Person at the Bar, and the rest, made him this Answer, That Mr. Trenchard had failed them; for that he had promised to have 1000 Foot, and 2 or 300 Horse, at four Hours Warning; but now it was come to pass, he could not perform it; that some Persons in the



would not join with them, and therefore at this Time they could not proceed; and therefore they must defer the Day. And at a Council, they sent my Lord Shaftesbury Word, he must be contented, they had otherwise resolved, and thereupon my Lord Shaftesbury went away, and Mr. Ferguson with him.

To carry on this Practice, they took others into their Council, Sir Thomas Armstrong was left out, and there falling that scandalous Report upon my Lord Grey, he was to be left out, and then there was to be a new Council of Six, whereas the inferior Council to manage the Assassination was Seven. At this Council there was this honourable Person at the Bar, the Duke of Monmouth, my Lord Howard, and another Honourable Person, who I am sorry to name upon this Account, who hath, this Morning, prevented the Hand of Justice upon himself, my Lord of Essex and Col. Sidney, and Mr. Hambden: These six had their frequent Consults at this Honourable Person's House; for they had excluded Sir Thomas Armstrong, and my Lord Grey; for these Gentlemen would have the Face of Religion; and my Lord Grey was in their Esteem so scandalous, that they thought that would not prevail with the People, if he was of the Council. There they debated how they should make this Rising; after several Consultations they came to this Resolution: That before they did fall upon this Rising, they should have an exact Account both of the Time and Method of the Scotch Rising, and thereupon a Messenger was sent on purpose by Colonel Sidney, viz. Aaron Smith, to invite Scotch Commissioners to treat with these Noble Lords. Pursuant to this, just before the Plot brake out, several from Scotland came to treat with them how to manage the Work; 30,000 *l.* was demanded by the Scots, in order that they should be ready in Scotland; then they fell to 10,000; and at last, (for the Scots love Money) they fell to 5000, which they would take and run all Hazards; but they not coming to their Terms, that broke off that Week the Plot was discovered.

Gentlemen, if we prove all these Instances, besides, we shall call some to shew you, that all the inferior Party still looked upon these to be the Heads; and tho' they kept it secret, God hath suffered it to come to Light, with as plain an Evidence as ever was heard.

Mr. Serj. Jeff. I will not take up any of your Lordship's Time; we will call our Witnesses to prove the Fact Mr. Attorney hath opened. Swear Col. Rumsey (which was done). Pray, Colonel Rumsey, will you give my Lord and the Jury an Account, from the Beginning to the End, of the several Meetings that were, and what were the Debates of those Meetings?

Col. Rumsey. My Lord, I was at my Lord Shaftesbury's Lodging, where he lay, down by Wapping, about the latter End of October, or the Beginning of November; and he told me, there was met at one Mr. Sheppard's House, the Duke of Monmouth, my Lord Russell, my Lord Grey, Sir Thomas Armstrong, and Mr. Ferguson; and he desired me to speak to them, to know what Resolution they were come to about the Rising of Taunton: I did go there accordingly, and call for Mr. Sheppard, and he carried me up where they were, and the Answer that was there made me was, that Mr. Trenchard had failed them, and there would no more be done in the Matter at that Time.

Mr. Att. Gen. Tell the whole Passage.

Col. Rumsey. I did say my Lord Shaftesbury had sent me to know what Resolution they had taken about the Rising of Taunton: They made me this Answer, That Mr. Trenchard had failed them, that he had promised 1000 Foot and 300 Horse; but when he came to perform it, he could not. He thought the People would not meddle, unless they had some Time to make Provision for their Families.

L. C. J. Who had you this Message from?

Col. Rumsey. Mr. Ferguson did speak most of it.

L. C. J. Who sent this Message back?

Col. Rumsey. Mr. Ferguson made the Answer, my Lord Russell and the Duke of Monmouth were present, and I think my Lord Grey did say something to the same Purpose.

Mr. Att. Gen. Pray, how often were you with them at that House?

Col. Rumsey. I do not know: I was there more than once, I was there either another Time, or else I heard Mr. Ferguson make a Report of another Meeting to my Lord Shaftesbury.

Mr. Serj. Jeff. Was my Lord Russell in the Room when this Debate was?

Col. Rumsey. Yes, my Lord.

Mr. Att. Gen. What did they say further?

Col. Rumsey. That was all at that Time, that I remember.

Mr. Att. Gen. Was there nothing of my Lord Shaftesbury to be contented?

Col. Rumsey. Yes, that my Lord Shaftesbury must be contented; and upon that he took his Resolution to be gone.

L. C. J. Did you hear any such Resolution from him?

Col. Rumsey. Yes, my Lord.

Mr. Att. Gen. Did you know of their meeting there, or was it by my Lord Shaftesbury's Direction?

Col. Rumsey. No, but my Lord told me, I should find such Persons, and accordingly I found them; and this Answer was given.

Mr. Att. Gen. What Time did you stay?

Col. Rumsey. I think I was not there above a quarter of an Hour.

Mr. Att. Gen. Was there any Discourse happened while you were there about a Declaration?

Col. Rumsey. I am not certain whether I did hear something about a Declaration there, or that Mr. Ferguson did report it to my Lord Shaftesbury, that they had debated it.

Mr. Serj. Jeff. To what Purpose was the Declaration?

L. C. J. We must do the Prisoner that Right; he says he can't tell whether he had it from him or Mr. Ferguson.

Mr. Att. Gen. Did you hear no Discourse to what it tended?

Col. Rumsey. My Lord, there was some Discourse about seeing what Posture the Guards were in.

One of the Jury. By whom, Sir?

Col. Rumsey. By all the Company that was there.

L. C. J. What was that Discourse?

Col. Rumsey. To see what Posture they were in, that they might know who to surprise them.

L. C. J. The Guards?

Vol. III.

Col. Rumsey. Yes, that were at the Savoy and the Mews.

L. C. J. Whose were the Words? Tell the Words as near as you can.

Col. Rumsey. My Lord the Discourse was, that some should—

L. C. J. Who made that Discourse?

Col. Rumsey. My Lord, I think Sir Thomas Armstrong began it, and Mr. Ferguson.

Mr. Att. Gen. Was it discoursed among all the Company?

Col. Rumsey. All the Company did debate it. Afterwards they thought it necessary to see with what Care and Vigilance they did guard themselves at the Savoy and Mews, whether they might be surpris'd or not.

Mr. Att. Gen. Were there any undertook to go and see there?

Col. Rumsey. There were some Persons.

Mr. Serj. Jeff. Name them.

Col. Rumsey. I think the Duke of Monmouth, my Lord Grey, and Sir Thomas Armstrong.

Mr. Serj. Jeff. Was my Lord Russell, the Prisoner, there, when they undertook to take the View?

Col. Rumsey. Yes, Sir.

Mr. Att. Gen. To what Purpose was the View?

Col. Rumsey. To surpris'e them, if the Rising had gone on.

Mr. Serj. Jeff. Did you observe by the Debates that happened, that they did take Notice there was a Rising intended?

Col. Rumsey. Yes.

Mr. Serj. Jeff. And that Direction was given to take a View of the Guards, if the Rising had gone on?

Col. Rumsey. Yes.

L. C. J. Pray, Sir, declare justly the Discourse.

Col. Rumsey. I went to them from my Lord Shaftesbury: And I did tell them, that my Lord did pray they would come to some Resolution; and they told me, Mr. Trenchard they depended upon for Taunton had failed them, who when he came up to Town first at the Term, had assured them, that in three or four Hours Time he could have One Thousand Foot, and Three hundred Horse: But now it came to be tried, he answered, it was not possible for him to undertake it; for People would not rush into it of a sudden, but have some Time to prepare for their Families.

Mr. Att. Gen. Was it pretended there should be a Rising at that Time?

Col. Rumsey. Yes, the 19th of November was appointed for the Rising.

L. C. J. Was it before that Time you went to press them from my Lord Shaftesbury?

Col. Rumsey. Yes, I think it was a matter of a Fortnight before, or something more. For I think it was concluded Sunday Fortnight, after my Lord Grey met.

Mr. Att. Gen. But you say, besides what you heard there, you understood there was to be a Rising at that Time: Was you to be engaged in this?

Col. Rumsey. Yes, I was.

L. C. J. You must speak so, that what you deliver may be sensible; for if you speak, I apprehend so and so, that will be doubtful.

Col. Rumsey. No, my Lord, the Rising was determined, and I was to have gone to Bristol.

Mr. Att. Gen. In what Capacity, as Colonel, or Captain?

Col. Rumsey. There was no Determination of that, no Quality.

L. C. J. By whose Appointment was that?

Col. Rumsey. My Lord Shaftesbury spake that to me.

Mr. Serj. Jeff. But pray, Col. Rumsey, this you are very able to know, what the Debates were; and need not be pumped with so many Questions: Pray, was there any Debate when you came with the Message from my Lord Shaftesbury's, was there a Debate about the Rising?

Col. Rumsey. There was no Debate of it, because they made Answer, Mr. Trenchard had failed them.

Mr. Serj. Jeff. But did not they take Notice of the Rising? Give an Account of it.

Col. Rumsey. I have done it twice.

Jury. We desire to know the Message from the Lord Shaftesbury.

L. C. J. Direct yourself to the Court: Some of the Gentlemen have not heard it, they desire you would, with a little more loud Voice, repeat the Message you were sent of from my Lord Shaftesbury.

Col. Rumsey. I was sent by my Lord, to know the Resolution of the Rising in Taunton; they answered Mr. Trenchard, whom they depended upon for the Men, had failed them, and that it must fall at that time, and my Lord must be contented.

Mr. Att. Gen. Was the Prisoner at the Bar present at that Debate?

Col. Rumsey. Yes.

Mr. Serj. Jeff. Did you find him averse to it, or agreeing to it?

Col. Rumsey. Agreeing to it.

Baron Street. What said my Lord Shaftesbury?

Col. Rumsey. Upon my Return he said, he would be gone, and accordingly did go.

Mr. Serj. Jeff. If my Lord Russell pleases to ask him any Questions, he may.

L. Russell. Must I ask him now?

L. C. J. Yes, my Lord, propose your Questions to me.

L. Russell. I have very few Questions to ask him, for I know little of the Matter; for it was the greatest Accident in the World I was there, and when I saw that Company was there, I would have been gone again. I came there accidentally to speak with Mr. Sheppard; I was just come to Town, but there was no Discourse of surpris'ing the Guards, nor no undertaking of raising an Army.

L. C. J. We will hear you to any thing by-and-by, but that which we now desire of your Lordship is, as the Witnesses come, to know if you would have any particular Questions asked of them.

L. Russell. I desire to know, if I gave any Answer to any Message about the Rising: I was up and down; I do not know what they might say when I was in the Room; I was tasting of Wine.

L. C. J. Did you observe, that my Lord Russell said any thing there, and what?

Col. Rumsey. Yes, my Lord Russell did speak.

L. C. J. About what?

Col. Rumsey. About the Rising of Taunton.

L. Russell. It was Sir Tho. Armstrong that conversed with Mr. Trenchard.



L. C. J. What did you observe my Lord Russell to say?

Col. Rumsey. My Lord Russell did discourse of the Rising.

L. Russell. How should I discourse of the Rising at Taunton, that knew not the Place, nor had Knowledge of Trenchard?

Mr. Att. Gen. Now, my Lord, we will give you an Account, that my Lord Russell appointed this Place, and came in the dark without his Coach.

L. Russell. My Lord, I think the Witness was asked, if I gave my Consent.

L. C. J. What say you, did my Lord give any Consent to the Rising?

Col. Rumsey. Yes, my Lord, he did.

Mr. Att. Gen. Pray, swear Mr. Sheppard.

[Which was done.]

Pray, will you speak aloud, and give an Account to my Lord and the Jury, of the Meetings at your House, and what was done?

Mr. Sheppard. In the Month of October last, as I remember, Mr. Ferguson came to me in the Duke of Monmouth's Name, and desired the Convenience of my House, for him and some other Persons of Quality to meet there. And as soon as I had granted it, in the Evening the Duke of Monmouth, my Lord Grey, my Lord Russell, Sir Thomas Armstrong, Col. Rumsey, and Mr. Ferguson came. Sir Thomas Armstrong desired me, that none of my Servants might come up, but they might be private; so what they wanted I went down for, a Bottle of Wine or so. The Substance of their Discourse was, how to surprise the King's Guards: And in order to that, the Duke of Monmouth, my Lord Grey, and Sir Thomas Armstrong, as I remember, went one Night to the Mews, or thereabout, to see the King's Guards: And the next time they came to my House, I heard Sir Thomas Armstrong say, The Guards were very remiss in their Places, and not like Soldiers, and the thing was feasible, if they had Strength to do it.

Mr. Att. Gen. How many Meetings had you there?

Mr. Sheppard. I remember but twice, Sir.

Mr. Att. Gen. Did they meet by Chance, or had you Notice they would be there that Night?—Mr. Sheppard. Yes, I did hear it before.

Mr. Sol. Gen. Who had you Notice would be there?

Mr. Sheppard. The Duke of Monmouth, my Lord Grey, my Lord Russell, Sir Thomas Armstrong, Col. Rumsey, and Mr. Ferguson.

Mr. Att. Gen. Did they come with their Coaches, or a-foot, in the Night-time, and in the dark?

Mr. Sheppard. I cannot tell; it was in the Evening, I did not let them in.

Mr. Att. Gen. Were there any Coaches at the Door?

Mr. Sheppard. None that I heard, or saw, they came not altogether, but immediately one after another.

Mr. Serj. Jeff. Had they any Debate before they went into the Room?

Mr. Sheppard. No, they went readily into the Room.

Mr. Serj. Jeff. Was my Lord Russell both times there?

Mr. Sheppard. Yes, Sir, as I remember.

Mr. Serj. Jeff. Had you any particular Business with my Lord Russell, or he with you?

Mr. Sheppard. No, not at that time, but since I have had, about the Affairs of my Lord Shaftesbury.

Mr. Serj. Jeff. Do you remember Col. Rumsey, at the first Time, had any Discourse about any private Business relating to my Lord Russell?

Mr. Sheppard. No, I do not remember it.

Mr. Att. Gen. Besides the seizing of the Guards, did they discourse about Rising?

Mr. Sheppard. I do not remember any further Discourse, for I went several times down to fetch Wine, and Sugar, and Nutmeg, and I do not know what was said in my Absence.

Mr. Serj. Jeff. Do you remember any Writings or Papers read at that time?—Mr. Sheppard. None that I saw.

Mr. Serj. Jeff. Or that you heard of?

Mr. Sheppard. Yes, now I recollect myself, I do remember one Paper was read.

Mr. Serj. Jeff. To what Purpose was it?

Mr. Sheppard. It was somewhat in the nature of a Declaration; it was read by Mr. Ferguson; who was present at the Reading, I cannot say, whether they were all present or not. The Purport of it was setting forth the Grievances of the Nation, but truly what Particulars I can't tell: It was a pretty large Paper.

Mr. Att. Gen. But can you tell the Effect of it, When was that to be set out?

Mr. Sheppard. It was not discoursed, it was shewn only, I suppose, for Approbation.

Mr. Att. Gen. Who was it shew'd to?

Mr. Sheppard. Sir Thomas Armstrong.

Mr. Serj. Jeff. Who else?

Mr. Sheppard. As I remember, the Duke was present, and I think Col. Rumsey.

Col. Rumsey. No, I was not; it was done before I came.

Mr. Serj. Jeff. What was the Design of that Paper? Recollect yourself, What was the Design?

Mr. Sheppard. The Design of that Paper was in the Nature of a Declaration, setting forth the Grievances of the Nation, in order to a Rising, I suppose for the Purport of the Paper; but cannot remember the particular Words of it.

Foreman of the Jury. Can you say my Lord Russell was there, when that Declaration was read, as you call it?

Mr. Sheppard. I can't say that.

Mr. Att. Gen. But he was there, when he talked of seizing the Guards?

Mr. Sheppard. Yes, my Lord was there then.

L. Russell. Pray, Mr. Sheppard, do you remember the time when these Meetings were?

Mr. Sheppard. I can't be positive as to the Time. I remember it was at the Time my Lord Shaftesbury was absent from his own House, and he absented himself from his own House about Michaelmas-day; but I cannot be positive as to the Time.

L. Russell. I never was but once at your House, and there was no such Design as I heard of. I desire that Mr. Sheppard may recollect himself.

Mr. Sheppard. Indeed, my Lord, I can't be positive in the Times. My Lord, I am sure, was at one Meeting.

L. C. J. But was he at both?

Mr. Sheppard. I think so; but it was eight or nine Months ago, and I can't be positive.

L. Russell. I can prove I was then in the Country. Col. Rumsey said there was but one Meeting.

Col. Rumsey. I do not remember I was at two; if I was not, I heard Mr. Ferguson relate the Debates of the other Meeting to my Lord Shaftesbury.

L. Russell. Is it usual for the Witnesses to hear one another?

L. C. J. I think your Lordship need not concern yourself about that; for I see the Witnesses are brought in one after another.

L. Russell. There was no Design.

Mr. Serj. Jeff. He hath sworn it.

Mr. Att. Gen. Swear my Lord Howard.

[Which was done.]

Pray, will your Lordship give an Account to the Court, what you know of a Rising designed before my Lord Shaftesbury went away, and afterwards how it was continued on?

L. Howard. My Lord, I appear with some Confusion. Let no Man wonder, that it is troublesome to me. My Lord, as to the Question Mr. Attorney puts to me, this is the Account I have to give: 'Tis very well known to every one, how great a Ferment was made in the City, upon occasion of the long Dispute about the Election of Sheriffs: And this soon produced a greater Freedom and Liberty of Speech one with another, than perhaps had been used formerly, though not without some previous Preparations and Dispositions made to the same thing. Upon this Occasion, among others, I was acquainted with Captain Walcot, a Person that had been some Months in England, being returned out of Ireland, and who indeed I had not seen for Eleven Years before. But he came to me as soon as he came out of Ireland, and when these unhappy Divisions came, he made very frequent Applications to me; and tho' he was unknown himself, yet being brought by me, he soon gained a Confidence with my Lord Shaftesbury, and from him derived it to others. When this unhappy Rent and Division of Mind was, he having before got himself acquainted with many Persons of the City, had entered into such Counsels with them, as afterwards had the Effect, which in the ensuing Narrative I shall relate to your Lordship. He came to me, and told me, that they were now sensible all they had was going, that this Force put upon them—

L. C. J. Pray, my Lord, raise your Voice, else your Evidence will pass for nothing.

One of the Jury. We cannot hear, my Lord.

L. Howard. There is an unhappy Accident happen'd that hath sunk my Voice: I was but just now acquainted with the Fate of my Lord of Essex.—My Lord, I say, he came to me, and did acquaint me, that the People were now so sensible that all their Interest was going, by that Violence offer'd to the City in their Elections, that they were resolved to take some Course to put a Stop to it, if it were possible: He told me there were several Consults and Meetings of Persons about it, and several Persons had begun to put themselves into a Disposition and Preparation to act; that some had furnished themselves with very good Horses, and kept them in the most secret and blind Stables they could; That divers had intended it, and for his own part, he was resolved to embark himself in it. And having an Estate in Ireland, he thought to dispatch his Son thither (for he had a good real Estate, and a great Stock, how he disposed of his real Estate I know not); but he ordered his Son to turn his Stock into Money to furnish him for the Occasion: This I take to be about August, His Son was sent away. Soon after this, the Son not being yet returned, and I having several Accounts from him, wherein I found the Fermentation grew higher and higher, and every Day a nearer Approach to Action, I told him I had a Necessity to go into Essex to attend the Concerns of my own Estate; but told him, how he might by another Name convey Letters to me, and gave him a little Cant, by which he might blind and disguise the Matter he wrote about, when I was in the Country. I received two or three Letters from him, that gave me an Account in that disguised Style, but such as I understood, that the Negotiation which he had with my Correspondents was going on, and in good Condition; and it was earnestly desired I would come to Town; this was the Middle of September. I, notwithstanding, was willing to see the Result of that great Affair, upon which all Men's Eyes were fixed, which was the Determination of the Shrivality about that time. So I ordered it to fall into Town, and went to my own House on Saturday Night, which was Michaelmas-day. On Sunday he came to me, and dined with me, and told me, (after a general Account given me of the Affairs of the Times) that my Lord Shaftesbury was secreted and withdrawn from his own House in Aldersgate-street; and that though he had a Family settled, and had absconded himself from them, and divers others of his Friends and Confidants; yet he did desire to speak with me, and for that Purpose sent him to shew me the Way to his Lodging: He brought me to a House at the lower End of Wood-street, one Watson's House, and there my Lord was alone. He told me he could not but be sensible, how innocent soever he was, both he and all honest Men were unsafe, so long as the Administration of Justice was in such Hands as would accommodate all Things to the Humour of the Court: That in the Sense of this he thought it but reasonable to provide for his own Safety, by withdrawing himself from his own House into that Retirement: That now he had ripen'd Affairs to that Head, and had Things in that Preparation, that he did not doubt but he should be able, by those Men that would be in Readiness in London, to turn the Tide, and put a Stop to the Torrent that was ready to overflow. But he did complain to me, that his Design, and the Design of the Publick, was very much obstructed by the unhandsome Deportment of the Duke of Monmouth, and my Lord Russell, who had withdrawn themselves not only from his Assistance, but from their own Engagements and Appointments: For when he had got such a formed Force as he had in London, and expected to have it answered by them in the Country, they did recede from it, and told him they were not in a Condition or Preparation, in the Country, to be concurrent with him at that Time. This he looked upon but as an artificial Excuse, and as an Instance of their Intentions wholly to desert him; but notwithstanding there was such Preparation made in London, that if they were willing to lose the Honour of being concurrent with him, he was able to do it himself, and did intend speedily to put it into Execution. I asked him, What Forces he had? He said he had enough. Says I, What are you assured of? Says he, There is above Ten thousand brisk Boys are ready to follow me, whenever I hold up my Finger. Says I, How



How have you methoded this, that they should not be crushed? for there will be a great Force to oppose you. Yes, he answered, but they would possess themselves of the Gates; and these *Ten thousand Men*, in twenty-four Hours, would be multiplied into five times the Number, and be able to make a Sally out, and possess themselves of *Whitehall*, by beating the Guards. I told him, this was a fair Story, and I had Reason to think, a Man of his Figure would not undertake a thing that might prove so fatal, unless it were laid on a Foundation that might give a prudent Man Ground to hope it would be successful. He said he was certain of it, but confessed it was a great Disappointment that these Lords had failed him. I told him, I was not provided with an Answer at that time; that he well knew me, and knew the general Frame and Bent of my Spirit. But I told him, I looked upon it as dangerous, and ought to be laid deep, and to be very well weighed and consider'd of; and did not think it a thing fit to be enter'd upon, without the Concurrence of those Lords: And therefore desired, before I discover'd my own Inclination, to discourse with those Lords. He did consent, with much ado; but, says he, you will find they will waive it, and give doubtful and deferring Answers, but you will find this a Truth. I went to *Moor-Park* the next Day, where the Duke of *Monmouth* was, and told him the great Complaint my Lord *Shaftesbury* had made, that he failed him. Says he, I think he is mad: I was so far from giving him any Encouragement, that I did tell him from the Beginning, and so did my Lord *Russel*, there was nothing to be done by us in the Country at that time. I did not then own I had seen my Lord, but spake as if this were brought me by a third Person, because he had not given me Liberty to tell them where his Lodging was. Says I, my Lord, I shall be able to give a better Account of this in a Day or two: Shall I convey it to my Lord, that you are willing to give a Meeting? Yes, says he, with all my Heart. This was the second, third or fourth of *October*. I came to Town on *Saturday*, and was carried to him on *Monday*; and I suppose this was *Tuesday* the second of *October*: On *Wednesday*, I think, I went to him again, (but 'tis not very material) and told him I had been with the Duke of *Monmouth*, and given him a punctual Account of what I had from him; and the Duke did absolutely disown any such thing; and told me, he never did give him any Encouragement to proceed that way, because the Countries were not in a Disposition for Action, nor could be put in Readiness at that Time. Says my Lord *Shaftesbury*, 'Tis false; they are afraid to own it. And, says he, I have Reason to believe, there is some artificial Bargain between his Father and him, to save one another: For when I have brought him to Action, I could never get him to put on, and therefore I suspect him: And, says he, several honest Men in the City have puzzled me, in asking how the Duke of *Monmouth* lived: Says he, They puzzled me, and I could not answer the Question; for I know he must have his Living from the King; and, says he, we have different Prospects: We are for a *Commonwealth*, and he hath no other Design but his own personal Interest, and that will not go down with my People now, so he called them) they are all for a *Commonwealth*: And then, says he, 'Tis to no purpose for me to see him; it will but widen the Breach, and I dare not trust him to come hither. Says I, my Lord, that's a good one indeed! Dare not you trust him, and yet do you send me to him on this Errand? Nay, says he, 'tis because we have had some Misunderstanding of late; but I believe he is true enough to the Interest. Says I, 'Tis a great Unhappiness to take this Time to fall out; and I think 'tis so great a Design, that it ought to be undertaken with the greatest Strength and Coalition in the Kingdom. Says he, My Friends are now gone so far, that they can't pull their Foot back again without going further; for, says he, it hath been communicated to so many, that 'tis impossible to keep it from taking Air, and it must go on. Says he, We are not so unprovided as you think for; there are so many Men, that you will find as brisk Men as any in *England*. Besides, we are to have 1000 or 1500 Horse, that are to be drawn by insensible Parties into Town, that when the Insurrection is, shall be able to scour the Streets, and hinder them from forming their Forces against us. My Lord, after great Inlargement upon this Head, and Heads of the like Nature, I told him I would not leave him thus, and that nothing should satisfy me, but an Interview between him and the Lords. No, I could not obtain it: But if I would go and tell them what a forwardness he was in, and that, if they would do themselves Right, by putting themselves upon correspondent Action in their respective Places, and where their Interest lay, well; otherwise he would go away without them. So I went again to the Duke of *Monmouth*, I spake to him only (I never spake to my Lord *Russel* then, only we were together, but I had never come to any close Conjunction of Counsels in my Life with him at that time). Says I, to the Duke, This Man is mad, and his Madness will prove fatal to us all; he hath been in a Fright by being in the *Tower*, and carries those Fears about him that cloud his Understanding; I think his Judgment hath deserted him, when he goes about with those strange sanguine Hopes, that I can't see what should support him in the Ground of them. Therefore, says I, Pray will you give him a Meeting. God-so, says the Duke, with all my Heart, and I desire nothing more. Now, I told him, I had been with my Lord *Shaftesbury*, with other Inlargements that I need not trouble your Lordship with: Well, says he, Pray go to him, and try if it be possible to get a Meeting: So I went to him, and told him. Says I, This is a great Unhappiness, and it seems to be a great Absurdity, that you are so forward to act alone in such a thing as this. Pray, says I, without any more to do, since you have this Confidence to send for me, let me prevail with you to meet them, and give them an Interview, or else you and I must break. I will no longer hold any Correspondence, unless it be so. Says he, I tell you they will betray me. In short, he did with much Importunity yield, that he would come out the next Night in a Disguise. By this time it was *Saturday*, I take it to be the sixth of *October*; an Almanack will settle that: So the next Night being *Sunday*, and the Shops shut, he would come out in a Concealment, be carried in a Coach, and brought to his own House, which he thought then was safest. I came and gave the Duke of *Monmouth* an Account of it; the Duke, I suppose, conveyed the same Understanding to my Lord *Russel*;

and, I suppose, both would have been there accordingly, to have given the Meeting; but next Morning I found Colonel *Rumsey* had left a Note at my House, that the Meeting could not be that Day. Then I went to the Duke of *Monmouth*, and he had had the Account before, that my Lord *Shaftesbury* did apprehend himself to be in some Danger in that House, and that the Apprehension had occasioned him to remove; but we should be sure to hear from him in two or three Days. We took it as a Waiver, and thought he did from thence intend to abscond himself from us, and it proved so to me, for from that time I never saw him. But Captain *Walcot* came to me, and told me, that he was withdrawn, but it was for fear his Lodging might be discovered, but he did not doubt but in a Week he would let me know where his Lodging was: But told me within such a time, which I think was eight or ten Days, there would be a Rising; and I told the Duke of *Monmouth*, and I believe he told my Lord *Russel*; and we believed his Frenzy was now grown to that Height, that he would rise immediately, and put his Design in Execution; so we endeavour'd to prevent it. Upon which my Lord *Russel* (I was told) and the Duke of *Monmouth*, did force their way to my Lord *Shaftesbury*'s, and did persuade him to put off the Day of his Rendezvous. I had not this from my Lord *Russel*, for I had not spoke a Word to him; but the Duke told me, my Lord *Russel* had been with him (I had indeed an Intimation, that he had been with him); but the Duke told me, says he, I have not been with him, but my Lord *Russel* was, having been convey'd by Colonel *Rumsey*. After this Day was put off, it seems it was put off with this Condition, That those Lords, and divers others, should be in a Readiness to raise the Country about that Day Fortnight, or thereabouts; for there was not above a Fortnight's time given: And, says the Duke of *Monmouth*, we have put it off, but now we must be in Action, for there's no holding it off any longer. And says he, I have been at *Wapping* all Night, and I never saw a Company of bolder and brisker Fellows in my Life: And, says he, I have been round the *Tower*, and seen the Avenues of it; and I do not think it will be hard, in a little time, to possess ourselves of it: But, says he, they are in the wrong way, yet we are engaged to be ready for them in a Fortnight, and therefore, says he, now we must apply ourselves to it as well as we can. And thereupon I believe they did send into the Country; and the Duke of *Monmouth* told me, he spake to Mr. *Trenchard*, who was to take particular Care of *Somersetshire*, with this Circumstance: Says he, I thought Mr. *Trenchard* had been a brisker Fellow; for when I told him of it, he looked so pale, I thought he would have swooned, when I brought him to the Brink of Action; and said, I pray go and do what you can among your Acquaintance; and truly, I thought it would have come then to Action. But I went the next Day to him, and he said it was impossible; they could not get the Gentlemen of the Country to stir yet.

L. *Russel*. My Lord, I think I have very hard Measure, here is a great deal of Evidence by Hear-say.

L. C. J. This is nothing against you, I declare it to the Jury.

Mr. *Att. Gen.* If you please, my Lord, go on in the Method of Time. This is nothing against you, but it's coming to you, if your Lordship will have Patience, I assure you.

L. *Howard*. This is just in the Order it was done. When this was put off, then they were in a great Hurry; and Captain *Walcot* had been several times with me, and discoursed of it. But upon this Disappointment they said, it should be the Dishonour of the Lords, that they were backward to perform their Parts; but still they were resolved to go on. And this had carried it to the latter end of *October*. About the 17th or 18th Captain *Walcot* came to me, and told me, now they were resolv'd positively to rise, and did believe, that a smart Party might perhaps meet with some great Men. Thereupon I told the Duke of it; I met him in the Street, and went out of my own Coach into his, and told him, That there was some dark Intimation, as if there might be some Attempt upon the King's Person; with that he struck his Breast with a great Emotion of Spirit, and said, God-so, kill the King! I will never suffer that. Then he went to the *Play-house* to find Sir *Thomas Armstrong*, and send him up and down the City to put it off, as they did formerly; and it was done with that Success, that we were all quieted in our Minds, that at that time nothing would be done: But upon the Day the King came from *Newmarket*, we din'd together; the Duke of *Monmouth* was one, and there we had a Notion conveyed among us, that some bold Action should be done that Day; which comparing it with the King's coming, we concluded it was design'd upon the King. And I remember my Lord *Grey*, says he, By God, if they do attempt any such thing, it can't fail. We were in great Anxiety of Mind, till we heard the King's Coach was come in, and Sir *Thomas Armstrong* not being there, we apprehended that he was to be one of the Party (for he was not there). This failing, (it was then next determined which was the last Alarm and News I had of it) to be done upon the 17th of *November*, the Anniversary of *Queen Elizabeth*; and I remember it by this Remark I made myself, that I fear'd it had been discovered, because I saw a Proclamation a little before, forbidding publick Bonfires without leave of my Lord Mayor. It made some Impressions upon me, that I thought they had got an Intimation of our Intention, and had therefore forbid that Meeting. This therefore of the 17th of *November* being also disappointed, and my Lord *Shaftesbury*, being told things were not ripe in the Country, took Shipping and got away; and from that time I heard no more of him till I heard he was dead. Now, Sir, after this we all began to lie under the same Sense and Apprehensions that my Lord *Shaftesbury* did, that we had gone so far, and communicated it to so many, that it was unsafe to make a Retreat; and this being considered, it was also considered, that so great an Affair as that was, consisting of such infinite Particulars, to be managed with so much Fineness, and to have so many Parts, it would be necessary, that there should be some general Council, that should take upon them the Care of the Whole. Upon these Thoughts we resolved to erect a little *Cabal* among ourselves, which did consist of six Persons; and the Persons were, The Duke of *Monmouth*, my Lord of *Effex*, my Lord *Russel*, Mr. *Humbden*, Jun. *Algernone Sidney*, and myself.

Mr. *Att. Gen.* About what time was this, when you settled this Council?

L. *Howard*.



*L. Howard.* It would have been proper for me in the next Place to tell you that, and I was coming to it. This was about the Middle of Jan. last (as near as I can remember); for about that time we did meet at Mr. Hambden's House.

*Mr. Att. Gen.* Name those that met.

*L. Howard.* All the Persons I named before; that was the Duke of Monmouth, my Lord of Essex, my Lord Ruffel, Col. Sidney, Mr. Hambden, jun. and myself. When we met there, it was presently agreed what their proper Province was, which was to have a care of the whole: And therefore it was necessary some general Things should fall under our Care and Conduct, which could not possibly be conducted by individual Persons. The Things that did principally challenge this Care, we thought were these: Whether the Insurrection was most proper to be begun in London, or in the Country, or both at one Instant. This stood upon several different Reasons: It was said in the Country; and I remember the Duke of Monmouth insisted upon it, that it was impossible to oppose a formed, well-methodiz'd, and govern'd Force, with a Rabble hastily got together; and therefore whatever Numbers could be gathered in the City, would be suppressed quickly, before they could form themselves: Therefore it would be better to begin it at such a Distance from the Town, where they might have an Opportunity of forming themselves, and would not be subject to the like panick Fear, as in the Town, where half an Hour would convey the News to those Forces that in another half Hour would be ready to suppress them.

*Mr. Att. Gen.* Was this determined among you all?

*L. Howard.* In this Manner that I tell you, why it was necessary to be done at some reasonable Distance from the Town. And from thence it was likewise considered, that the being so remote from the Town, it would put the King upon this Dilemma, that either the King would send his Forces to subdue them; or not; if he did, he must leave the City naked, who being *Proxim' Dispositioni* to Action, it would give them Occasion to rise, and come upon the Back of the King's Forces; if he did not send, it would give them Time to form their Number, and be better ordered.

*Mr. Att. Gen.* My Lord, we do not desire all your Discourse and Debates: What was your other general Thing?

*L. Howard.* The other was, What Countries and Towns were the fittest and most disposed to Action: And the *Third*, what Arms were necessary to be got, and how to be disposed: And a *Fourth*, (which should have been indeed first in Consideration) propounded by the Duke of Monmouth, That it would be absolutely necessary to have some common Bank of 25 or 30,000*l.* to answer the Occasions of such an Undertaking. Nothing was done, but these Things were offered then to our Consideration, and we were to bring in our united Advice concerning them. But the last and greatest was, how he might so order it, as to draw Scotland into a Consent with us; for we thought it necessary that all the Division should be given. This was the last.

*Mr. Att. Gen.* Had you any other Meetings?

*L. Howard.* We had, about ten Days after this, at my Lord Ruffel's.

*Mr. Att. Gen.* The same Persons?

*L. Howard.* Every one of the same Persons then meeting.

*Mr. Att. Gen.* What Debate had you there?

*L. Howard.* Then it was so far, as we came to a Resolution, That some Persons should be sent to my Lord Argyle, to settle an Understanding with him; and that some Messengers should be dispatched into Scotland, that should invite some Persons hither, that were judged most able to understand the Estate of Scotland, and give an Account of it. The Persons agreed on were Sir John Cockram, my Lord Melville, and another whose Name I have since been told upon my Description, Sir — *Cambel*. For this Purpose we did order a Person should be thought on that was fit —

*Mr. Att. Gen.* Do you know who was sent, and what was done upon this Resolution?

*L. Howard.* I have heard (I never saw him in six Months before) that Aaron Smith was sent.

*Mr. Att. Gen.* Who was intrusted to take Care of that Business?

*L. Howard.* Col. Sidney. We in Discourse did agree to refer it to Colonel Sidney to have the Care of sending a Person.

*Mr. Att. Gen.* Who acquainted you Aaron Smith was sent?

*L. Howard.* Col. Sidney told me he had sent him, and given him sixty Guineas for his Journey.

*Mr. Att. Gen.* What more Meetings had you?

*L. Howard.* We did then consider that these Meetings might have occasioned some Observation upon us, and agreed not to meet again till the Return of that Messenger. He was gone, I believe, near a Month before we heard any thing of him, which we wonder'd at and fear'd some Miscarriage; but if his Letter had miscarried, it could have done no great Hurt, for it carried only a kind of Cant in it; it was under the Disguise of a Plantation in Carolina.

*Mr. Att. Gen.* You are sure my Lord Ruffel was there?

*L. Howard.* Yes, Sir: I wish I could say he was not.

*Mr. Att. Gen.* Did he sit there as a Cypher? What did my Lord say?

*L. Howard.* Every one knows my Lord Ruffel is a Person of great Judgment, and not very lavish in Discourse.

*Mr. Serj. Jeff.* But he did consent?

*L. Howard.* We did not put it to the Vote, but it went without Contradiction, and I took it, that all there gave their Consent.

*Mr. Sol. Gen.* The raising of Money you speak of, was that put into any way?

*L. Howard.* No, but every Man was to put themselves upon thinking of such a way, that Money might be collected without administering Jealousy.

*Mr. Att. Gen.* Were there no Persons to undertake for a Fund?

*L. Howard.* No, I think not. However, it was but Opinion, the thing that was said was jocosely, rather than any thing else, that my Lord of Essex had dealing in Money, and therefore he was thought the most proper Person to take care of those things; but this was said rather by way of Mirth, than otherwise.

*Mr. Att. Gen.* What do you know else, my Lord?

*L. Howard.* I was going to tell you, I am now at a full Stop. For it was six Weeks or more before Smith's Return, and then drew on the Time, that it was necessary for me to go into Essex, where I had a small Concern; there I staid about three Weeks; when I came back, I was informed that he was returned, and Sir John Cockram was also come to Town.

*L. C. J.* Did you meet after this?

*L. Howard.* No, my Lord, I tell you, that I was forced to go three Weeks upon the Account of my Estate, and afterwards I was necessitated to go to the Bath, where I spent five Weeks; and the time of coming from the Bath to this time, is five Weeks more; so that all this time hath been a perfect Parenthesis to me, and more than this I know not.

*L. C. J.* My Lord Ruffel, Now, if your Lordship pleases, is the time for you to ask him any Questions.

*L. Ruffel.* The most he hath said of me, my Lord, is only Hear-say; the two times we met, it was upon no formed Design, only to talk of News, and talk of things in general.

*L. C. J.* But I will tell you what it is he testifies, that comes nearest your Lordship, that so you may consider of it, if you will ask any Questions. He says, after my Lord Shaftesbury went off (all before is but Inducement, as to any thing that concerns your Lordship, and does not particularly touch you; after his going away, he says) the Party concerned with my Lord Shaftesbury did think fit to make Choice of six Persons to carry on the Design of an Insurrection or Rising, as he calls it, in the Kingdom; and that to that Purpose, Choice was made of the Duke of Monmouth, my Lord of Essex, your Lordship, my Lord Howard, Colonel Sidney, and Mr. Hambden.

*L. Ruffel.* Pray, my Lord, not to interrupt you, by what Party (I know no Party) were they chosen?

*L. Howard.* 'Tis very true, we were not chosen by Community, but did erect ourselves by mutual Agreement, one with another, into this Society.

*L. Ruffel.* We were People that did meet very often.

*L. C. J.* Will your Lordship please to have any other Questions asked of my Lord Howard?

*L. Ruffel.* He says, it was a formed Design, when we met about no such thing.

*L. C. J.* He says, that you did consult among yourselves, about the Raising of Men, and where the Rising should be first, whether in the City of London, or in more foreign Parts, that you had several Debates concerning it; he does make mention of some of the Duke of Monmouth's Arguments for its being formed in Places from the City; he says, you did all agree, not to do any thing further in it, till you had consider'd how to raise Money and Arms: And to engage the Kingdom of Scotland in this Business with you, that it was agreed among you that a Messenger should be sent into the Kingdom of Scotland. Thus far he goes upon his own Knowledge, as he saith; what he says after, of sending a Messenger, is by Report only.

*Mr. Att. Gen.* I beg your Pardon, my Lord.

*L. C. J.* 'Tis so, that which he heard concerning the sending of Aaron Smith.

*Mr. Att. Gen.* Will you ask him any Questions?

*L. Ruffel.* We met, but there was no Debate of any such thing, nor putting any thing in Method. But my Lord Howard is a Man hath a voluble Tongue, talks very well, and is full of Discourse, and we were delighted to hear him.

*Mr. Att. Gen.* I think your Lordship did mention the *Cambells*?

*L. Howard.* I did flammer it out, but not without a Parenthesis, it was a Person of the Alliance, and I thought of the Name of the *Argyles*.

*L. Ruffel.* I desire your Lordship to take notice, that none of these Men I ever saw; my Lord Melville I have seen, but not upon this Account.

*Mr. Atterbury sworn.*

*Mr. Att. Gen.* Aaron Smith did go, and *Cambell* he went for, is here taken. This is the Messenger. Pray, what do you know of the Apprehending of the *Cambells*?

*Mr. Atterbury.* If it please your Lordship, I did not apprehend Sir Hugh Cambell myself, but he is now in my Custody; he was making his Escape out of a Woodmonger's House, both he and his Son.

*Mr. Att. Gen.* How long did he own he had been at London?

*Mr. Atterbury.* Four Days, and that in that Time he had been at their Lodgings; and that he and his Son, and one *Bailey*, came to Town together.

*Mr. Att. Gen.* My Lord, we shall besides this (now we have fixed this upon my Lord) give you an Account, that these Persons, that were to rise, always took them as their Pay-masters, and expected their Assistance. *Mr. West, Mr. Keeling, and Mr. Leigh.*

*Mr. West sworn.*

*Mr. Att. Gen.* That which I call you to, is to know whether or no, in your Managery of this Plot, you understood any of the Lords were concerned, and which?

*Mr. West.* My Lord, as to my Lord Ruffel, I never had any Conversation with him at all, but that I have heard this, That in the Insurrection in November, Mr. Ferguson, and Colonel Rumsey, did tell me, that my Lord Ruffel intended to go down and take his Post in the *West*, when Mr. Trenchard had failed them.

*L. C. J.* What is this?

*Mr. Att. Gen.* We have proved my Lord privy to the Consults; now we go about to prove the Under-actors did know it.

*Mr. West.* They always said, my Lord Ruffel was the Man they most depended upon, because he was a Person looked upon as of great Sobriety.

*L. Ruffel.* Can I hinder People from making use of my Name? To have this brought to influence the Gentlemen of the Jury, and inflame them against me, is hard.

*L. C. J.* As to this, the giving Evidence by Hear-say, will not be Evidence; what Colonel Rumsey or Mr. Ferguson told Mr. West, is no Evidence.

Mr.



*Mr. Att. Gen.* 'Tis not Evidence to convict a Man, if there were not plain Evidence before; but it plainly confirms what the other swears: But think we need no more.

*Mr. Serj. Jefferies.* We have Evidence without it, and will not use any thing of Garniture; we will leave it as 'tis, we won't trouble your Lordship any further. I think, *Mr. Attorney*, we have done with our Evidence.

*L. C. J.* My Lord *Ruffel*, the King's Counsel do think to rest upon this Evidence that they have given against your Lordship. I would put your Lordship in mind of those things that are material in this Case, and proved against your Lordship. Here is Colonel *Rumsey* does prove against your Lordship this, That he was sent upon an Errand, which in Truth was traitorous; it was a traitorous Errand sent from my Lord *Shaftesbury* to him to that Meeting. He does swear your Lordship was at that Meeting; and he delivered his Errand to them, which was to know, what Account could be given concerning the Design of the Insurrection at *Taunton*; and he says, your Lordship being there, this Return was made, that *Mr. Trencard* had failed them in his Undertaking in the Business, and therefore my Lord *Shaftesbury* must be contented, and sit down satisfied as to that time. *Mr. Sheppard* does likewise speak of the same Time, that your Lordship was there with the rest of the Persons, the Duke and others; that there was a Discourse concerning an Insurrection to have been made (though he is not so particular, as to the very Notion of it, as Colonel *Rumsey* is); as to the Time they do agree.

*L. Ruffel.* Col. *Rumsey* is not positive that I said or heard any thing.

*L. C. J.* My Lord, if you will have a little Patience to hear me, I will tell you what it is presses you; there is this which I have mentioned; and *Mr. Sheppard* does say, there was a Paper purporting a Declaration then read among the Company there, which was to be printed upon the Rising, setting forth the Oppressions and Grievances of the Nation; and then my Lord *Howard* (after a great Discourse concerning the many Designs of my Lord *Shaftesbury*) comes particularly to your Lordship, and says, that Six of you, as a chosen Council among yourselves, (not that you were actually chosen, but as a chosen Council among yourselves) did undertake to manage the great Matter of the Insurrection, and raising of Men, in order to surprise the King's Guards, and for to rise (which is a Rebellion in the Nation). He says, that you had several Consults concerning it. I told you the several Particulars of those Consults he mentioned: Now it is fit for your Lordship, and 'tis your Time, to give some Answer to these things.

*L. Ruffel.* My Lord, I cannot but think myself mighty unfortunate, to stand here charged with so high and heinous a Crime, and that intricate and intermixed with the Treasons and horrid Practices and Speeches of other People, the King's Counsel taking all Advantages, and improving and heightening things against me. I am no Lawyer, a very unready Speaker, and altogether a Stranger to things of this Nature, and alone, and without Counsel. Truly, my Lord, I am very sensible, I am not so provided to make my just Defence, as otherwise I should do. But, my Lord, you are equal, and the Gentlemen of the Jury, I think, are Men of Consciences; they are Strangers to me, and I hope they value innocent Blood, and will consider the Witnesses that swear against me, swear to save their own Lives; for howsoever legal Witnesses they may be accounted, they can't be credible. And for Col. *Rumsey*, who 'tis notoriously known hath been so highly obliged by the King, and the Duke, for him to be capable of such a Design of murdering the King, I think nobody will wonder, if to save his own Life, he will endeavour to take away mine; neither does he swear enough to do it; and then if he did, the Time, by the 1<sup>st</sup> of this King, is elapsed, it must be, as I understand by the Law, prosecuted within six Months; and by the 25 E. 3. a Design of levying War is no Treason, unless by some Overt-Act it appear. And, my Lord, I desire to know, what Statute I am to be tried upon; for Generals, I think, are not to be gone upon in these Cases.

*L. C. J.* (To the Attorney General.) *Mr. Attorney*, you hear what it is my Lord objects to this Evidence; he says, that as to those Witnesses that testify any thing concerning him, above six Months before he was prosecuted, he conceives the Act of Parliament, upon which he takes himself to be indicted, does not extend to it; for that says, that within six Months there ought to have been a Prosecution; and my Lord tells you, that he is advised, that a Design of levying War, without actual levying of War, was not Treason before that Statute.

*Mr. Att. Gen.* To satisfy my Lord he is not indicted upon that Statute, we go upon the 25 E. 3. But then for the next Objection, surely my Lord is informed wrong. To raise a Rebellion, or a Conspiracy, within the Kingdom, is not that which is called levying of War in that Statute, but to raise a Number of Men, to break Prisons, &c. which is not so directly tending against the Life of the King. To prepare Forces to fight against the King, that is a Design, within that Statute, to kill the King; and to design to depose the King, to imprison the King, to raise the Subjects against the King, these have been settled by several Resolutions to be within that Statute, and Evidences of a Design of killing the King.

*L. Ruffel.* My Lord, this is a Matter of Law; neither was there but one Meeting at *Mr. Sheppard's* House.

*Mr. Att. Gen.* My Lord, if you admit the Fact, and will rest upon the Point of Law, I am ready to argue it with any of your Counsel. I will acquaint your Lordship how the Evidence stands. There is one Evidence since *Christmas* last.

*L. Ruffel.* That's not to the Business of *Sheppard's* House. My Lord, one Witness will not convict a Man of Treason.

*Mr. Att. Gen.* If there be one Witness of one Act of Treason, and another of a second, another of a third, that manifest the same Treason to depose or destroy the King, that will be sufficient.

*L. C. J.* My Lord, that has been resolved: The two Witnesses the Statute requires are not to the same individual Act, but to the same Treason; if they be several Acts declaring the same Treason, and one Witness to each of them, they have been reckoned two Witnesses within the Statute of *Edw. 3.*

*Mr. Serj. Jefferies.* If my Lord will call his Witnesses—

*L. Ruffel.* This is tacking of two Treasons together; here is one in *November* by one Witness, and then you bring on another with a Discourse of my Lord *Howard*, and he says the Discourse passed for Pleasure.

*L. C. J.* If your Lordship do doubt whether the Fact proved against your Lordship be Treason or not within the Statute of *E. 3.* and you are contented that the Fact be taken as proved against your Lordship, and so desire Counsel barely upon that, that is Matter of Law, you shall have it granted.

*L. Ruffel.* I am not knowing in the Law. I think 'tis not proved; and if it was, I think it's not punishable by that Act. I desire Counsel may be admitted upon so nice a Point. My Life lies at Stake; here's but one Witness that speaks of a Message.

*Mr. Serj. Jefferies.* The Fact must be left to the Jury; therefore if my Lord *Ruffel* hath any Witnesses to call in Opposition to these Matters, let him.

*L. C. J.* My Lord, there can be no Matter of Law, but upon a Fact admitted and stated.

*L. Ruffel.* My Lord, I do not think it proved; I hope you will be of Counsel for me; it's very hard for me, that my Counsel may not speak for me in a Point of Law.

*L. C. J.* My Lord, to hear your Counsel concerning this Fact, that we cannot do, it was never done, nor will be done. If your Lordship doubts whether this Fact is Treason or not, and desires your Counsel may be heard to that, I will do it.

*L. Ruffel.* I doubt in Law, and do not see the Fact is proved upon me.

*Mr. Sol. Gen.* Will your Lordship please to call any Witness to the Matter of Fact?

*L. Ruffel.* 'Tis very hard a Man must lose his Life upon Hear-say. Colonel *Rumsey* says he brought a Message, which I will swear I never heard nor knew of. He does not say he spake to me, or I gave him any Answer. *Mr. Sheppard* remembers no such thing: He was gone to and again. Here is but one Witness, and seven Months ago.

*Mr. Att. Gen.* My Lord, if there be any thing that is Law, you shall have it.

*L. Ruffel.* My Lord, Colonel *Rumsey*, the other Day before the King, could not say, that I heard it, I was in the Room, but I came in late, they had been there a good while; I did not stay above a Quarter of an Hour talking *Sherry* with *Mr. Sheppard*.

*L. C. J.* Read the Statute of 25 E. 3. c. 2. My Brothers desire to have it read.

Cl. of Cr. Whereas divers Opinions have been before this Time, in what Case Treason shall be said, and in what not: The King, at the Request of the Lords, and of the Commons, hath made a Declaration in the manner as hereafter followeth; that is to say, When a Man doth compass or imagine the Death of our Lord the King, or of our Lady his Queen, or of their eldest Son and Heir; or if a Man do violate the King's Companion, or the King's eldest Daughter unmarried, or the Wife of the King's eldest Son and Heir; or if a Man do levy War against our Lord the King, in his Realm, or be adherent to the King's Enemies in his Realm, giving to them Aid and Comfort in the Realm, or elsewhere, and thereof be provable attainted of open Deed by People of their Condition: And if a Man counterfeit the King's Great or Privy Seal, or his Money: And if a Man bring false Money into this Realm, counterfeit to the Money of England, as the Money called *Luthburgh*, or other like to the said Money of England, knowing the Money to be false, to Merchandise, or make Payment in default of our said Lord the King, and of his People: And if a Man flee the Chancellor, Treasurer, or the King's Justices of the one Bench or the other, Justices in Eyre, or Justices of Assize, and all other Justices designed to hear and determine, being in their Places during their Offices. And it is to be understood, that in the Cases above rehearsed, that ought to be judged Treason, which extends to our Lord the King, and his Royal Majesty.

*L. C. J.* My Lord, that which is urged against you by the King's Counsel, is this, You are accused by the Indictment of compassing and designing the King's Death, and of endeavouring to raise an Insurrection in order to it; that that they do say is, that these Counsels that your Lordship hath taken, are Evidences of your compassing the King's Death, and are Overt-acts declaring the same; and upon that it is they insist your Lordship to be guilty within that Statute.

*L. Ruffel.* It is in a Point of Law, and I desire Counsel.

*Mr. Att. Gen.* Admit your Consultations, and we will hear them.

*L. C. J.* I would set your Lordship right, for probably you may not apprehend the Law in this Case; if your Counsel be heard, they must be heard to this, That taking it, that my Lord *Ruffel* has consulted in this Manner, for the raising of Forces within this Kingdom, and making an Insurrection within this Kingdom, as Colonel *Rumsey* and my Lord *Howard* have deposed, whether then this be Treason, we can hear your Counsel to nothing else.

*L. Ruffel.* I do not know how to answer to it. The Point methinks must be quite otherwise, that there should be two Witnesses to one Thing at the same Time.

*Mr. Att. Gen.* Your Lordship remembers, in my Lord *Stafford's* Case, there was but one Witness to one Act in *England*, and another to another in *France*.

*L. Ruffel.* It was to the same Point.

*Mr. Att. Gen.* To the general Point, the lopping Point.

*Mr. Serj. Jefferies.* There was not so much Evidence against him, as there is against your Lordship.

*L. C. J.* My Lord, if your Lordship will say any thing, or call any Witnesses to disprove what either of these Gentlemen have said, we will hear your Lordship what they say: But if you can't contradict them by Testimony, it will be taken to be a Proof. And the Way you have to disprove them, is to call Witnesses, or by asking Questions, whereby it may appear to be untrue.

*Mr. Sol. Gen.* If you have any Witnesses, call them, my Lord.



*L. Ruffel.* I do not think they have proved it. But then it appears by the Statute, that levying War is Treason, but a Conspiracy to levy War is no Treason; if nothing be done, 'tis not levying War within the Statute. There must be manifest Proof of the Matter of Fact, not by Inference.

*Mr. At. Gen.* I see that is taken out of my Lord *Coke*. Levying War is a distinct Branch of the Statute; and my Lord *Coke* explains himself afterwards, and says, 'tis an Assuming of Royal Power, to Raise for particular Purposes.

*Just. Withins.* Unless Matter of Fact be agreed, we can never come to argue the Law.

*L. Ruffel.* I came in late.

*Mr. Sol. Gen.* Pray, my Lord, has your Lordship any Witnesses to call as to this Matter of Fact?

*L. Ruffel.* I can prove I was out of Town when one of the Meetings was; but Mr. *Sheppard* can't recollect the Day, for I was out of Town all that Time. I never was but once at Mr. *Sheppard's*, and there was nothing undertaken of viewing the Guards while I was there. Colonel *Rumsey*, can you swear positively, that I heard the Message, and gave any Answer to it?

*L. C. J. (To Colonel Rumsey)* Sir, did my Lord *Ruffel* hear you when you deliver'd the Message to the Company? Were they at the Table, or where were they?

*Col. Rumsey.* When I came in they were standing at the Fire-side; but they all came from the Fire-side to hear what I said.

*L. Ruffel.* Colonel *Rumsey* was there when I came in.

*Col. Rumsey.* No, my Lord. The Duke of *Monmouth*, and my Lord *Ruffel*, went away together; and my Lord *Grey*, and Sir *Thomas Armstrong*.

*L. Ruffel.* The Duke of *Monmouth* and I came together, and you were standing at the Chimney when I came in; you were there before me. My Lord *Howard* hath made a long Narrative here of what he knew. I do not know when he made it, or when he did recollect any thing; 'tis but very lately, that he did declare and protest to several People, that he knew nothing against me, nor of any Plot I could in the least be questioned for.

*L. C. J.* If you will have any Witnesses called to that, you shall, my Lord.

*L. Ruffel.* My Lord *Anglesey*, and Mr. *Edward Howard*.

*My Lord Anglesey stood up.*

*L. C. J.* My Lord *Ruffel*, What do you ask my Lord *Anglesey*?

*L. Ruffel.* To declare what my Lord *Howard* told him about me, since I was confined.

*L. Anglesey.* My Lord, I chanced to be in Town the last Week; and hearing my Lord of *Bedford* was in some Distress and Trouble concerning the Affliction of his Son, I went to give him a Visit, being my old Acquaintance, of some 53 Years standing, I believe; for my Lord and I were bred together at *Mandlin-College* in *Oxon*; I had not been there but a very little while, and was ready to go away again, after I had done the good Office I came about; but my Lord *Howard* came in, I don't know whether he be here.

*L. Howard.* Yes, here I am to serve your Lordship.

*L. Anglesey.* And sat down on the other Side of my Lord of *Bedford*, and he began to comfort my Lord; and the Arguments he used for his Comfort, were, My Lord, you are happy in having a wife Son, and a worthy Person, one that can never sure be in such a Plot as this, or suspected for it, and that may give your Lordship Reason to expect a very good Issue concerning him. I know nothing against him, or any body else, of such a barbarous Design, and therefore your Lordship may be comforted in it. I did not hear this only from my Lord *Howard's* Mouth, but at my own Home upon the *Monday* after, for I use to go to *Totteridge* for fresh Air; I went down on *Saturday*, this happen'd to be on *Friday* (my Lord being here, I am glad, for he can't forget this Discourse); and when I came to Town on *Monday*, I understood that my Lord *Howard* upon that very *Sunday* had been at Church with my Lady *Chaworth*. My Lady has a Chaplain, it seems, that preaches there, and does the Offices of the Church; but my Lady came to me in the Evening. This I have from my Lady—

*L. C. J.* My Lord, what you have from my Lady is no kind of Evidence at all.

*L. Anglesey.* I don't know what my Lord is, I am acquainted with none of the Evidence, nor what hath been done: But my Lady *Chaworth* came to me, and acquainted me, there was some Suspicion—

*Mr. Serj. Jefferies.* I don't think it fit for me to interrupt a Person of your Honour, my Lord, but your Lordship knows in what Place we stand here: What you can say of any thing you heard of my Lord *Howard* we are willing to hear, but the other is not Evidence. As the Court will not let us offer Hearfays, so neither must we that are for the King permit it\*.

*L. Anglesey.* I have told you what happened in my Hearing.

*Then Mr. Howard stood up.*

*L. C. J.* Come, Mr. *Howard*, what do you know?

*Mr. Howard.* I must desire to say something of myself and my Family first: My Lord and I have been very intimate, not only as Relations, but as dear Friends. My Lord, I have been of a Family known to have great Respect and Duty for the King; and I think there is no Family in the Nation so numerous, that hath expressed greater Loyalty; upon which Account I improved my Interest in my Lord *Howard*; I endeavoured, upon the great Misunderstanding of the Nation, (if he be here, he knows it) to persuade him to apply himself to the King, to serve him in that great Difficulty of State, which is known to all the World. I sometimes found my Lord very forward, and sometimes I soften'd him; upon which Parly, and upon his Permission, and more upon my own Inclination of Duty, I made several Applications to Ministers of State, (and I can name them) that my Lord *Howard* had a great Desire of serving the King in the best way of Satisfaction, and particularly in the great Business of his Brother. I wonder'd there should be so much Sharpness for a Matter of Opinion, and I told my Lord so, and we had several Disputes about it. My Lord,

\* But the Court did let them offer Hearfays; for Lord *Howard* went on with Hearfay Evidence, even after Lord *Ruffel* complained of it. p. 718.

I do say this before I come to the thing. After this I did partly by his Permission, and partly by my own Inclination to serve the King, because I thought my Lord *Howard* to be a Man of Parts, and saw him a Man that had Interest in the Nation, tell my Lord *Feverham*, that I had prevailed with a Relation of mine, that may be he might think opposite, that perhaps might serve the King in this great Difficulty that is emergent, and particularly that of his Brother. My Lord *Feverham* did receive it very kindly, and I wrote a Letter to him to let him know how I had soften'd my Lord, and that it was my Desire he should speak with my Lord at *Oxon*. My Lord *Feverham* gave me a very kind Account when he came again, but he told me—

*L. C. J.* Pray apply yourself to the Matter you are called for.

*Mr. Howard.* This it may be is to the Matter, when you have heard me; for I think I know where I am, and what I am to say.

*L. C. J.* We must desire you not to go on thus.

*Mr. Howard.* I must satisfy the World, as well as I can, as to myself, and my Family, and pray do not interrupt me. After this, my Lord, there never passed a Day for almost—

*L. C. J.* Pray speak to this Matter.

*Mr. Howard.* Sir, I am coming to it.

*L. C. J.* Pray, Sir, be directed by the Court.

*Mr. Howard.* Then now, Sir, I will come to the Thing. Upon this ground I had of my Lord's Kindness, I applied myself to my Lord in this present Issue, on the breaking out of this Plot. My Lord, I thought certainly, as near as I could discern him, (for he took it upon his Honour, his Faith, and as much as if he had taken an Oath before a Magistrate) that he knew nothing of any Man concerned in this Business, and particularly of my Lord *Ruffel*, whom he vindicated with all the Honour in the World. My Lord, it is true, was afraid of his own Person, and as a Friend and a Relation, I concealed him in my House, and I did not think it was for such a Conspiracy, but I thought he was unwilling to go to the Tower for nothing again: So that if my Lord *Howard* has the same Soul on *Monday*, that he had on *Sunday*, this can't be true; that he swears against my Lord *Ruffel*. This I say upon my Reputation, and Honour; and something I could say more, he added, he thought my Lord *Ruffel* did not only unjustly suffer, but he took God and Men to witness, he thought him the worthiest Person in the World. I am very sorry to hear any Man of my Name should be guilty of these things.

*L. Ruffel.* Call Dr. *Burnet*. Pray, Dr. *Burnet*, did you hear any thing from my Lord *Howard*, since the Plot was discover'd, concerning me?

*Dr. Burnet.* My Lord *Howard* was with me the Night after the Plot broke out, and he did then, as he had done before, with Hands and Eyes lifted up to Heaven, say he knew nothing of any Plot, nor believed any, and treated it with Scorn and Contempt.

*L. Howard.* My Lord, may I speak for myself?

*Mr. Serj. Jefferies.* No, no, my Lord, we don't call you.

*L. C. J.* Will you please to have any other Witnesses called?

*L. Ruffel.* There are some Persons of Quality, that I have been very well acquainted and conversed with, I desire to know of them, if there was any thing in my former Carriage, to make them think me like to be guilty of this? My Lord *Cavendish*.

*L. Cavendish.* I had the Honour to be acquainted with my Lord *Ruffel* a long Time. I always thought him a Man of great Honour, and too prudent and wary a Man to be concerned in so vile and desperate a Design as this, and from which he would receive so little Advantage: I can say nothing more, but that two or three Days since the Discovery of this Plot, upon Discourse about Colonel *Rumsey*, my Lord *Ruffel* did express something, as if he had a very ill Opinion of the Man, and therefore it is not likely he would entrust him with such a Secret.

*L. Ruffel.* Dr. *Tillotson*.

*L. C. J.* What Questions would you ask him, my Lord?

*L. Ruffel.* He and I happened to be very conversant. To know whether he did ever find any thing tending to this in my Discourse.

*L. C. J.* My Lord calls you as to his Life, and Conversation, and Reputation.

*Dr. Tillotson.* My Lord, I have been many Years last past acquainted with my Lord *Ruffel*, I always judg'd him a Person of great Virtue and Integrity, and by all the Conversation and Discourse I ever had with him, I always took him to be a Person very far from any such wicked Design he stands charged with.

*L. Ruffel.* Dr. *Burnet*, if you please to give some Account of my Conversation.

*Dr. Burnet.* My Lord, I have had the Honour to be known to my Lord *Ruffel* several Years, and he hath declared himself with much Confidence to me, and he always upon all Occasions expressed himself against all Risings; and when he spoke of some People that would provoke to it, he expressed himself so determined against that Matter, I think no Man could do more.

*L. C. J.* Will your Lordship call any other Witnesses?

*L. Ruffel.* Dr. *Cox*.

*Dr. Thomas Cox stood up.*

*Dr. Cox.* My Lord, I did not expect to have been spoken to upon this Account. Having been very much with my Lord of late, that is, for a Month or six Weeks before this Plot came out, I have had Occasion to speak with my Lord in private, about these publick Matters: But I have always found that my Lord was against all kind of Risings, and thought it the greatest Folly and Madness, till things should come in a parliamentary Way. I have had Occasion often to speak with my Lord *Ruffel* in private, and having myself been against all kind of Risings, or any thing that tended to the Disorder of the Publick, I have heard him profess solemnly, he thought it would ruin the best Cause in the World to take any of these irregular ways for the preserving of it; and particularly my Lord hath expressed himself occasionally of these two Persons, my Lord *Howard*



and Colonel *Rumsey*: One of them, Colonel *Rumsey*, I saw once at my Lord's House, and he offered to speak a little privately. But my Lord told me he knew him but a little: I told him he was a valiant Man, and acted his Part valiantly in *Portugal*. He said he knew him little, and that he had nothing to do with him, but in my Lord *Shaftesbury*'s Business: He said, for my Lord *Howard*, he was a Man of excellent Parts, of luxuriant Parts, but he had the Luck not to be much trusted by any Party. And I never heard him say one Word of Indecency or Immodesty towards the King.

*L. Ruffel*. I would pray the Duke of *Somerset* to speak what he knows of me.

*D. of Som.* I have known my Lord *Ruffel* for about two Years, and have had much Conversation with him, and been often in his Company, and never heard any thing from him, but what was very honourable, loyal, and just.

*L. C. J.* My Lord does say, that he has known my Lord *Ruffel* for about two Years, and hath had much Conversation with him, and been much in his Company, and never heard any thing from him, but what was honourable, and loyal, and just in his Life.

*Foreman of the Jury*. The Gentlemen of the Jury desire to ask my Lord *Howard* something upon the Point my Lord *Anglesey* testified, and to know what Answer he makes to my Lord *Anglesey*.

*L. C. Bar.* My Lord, what say you to it, that you told his Father he was a discreet Man, and he needed not to fear his Engagement in any such thing?

*L. Howard*. My Lord, if I took it right, my Lord *Anglesey*'s Testimony did branch itself into two Parts, one of his own Knowledge, and the other by Hearsay; as to what he said of his own Knowledge, when I waited upon my Lord of *Bedford*, and endeavoured to comfort him, concerning his Son, I believe I said the Words my Lord *Anglesey* has given an Account of, as near as I can remember, that I looked upon his Lordship, as a Man of that Honour, that I hoped he might be secure, that he had not entangled himself in any thing of that Nature. My Lord, I can hardly be provoked to make my own Defence, lest this noble Lord should suffer, so willing I am to serve my Lord, who knows I can't want Affection for him. My Lord, I do confess I did say it; for your Lordship well knows under what Circumstances we were: I was at that Time to outface the thing, both for myself and my Party, and I did not intend to come into this Place, and act this Part. God knows how it is brought upon me, and with what Unwillingness I do sustain it; but my Duty to God, the King, and my Country, requires it; but I must confess I am very sorry to carry it on thus far. My Lord, I do confess I did say so; and if I had been to visit my Lord *Pemberton*, I should have said so. There is none of those that know my Lord *Ruffel*, but would speak of my Lord *Ruffel*, from those Topicks of Honour, Modesty, and Integrity, his whole Life deserves it. And I must confess, I did frequently say, there was nothing of Truth in this, and I wish this may be for my Lord's Advantage. My Lord, will you spare me one thing more, because that leans hard upon my Reputation? and if the Jury believe that I ought not to be believed, for I do think the Religion of an Oath is not tied to a Place, but receives its Obligation from the Appeal we therein make to God, and, I think, if I called God and Angels to witness to a Falshood, I ought not to be believed now: But I will tell you as to that; your Lordship knows, that very Man that was committed, was committed for a Design of murdering the King; now I did lay hold on that Part, for I was to carry my Knife close between the Paring and the Apple; and I did say, that if I were an Enemy to my Lord *Ruffel*, and to the Duke of *Monmouth*, and were called to be a Witness, I must have declared in the Presence of God and Man, that I did not believe either of them had any Design to murder the King. I have said this, because I would not walk under the Character of a Person, that would be perjured at the Expence of so noble a Person's Life, and my own Soul.

*L. Ruffel*. My Lord *Clifford*.

*L. C. J.* What do you please to ask my Lord *Clifford*?

*L. Ruffel*. He hath known my Conversation for many Years.

*L. Clifford*. I always took my Lord to be a very worthy honest Man; I never saw any thing in his Conversation to make me believe otherwise.

*L. Ruffel*. Mr. *Gore*.

Mr. *Luton Gore*. I have been acquainted with my Lord several Years, and conversed much with him; in all the Discourse I had with him, I never heard him let any thing fall, that tended in the least to any Rising, or any thing like it: I took him to be one of the best Sons, one of the best Fathers, and one of the best Masters, one of the best Husbands, one of the best Friends, and one of the best Christians we had. I know of no Discourse concerning this Matter.

*L. Ruffel*. Mr. *Spencer*, and Dr. *Fitz-Williams*.

Mr. *Spencer*. My Lord, I have known my Lord *Ruffel* many Years, I have been many Months with him in his House; I never saw any thing by him, but that he was a most virtuous and prudent Gentleman, and he had Prayers constantly twice a Day in his House.

*L. C. J.* What, as to the general Conversation of his Life? My Lord asks you, whether it hath been sober?

Mr. *Spencer*. I never saw any thing but very good, very prudent, and very virtuous.

*L. Ruffel*. What Company did you see used to come to me?

Mr. *Spencer*. I never saw any but his near Relations, or his own Family. I have the Honour to be related to the Family.

Then Dr. *Fitz-Williams* stood up.

*L. Ruffel*. If it please you, Doctor, you have been at my House several Times, give an Account of what you know of me.

Dr. *Fitz-Williams*. I have had the Knowledge of my Lord these fourteen Years, from the Time he was married to his present Lady, to whose Father, eminent for Loyalty, I had a Relation by Service; I have had Acquaintance with him both at *Stratton*, and *Southampton-Buildings*; and by

all the Conversation I had with him, I esteemed him a Man of that Virtue, that he could not be guilty of such a Crime as the Conspiracy he stands charged with.

*L. C. J.* My Lord, does your Lordship call any more Witnesses?

*L. Ruffel*. No, my Lord, I will be very short. I shall declare to your Lordship, that I am one that have always had a Heart sincerely loyal and affectionate to the King, and the Government, the best Government in the World. I pray as sincerely for the King's happy and long Life as any Man alive; and for me to go about to raise a Rebellion, which I looked upon as so wicked and unpracticable, is unlikely. Besides, if I had been inclined to it, by all the Observation I made in the Country, there was no Tendency to it. What some hot-headed People have done there, is another thing. A Rebellion can't be made now as it has been in former Times; we have few great Men. I was always for the Government, I never desired any thing to be redressed, but in a parliamentary and legal Way. I have been always against Innovations, and all Irregularities whatsoever; and shall be as long as I live, whether it be sooner or later. Gentlemen, I am now in your Hands eternally, my Honour, my Life, and all; and I hope the Heats and Animosities that are amongst you will not so bias you, as to make you in the least inclined to find an innocent Man guilty. I call to witness Heaven and Earth, I never had a Design against the King's Life in my Life, nor never shall have. I think there is nothing proved against me at all. I am in your Hands. God direct you.

Mr. *Sol. Gen.* My Lord, and you Gentlemen of the Jury, the Prisoner at the Bar stands indicted for High Treason, in conspiring the Death of the King. The Overt-act that is laid to prove that Conspiracy and Imagination by, is the assembling in Council to raise Arms against the King, and raise a Rebellion here. We have proved that to you by three Witnesses. I shall endeavour as clearly as I can, to state the Substance of the Evidence to you, of every one of them, as they have delivered it.

The first Witness, Colonel *Rumsey*, comes, and he tells you of a Message he was sent of to Mr. *Sheppard*'s House to my Lord *Ruffel*, with several other Persons, who he was told would be there assembled together: And the Message was to know what Readiness they were in, what Resolutions they were come to concerning the Rising at *Taunton*? By this you do perceive, that this Conspiracy had made some Progress, and was ripe to be put in Action. My Lord *Shaftesbury*, that had been a great Contriver in it, he had pursued it so far, as to be ready to rise. This occasioned the Message from my Lord *Shaftesbury* to my Lord *Ruffel*, and those noble Persons that were met at Mr. *Sheppard*'s House, to know what the Resolution was concerning the Business of *Taunton*, which you have heard explained by an Undertaking of Mr. *Trenchard*'s: That the Answer was, they were disappointed there, and they could not then be ready, and that my Lord *Shaftesbury* must be content. This Message was delivered in Presence of my Lord *Ruffel*; the Messenger had notice my Lord *Ruffel* was there; the Answer was given as from them all, That at present they could not be ready, because of that Disappointment. Colonel *Rumsey* went farther, and he swears there was a Discourse concerning the surprising of the Guards; and the Duke of *Monmouth*, my Lord *Grey*, and Sir *Thomas Armstrong*, went to see what Posture they were in, whether it were feasible to surprise them, and they found them very remiss; and that Account they brought back, as is proved to you by Mr. *Sheppard*, the other Witness, that it was a thing very feasible. But to conclude with the Substance of Colonel *Rumsey*'s Evidence, he says, my Lord was privy to it, that he had Discourse among the rest of it, though my Lord was not a Man of so great Discourse as the rest, and did talk of a Rising. He told you there was a Rising determined to be on the 19th of November last, which is the Substance of Colonel *Rumsey*'s Evidence.

Gentlemen, the next Witness is Mr. *Sheppard*, and his Evidence was this: He swears that about October last, Mr. *Ferguson* came to him of a Message from the Duke of *Monmouth*, to let him know, that he and some other Persons of Quality would be there that Night; that accordingly they did meet, and my Lord *Ruffel* was there likewise; that they did desire to be private, and his Servants were sent away; and that he was the Man that did attend them. He swears there was a Discourse concerning the Way and Method to seize the Guards; he goes so far, as to give an Account of the Return of the Errand the Duke of *Monmouth*, my Lord *Grey*, and Sir *Thomas Armstrong*, went upon, that it was feasible, if they had Strength to do it. Then he went a little farther, and he told you there was a Paper read, that in his Evidence does not come up to my Lord *Ruffel*; for he did not say my Lord *Ruffel* was by, and I would willingly repeat nothing but what concerns the Prisoner. This therefore Colonel *Rumsey*, and Mr. *Sheppard*, agree in, that there was a Debate among them how to surprise the Guards, and whether that was feasible; and Mr. *Sheppard* is positive as to the Return made upon the View.

The next Witness was my Lord *Howard*: He gives you an Account of many things, and many things that he tells you are by Hearsay. But I cannot but observe to you, that all this Hearsay is confirmed by these two positive Witnesses, and their Oaths agree with him in it; for my Lord *Shaftesbury* told him of the Disappointment he had met with from these noble Persons that would not join with him; and then he went from my Lord *Shaftesbury* to the Duke of *Monmouth*, to expostulate with him about it, (for my Lord *Shaftesbury* then was ready to be in Action) and that the Duke said he always told him he would not engage at that Time: This thing is confirmed to you by these two Witnesses. Colonel *Rumsey* says, when he brought the Message from my Lord *Shaftesbury*, the Answer was, They were not ready, my Lord must be contented.

Next he goes on with a Discourse concerning my Lord *Shaftesbury*, (that does not immediately come up to the Prisoner at the Bar, but it manifests there was a Design at that Time) he had 10,000 brisk Boys (as he called them) ready to follow him upon the holding up his Finger: But it was thought not so prudent to begin it, unless they could join all their Forces: So you hear in this they were disappointed; and partly by another Accident too, my Lord *Howard* had an Apprehension it might be discovered; that was upon the Proclamation that came out forbidding Bonfires, to prevent the ordinary Tumults that used to be upon those Occasions. Then my Lord *Howard* goes on, and comes particularly to my Lord



Lord Ruffel; for upon this Disappointment, you find, my Lord Shaftesbury thought fit to be gone. But after that, the Design was not laid aside; for you hear, they only told him all along, they could not be ready at that Time, but the Design went on still to raise Arms, and then they took upon themselves to consult of the Methods of it; and for the carrying it on with the greater Secrecy, they chose a select Council of Six, which were the Duke of Monmouth, my Lord of Essex, my Lord Howard, my Lord Ruffel, Mr. Hambden, and Colonel Sidney. That accordingly they met at Mr. Hambden's, (there was their first Meeting) and their Consultation there was, how the Insurrection should be made, whether first in London, or whether first in the Country, or whether both in London and in the Country at one Time. They had some Debates among themselves, that it was fittest first to be in the Country; for if the King should send his Guards down to suppress them, then the City, that was then as well disposed to rise, would be without a Guard, and easily effect their Designs here.

Their next Meeting was at my Lord Ruffel's own House, and there their Debates were still about the same Matter, how to get in Scotland to their Assistance; and in order to that, they did intrust Col. Sidney, one of their Council, to send a Messenger into Scotland for some Persons to come hither, my Lord Melville, Sir Hugh Cambell, and Sir John Cockram. Accordingly Col. Sidney sends Aaron Smith (but this is only what Col. Sidney told my Lord afterwards, that he had done it); but you see the Fruit of it. Accordingly they are come to Town, and Sir Hugh Cambell is taken by a Messenger upon his Arrival; and he had been but four Days in Town, and he had changed his Lodging three times.

Now, Gentlemen, this is the Substance of the Evidence that hath been produced against my Lord Ruffel. My Lord Ruffel hath made several Objections, That he was accidentally at this Meeting at Mr. Sheppard's House, and came about other Business; but I must observe to you, that my Lord Ruffel owned, that he came along with the Duke of Monmouth, and, I think, he said, he went away with him too. You observe what Mr. Sheppard's Evidence was: Mr. Ferguson came to tell him the Duke of Monmouth would come; and accordingly the Duke of Monmouth did come, and brought his Companion along with him, which was my Lord Ruffel; and certainly they that met upon so secret an Affair, would never have brought one that had not been concerned. Gentlemen, there are other Objections my Lord hath made, and those are in Point of Law; but before I come to them, I would observe what he says to the second Meeting. My Lord does not deny, but that he did meet both at Mr. Hambden's House, and my Lord's own: I think my Lord said they did meet only to discourse of News; and my Lord Howard being a Man of excellent Discourse, they met for his Conversation. Gentlemen, you can't believe that this designed Meeting was for nothing; in this close secret Meeting, that they had no Contrivance among them. You have heard the Witness, he swears positively what the Conversation was, and you see the Fruit of it, Sir Hugh Cambell's coming to Town, and absconding when it is discovered. Now my Lord Ruffel insists upon it, that admitting these Facts be proved upon him, they amount to no more than to a Conspiracy to levy War, and that that is not Treason within the Statute of 25 E. 3. and if it be only within the Statute of the 13. of this King, then 'tis out of Time, that directs the Prosecution to be within six Months: The Law is plainly otherwise. The Statute of the 13th of this King I will not now insist upon, though I believe if that be strictly looked into, the Clause that says the Prosecution shall be within six Months, does not refer to Treason, but only to the other Offences that are highly punishable by that Statute. For the Proviso runs thus:

13 Car. 2. *Provided always, that no Person be prosecuted for any of the Offences in this Act mentioned, other than such as are made and declared to be High Treason, unless it be by Order of the King's Majesty, his Heirs or Successors, under his or their Sign Manual, or by Order of the Council Table of his Majesty, his Heirs or Successors, directed unto the Attorney General for the Time being, or some other Council learned to his Majesty, his Heirs or Successors, for the Time being: Nor shall any Person or Persons, by virtue of this present Act, incur any the Penalties herein before mentioned, unless he or they be prosecuted within six Months next after the Offence committed, and indicted thereupon within three Months after such Prosecution; any thing herein contained to the contrary notwithstanding.*

This Word (Nor) is a Continuation of the former Sentence, and the Exception of High Treason will go through all, and except that out of the temporary Limitation of Treason: But this is High Treason within 25 E. 3. To conspire to levy War, is an Overt-act to testify the Design of the Death of the King. And the Error of my Lord Coke hath possibly led my Lord into this Mistake. But this, Gentlemen, hath been determined; it was resolved by all the Judges in the Case of my Lord Cobham, 1 Jac. A Conspiracy to levy War against the King's Person, (as this was a Conspiracy to seize the Guards) what does that tend to but to seize the King? And that always hath been taken to be High Treason. But there are some things called levying of War in Law, that are not so directly against the King, as if a Number of Men go about to levy Men to overthrow all Inclosures, this by the generality of the Intent, and because of the Consequences, is accounted levying War against the King. A Conspiracy therefore to levy such a War, which by Construction only is against the King, perhaps that may not be such an Overt-act, as to testify the Imagination of the Death of the King; but other Conspiracies to raise War against the King have always so been taken. 'Tis the Resolution of all the Judges in my Lord Dyer's Reports, the Case of Dr. Story: A Conspiracy to invite a foreign Prince to make an Invasion, tho' no Invasion follow, is an Overt-act to prove the conspiring the Death of the King; and as it has been so taken, so it hath been practised but of late Days. In the King's Bench I take it the Indictment against Plunket that was hanged, he was indicted for conspiring against the Life of the King, and his Charge went no farther than for raising of Arms, and inviting the

French King in, and he suffered: This is acknowledged by my Lord Coke; for he himself said in the Paragraph before that out of which this Advice to my Lord Ruffel is extracted, that a Conspiracy to invite a foreign Prince to invade the Kingdom, is a Conspiracy against the Life of the King. And in the next Paragraph, he says an Overt-Act of one Treason cannot be an Overt-Act of another Treason. But constant Practice is against him in that: For what is more common than to indict a Man for imagining the Death of the King, and to assign the Overt-Act in a Conspiracy to raise Arms against the King? And sometimes they go on and say, Did levy War against the King. Now by my Lord Coke's Rule, levying War, unless the Indictment be particular for that, is not an Overt-Act for the compassing the Death of the King; but the contrary hath been resolved by all the Judges, in the Case of Sir Henry Vane, and it is the constant Practice to lay it so in Indictments. It would be a strange Construction, if this should not be High Treason. 'Tis agreed by every body, to take the King Prisoner, to seize the King, that is a compassing of the Death of the King; and to sit in Council to conspire to effect that, that is an Overt-Act of the Imagination of the Death of the King: Now no Man can distinguish this Case from that: And this Consultation amounted to all this, for plainly thither it tended. The Consultation was to seize upon the King's Guards; that could have no other Stop but to seize upon the King's Person, and bring him into their Power. As to the killing of the King, I am apt to think that was below the Honour of the Prisoner at the Bar; but this is equal Treason: If they designed only to bring the King into their Power, till he had consented to such things as should be moved in Parliament, 'tis equally Treason as if they had agreed directly to assassinate him. Therefore I think there is nothing for you to consider, but to see that the Fact be fully proved; and I see nothing that hath been said by my Lord Ruffel, that does invalidate our Evidence. He hath produced several Witnesses, Persons of Honour; my Lord Anglesey he tells you of a Discourse my Lord Howard had with my Lord of Bedford; that he told my Lord of Bedford that he needed not to fear, for he had a wife and understanding Son, and could not think he should be guilty of any such thing as was laid to his Charge. This is brought to invalidate my Lord Howard's Testimony. Gentlemen, do but observe, my Lord Howard was as deep in as any of them, and was not then discovered: Is it likely, that my Lord Howard, that lay hid, should discover to my Lord of Bedford, that there was a Conspiracy to raise Arms, and that he was in it? This would have been an Aspersions upon my Lord of Bedford, that any such thing should have been said.

Mr. Edward Howard is the next, and he proves, That my Lord Howard used solemn Protestations, that he knew nothing of this Conspiracy. I did observe that worthy Gentleman in the Beginning of his Discourse (for it was pretty long) said first, that he had been several times tempting my Lord Howard to come over and be serviceable to the King; and if he knew any thing, that he would come and confess it. Why, Gentlemen, Mr. Howard, that had come to him upon these Errands formerly, and had thought he had gained him, I conceive you do not wonder if my Lord Howard did not reveal himself to him, who presently would have discovered it, for for that Errand he came. But if my Lord had had a Design to have come in and saved his Life, he would have made his Submission voluntarily, and made his Discovery: But my Lord tells nothing till he is pinched in his Conscience, and confounded with the Guilt, (being then in Custody) and then he tells the whole Truth, that which you have heard this Day.

Gentlemen, this hath been all that hath been objected against the Witnesses, except what is said by Dr. Burnet; and, he says, that my Lord Howard declared to him, that he believed there was no Plot, and laughed at it. Why, Gentlemen, the Dr. would take it ill to be thought a Person fit to be intrusted with the Discovery of this; therefore what he said to him signifies nothing, for 'tis no more than this, that he did not discover it to the Doctor.

But the last Objection (which I see there has been a great many Persons of Honour and Quality called to) is, that 'tis not likely my Lord Ruffel should be guilty of any thing of this kind, being a Man of that Honour, Virtue, and so little blameable in his whole Conversation. I do confess, Gentlemen, this is a thing that hath Weight in it. But consider, on the other hand, my Lord Ruffel is but a Man, and hath his human Frailties about him. Men fall by several Temptations; some out of Revenge, some by Malice, fall into such Offences as these are: My Lord Ruffel is not of that Temper, and therefore may-be these are not the Ingredients here. But, Gentlemen, there is another great and dangerous Temptation that attends People in his Circumstances, whether it be Pride or Ambition, or the cruel Snare of Popularity, being cried up as a Patron of Liberty. This hath been a dangerous Temptation to many, and many Persons of Virtue have fallen into it, and 'tis the only way to tempt Persons of Virtue, and the Devil knew it; for he that tempted the Pattern of Virtue, shewed him all the Kingdoms of the World, and said, *All these will I give thee, if thou wilt fall down, and worship me.* Tho' he be a Person of Virtue, yet it does not follow, but his Virtue may have some weak Part in him; and I am afraid, these Temptations have prevailed upon my Lord: For I cannot give myself any Colour of Objection, to disbelieve all these Witnesses who give in their Testimony. I see no Contradiction, no Correspondence, no Contrivance at all between them. You have plain Oaths before you, and I hope you will consider the Weight of them, and the great Consequence that did attend this Case, the Overthrow of the best Government in the World, and the best and most unspotted Religion, which must needs have suffered; the greatest Liberty, and the greatest Security for Property, that ever was in any Nation, bounded every way by the Rules of Law, and those kept sacred. I hope you will consider the Weight of this Evidence, and consider the Consequences such a Conspiracy, if it had taken Effect, might have had. And so I leave it to your Consideration upon the Evidence you have heard.

Mr. Serj. Jefferies. My Lord, and you Gentlemen of the Jury, This Cause hath detained your Lordship a long time, by reason of so many Wit-



nesses being called, and the Length of the Defence made by the Prisoner at the Bar; and if it had not been for the Length, I would not have injured your Patience by saying any thing, Mr Solicitor having taken so much Pains in it. It is a Duty incumbent upon me, under the Circumstances I now stand, to see if any thing hath been omitted, that hath not been observed to you; and I shall detain you with very few Words.

Gentlemen, you must give me Leave to tell you, 'tis a Case of great Consequence, of great Consequence to that noble Person, that now is at the Bar, as well as to the King; for it is not desired by the King, nor by his Counsel, to have you influenced in this Matter by any thing but by the Truth, and what Evidence you have received. You are not to be moved by Compassion or Pity; the Oath you have taken is to go according to your Evidence; and you are not to be moved by any Insinuations that are offered by us for the King, nor by any Insinuations by the Prisoner at the Bar; but the Truth, according to the Testimony given, must be your Guide. How far the Law will affect this Question, that we are not to apply to you; for that we are to apply ourselves to the Court, (they are the Judges in point of Law) who will take so much Care in their Directions to you, that you may be very well satisfied you will not easily be led into Error. For the Instances that have been put, I could put several others; but I will take Notice only of one thing, that that noble Person at the Bar seems to object. Gentlemen, it is not necessary there should be two Witnesses to the self-same Fact at the self-same Time; but if there be two Witnesses tending to the self-same Fact, tho' it was at several Times, and upon several Occasions, they will be in point of Law two Witnesses, which are necessary to convict a Man for High-Treason. Gentlemen, I make no Doubt this thing is known to you all, not only by the Judgment of all the Judges in England, but the Judgment of the Lords in Parliament; when I doubt not the Prisoner at the Bar did attend in the Case of my Lord Stafford, wherein one Witness gave an Account of a Conspiracy in England, Turberville of another in France; and by the Opinion of all my Lords the Judges approved in Parliament, that was enough, and he was convicted.

The Question is, Whether we have sufficiently proved this Matter? Gentlemen, I must tell you, we rake no Gaols, nor bring any profligate Persons, Persons that wanted Faith or Credit before this Time: I must tell you, that notwithstanding the fair Notice that hath been given to the Prisoner at the Bar, (that you see he hath taken an Advantage of it, he hath given an Account of a private Conversation, which my Lord Howard had before that noble Person that was Witness, since he was taken) he has not given you in any Proof hitherto; nay, I say, he has not pretended any thing in the World: Wherefore you, Gentlemen, that are upon your Oaths, should take it upon your Consciences, that two Men, against whom there is no Objection, should come to damn their own Souls to take away the Life of this Gentleman, when there is no Quarrel, no Temptation, wherefore these Gentlemen should come in the Face of a Court of Justice, in the Face of such an Auditory, without Respect to that infinite Being, to whom they appeal for Confirmation of the Truth of their Testimony: And if they had the Faith of Men or Christians, they must necessarily conclude, that if they did swear to take away a Man's Life that was innocent, God would sink them down presently into Hell.

Gentlemen, in the next Place, I must acquaint you, that the first Witness, Colonel Rumsey, it is apparent, that he was taken Notice of by the Prisoner as a Man fit to be trusted; he was engaged by my Lord Shaftesbury: But, says he, would any Man believe, that that Man that had received so many Marks of the King's Favour, both in Advantage to his Estate, his Honour, and Person, could be ever contriving such an hellish Design as this? Gentlemen, if you will argue from such uncertain Conjectures, then all Criminals will come off. Who should think that my Lord of Essex, who had been advanced so much in his Estate and Honour, should be guilty of such desperate Things! which had he not been conscious of, he would scarcely have brought himself to that untimely End, to avoid the Methods of publick Justice. Colonel Rumsey tells you, my Lord Shaftesbury was concerned in this Conspiracy. I am sorry to find, that there have been so many of the Nobility of this Land, that have lived so happily under the benign Influence of a gracious Prince, should make so ill Returns. Gentlemen, I must appeal to you, Whether in your Observation you found Colonel Rumsey to be over-hasty, and an over-zealous Witness? He did not come as if he came in Spite to the Prisoner at the Bar; you found how we were forced to pump out every thing; but after he had been pressed over and over again, then he came to it: So that I observe to you, that he was an unwilling Witness.

Gentlemen, give me Leave to observe to you, the Prisoner at the Bar, before such time as Mr. Sheppard came up and gave Evidence against him, says he, I came only by Accident, only to taste a Parcel of Wine. Mr. Sheppard, when he comes up, he tells you, there was no such Design. Ferguson, that was the Person he kept Company with; the Reverend Dean, and the rest of the Clergy of the Church of England, they were not fit to be trusted with it; but this Independent Parson, Ferguson, he gives Notice of the Coming of these Persons; and in pursuance of this Notice, they all come, they come late in the Evening, not in the Posture and Quality they used to go; for you find they had not so much as a Coach. Is it probable they came to taste Wine? Wherefore did they go up into a Room? Wherefore did they order Mr. Sheppard, that none of the Boys should come up, but that the Master must fetch the Sugar and Wine himself? Wherefore you may perceive the Action they were upon; there were only to be such Persons as had an Affection for such a Cause. You find, pursuant to what Colonel Rumsey says, that there was a Direction to take a View of the Guards, that Sir Thomas Armstrong comes back, and makes this Report: Says he, I have taken Notice, they are in such an idle careless Posture, that it is not impossible to surprize them. This Mr. Sheppard he does not come, nor does he appear to you to come here out of any vindictive Humour, to do the Prisoner at the Bar any Hurt.

In the next place, we have my Lord Howard; he comes and positively

tells you, after he had given an Account, (for you observe there were two Parts to be acted in this horrid Tragedy; there was first the scoundrel Sort of People were to be concerned to take away the Life of the King and the Duke, the great Persons were to head the party in the Rising) they put themselves in proper Postures, each of them consenting to something of the Surprize, inasmuch as you observe, that Sir Thomas Armstrong, and some other Persons, might not be trusted. They come and resolve themselves out of a general Council, and they meet in a particular Council of six, looking upon themselves as the Heads of the Party: And I must tell you, many of them, (we live not in an Age of such Obscurity, but we know them) how fond have they been of the Applause of the People! As that Person encouraged himself Yesterday, they were *Liberatores Patriæ*, that could murder the King and the Duke.

My Lord, I must take Notice, that this noble Lord is known to have an Intimacy with him; you observe with how much Tenderness he is pleased to deliver himself, how carefully he reports the Debates of the particular Consults of the Persons to be intrusted in the Management; he tells you, that noble Lord, the Prisoner at the Bar, was pitched upon, and Algernon Sidney, a Man famous about the Town; for what? To call in Parties from some of his Majesty's other Dominions, Persons we know ripe enough for Rebellion, to assist. Pursuant to this, you find Persons sent of a Message for some to come over, whereof some are in hold: So that for all dark and obscure sort of Matters, nothing can be brought better to Light, than this, of taking all Matters together, with the concurring Circumstances of Time and Place.

Gentlemen, I must confess this noble Lord hath given an Account by several honourable Persons of his Conversation, which is a very easy Matter. Do you think, if any Man had a Design to raise a Rebellion against the Crown, that he would talk of it to the Reverend Divines, and the noble Lords, that are known to be of Integrity to the Crown? Do you think the Gentleman at the Bar would have so little Concern for his own Life, to make this Discourse his ordinary Conversation? No, it must be a particular Consult of six, that must be entrusted with this. I tell you, 'tis not the Divines of the Church of England, but an Independent Divine, that is to be concerned in this; they must be Persons of their own Complexion and Humour: For Men will apply themselves to proper Instruments.

Gentlemen, I would not labour in this Case; for far be it from any Man to endeavour to take away the Life of the Innocent! And whereas that noble Lord says, he hath a virtuous good Lady, he hath many Children, he hath Virtue and Honour he puts into the Scale; Gentlemen, I must tell you, on the other Side, you have Consciences, Religion; you have a Prince, and a merciful one too; consider the Life of your Prince, the Life of his Posterity, the Consequences that would have attended, if this Villainy had taken Effect. What would have become of your Lives and Religion? What would have become of that Religion we have been so fond of preserving? Gentlemen, I must put these things home upon your Consciences. I know you will remember the horrid Murder of the most pious Prince the Martyr, King Charles the First. How far the Practices of those Persons have influenced the several Punishments since, is too great a Secret for me to examine. But now I say, you have the Life of a merciful King, you have a Religion, that every honest Man ought to stand by, and I am sure every loyal Man will venture his Life and Fortune for. You have your Wives and Children. Let not the Greatness of any Man corrupt you; but discharge your Consciences both to God and the King, and to your Posterity.

L. C. J. Gentlemen of the Jury, the Prisoner at the Bar stands indicted before you of High-Treason, in compassing and designing the Death of the King, and in declaring of it by Overt-acts, endeavouring to raise Insurrections, and popular Commotions, in the Kingdom here. To this he hath pleaded, Not guilty. You have heard the Evidence, that hath been against him; it hath been at large repeated by the King's Counsel, which will take off a great deal of my Trouble in repeating it to you again. I know you cannot but take Notice of it, and remember it, it having been stated twice by two of the King's Counsel to you; 'tis long, and you see what the Parties here have proved. There is first of all Colonel Rumsey, he does attest a Meeting at Mr. Sheppard's House, and you hear to what Purpose he says it was; the Message that he brought, and the Return he had; it was to enquire concerning a Rising at Taunton; and that he had in Return to my Lord Shaftesbury was, that Mr. Trenchard had failed them, and my Lord must be contented; for it could not be that time. You hear, that he does say, that they did design a Rising; he saith there was a Rising designed in November, I think he saith the seventeenth, upon the Day of Queen Elizabeth's Birth. You hear he does say, there was at that Meeting some Discourse concerning inspecting the King's Guards, and seeing how they kept themselves, and whether they might be surprized; and this, he says, was all in order to a Rising. He says, that at this my Lord Russell was present. Mr. Sheppard does say, that my Lord Russell was there; that he came into this Meeting with the Duke of Monmouth, and he did go away with the Duke of Monmouth as he believes. He says, there was some Discourse of a Rising or Insurrection, that was to be procured within the Kingdom; but he does not tell you the Particulars of any thing, he himself does not. My Lord Howard afterwards does come and tell you of a great Discourse he had with my Lord Shaftesbury, in order to a Rising in the City of London; and my Lord Shaftesbury did value himself mightily upon 10,000 Men he hoped to raise; and a great deal of Discourse he had with my Lord Shaftesbury. This he does, by way of Inducement, to what he says concerning my Lord Russell. The Evidence against him is some Consults, that there were by six of them, who took upon them, as he says, to be a Council for the Management of the Insurrection, that was to be procured in this Kingdom. He instances in two, that were for this Purpose, the one of them at Mr. Hambden's House, the other at my Lord Russell's House. And he tells you at these Meetings, there was some Discourse of providing



Treasure, and of providing Arms; but they came to no Result in these Things. He tells you, that there was a Design to send for some of the Kingdom of Scotland, that might join with them in this thing. And this is, upon the Matter, the Substance of the Evidence, that hath been at large declared to you by the King's Counsel, and what you have heard. Now, Gentlemen, I must tell you, some things it lies upon us to direct you in.

My Lord excepts to these Witnesses, because they are concerned, by their own shewing, in this Design: If there were any, I did direct (some of you might hear me) Yesterday, that that was no sufficient Exception against a Man's being an Evidence in the Case of Treason, that he himself was concerned in it; they are the most proper Persons to be Evidence, none being able to detect such Counsels but them. You have heard my Lord Ruffel's Witnesses, that he hath brought concerning them, and concerning his own Integrity and Course of Life, how it has been sober and civil, with a great Respect to Religion, as these Gentlemen do all testify. Now the Question before you will be, Whether upon this whole Matter you do believe my Lord Ruffel had any Design upon the King's life, to destroy the King, or take away his Life; for that is the material Part here. 'Tis used and given you (by the King's Counsel) as an

Evidence of this, that he did conspire to raise an Insurrection, and to cause a Rising of the People, to make as it were a Rebellion within the Nation, and to surprise the King's Guards, which, say they, can have no other End, but to seize and destroy the King; and 'tis a great Evidence (if my Lord Ruffel did design to seize the King's Guards, and make an Insurrection in the Kingdom) of a Design to surprise the King's Person. It must be left to you upon the whole Matter: You have not Evidence in this Case as there was in the other Matter, that was tried in the Morning, or Yesterday, against the Conspirators to kill the King at the Rye. There was a direct Evidence of a Consult to kill the King; that is not given you in this Case: This is an Act of contriving Rebellion, and an Insurrection within the Kingdom, and to seize his Guards, which is urged an Evidence, and surely is in itself an Evidence, to seize and destroy the King.

Upon this whole Matter, this is left to you. If you believe the Prisoner at the Bar to have conspired the Death of the King, and in order to that, to have had these Consults, that these Witnesses speak of, then you must find him Guilty of this Treason that is laid to his Charge.

Then the Court adjourned till Four o'Clock in the Afternoon, when the Jury brought the said Lord Ruffel in Guilty of the said High Treason.

### CXX. The Trial of JOHN ROUSE\*, at the Old Baily, for High Treason, July 13. 1683.

JOHN ROUSE, and William Blague, being set to the Bar, and having held up their Hands, the Indictment was read, as follows:

London. The Jurors for our Sovereign Lord the King, upon their Oaths, present, That John Rouse, late of London, Gent. and William Blague, late of London, Gent. as false Traitors, against the most Illustrious and Excellent Prince, our Sovereign Lord Charles II. by the Grace of God, of England, Scotland, France and Ireland King, their natural Lord; not having the Fear of God in their Hearts, nor weighing the Duty of their Allegiance, but being moved and seduced by the Intigation of the Devil; and the true Duty, and natural Obedience, which true and faithful Subjects of our Sovereign Lord the King, towards him our said Lord the King, do bear, and of Right ought to bear, wholly withdrawing; and with their whole Strength intending the Peace and common Tranquillity of this Kingdom of England to disturb, and War and Rebellion against our said Lord the King to move and stir up, and the Government of our said Lord the King within this Kingdom of England to subvert, and our said Lord the King from his Title, Honour and Kingly Name of the Imperial Crown of this his Kingdom of England to put down and deprive, and our said Lord the King to Death and final Destruction to bring and put, the second Day of March, in the Year of the Reign of our Sovereign Lord Charles II. King of England, &c. the Five-and-thirtieth, and divers other Days and Times, as well before as after, at the Parish of St. Michael Bassishaw, in the Ward of Bassishaw, London, maliciously and traitorously, with divers other Traitors, to the Jurors aforesaid unknown, did conspire, compass, imagine and intend our said Lord the King their Supreme Lord, not only of his Kingly State, Title, Power and Government of this his Kingdom of England to deprive and throw down; but also our said Lord the King to kill, and to Death to bring and put; and the ancient Government of this his Kingdom of England to change, alter, and wholly to subvert, and a miserable Slaughter amongst the Subjects of our said Lord the King through his whole Kingdom of England to cause and procure, and Insurrection and Rebellion against our said Lord the King to move, and stir up within this Kingdom of England; and to fulfil and perfect the said most horrible Treasons, and traitorous Conspiracies, Imaginations and Purposes aforesaid, the said John Rouse, and William Blague, then and there, and divers other Days and Times, as well before as after, as false Traitors, maliciously, traitorously and advisedly, they did assemble, meet together, and consult between themselves, and with the said other Traitors, to the Jurors aforesaid unknown, and with them did treat of the taking and seizing the Tower of London, and of and for the executing and perfecting their Treasons, and traitorous Compassings, Imaginations and Purposes aforesaid: And that they the said John Rouse, and William Blague, as false Traitors, maliciously traitorously and advisedly, then and there, and divers other Days and Times, as well before as after, they and either of them did undertake, and to the said other Traitors did promise for themselves to be aiding and assisting in the Execution of the Treasons and traitorous Compassings, Imaginations and Purposes aforesaid; and in providing Arms and armed Men to fulfil and perfect the said Treasons, and traitorous Compassings, Imaginations and Purposes aforesaid. And the said most wicked Treasons and traitorous Compassings, Imaginations and Purposes aforesaid, to fulfil and bring to pass, they the said John Rouse, and William Blague, as false Traitors, maliciously, traitorously and advisedly, then and there did procure and prepare Arms, to wit, Blunderbusses, Carbines and Pistols, against the Duty of their Allegiance, against the Peace of our Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statutes in that Case made and provided, &c.

Cl. of Cr. What sayest thou, John Rouse? Art thou guilty of this High Treason, whereof thou standest indicted, or Not guilty?

Rouse. Not guilty.

Cl. of Cr. Culprit, How wilt thou be tried?

Rouse. By God and my Country.

Cl. of Cr. God send thee a good Deliverance. What sayest thou, William Blague? Art thou guilty of this High Treason, whereof thou standest indicted, or Not guilty?

Capt. Blague. Not guilty.

Cl. of Cr. Culprit, How wilt thou be tried?

Capt. Blague. By God and my Country.

Cl. of Cr. God send thee a good Deliverance.

Friday, July 13. in the Afternoon, the Court being met, and Proclamation made, Cl. of Cr. Set John Rouse, and William Blague, to the Bar. You the Prisoners at the Bar, these good Men, that you hear called, are to pass between our Sovereign Lord the King upon Trial of your several Lives and Deaths; if you will challenge them, or any of them, your Time is, as they come to the Book to be sworn, before they are sworn. Nicolas Charlton.

Capt. Blague. I hope I shall only speak for myself.

L. C. J. Yes, you shall be heard.

Rouse. My Lord, I have had no Liberty so much as sending for my Wife. Monday Morning they gave me Notice of Trial; but I have had no Advantage of that Notice: I presumed it meant we should have the Liberty of Subjects: But though Notice was then given, yet I had not the Liberty of sending for any body till Wednesday: It was eight or nine of the Clock on Wednesday Night, that one came and told me, I should have no Liberty of Counsel, unless I had it from the Court; and Yesterday Morning I found, that Captain Blague and I were joined in one Indictment, which alters the Case, with Submission to the Court. What Time I have had for Trial has been so short, I have not been able to get my Witnesses ready. I desire nothing but as an Englishman.

L. C. J. As an Englishman! You can demand no Time to prepare for Trial; for those that will commit Crimes, they must be ready to answer for them, and defend themselves. 'Tis Matter of Fact you are charged with; you knew long ago what you were to be tried for; for you were taken up, and charged with High Treason. You might then reasonably consider what kind of Evidence would be against you: If you be an innocent Person, you may defend yourself without Question: But if you have done an ill thing, the Law does not design to give you Time to shelter yourself under any Subterfuge, or make any Excuse, or to prepare any Witnesses to testify an untrue thing for you.

Rouse. My Lord, I only beg a little Time, I don't design to make any Evasion. That I am innocent, I thank God I am.

L. C. J. We can't give you any farther Time, unless the King pleases; we are bound to try those he brings before us.

Mr. Serj. Jeff. Because Captain Blague does not desire to be joined to the other; we that are for the King are contented, that Rouse be tried first.

Then Captain Blague was taken away, and after several Persons challenged by Rouse, the Jury that were sworn, were,

Jurors.

Robert Beddingfield,  
John Pelling,  
William Windbury,  
Theophilus Man,

John Short, senior,  
Thomas Nicholas,  
Richard Hoare,  
Thomas Barnes,

Henry Robbins,  
Henry Kempe,  
Edward Raddish,  
Edward Kempe.

Cl. of Cr. John Rouse, Hold up thy Hand. You of the Jury, look upon the Prisoner, and hearken to his Cause; he stands indicted, — *Procurator* antea to his Indictment *Mutatis mutandis*; upon this Indictment, he hath been arraigned, and thereunto pleaded Not guilty; and for his Trial, put himself upon his Country, which Country you are; your Charge is to inquire, &c.

Mr. Jones. May it please your Lordship, and you Gentlemen of the Jury, the Prisoner at the Bar stands indicted for High Treason, in conspiring the Death of the King; and in order thereunto, consulting how to seize the Tower; and in providing of Arms, in order to destroy the King, and subvert the Government: If we prove it upon him, you are to find him guilty.

Mr. Serj. Jeff. The Prisoner at the Bar was (as you have been acquainted) in that horrid Conspiracy, whereof several of the Conspirators have been brought to Trial, and received a Verdict surely according to Evidence. The Prisoner at the Bar did bear a Proportion among the rest. It does occur to your Memories, there were several Undertakers, that undertook several Stations; some whereof were to undertake the blackest Part of this horrid Villainy, by the taking off the King and his Royal Highness his Brother; others (in order to the same Design) were to seize upon the King's Guards, and so to deprive him of all manner of Defence whatsoever; and to prevent all Persons to make any Defence against them, as you heard, there was another Part to be acted; therefore the Town was to be divided into several Divisions; I think

\* Burnet's Hist. of his Own Times, Vol. I. p. 539.



there were twenty; but the most numerous and beneficial Parts were thought to be about *Wapping*. A particular Part of the Evidence was, That the Tower was to be seized, and the King's Arms there; I know you observed, that they took Notice of a particular Place of the Tower, that was most capable of Access. This *Rouse* is a Gentleman very well known, 'tis not the first time he hath been at this Bar: He was here at a time when the common Justice of the Nation could not be obtained in this Place, inasmuch that the Judges who came to execute Justice, had more Reason to fear being executed upon the Bench, than the Prisoner at the Bar. It may easily appear how far Mr. *Rouse* was concerned, (I don't love to aggravate Matters, he has Crimes enough) he was reckoned Paymaster to this Rabble, he was to take care to manage those Persons that were to seize upon the Tower. He is a Man of great Skill in that Subject, a Doctrine wherein he was well tutored under a Lord you heard mentioned this Morning; but he is in his Grave, and so I shall say no more of him. We shall give you an Account of a Design he had how to compass this Business. *Black-heath* was looked upon as a very convenient Place; where there was to be a Golden Ball; for which the Seamen were to play in great Numbers, and he that won the Prize was to have the Golden Ball; but his Eye was upon the Tower all this while. He thought to allure these silly Seamen by the Advantage of the honourable winning of this Ball; and when they were freighted with the Success of this Meeting, then it was proper to attack the Tower. We shall prove the other Prisoner, that was at the Bar, engaged with this Prisoner at the Bar. We shall not only prove this, but that Mr. *Rouse* hath been always of an Inclination against the Government. We shall call you Witnesses, that he hath undertaken to dispute by what Authority the King comes to govern in England; that he hath said, *he had forfeited his Government*; that he told an ordinary Miscreant, one of his Levellers, *that he had as much Right to the Crown as he had*. My Lord, if we prove this Matter to your Lordship, and the Gentlemen of the Jury, it will be high time for us to endeavour to preserve the Crown upon that Royal Head, upon which all loyal Men desire it should flourish as long as the Sun and Moon endure.

Mr. *Burton*. Call *Thomas Leigh*.

[Who was sworn.

Mr. *Jones*. Pray give us an Account what you know concerning Mr. *Rouse*.

Mr. *North*. Of any Design against the King, and providing Arms.

*Rouse*. If you please, my Lord, one Word before he speaks; I have an Exception against him. I wonder with what Confidence you can look in my Face at this time?

King's Counsel. Nay, nay, speak to the Court.

*Rouse*. My Lord, he is a Person, that before he was taken up, was sworn by two Persons to have a Hand in the Plot; one was Mr. *Keeling*, the other Mr. *Hew of Old-street*; and then being taken up, and conscious to himself, that he was guilty of such notorious Crimes, and knowing I was pretty well acquainted with him, he was deadly afraid I should come and swear against him, and thereupon he took the Boldness to swear against me first.

Mr. *North*. My Lord, he hath offered nothing of Objection.

*Rouse*. I suppose, with Submission to the Court, without he have his Pardon, he is no Evidence in this Case.

Mr. *Serj. Jeff*. Come, tell us all you know.

Mr. *Leigh*. If it please you, my Lord, I have been concerned in this Conspiracy, I know something of it; but I believe Mr. *Rouse* knows a great deal more. Mr. *Rouse* takes me to the King's-head Tavern in *Swinton's Alley*, where after some time, Mr. *Goodenough* came, where there was a Club of Men that were in the Conspiracy. I had seen Mr. *Goodenough* before; he acquainted me, that there was an Apprehension our Rights and Privileges were invaded, and it was time to look to ourselves; for Popery was designed, and Arbitrary Power; and therefore he desired to know, Whether I would engage in that Affair to prevent it? And withal he told me, the City of London and *Middlesex* was divided in twenty Parts; and he asked me to engage in one Part. I told him, my Acquaintance did not lie where I lived; but I would get a Part where my Acquaintance was. I acquainted Mr. *Rouse* and Mr. *Goodenough* what Men I had spoke to. Mr. *Goodenough* told me, the Design was to set up the Duke of *Monmouth*, and kill the King and the Duke of *York*; but that all Parties must not know of it: But that we must tell some People, here was like to be a foreign Invasion, and ask them, What Readiness they were in? And if we found they were like to be compliant in that, then we might discourse with them about the other Matter. I discoursed with several Men about this Affair: And he told me, the Lord Mayor and Aldermen were to be killed immediately, (especially the present Lord Mayor, Sir *John Moore*) and their Houses plundered, and there would be Riches enough, and that would help to maintain the Army; and we went on further in this Discourse. Then I acquainted Mr. *Rouse* with this Business, but he knew of it before; and he did tell me, he could provide Arms for an hundred Men, and said, Nothing was to be done unless the King was seized; saying, We remember since *Forty-One* the King went and set up his Standard; therefore (says he) we will seize them, that they shall not set up their Standard. But (says he) I am for seizing them, but not for shedding their Blood. Mr. *Rouse* went off with that Discourse; says he, I must speak with Mr. *Goodenough*, and some of those that are principally concerned. Mr. *Rouse* acquainted me, that it was a very convenient thing to have a Ball played upon *Black-Heath*, and to that End we must speak to some Sea Captains; and (says he) I will engage Ten, and they shall manage that Affair, and he that wins the Ball take it. But when they have so done, every Captain shall take his Party, and tell them, they have other Work; and then go with Long-boats and Arms, and seize the Tower. I acquainted Mr. *Goodenough* with this, and Mr. *Goodenough* asked me the Charge of the Golden Ball. Mr. *Rouse* had told me, it would be Ten or a Dozen Pounds. Mr. *Goodenough* said, if it was Forty Pounds he would be at the Charge of it all. Several such Discourses Mr. *Rouse* hath, in my Hearing, spoke to several Men at the King's-Head Tavern. I understood I was sworn against; I heard of it at the King's-Head Tavern, in his Company and Mr. *Good-*

*enough's*. Mr. *Rouse* directed me to go to the Sun Tavern near *Moregate*, and he would come to me; and there Mr. *Rouse* and Mr. *Goodenough* came to me; and Mr. *Rouse* told me, I should lie at his House. Mr. *Rouse* cut off my Hair, and went to Mr. *Bateman's* and fetch'd me a Perriwig; Mr. *Rouse* and I went several times to view the Tower, and took Mate *Lee* along with us. So Mate *Lee* directed us to *Traitor's-Bridge*; and he said, that was an easy Place, and he would undertake to do it with an hundred Men, so they had but Hand-granadoes. We had, some time before that, appointed to meet at *Wapping* to speak with the Sea Captains. Mr. *Rouse* met the first Day in order to this Business at the *Amsterdam Coffee-house*, and there Mr. *Rouse* met with two Sea Captains (as he told me) that were to officiate in this Business, and the two Captains he took to the *Angel and Crown in Threadneedle-street*. A small time after, about an Hour and a Half, or thereabouts, Mr. *Rouse* came, (I am not positive whether Mr. *Goodenough* was there or no) and told me, he had spoke to both the Sea Captains, and they were willing; but one was going to *New Jersey*, and therefore the Work must be done before he went, or he could not assist. Another time he appointed Mate *Lee* to meet at the *Anchor in Wapping*. I did speak to Mr. *Goodenough*, but he did not meet us, so that we could not go down that Day; but Mr. *Rouse* always undertook that Business to get ten Sea Captains, and get Arms for an hundred Men. After I was sworn against, and went to Mr. *Rouse's* House, the next Day Mr. *Nelthrop* and Mr. *Goodenough* came to me to Mr. *Rouse's*; says Mr. *Rouse*, Be not discouraged, let the Business go on. I was directed by Mr. *Nelthrop* and Mr. *Goodenough*, whenever I was taken into Custody, I should deny all, and it could not touch my Life. I thank him for his Kindness; I lay well, and eat well, at his House, my Lord; but however I will tell the Truth. We met afterwards several times, and went to Captain *Blague's*, and the rest of the Company, but at different Places. We had an Account, that Mr. *Goodenough* was in the North raising Men, and that the Duke of *Monmouth* was thereabouts, and that a Deliverance should be wrought for all this.

L. C. J. About what time was this?

Mr. *Leigh*. In last June. The Design was so laid, that I was told it was to be done in a Fortnight. They never agreed on a Way or Method of killing the King; but they told me, they had a thousand Horse ready in the Country, and that there was five hundred Horse, or thereabouts, ready in the Town; and that the King should be killed coming from *Windfor*. Now they were contriving how to send Arms, that they might not be suspected, to some private Place; they were to be sent in Trunks to some private House, and there they were to arm themselves in the Night; and some Brickmen were to go to *Windfor* to know when the King came, and give Information; and so they were set upon to him in some convenient Place, and both were to be taken off together, the King and the Duke; and Mr. *Rouse* said, Take them off, and then no Man can have Commis-sion to fight for them.

Mr. *Serj. Jeff*. He is a Politician every Inch of him.

Mr. *Jones*. What did he employ you to do?

Mr. *Leigh*. I was employ'd by Mr. *Goodenough* to make all the Friends I could in this Engagement. I went into *Spital-fields*, and engaged some Weavers and other People. They promised me a Gratuity, but I never had any thing.

Mr. *Serj. Jeff*. If Mr. *Rouse* has a mind to ask him any Questions.

*Rouse*. I will, my Lord.

L. C. J. Propose your Questions to the Court.

*Rouse*. I ask him, by the Oath he has taken, Whether ever I spake with him of any Design against the King and Government? I ask you, Whether you did not begin with me?

L. C. J. You hear his Question; answer it.

Mr. *Leigh*. For that I answer, That Mr. *Rouse* was the first Man that ever I heard propose, that the King and the Duke should be secured; and there is another thing come into my Mind; Mr. *Rouse* hath been a Traveller, he did presume to say, and has said to me, and in Company, that the King was sworn in *France* and *Spain* to bring in Popery and Arbitrary Power in so many Years, and therefore it was no Sin to take him off; and he told me, he had it under his own Hand.

*Rouse*. It was impossible, my Lord.

Mr. *Serj. Jeff*. I do believe it. I do not believe he thought thee fit to be a Secretary.

L. C. J. Look you, If you would have any thing asked him, propose it to me.

*Rouse*. What Place was it I began to speak of any thing of this Design?

Mr. *Leigh*. The King's-Head.

*Rouse*. Who was with us?

Mr. *Leigh*. Mr. *Goodenough* and several others.

*Rouse*. Was it discoursed of before them?

Mr. *Leigh*. No, You never discoursed of it before them?

*Rouse*. You discoursed of going an Hay-making in the Country; says you, I will trust them one alone; but says you, I am under an Oath of Secrecy, not to communicate it but to one at a time, but I make bold to acquaint you with it: I give you an Account what I heard from his own Mouth.

L. C. J. Look you, what you heard from him will signify nothing, unless you are able to make Proof of it by other Witnesses: If you will ask him any Questions, you shall. We will hear what you can say for yourself at last: But you must not evade the King's Evidence with any Discourse at random.

*Rouse*. Did I ever put you upon any thing of this Nature? Did you not tell me there was a Design to overturn the Government, but you would not shed Blood?

Mr. *Leigh*. I will answer: I can't be positive, whether I came to Mr. *Rouse*, or he to me. I had been in his Company several times before, and whether he discoursed it first to me, or I to him, I cannot tell; but when that Point was discoursed, he was very zealous to get ten Captains, and that the Ball might be play'd, and the Tower taken.

*Rouse*. Did ever Mr. *Goodenough*, and you and I, meet upon such an Account?

Mr,



Mr. Leigh. Yes, at the King's-head Tavern.

Rouse. I can take my Oath, I never saw Mr. Goodenough but twice in your Company, and I never knew you till May last.

Mr. Serj. Jeff. You came to a very strict Alliance by that time it came to June.

Mate Lee sworn.

Mr. Serj. Jeff. Tell my Lord and the Jury what you know, the whole Truth and nothing but the Truth.

Lee. The whole Truth I will tell. About a Week before Midsummer, or thereabouts, I met Mr. Rouse, I think it was in Pope's-head Alley, going to look after Captain Blague: Says Mr. Rouse, I have something to say to you, but he did forbear speaking it then; so I went to the King's-Head Tavern by the Exchange; we went into a little Room. Says he, There is something I would have you do. What's that? says I. Says he, Can't you get some Seamen fitting to make Commanders of Ships? I did not understand Mr. Rouse's Meaning in it; but I thought Mr. Rouse being in Employment, might put me in, being destitute of Employment, as well as other Men. So after we did appoint to meet at Wapping, at the Sign of the Blue Anchor in Wapping Dock. Says Mr. Rouse, If I come not at Ten of the Clock, do not look for me. Says he, Can you get no Men that are fit to make Commanders of Ships? Says I, I have no Acquaintance with any; I do not know but two or three: But, says I, I will see what I can do. I waited for Mr. Rouse and Mr. Leigh next Day (both were to come). The next Day I asked him, What he intended by the Commanders of the Ships? Where would he have those Ships? He answered, some of the King's Men of War, that lay at Deptford and Woolwich to make Guard-ships. Says I, What will you do, if you have no Powder and Shot? If you could take the Tower, then you might provide them with every thing fitting. Says Mr. Rouse, We must secure the Tower and Whitehall both, or we can do nothing. Says I, Mr. Rouse, where is your Oath of Allegiance then, that is to the King? Says he, We will secure the King, that he shall come to no Damage, and he shall remain King still. If Mr. Rouse hath any thing to object against what I say, I desire to hear it: I speak nothing but the Truth.

Mr. Serj. Jeff. Did you meet with him at any other time?

Lee. This was the first time he put out any such thing to me, concerning any such Contrivance.

Mr. Serj. Jeff. Did you meet with him afterwards?

Lee. Yes, we had some Discourse, it was to the same Effect; but it signifies nothing; and my Memory being shallow, I do not exactly remember it. I know I must give an Account of this, before a greater Court than this.

Mr. Burton. Mr. Corbin.

Mr. Serj. Jeff. I did acquaint you, my Lord, that there was Occasion to make use of Evidence against the Prisoner at the Bar; I gave you an Account how that Evidence was not received. Now I desire to give you Proof, that the continual Inclination of this Man's Heart was the Killing of the King, and Destruction of the Government.

Mr. Thomas Corbin sworn.

Mr. Serj. Jeff. Pray, Sir, tell my Lord, and the Gentlemen of the Jury, what Meetings you had heretofore with the Prisoner about the Year Eighty-one or thereabouts. See whether you know him.

Mr. Corbin. What I have to say against Mr. Rouse, is only what I gave in Evidence to the Court before.

Rouse. When was that?

Mr. Corbin. In Eighty-one.

L. C. J. Pray, what do you know of him? Don't tell us what you gave in Evidence; but you are on your Oath to speak Truth, not what you said then.

Mr. Corbin. My Lord, some few Days before the Members for the City of London went for Oxford, I happened to appoint a Gentleman (one Mr. Wyat) to meet me at Mr. Leech's in Cornhill. Mr. Rouse came by, I knew him very well; he was concerned in the Commission for disbanding the Army as well as I. He came in, and saluted not only me, but the Master of the Shop, with, *How do you do?* He enter'd into Discourse, and said, he intended to go for Oxford, and that he had agreed with the Coffee-men about Town, to furnish them with News: Says he, There are several Gentlemen resorting to your Shop; it would do well, if you had it. Says Mr. Leech, What shall I give you? Says he, If you will go to the Tavern, we will agree it over a Glass of Wine. But Mr. Rouse told me he had a Kindness to beg of me; and (says he) I would have you engage some of your Friends to deliver them speedily to such a Person I shall appoint, *de die in diem*; for, says he, if they be delivered by the ordinary Letter-carrier, they won't turn to Account, nor give Satisfaction. By-and-by Mr. Wyat came in (that I was to meet at the Stationers): Mr. Wyat asked me, What I thought of the Sessions? Mr. Rouse made Answer, he did foresee it would be a very short Sessions. Says he, These frequent Prorogations and Dissolutions of the Parliament won't avail him; for whatever the King has, the Parliament gave him, and they may take it away when they please. One bid him have a care what he said; and he reply'd, *The King had forfeited his Crown, and had no more Right to it than he had.*

L. C. J. Mr. Rouse, if you would ask him any Questions, pray direct yourself to us, and we will ask them.

Rouse. I desire he may be asked, What was said before and after?

L. C. J. Can you tell him? Do you know there was any previous or subsequent Discourse to this, that might any way alter it?

Rouse. It was the same Question propounded in Eighty-one.

Mr. Just. Withins. Pray, did he say the King had forfeited his Crown?

Mr. Corbin. Yes, and when he was rebuked for it, he reiterated it.

Mr. Serj. Jeff. We will trouble your Lordship but with one Piece of Evidence more; only to give you an Account Mr. Rouse is a Man very well known in the City of London; yet when there were Officers came to seize him, he had forgot his Name of Rouse, and did not remember it. Swear William Richardson, (which was done). Pray, tell my Lord and

the Jury, Whether you were at the taking of this Mr. Rouse, and what Name he went by?

Mr. Richardson. I was upon the Fourth of July Instant, to search for one Armiger, and coming to Widow Hay's Coffee-house, (I think they call it) the Widow told me, there was no Man in the House: I went down the Street, and came back again, and one said, he saw a Man go into the Garden: Says he, do you stay here, and I will go and see: He saw this Gentleman: Says he, What is your Name? He said, Johnson: I asked him, and he said, Johnson. I told him, We must have an Account of him. Some said, they did not know him. We went to the Half-Moon Tavern, in Aldersgate-street; he sent for other Men; they said, they did know him; but they could say nothing in his Behalf.

Mr. Serj. Jeff. Is that the Man, Johnson?

Mr. Richardson. That is the Man, that said his Name was Johnson.

L. C. J. Look you now, Mr. Rouse, this is your Time to speak for yourself: What have you to say to this that is charged upon you? You hear the first Witness does say, That you would have engaged him in a Design of raising of Men; and you told him, you designed to surprise the Tower; and to that Purpose he survey'd it with you; and you told him what your Design was you met Mr. Goodenough about; it was to raise Men. Goodenough was for killing the King; you, it seems, at first, was but for securing the King, and making him do what you please; but afterwards, it was come to an higher Matter; and then you had found out a way to engage some Captains to seize the Tower, and others were to seize Whitehall; both were to be done at once. What say you to this, (here are three Witnesses that testify very strongly against you) and the Device you had to get Men to Blackheath to secure the Tower?

Rouse. My Lord, I stand here for my Life; it never enter'd into my Heart, nor came out of my Mouth; but he came to me several times about it, and I opposed it. At last he dogg'd me so often, that he gave me Occasion to ask him the Meaning of it. The first Place I saw him in, was the King's-Head (as he saith truly) in Swithin's-Alley. There were several Persons, (as they met there every Day upon their private Occasions) that is true. He asked me a strange Question, (that was the first Time that I heard of it) Whether I was willing to oppose a foreign Invasion, that was like to be made speedily? And, Whether I would engage in the Defence of it? And this he did two or three times afterwards. To which I replied, Sir, I and every honest Man are bound (as we are Subjects, and have taken the Oaths of Supremacy and Allegiance) to engage in such a Thing you put me upon, that was, to engage against a foreign Invasion. The next time, he asked me, How far I would assist, if such a thing should fall out as a foreign Invasion. I wonder'd to hear it so often repeated; I answer'd, I never had but one Sword for several Years, tho' I have had Occasion for many in other Countries; but I make no Question but by the Assistance of my Friends, to raise an hundred Arms, that was my very Expression: But withal I demanded, What he meant by Invasion? And that I insisted upon several times: For, says I, I know of none, and I hope there is none like to be. I took an Account of this in Characters, and have acquainted his Majesty and the Council with it. He replied to me: Says he, I wonder you are a Stranger to such a Thing. 'Tis true, says he, that is the Word goes up and down: But, says he, there is another Kind of Invasion meant by some Men. I asked him, What other Invasion do you mean? He answered presently, Don't you know? Are you a Stranger in England? In Israel? Says he, there is an Invasion upon our Rights and Liberties, and all we have: Whereupon I was a little startled. This was at the King's-Head Tavern. Another time I desired him to explain his Meaning, being a Stranger to it, when I express'd my Readiness to serve the King upon such an Occasion, in those Words. They that know me, know that I am not in the Capacity of raising an hundred Arms; but I intended it, as God knows, in Opposition to a foreign Invasion: But, I thank God, I took Characters Day by Day, and with a Resolution Day by Day to discover it: But he has got the Start of me, for fear I should swear against him. He insisted still upon it, That our Rights and Liberties were invaded; and that was the Invasion all along intended; and that was the way to hook in Persons, only upon that Pretence of a foreign Invasion. I asked him, In what Manner he meant Invasion? Says he, What with their Doctrines on one hand, and Oppression on the other, they lie so heavy, that we can't bear it no longer. Says I, What do you mean by this? What Course do you think of? What can you propound to yourself to extricate yourself out of these Troubles you so much complain of? To which he answered, You are a Stranger to what is a-foot, and hath been a-foot, a great while. Do you not know the Persons that are engaged in the Design? (I was a little inquisitive to know what was meant by the Persons). No, (says I) positively, I know not what you mean; I am a perfect Stranger to these Persons, and this Design; and I wished him, and all others, (as they were Men and Christians) that they would take care of opposing the Government they lived under, that was my very Words. Says he, that we have considered very well, and how to secure the Two Things; and, says he, you shall see we will do it dexterously, without shedding a drop of Blood: Nay, says he, not the Blood of the Duke of York, though he be the veriest Dog in England. I desired him to explain himself. He answered, The Mischief of it is, we can't agree among ourselves; for it was Us and We at every Word; so I concluded he was of the Cabal and Club, that met together on this Design (that hath come before your Lordship); and I am pretty confident there was such a hellish Design, though I thank God, I had no Hand in it. Said I, who are the Persons? Pray declare the Bottom of this Story you come to me about, one Day after another. With much ado, he told me, Mr. Goodenough was one. After this Discourse, I never saw Mr. Goodenough but twice; once was at the King's-Head Tavern, where I believe was twenty; the second time, was a Day or two after I saw the Proclamation, and his Name in it. So much I speak of Mr. Goodenough. I asked him the Names of the other Persons, that were engaged in this Design; and says he, I must conceal them, for I am under an Obligation: But the first time I saw the Proclamation against Colonel Rumsey and the others, says he, I was deadly afraid I was in the Proclamation; but (says he) all these Persons are concerned, and several



several others. Thereupon he told me, that when they met they came to this Resolution of seizing the Tower, the Aldermen, and taking of London. Says I, Pray what Money have you to carry on this? Money? Oh, says he, we don't want Money; says he, Mr. Goodenough hath assured me there is 40,000*l*.

L. C. J. Look you, you invert all his Discourse: He hath sworn it against you. Have you any Evidence in the World? You are not in a Capacity to swear against him.

Rouse. My Lord, he hath turned it upon me, he spake to me always in private.

L. C. J. Look you, you have fixed but upon one Person, here was Mate Lee, that gives a very shrewd Evidence against you; Did he come and teach you? Did he use these Words?

Rouse. My Lord, I have nothing to say against Mate Lee, I hope he is an honest Man. But I having a Design to discover this whole Thing, and having so much out of Leigh the Dyer—

L. C. J. What did you use these Words to him for then?

Rouse. To satisfy the Gentlemen that put me upon it, that I might come to the Bottom of the Design.

Mr. Just. With. You say you know a great deal more: How came it to pass you never told the King one Word of this till after you was taken?

Rouse. I have told it since I was taken.

Mr. Sol. Gen. Pray, when you had got to the Bottom of all this (as you call it) why did you deny your Name?

Rouse. I did not deny my Name.

Mr. Serj. Jeff. He hath as many Names as he has Designs, and they are abundance.

Rouse. I did not know they were Officers. I did not think there was any Obligation upon me to tell every Man my Name.

L. C. J. You hear what Evidence is given against you concerning your Discourse in *Eighty-one*; which tho' it be not the Thing for which you are directly called in Question, yet if you could clear yourself of it, it would import you much, for that does shew your Spirit, and that you have had a long while a Design against the King's Life, if that be true; therefore it would be very fitting that you purged yourself of it, and that you could some way or other give an Answer to what you said, *That the King had forfeited his Crown, and had no more Right to it, than one of those jerry Persons you spoke to: And to say the Parliament might take away the King's Authority.* These are strange Treasonable Expressions.

Rouse. My Lord, tho' this Thing be revived, which was out of Doors two Years since, and I suppose it is well known to your Lordship, who was then upon the Bench. As I was told, there was a Word in the Indictment called *Colloquium*: He was asked what Discourse passed before: But if Mr. Corbin would remember himself, I do confess I did say these Words; but the Words that followed before.

Mr. Just. With. What do you mean, the Cart before the Horse?

Rouse. Mr. Wyat was urging of several Discourses, the Popish Grandeur in deposing Kings; and I gave this Answer in these Words: *Sir, (says I) if it were in the Power of any Pope to depose the King, then he might as well take away the Crown off the King's Head; but he hath no such Power; if he had that Power, says I, then the Crown of England is your's as much as his.*

Mr. Sol. Gen. What was the *Colloquium*, when you said the Parliament might take it away?—Rouse. I never said that.

L. C. J. I have heard a great deal of your Discourse: If you think you can make any of it good by Witnesses to your Advantage, call them.

Rouse. My Lord, I have not had Time to collect my Witnesses. How can it be supposed I should call Witnesses? I don't know whether they are here. Here are Witnesses called to prove a Matter, whereof upon a Trial two Years past I was acquitted.

Mr. Just. With. Pray do not go away with that, here are two Witnesses since.

L. C. J. You were told, that was not the Thing laid to your Charge now, that does only shew the Temper of your Spirit, and how your Inclinations have been all along. Look you, this you are now charged with, is a Design to *Seize and Kill the King*, and to that Purpose to have enter'd into a Conspiracy with Goodenough and others, for the *raising of Men*, and the making of a *Rebellion and Insurrection* here in the Kingdom; whereby you might have seized not only the King, but his Fort here, the Tower, and made yourselves Masters of his Ships, and so enter'd into a perfect War with him in his own Kingdom, to the Destruction of himself and the Government. You hear what the Witnesses say against you.

Rouse. I do declare, in the Presence of God Almighty, before whom I must stand, it never enter'd into my Heart.

Mr. Jones. If that would do, we should have none hanged.

Rouse. I appeal to your Lordship, and this Honourable Court, whether 'tis likely for me, who am such a silly Person, to engage in such a devilish Design, especially being concerned with no Person in the World about it; for I declare, if I was upon ten thousand Oaths, I never had any Discourse with any Person in the World about it. In the next Place, I never was in any Meeting, though I have heard of several darkly that they met in London, and in several Clubs, but I could never find out the Places. I desire to ask him, whether he knows with whom I did concern myself.

L. C. J. Look you, did you never meet him with any Company concerning any of these Treasonable Designs that you have spoken of?

Mr. Leigh. I will give your Lordship and the Jury an Account. Mr. Rouse acquainted me he could make ten Sea-Captains; I acquainted Mr. Goodenough with it. He told me he would have a Golden Ball, and told me the Charge. We went to the *Angel and Crown Tavern*, from thence he came to meet Mr. Goodenough, to tell him what he had said to these Captains. The next Day he met Mr. Goodenough; and Mr. Goodenough, Mr. Rouse, Mr. Pachin, and I, went from *Joseph's Coffee-house* in *Exchange-Alley*, and he discoursed about getting of these Captains.

Rouse. Who was present?

Mr. Leigh. We never discoursed the Matter jointly, but singly with one Man. Mr. Rouse and Mr. Goodenough went into a Room apart above Stairs, and discoursed this Matter (as I believe) half an Hour.

Vol. III.

Rouse. How do you know what Discourse I had with Mr. Goodenough when you was not present?

Mr. Leigh. Mr. Goodenough thanked me for bringing him acquainted with you.

L. C. J. How do you know what Discourse they had?

Mr. Leigh. I know only what Mr. Rouse told me; Mr. Rouse told me, that he would engage ten Sea-Captains, that a Ball should be play'd, and every Man take his Dividend.

L. C. J. Did he tell you he had discoursed this with Mr. Goodenough?

Rouse. Did I tell you so?—Mr. Leigh. Yes, Sir.

L. C. J. You speak of several in Company, one Pachin and others.

Mr. Leigh. We went from the *King's-head Tavern*, for there was Company we did not like, tho' we discoursed there but of *Hay-making*, and getting Men to help the Country People.

L. C. J. What did you mean by that?

Mr. Leigh. That was to get Men for this Business.

L. C. J. What did he say the Intention was of raising these Men?

Mr. Leigh. Mr. Rouse hath frequently and often acquainted me, that the King had taken an Oath in *France* and *Spain* to bring in *Popery* and *Arbitrary Power* in so many Years, and that he had not done it, made the *Popish Party* angry, but that he would do it.

L. C. J. Well, what Design was there in raising of Men, and seizing the Tower?

Mr. Leigh. He told me all things must be done together. The King and the Duke must be seized, for that was the principal Work.

Rouse. It never enter'd into my Heart. Be pleas'd to ask him if he was not arrested by one Keeling, and what was the Account of it?

Mr. Leigh. No.

Rouse. I mean sworn against.

Mr. Leigh. I will give your Lordship an Account of it. Mr. Goodenough, Mr. Rouse, Mr. Pachin, and I, had been at the *King's-head Tavern*; a Man came and told me, a Man had been at my House, and that one swore against me, and it would be dangerous to go home. A while after comes one *Armiger*, and he told me, Mr. Bateman was gone one Way, and he another, to seek for me, and desir'd me to have a Care of myself. With that Mr. Rouse, Mr. Goodenough, and Mr. Pachin, came out to me. Mr. Rouse directed me to go to the *Sun Tavern* at *Moorgate*, and I went; Mr. Rouse, Mr. Goodenough, and Mr. Pachin came to me. I told them I would meet my Wife, but they would not let me go on by any means, but sent one Mr. Thomas, a Coffee-man, for my Wife. She came and told me, Mr. Goodenough had sworn against several People, or he was sworn against. I went to Mr. Rouse's House, where Mr. Goodenough came to me. Mr. Rouse would have had Mr. Goodenough staid there all Night: Mr. Goodenough sent for his Wife, to know if his Brother had sworn; she acquainted him, he had not sworn: Mr. Rouse invited him to lie with me. He shew'd me, behind the Bed, a Window to go into another Man's Room, to make my Escape, if any Man should come to search the House. I lay there on *Saturday*. Mr. Goodenough and Mr. Nelthrop came to me; Mr. Goodenough told me, he had lain at Mr. Nelthrop's all Night, but he had seen his Brother, and he had not sworn against me: I heard that Mr. Keeling had sworn against me, and did say, in Discourse, if I did light of Keeling, I would kill him.

Rouse. I desire to ask him another Question: When he was told he was sworn against, what did he say?

L. C. J. He tells you before-hand, that he said he would kill Keeling, if he could meet him.

Rouse. He says Mr. Goodenough and Nelthrop came to my House; ask him if I was in the House, or saw Mr. Goodenough?

Mr. Leigh. I am not positive whether he saw them together, but that he saw Mr. Goodenough there the *Friday Night*, for he invited him to lie with me.

L. C. J. Pray, what was your Reason in putting Mate Lee upon the inquiring out Men to make Masters of Ships?

Rouse. To satisfy the Gentleman, because he told me, there was such a Design in hand, to get to the Bottom of that Design, that so his Majesty might come to no Damage. Pray, my Lord, How could I acquaint the King, or any Justice of Peace, what he meant by it, unless I understood it?

L. C. J. Have you any thing more to ask? Or would you have any Witnesses called?

Rouse. My Lord, 'tis my Unhappiness I have no Witnesses.

Mr. Serj. Jeff. He hath confessed the Treason enough.

L. C. J. Look you, Gentlemen of the Jury. You hear that this Person at the Bar is indicted for High Treason, in conspiring the King's Death, and declaring this by Overt-acts, that is, endeavouring to raise Men here for to seize the Tower, and to make an Insurrection here, and a Rebellion within the Kingdom: You hear two positive Witnesses of what they have heard from him: He did endeavour, says Lee, to bring him into it, and he told him the whole Design, he did declare to him the Manner how they intended to seize the King, and the Duke of York: Mr. Goodenough was one of the Persons that confederated with him, one of them, but several others they had. They had covert Terms to disguise this, by getting the Country People in their Harvest. He told them of a Design he had to get the Seamen, a Thousand of them together, to seize the Tower and Whitehall, both at a Time. And you hear that Mate Lee had the same Discourse in Substance with him, of endeavouring to seize the Tower, and get Arms for to seize the King's Ships, to raise a thousand Persons for the effecting of this. All these things you have heard proved against him; he gives no Answer to any of them, but only tells you, that in Truth he did not say these Things to them; but they, that is the first, Lee, said these Things to him. He hath no Evidence at all of it. You hear likewise (which does agree with this Case) the Testimony by the other Person concerning his Discourse in *Eighty-one*: How he said, The King had forfeited his Crown, and had no Right to it; but the Parliament gave him his Authority, and might take it away. All these Discourses they favour of a wicked Spirit as can be in the whole World. I must leave it to you, whether you believe him guilty.

The Jury presently gave their Verdict that he was guilty.



CXXI. *The Trial of WILLIAM BLAGUE, at the Old Bailey, for High Treason, July 13, 1683. 35 Car. II.*

**WILLIAM BLAGUE** having been arraigned on *Thursday, July 12.* pleaded Not guilty, and put himself upon his Country, was brought to the Bar again, *Friday July 13.* He made no Challenges, and the former Jury was sworn.

## JURORS.

<i>Robert Beddingfield,</i>	<i>John Short, Sen.</i>	<i>Henry Robbins,</i>
<i>John Pelling,</i>	<i>Thomas Nicholas,</i>	<i>Henry Kempe,</i>
<i>William Windbury,</i>	<i>Richard Hoare,</i>	<i>Edward Raddish,</i>
<i>Theophilus Man,</i>	<i>Thomas Barnes,</i>	<i>Edward Kempe.</i>

*Clerk.* Gentlemen of the Jury, look upon the Prisoner, and hearken to his Charge. He stands indicted by the Name of *William Blague*, late of *London*, Gent. that he, together with *John Rouse*, &c.

*Mr. North.* Gentlemen, you that are sworn; the Prisoner at the Bar is charged with compassing the Death of the King, and conspiring to raise War and Rebellion, to destroy the Government, and take Possession of it; that he did conspire with on *Rouse*, and several others not yet known, to bring these Things to pass, and being join'd together, to seize the *Tower*, and to provide several Arms: To this he hath pleaded Not guilty, &c.

*Mr. Serj. Jeff.* My Lord, and you Gentlemen of the Jury, we shall not need to trouble you much with the Prisoner at the Bar, for this Prisoner, with him that went before, were to undertake that Part of this horrid Conspiracy relating to the seizing the *Tower*, because the same Witnesses that were against the former, are against the Prisoner at the Bar. We shall not need to trouble you with the History, we will cause our Witnesses to prove it.—Do you hear, *Leigh*? You must tell my Lord and the Jury what the Prisoner at the Bar was concerned in.

*L. C. J.* What do you know of any treasonable Practices of his?

*Mr. Leigh.* I will acquaint your Lordship, and the Gentlemen of the Jury, that *Capt. Blague* and *Mr. Rouse* were frequently at the Tavern. I presume many times they came in about Business, and sometimes there were Discourses to carry on this Conspiracy. *Mr. Rouse* told me, he had acquainted *Capt. Blague* with it, about getting ten Sea Captains; *Captain Blague* told him, they had better engage one or two Ships to shoot Mortar-pieces into the *Tower*, which would presently destroy it; and discoursing with *Captain Blague* about the Affair, he told me he would be ready in a Fortnight or three Weeks.

*Capt. Blague.* My Lord, Will you please to ask what Time that was?

*L. C. J.* You shall have any Question asked by-and-by.

*Capt. Blague.* Very well.

*Mr. Leigh.* *Capt. Blague* told me, he would be ready in a Fortnight or something more, and he had an Intention to lay in about fourteen Guns in his own Ship that he had bought, he would have twenty-four in it, and lay it on *Southwark* Side, against the *Tower*. He would venture his Ship, but they must see they were provided with Money for the Seamen. I acquainted *Mr. Goodenough* with this, and *Mr. Goodenough* desired to speak with *Capt. Blague*; I told *Capt. Blague* of it, and we took Coach at *Stocks-market*, and went to the *King's-head* in *Chancery-Lane*, where we met with *Mr. Richard Goodenough*, and *Mr. Francis Goodenough*. *Capt. Blague* asked, what Money they had provided; they said, about 40,000*l.* says *Capt. Blague*, the Seamen will swallow that up immediately.

*L. C. J.* What did *Capt. Blague* say?

*Mr. Leigh.* *Mr. Goodenough* and *Capt. Blague* discours'd about the Matter at the *King's-head* Tavern at *Chancery-Lane* End, and the Discourse about the Matter was, how to seize the *Tower*; he then told them again, the only Way was to do it with Mortar-pieces, that he would venture his own Ship, and provide two hundred Men.

*L. C. J.* What did he say about Money?

*Mr. Leigh.* He asked what Money was provided, he said, there was about 40,000*l.* then he said, that would be easily swallowed. *Mr. Goodenough* said, that there would be more provided at any time. *Captain Blague* and *Mr. Goodenough*, both of them, drank a Glass or two of Wine together, and so at that time we parted. I met with *Captain Blague* again, and he bid me, for God's sake, don't discourse before my Mate such a one, but my Mate *Lee* is a very honest Fellow: Said he, I will undertake, once in twenty times, to dismount them six Guns that face towards *Surry* Side, which I understood to be about *Traitor's-Bridge*, he would undertake to dismount them. What Discourse *Captain Blague* and *Mr. Goodenough* had apart I can't tell, but *Mr. Goodenough* told me, he would get some other Captains to engage in that Affair. That Business was left to him and I, and I was desired to be frequently with *Captain Blague*, for the managing this Affair of the *Tower*; and, says he, I have had a Commission, tho' not in *England*, by Land as well as by Sea.

*L. C. J.* Will you ask him any thing, Sir? Now he shall be asked any thing that you will propose. First, you do propose to him, about what Time this Meeting was. What say you to that?

*Mr. Leigh.* If it please your Lordship, I believe it was towards the latter End of *May*, or the Beginning of *June*.

*Capt. Blague.* If you please, my Lord, I will give you a Journal or Narrative of all my Proceedings.

*L. C. J.* Will you ask him any more than that?

*Capt. Blague.* No, my Lord.

*Mr. Serj. Jeff.* We will call *Mate Lee*. This *Mate Lee* was the Man that might not be trusted.—*Mate Lee*, Tell my Lord, and the Gentlemen of the Jury, what Discourse you have had with the Prisoner at the Bar, *Captain Blague*, about seizing the *Tower*.

*Mate Lee.* I shall, Sir. The first Discourse that ever I understood, was one Time he and I was riding in a Coach, says *Capt. Blague*, One of these Days we shall have a Ball to toss. I did not know the Meaning of this Ball, till afterwards *Mr. Rouse*, and *Mr. Leigh* and I came together, and he told me of tossing a Ball upon *Black-beath*. Then I began to un-

derstand it. And after this, I can't tell whether it was before that *Captain Blague* and I walked before the *Tower*, and discoursing of this, my Way was to scale the *Tower*, and take it that way; says *Captain Blague*, the best Way is to shoot Mortar-pieces on *Southwark* Side; this was all the Discourse.

*Mr. Serj. Jeff.* Can you say any thing about the Ship?

*Mate Lee.* Nothing about the Ship, but about Mortar-pieces on *Southwark* Side.

*Mr. Serj. Jeff.* What Time was that?

*Mate Lee.* I cannot be positive, about six Weeks ago, or less.

*Mr. Serj. Jeff.* The first Time was in the Coach?

*Mate Lee.* That was about the Ball, I did not understand it, only tossing up a Ball; I did not understand the Meaning of it, till afterwards *Mr. Rouse* and *Mr. Leigh* and I came together.

*L. C. J.* How came you to discourse with him concerning the best Way of taking the *Tower*?

*Mate Lee.* *Mr. Rouse* and *Mr. Leigh* and I, and *Captain Blague* had been together. We discours'd about taking the *Tower*. And we had this Discourse among ourselves, which was the best Way to take the *Tower*? My Approbation was Scaling-ladders, and Hand-granadoes, that was the best Way; *Captain Blague's* Way was with Mortar-pieces on *Southwark* Side.

*L. C. J.* To what Intent was this Discourse, had you had any former Discourse with any Persons?

*Mate Lee.* Not at all, if it please your Lordship. The first Discourse I had was with *Mr. Rouse* and *Mr. Leigh*.

*L. C. J.* And was that about taking the *Tower*?

*Mate Lee.* To surprise the *Tower*, and *Mr. Leigh* and *Mr. Rouse* and I went down to view the *Tower*.

*L. C. J.* Then afterwards *Captain Blague* came in about the Way to take it?

*Mate Lee.* This Discourse with *Captain Blague*, about the *Tower*, was between him and I. I don't remember it in any other Company.

*L. C. J.* What was your Business with *Captain Blague*?

*Mate Lee.* My Business was with *Capt. Blague*, to be his Mate, and I was conversant with him at the *Exchange*, the *Coffee-house*, and the *King's-head* Tavern. And we had Discourse about these Things.

*L. C. J.* Come, *Captain Blague*, would you have him asked any Question?

*Capt. Blague.* My Lord, otherwise I had gone to Sea soon after I came home; but so it was, that I had an Occasion for *Pennsylvania* and *New-York*, and coming one Day to the *Exchange*, I met *Mr. Rouse*, whom I had not seen in sixteen or seventeen Years before, for *Mr. Rouse* made a Voyage to *Virginia* with me about twenty Years ago. Now, my Lord, meeting with *Mr. Rouse*, I had an Occasion then to take up two or three hundred Pounds, and knowing *Mr. Rouse* was a Broker, I did employ him to procure it me, but he did not; however, daily I came to him to dispatch that Affair; and *Mr. Rouse* being a Man for a Tavern, I went to the *King's-head* Tavern, and the *Sun* Tavern, if he was not at one Place I found him at another, in order to perfect this Business. So, my Lord, when I came into his Company, several People used to be with him that I never saw in my Life, and *Mr. Rouse* would say, Sit down a little, and I will go with you presently; so I would sit down, and drink a Glass of Wine, and go to the Places where the Affair was to be managed; after I had done thus several Days, and to no Purpose, I did it myself. Now, my Lord, *Mr. Rouse* in that Time brought me acquainted with *Goodenough*, because *Goodenough* was in his Company, and *Mr. Leigh*, not that I ever saw *Mr. Goodenough* in my Life before, and not as *Mr. Leigh* says, that I ever was with him at the *Dragon*.

*Mr. Leigh.* The *King's Head* Tavern in *Chancery-Lane*.

*Capt. Blague.* I was just coming home when *Mr. Leigh* was going to meet with *Mr. Goodenough*, and I went in there, and took a Glass of Wine, and bid him farewell, and so went home. When I was with *Mr. Rouse*, I was asking, what People they were that were in his Company, he said, very honest Men, drank a Glass of Wine and went away, and still I found them together. I was saying to this *Mr. Leigh* here, if you will go along with me, you shall give me as much for your Passage as any of the rest of the Passengers do. Now, at this Time, my Ship was not in my Possession; this very Day three Weeks I had it in my Possession, and now at this very Day she is in the Carpenter's Hands, who is here now, I suppose.

*L. C. J.* Well, go on.

*Capt. Blague.* Now, Sir, whereas *Mr. Leigh* reports, that I discours'd with *Mr. Goodenough* concerning any publick Affairs, or any thing tending to the Disturbance of the Peace, then am I not a Christian. Besides, Sir, I did not speak twenty Words, or ten Words at the Time, but Your Servant, Sir, or Here's to you, in a Glass of Wine; and this I do speak in the Presence of God Almighty. And when I came into a Room, I never staid longer than *Mr. Rouse*, for my Business was with him, and so went about my own Affairs. As for *Mr. Goodenough*, I believe, I was three times in his Company before I could remember his Name; I would ask *Rouse* several times, What do you call that Man? But in reference to the *Tower*, that *Mr. Leigh* speaks of, that must be touched at. I do remember very well, I shall by no means palliate it, if I were presently to die; coming up from the Ship, we were coming by Water, indeed I should have had Possession of the Ship a Fortnight before, if they had done me Justice; I had two or three hundred Pounds for them before, but coming from the Ship, we were coming up by Water by the *Tower*. I don't know how it was, I spake it to the Waterman, This Place is not well fortified, and if any Occasion should happen, this Place lies in more Peril and Jeopardy than any Place of the *Tower*, and so it does. It is an easy Matter for any to give their Sentiments whether they be accepted.



accepted of or no. This is the very Thing I said, and then they were talking of a *French War*, and the like. Then I said, You silly Fools, if they should take it, it is but going over a t'other Side, and throwing half a dozen Bombo's to them, and set them out again. But, however, Mate Lee, if he remember, I told him the same Thing at that same Time; and I told Mr. Leigh, it was a Pity, a thousand times, that Place was not better fortified. But as to what Mr. Leigh says, to have two hundred Men in a poor Pink, I have refused several in that very Ship, because I could not stow an hundred Men, Women and Children, and that I should press two hundred Men in that Ship, that will not hold. And besides, it is a Pink, let any one look upon her, and see whether that Ship be fit or no to take in two hundred Men. But whereas they say I had Arms, and such Things, I bought the Ship and Arms together, I had four Blunderbusses, two Javelins, and Half-pikes, that is all.

L. C. J. You forget to answer several things; you had Discourse about a Bank of Money.

Capt. Blague. A Bank of Money, my Lord, I never discours'd of. And as to the Ball that my Mate speaks of, my Lord, I know no more what it means to this very Day, than one that never saw a Ball.

L. C. J. Look you, Sir, you were with Mr. Leigh, this Mr. Leigh has sworn; he says, you told him, that you would undertake to get two hundred Men, and you had bought fourteen Pieces of Ordnance already, and that you would within a Fortnight's Time, do you remember, bring your Ship to *Southwark*, and be ready to beat down that Part of the *Tower*.

Capt. Blague. My Lord, I have told you already, the Ship was not mine to bring till this Day three Weeks.

L. C. J. That was within Compass, for they tell you this Discourse was about a Month ago.

Capt. Blague. It was in *May*, my Lord, they talk of.

L. C. J. No, they speak of about a Month ago, you were to have them in a Fortnight's Time—What says the first Leigh, what Time does he speak of?

Mr. Leigh. If it please your Lordship, he said, his Ship would be ready in a Fortnight's Time, or thereabouts.

L. C. J. How long was that ago?

Mr. Leigh. About a Month or five Weeks.

L. C. J. To what Purpose did you meet Mr. Goodenough so often, to discourse about this Matter of the *Tower*?

Capt. Blague. My Lord, I never met with him at all, but when I came to Mr. Rouse about this Business of the two hundred Pounds.

L. C. J. Mr. Leigh, what say you concerning his Inquiry for Money?

Mr. Leigh. If it please your Lordship, Mr. Goodenough and the Captain met at the *King's-head Tavern*, they met several times apart, out of Company, and discours'd of the Business apart. Mr. Goodenough asked me for the Captain many times; I told him what the Captain said to me. Mr. Goodenough took the Captain out, and discours'd him about this Affair. Mr. Goodenough hath told me several times, the Captain would be very serviceable. The Captain asked, what Money there was; I told him about 40,000*l.* and he said, that would be quickly gone. I enquired of Mr. Goodenough again, and Mr. Goodenough told me, there was more Money in *Holland*.

L. C. J. What Money was he to have?

Mr. Leigh. Two hundred Men—The Captain says, I named him before the King and Council to be at a Meeting at the *Green-Dragon Tavern*. It is true, I did acquaint the King and Council, that Mr. Rouse had Business at the *Green-Dragon Tavern*. But this was at the Time of my absconding, I could not tell where to meet him again.

L. C. J. What Guns did he say he had provided?

Mr. Leigh. If it please your Lordship, he said, he had fourteen Guns in the Ship, and would make them up twenty-four: He would undertake in twenty Shot, to dismount them Guns.

L. C. J. Where was this Discourse you had with him about this two hundred Pounds?

Mr. Leigh. If it please your Lordship, it was at several times, one was with Mr. Goodenough at the *King's-head* at the Corner of *Chancery-Lane*.

L. C. J. Look you, Sir, by the Oath you have taken, did he undertake to raise Men, and to assist with his Ship in taking the *Tower*?

Mr. Leigh. If it please your Lordship, he told me he would so do it. He told me, he would have twenty-four Guns.

Jury. Did the Captain tell you so?

Mr. Leigh. Captain Blague that is here.

Capt. Blague. My Lord, in reference to the two hundred Men, this is the Thing that I would answer, I could not stow one hundred Men, Women and Children.

L. C. J. Two hundred Men, he says, for this Service.

Capt. Blague. Yes, my Lord, I mean so. Who can you have to say so besides yourself?

Mr. Leigh. If it please your Lordship, this Discourse was only with Mr. Rouse, Mr. Goodenough, Capt. Blague and I.

Capt. Blague. My Lord, Mr. Leigh said before the King and Council, that he was never along with me but once, and of what I said then, he could tell only he was there when I went to look for Mr. Rouse. How can these nly Expressions go together?

Mr. Leigh. My Lord, as to that before the King and Council, I did say, I was not apart with Capt. Blague and Mr. Goodenough, at the *King's-head Tavern*, but Capt. Blague and Mr. Goodenough were there several times, and they were apart by themselves; and that I had Discourse with Capt. Blague and Mr. Goodenough, and came with them once to the *King's-head Tavern*.

L. C. J. What did Captain Blague tell you of what Discourse he had with Mr. Goodenough?

Mr. Leigh. Capt. Blague did tell me, that we must have a great Care, or else we should be all ruined, and that his Ship should be ready, and always encouraged me. And, says he, when I have done the Business, I have been a Captain ashore in another Country, I have been in Commission in another Country ashore, and can tell how to manage Men ashore as well as aboard. Another Thing was, after all this, some time, when I understood I was sworn against, I was indeed, the Captain says right, to have gone with him a Passenger, and was with him several times, I gave him a Report how the *Tower* might be taken by Ladders and *Granadoes*, and he told me, that *Nelbrop's* Brother came to see him, and did

inform me, that neither Mr. Goodenough nor his Brother was taken, and that the Duke of *Monmouth* was in the Country, and quickly would come.

L. C. J. Who told you this?—Mr. Leigh. Captain Blague.

Mr. Serj. Jeff. This is a pretty Matter to smirk at, Captain.

Capt. Blague. I will assure you, Sir, there is no Truth in it.

Mr. Serj. Jeff. Would you smile the Witnesses out of their Oaths?

L. C. J. Look you, Mate Lee, What say you to this? In your Judgment and your Thoughts, was the Discourse concerning taking the *Tower* in a jesting way?

Mate Lee. No, an't shall please your Lordship, I was in earnest in discoursing of it; my Way was, as I told your Lordship before, Scaling-ladders and Hand-granadoes.

L. C. J. Had you any Talk before of surprizing the *Tower*?

Mate Lee. No, my Lord, by nobody but Mr. Rouse and Leigh.

L. C. J. What had they spoken to you concerning surprizing the *Tower*?

Mate Lee. Mr. Rouse spoke to me of getting some Seamen, that might be fit to make Masters of Ships; and I asked him, what he would do with those Seamen to make Commanders of Ships? He said, to put them aboard the King's Men of War, and make Guard-Ships of them: I said, what can you do with them to make Guard-ships, when there is neither Powder, Shot, nor Ammunition? But, said I, if you can take the *Tower*, you may do well enough: So that our Discourse was about taking the *Tower*.

L. C. J. Was Capt. Blague with you then?

Mate Lee. What Discourse we had about taking the *Tower* was between ourselves.

L. C. J. How came you to discourse concerning this?

Mate Lee. This was our common Discourse. I suppose the Instigation might be by Mr. Rouse. I was acquainted with Mr. Rouse, by going with Captain Blague; this was my first Discourse with Mr. Rouse and Mr. Leigh together.

L. C. J. Who was with you when you discours'd it first?

Mate Lee. There was only Mr. Rouse and Mr. Leigh; I can be positive that Captain Blague was not: But this Captain Blague did say, when I gave my way of taking the *Tower* by Scaling-ladders, and Hand-granadoes; No, says Captain Blague, it is a better Way to have Mortar-pieces over the Water, and shoot into the *Tower*.

Mr. Serj. Jeff. Hark you, Friend, did Leigh or Rouse tell you, that Blague was made privy to it?

Mate Lee. I understood nothing of it, but what we discours'd together; for I was acquainted with none of the Cabal, but Mr. Rouse and Mr. Leigh.

L. C. J. What did you discourse about?

Mate Lee. About taking the *Tower*. I won't mince it, I am upon my Oath.

L. C. J. Therefore we would have the Truth out of you.

Mate Lee. I did gather from Mr. Rouse and Mr. Leigh, that the Intention was to take the *Tower*.

L. C. J. Give some Account how you and Blague came to discourse of such a thing as this is, and in order to what Design.

Mate Lee. The Design was to take the *Tower*.

L. C. J. Did Blague and you discourse it to this Purpose?

Mate Lee. Captain Blague and I discours'd it to that Purpose of taking the *Tower*.

Mr. Sol. Gen. Did you discourse of it as a thing that might be done, or that was intended to be done?

Mate Lee. We did discourse of it as a thing that might be done, or was intended to be done.

L. C. J. Now Captain Blague, if you have any thing to ask him, you may.

Capt. Blague. Ask him, whether there were any Projections or Provisions made for the taking of it; and whether or no there was any Resolution taken that the *Tower* should be taken.

Mate Lee. An't shall please your Lordship, the King's Majesty asked me, when I said what Captain Blague said, about taking the *Tower* with Mortar-pieces; If it please your Majesty, said I, I don't know whether there was any such thing discours'd, that I did not hear.

L. C. J. Well, was there any thing provided or designed in order to it?

Mate Lee. An't please your Lordship, there was nothing of Men or Guns provided, that I did know or hear of.

Mr. Serj. Jeff. How many times did you talk with Captain Blague about this?

Mate Lee. Several times.

L. C. J. Had you any Order from any other Persons for to discourse Captain Blague in order to this?

Mate Lee. No, an't shall please your Lordship, to the best of my Knowledge I had no Order; for they were commonly together, Captain Blague, Mr. Rouse, and Mr. Leigh, and I came to them when I had Business with Captain Blague.

L. C. J. Did you ever discourse this thing with Captain Blague before them?

Mate Lee. I cannot be positive in that.

Mr. Sol. Gen. Did those other Persons, that you said you discours'd with, engage you?

Mate Lee. Mr. Rouse, and Mr. Leigh, and I went out to view the *Tower*, how it might be taken.

Mr. Sol. Gen. Did they engage you?

Mate Lee. Yes, they did engage me.

Jury. My Lord, we desire to have the Witness asked, Whether the Captain knew he went to view the *Tower*?

L. C. J. Had he any Intimation you went to view the *Tower*?

Mate Lee. My Lord, I can't be positive in that: Some time after we met the Captain, and did tell the Captain, we had view'd the *Tower*; but I don't remember what Observations we made.

Mr. Serj. Jeff. Nor what he said to you?

Mate Lee. No, nor what he said to me upon it.

L. C. J. Look you, Mr. Lee, Mate Lee, the Captain told you of this Ball that was to be thrown upon *Blackheath*: How long ago was it?

Mate Lee. An't please your Lordship, I cannot be positive, it was five or six Weeks ago, I think it was the last time I rid along with him to the *King's-head Tavern*. I went to *Chancery-Lane*, and you gave me Coach-hire for nothing, and then you spoke of tossing up the Ball.

L. C. J. What was it he said?

Mate



Mate *Lee*. This was all. I did not know his Meaning, neither did he express his Meaning. He was saying, to the best of my Remembrance, We shall see a Ball tofs'd up. I don't remember he said upon *Blackbeath*; the Confirmation of it was by Mr. *Rouse* and Mr. *Leigh*; then I came to understand what the Ball did mean.

Sir *James Butler*. With his Lordship's Leave, did you speak first to the Captain about the *Tower*, or did he speak to you? Was it your Motion to him, or his to you?

Mate *Lee*. I don't know but it might be my Motion to him.

Sir *James Butler*. Then, my Lord, give me Leave to ask another. How were these Mortar-pieces to be brought up, to be planted on *Southwark Side*, to play upon the Wall of the *Tower*?

Mr. Serj. *Jeff*. That was t'other Man, Sir *James*.

L. C. J. Is there any thing more that you would have asked of any of these Witnesses? or have you any Witnesses of your own?

Capt. *Blague*. My Lord, the Witnesses that I have, in reference to the Number of Men, are here. I desire, my Lord, you will be pleased to order them to come in, to know upon what Account I shipped them.

Jury. My Lord, pray let us ask t'other *Leigh* one Question.

L. C. J. The first *Leigh*.

Jury. We desire to know, whether he heard any thing of the Ball, or tossing it?

L. C. J. He hath told you a long Story of it.

Mr. *Leigh*. The Story of *Blackbeath* I acquainted you with it, about Mr. *Rouse*. There was a golden Ball to be play'd upon *Blackbeath*, a thousand Sea-men to be at the playing of this Ball, ten Sea Captains to manage these thousand Sea-men, and after the Play was over, every Captain to take his Division apart, and treat them with Punch, and after that was done, to tell them they had other Work to do, and to have Long-boats and Arms ready, to go and seize the *Tower*.

Jury. Did Captain *Blague* acquaint you with this?

Mr. *Leigh*. Mr. *Rouse* told me, Captain *Blague* was acquainted with it; I never discoursed with Captain *Blague* about it. Captain *Blague* told me, the best way was to set a Ship on t'other Side, and shoot Mortar-pieces into the *Tower*.

L. C. J. What would you have Mr. *Wright* asked?

Capt. *Blague*. My Lord, please to ask him upon what Account he was shipped.

L. C. J. Was you shipped upon the Captain's Ship, and upon what Account?

Mr. *Wright*. An't shall please your Honour, I was shipped upon him almost four Months and three Weeks ago.

L. C. J. Upon what Account?

Mr. *Wright*. I was shipped upon him upon the Account of *New York, England and Holland*.

L. C. J. Well, what Use do you make of this Evidence?

Capt. *Blague*. Only, my Lord, if you please to ask the rest, whether I have shipped any more men, or spoke with any more than these are?

Mr. *Wright*. An't like your Honour, I have waited upon the Captain ever since I have been shipped: I have waited upon him in *London*, at the Coffee-house, about Business: Since I have belonged to him, I was in Pay, altho' we had not a Ship in Possession: Sometimes at the Mayor's Court Office, Mr. *Briggs*, sometimes with Mr. *Rouse*, who had something to do for Captain *Blague*. I kept at the Coffee-house commonly every Day from eight or nine a-Clock in the Morning. Sufficient Persons know me in *London*. I have kept at the Coffee-house from nine or ten a-Clock in the Morning till four or five in the Afternoon, and so I have satisfied him about what People have inquired after him.

Capt. *Blague*. Call *Robert Chappel*.

L. C. J. Captain *Blague*, What would you have him asked?

Capt. *Blague*. Carpenter, declare to my Lord how long you have been with me, and upon what Account I shipped you?

*Chappel*. Four Months and an half.

L. C. J. What besides?

*Chappel*. We were to go to *New-York*. I have been shipped four Months and an half to go to *New York*. We came to the Coffee-house in *Birchin-Lane*.

L. C. J. Well.

*Chappel*. We have had the Ship a Month in our Hands next *Monday*.

L. C. J. Is she fitted?—*Chappel*. No, she is not fitted.

L. C. J. Was she in a Condition to have done any Service upon the Water?

Capt. *Blague*. Carpenter, do you hear what my Lord says?

*Chappel*. The Ship is a small Vessel, about an hundred and fifty Tun, between that and an hundred.

Capt. *Blague*. My Lord asks you, if she be in a Condition to do Service.

L. C. J. Was she capable to do any Service upon the Water?

*Chappel*. No Service at all upon the Water she could do three Weeks ago.

Mr. Serj. *Jeff*. A Ship of one hundred and fifty or two hundred Tun, would hold a great many People; she was to lie still, that was the Mischief.

*Chappel*. We haled her down to the Carpenter's Yard; she is now in a Condition to work.

L. C. J. Have you any more Men?

Capt. *Blague*. Doctor, upon what Account were you shipped?

*Bellinger*. For *New York, England and Holland*.

Capt. *Blague*. When were you shipped?—*Bellinger*. Seven Weeks ago.

L. C. J. When were you to begin your Voyage?

*Bellinger*. I belonged to the Captain before he had a Ship.

L. C. J. But when did you reckon to begin your Voyage?

*Bellinger*. That I cannot tell.

Capt. *Blague*. My Bill upon the Exchange doth specify it, Sir.

Jury. Pray, my Lord, will you ask if he have any Guns aboard, and how many?

L. C. J. What say you? What Guns are there about the Ship?

*Bellinger*. Fourteen, Sir, and four wooden ones.

L. C. J. What are they?

*Bellinger*. Six above Deck, four in the Hold.

Capt. *Blague*. They are Saker Guns.

L. C. J. Saker?

Capt. *Blague*. Yes, Sir—*Richard Clarke*, What Voyage had we?

*Clarke*. *New York*.

L. C. J. Surely it doth appear, that these Men were shipped a great while ago.

Capt. *Blague*. Some of them have had a Dependence upon me a great while, one hath depended upon me I believe seven Months.

L. C. J. Have you any thing more to say?

Capt. *Blague*. No, my Lord.

L. C. J. Look you, Gentlemen, you that are of this Jury; this Gentleman is indicted for conspiring the Death of the King, and doing some Acts in order to it, that is, endeavouring to surprise the *Tower*, and raising of Men, and preparing of Shipping and Guns, and this on purpose to surprise the *Tower*. That there was an evil Design, a very wicked notorious Design of seizing the King's Person, and killing the King, that is most certain, you have heard it by a great many Witnesses, and it is a thing, I think, not to be doubted of by any. The Question is, Whether this Man be guilty of it, and hath undertaken any thing in relation to it? Look you, you ought to have in such Cases of High Treason, as you have been told, you ought to have two Witnesses against a Person. Here are two Witnesses produced, one of them does speak very shrewdly to the Case, and tells you, he had it from this Person himself; that he had spoken with *Goodenough* about this Matter, about surprising the *Tower*, and that he told him it was an easy thing to surprise the *Tower*, and that he could do it; that he had a Ship ready, and he would undertake that 200 Men should be ready with Mortar-pieces from *Southwark Side*, to throw them and beat down the *Tower*, so that it might have presently been down. First, Mr. *Leigh* doth say, that the Captain there at the Bar, that he was oftentimes with Mr. *Goodenough*, and Mr. *Rouse*, and others, who it is plain were in that Design, both *Rouse* and *Goodenough* was, and that he heard *Goodenough* say, that the Captain had undertaken it; and he says that the Captain had Discourse with *Goodenough* about it. He says, the Captain asked him, in order to this, what Money could be raised, and he told him there was 40,000*l.* and the Captain told him, that was but a small Matter, the Sea-men would eat up that; and *Goodenough* told him, there was a greater Bank in *Holland*, that would be brought over. So that this Evidence goes a great way. But then, Gentlemen, you must consider whether you have another Evidence or not. There is a Person that you call *Mate*; the *Mate* doth give a dark kind of an Evidence: He does say here, that he and the Captain had Discourse about the Way of taking the *Tower*, and he believes it was in order to take the *Tower*; but he does say, when he heard it, nobody was present but himself, and he was of one Opinion how the *Tower* might be taken, that is, by Scaling-ladders and Hand-granadoes; and that the Captain was of another Opinion, whether it might be the better taken by Mortar-pieces, thrown from *Southwark Side*; but whether the Captain had any Notice of this Design of taking it, he cannot tell, or whether he had any Acquaintance concerning it. So that this Evidence does seem to be somewhat dark. Whether this were sportive, or a Trial of their Skill, or whether it was a Design to have Counsel and Advice one of another, which way to take it, I must leave it to you; whether it was done with an Intent and Design, for to find out the best way in order to the taking of it. But if it were only a Discourse at large between them, and Endeavour to try their Judgments one with another, and speaking their Minds one with another in that Case, then this Evidence doth not come home to make him guilty of the Plot of taking the *Tower*, or taking away the King's Life. He tells you, he did speak of a Ball to be thrown up; but whether he ever heard of the other Design that *Leigh* speaks of, the first *Leigh*, *Thomas Leigh*, of throwing up a Ball by Sea-men, in order to the taking of the *Tower*, he knows not. *Leigh* says, the first Witness, he does not know any thing whether this Man at the Bar was ever acquainted with the Ball or not. If upon what you have heard, you believe there are two Witnesses to prove this Gentleman at the Bar guilty of this Design of surprising the *Tower*, and killing the King, and taking the *Tower* in order to it in this manner; then you ought to find him guilty: But if you have not two Witnesses, that do testify the thing, then, Gentlemen, under two Witnesses a Man cannot be guilty.

After which the Jury withdrawing to consider of their Verdict, in a short Time returned, and brought him in Not Guilty.

Saturday 14th July, Lord Ruffel was brought to the Bar.

Cl. of Cr. *William Ruffel*, Esq; hold up thy Hand (which he did). Thou hast been indicted for High Treason against our Sovereign Lord the King, and thereupon hast pleaded Not Guilty, and for thy Trial hast put thyself upon the Country, which Country has found thee guilty. What canst thou say for thyself why Judgment of Death should not pass upon thee according to Law?

L. Ruffel. Mr. Recorder, I should be very glad to hear the Indictment read.—Mr. Att. Gen. You may read it.

Cl. of Cr. Will you have it read in *Latin* or in *English*?

L. Ruffel. In *English*.

The Clerk read to the Words, Of Conspiring the Death of the King.

L. Ruffel. Hold, I thought I had not been charged in the Indictment as it is, of compassing and conspiring the Death of the King.

Mr. Att. Gen. Yes, my Lord.

L. Ruffel. But Mr. Recorder, if all that the Witnesses swore against me be true, I appeal to you and to the Court, I appeal to you, whether I am guilty within the Statute of 25 E. 3. they having sworn a Conspiracy to levy War, but no Intention of killing the King: And therefore I think truly Judgment ought not to pass upon me for Conspiring the Death of the King, of which there was no Proof by any one Witness.

Mr. Att. Gen. That is no Exception.

Mr. Recorder. My Lord, that was an Exception proper (and as I think you did make it) before the Verdict; whether the Evidence does amount to prove the Charge, that is proper to be observed to the Jury; for if the Evidence come short of the Indictment, they can't find it



it to be a true Charge : But when the Jury has found it, their Verdict does pass for Truth. We are bound by the Verdict as well as your Lordship, we are to go by what the Jury have found, not their Evidence.

L. Russell. Without any Proof ?

Mr. Recorder. The Jury must be governed by their Evidence.

L. Russell. I think it very hard I must be condemned upon a Point that there was not one thing of it sworn ; and therefore I think I may very legally demand Arrest of Judgment.

Mr. Recorder. I hope your Lordship will consider, 'tis not the Court can give a Verdict, it must be the Jury. I believe there is nobody in the Court does delight in giving such Judgments, especially against your Lordship. The Verdict is found, and the King's Attorney General on Behalf of the King does demand it.

Mr. Att. Gen. I do demand Judgment of the Court against the Prisoner. Proclamation made for Silence, whilst Judgment was given.

Mr. Recorder, My Lord Russell, your Lordship hath been indicted, and tried, and found guilty of High Treason, the greatest of Crimes : Your Quality is great, and your Crime is great : And I hope and expect, that your Behaviour and Preparation in this Condition will be proportionable. My Lord, it is the Duty of the Witnesses to give Evidence according to Truth ; it is the Duty of the Jury to proceed according to Evidence ; and it is the Duty of the Court to give Judgment according to the Verdict. It is the King's Pleasure signified by his Attorney General, to demand Judgment against your Lordship according to this Verdict, and therefore, my Lord, I shall not delay it with any farther Circumlocution. The Judgment the Law hath provided, and is the Duty of the Court to give, is,

*That you be carried back again to the Place from whence you came, and from thence be drawn upon an Hurdle to the Place of Execution, where you shall be hang'd up by the Neck, but cut down alive, your Entrails and Privy Members cut off from your Body, and burnt in your Sight, your Head to be severed from your Body, and your Body divided into four Parts, and disposed at the King's Pleasure. And the Lord have Mercy upon your Soul.*

Mr. Att. Gen. Set up the other now.

Cl. of Cr. Set Captain Walcot to the Bar, Rouse and Hone.

*Which was done, and they bid severally to hold up their Hands, which they did ; and Captain Walcot being asked, What he could say why Judgment of Death should not be passed upon him, said,*

Capt. Walcot. I have nothing to say ; only I have one Favour to beg of the Court ; whether it be proper to beg it now or no, I can't tell.

Mr. Recorder. What is it ?

Capt. Walcot. I would beg the Favour, that the Youth my Son might come and see me, and some of my Friends.

Mr. Recorder. Capt. Richardson does not deny it to any Man after he is condemned. That is a Piece of Humanity you need not ask : I never knew it denied.

*Then Hone was asked what he could say against Judgment.*

Hone. I beg the same Favour.

Mr. Recorder. Ay, ay, God forbid ! You had best ask for some Divine to come to you.

*Then Rouse was asked the same Question.*

Rouse. I would speak of the Disadvantages I had when I came upon my Trial. When I was put upon my Trial, you know very well, I begged the Favour of some things : One was a Copy of the Indictment, when I saw a Person come before me, who in his own Conscience knew was the Author of all these Things. I have nothing to say against the Judgment or Verdict. I always had a great Veneration for the Constitutions of the Kingdom. I pray God forgive them that came against me. I wish I had no more Weight upon my Legs, than I have in my own Conscience. I prayed a Copy of my Indictment. These Things unexpectedly came upon my Trial, that I had not Opportunity to speak what I should.

Mr. Recorder. We are content to hear you. But observe, you are to answer the Question that is asked, Why Judgment should not pass upon you ? You say you won't speak against the Jury, we must not hear you, nor against the Verdict.

Rouse. I have one Word more, and that is, the vast Difference between the Indictment and their Oaths. The Indictment was, That such and such Words and Discourses passed the second of March. The Oaths sworn were, That the Words were not spoken then, but the last of June, which was three Months Difference ; but however the Jury have pleased to find it. I must throw myself at his Majesty's Feet : I have nothing more to say.

*Then Silence was proclaim'd, and Judgment given against Walcot, Hone, and Rouse, in like manner as upon the Lord Russell.*

The Execution of Captain WALCOT, JOHN ROUSE, and WILLIAM HONE, on Friday July 20. 1683.

Captain Thomas Walcot being drawn to Tyburn in one Hurdle, John Rouse and William Hone in another, and there put into a Cart, the Reverend Dr. Thomas Cartwright, Dean of Rippon, and one of his Majesty's Chaplains in Ordinary, with Mr. Smith, the Ordinary of Newgate, acquainted Captain Walcot, That this was the last Time he had to spend in the World, and therefore desired him to make a good Use of it, telling him, That as Death leaves him, so Judgment will find him ; and earnestly exhorted him to make an ingenuous Discovery and Confession of what he knew touching the Conspiracy and Treasons, of which he had been found guilty, and received Sentence to die.

To this Capt. Walcot replied, That he had some Papers in his Pocket, of what he had prepared to say, in Writing, because his Memory was

bad ; therefore he desired they might be pulled out, and he would read them.

Then Dr. Cartwright and the Ordinary spake to Hone and Rouse to the Effect before-mentioned, earnestly desiring them to confess the Whole of what they knew ; instancing some Places of Scripture to them, as Joshua's Advice to Achan, &c. My Son, confess, and give Glory to God, whom you have dishonoured, &c. telling them, they would have imbrued their Hands in the Blood of a merciful and good Prince, who had often pardoned, and gave many Acts of Oblivion and indemnity to his Subjects ; and whose Reign hath preserved the Purity of the Protestant Religion amongst us : That we cannot enjoy more than we do enjoy : With other good Admonitions for them to make clear Discoveries of the Truth of what they knew.

Captain Walcot, in the mean while, was preparing to read his Speech. Dr. Cartwright ask'd him, if he could discover any more than he had done already ?

Walcot. I've not in the General. I told the King the thing was laid very deep : There was a Gentleman with me last Night. I told him what I told the King, and that was all : I told him, I thought an Act of Indulgence would be very necessary, because he had a great many Men to take Judgment of. I know not the Particulars of the Design ; but the King hath the Lord Howard, Mr. West, and others, that know more than I. I was never in Council with them, nor never with them above four, five, or half a dozen times.

Then looking upon his Paper, he began his Speech as follows :

This great Concourse of People do not only come here to see me die, but also to hear what I shall say ; but because I would not be reproached, and thought to be an Atheist when I am gone, I have two or three Words to speak for my Religion. I do believe in Three Persons, and One God, and I expect and hope to be saved by the Merits and Righteousness of his Son Christ Jesus, without the Hope of an Advantage by any Merits or Righteousness of my own. And I believe, that the Scriptures of the Old and New Testament are the Word of God ; that they were not written according to the Will of Man, but holy Men of God writ them as they were inspired by the Holy Ghost.

I believe that these Scriptures ought to be the Rule of our Faith, and the Method of our worshipping of God : I believe that as Christ is the Head of his Church, so he is their Lawgiver ; that it is not in the Power of any Council or Conclave of Cardinals, or Power upon Earth whatsoever, to set up the Precepts and Traditions of Men, and to make them of equal Validity with the Word of God. I believe it was not because the Jews rejected and crucified Christ, that he rejected them, but because they rejected his Word ; which appears by the Three thousand that God by one Sermon of Peter's converted ; they being pricked in their Hearts, and touched in their Consciences, cried out, Men and Brethren, what shall we do ? And they were that Day added to the Church. It was certainly because the Jews rejected the Word and Gospel of Christ, that the Things were hid from their Eyes which belonged to their Peace. It is a dreadful thing to reject the Word of God ; and it is a dreadful thing to live in a sinful Course of Life, till God withdraws his Spirit from us : For it is said, *It shall not always strive with Man. Death is the Wages of Sin.* I believe, had not Adam sinned, he and we, his Posterity, had not died. Death is said to be the King of Terrors ; but it is only so to those that are terrified with a terrifying Conscience, that have the Arrows of the Almighty sticking in them, from Convictions of great Guilt, and see no Hopes of Mercy, have no Assurance of Pardon ; but those that are Christ's, he takes away the Terror, and Horror, and Sting of Death ; he enables them to say with Paul, *To me to live is Christ, and to die is Gain* : He enables not only to get unto Christ, but into Christ, and so they have Communion and Fellowship with the Father and the Son. It is no hard matter to get the Notions of the Promises of the Gospel into our Heads ; but unless the Lord is pleased to apply them to our Hearts, we cannot believe ; except we be in Christ as Branches in the Vine, we are not Christians indeed. It was the Case of poor Francis Spira : He was certainly a knowing Man, but notwithstanding he had not Faith to apply the Promises. Christ hath said, *That he that believes in him, tho' he were dead, yet shall he live ; and he that lives and believes in him shall never die.* So if we be able to apply the Promises by the Spirit of God, we may have Comfort thro' Faith : But then Faith is the Gift of God, and Faith comes by hearing the Word of God, and receiving it in the Love of God.

I shall not be tedious, Mr. Sheriff ; I shall be very short.

Mr. Sheriff. Take your own Time.

Walcot. As to the present Occasion of my Death, I do neither blame the Judges, nor the Jury, nor the King's Council ; I only blame some Men, that in Reality and in Truth were deeper concern'd, and more engag'd than I, that came in as Witnesses against me, who swore me out of my Life to save their own ; and who, for fear they should not do it effectually, contriv'd that, which I will appeal to you all, whether there be a Probability in it or not ; for they said, that I made it a Scruple of Conscience to have a Hand in killing the King, or to embroil my Hands in his Blood, but was so generous as to undertake the charging his Guards whilst others did it, and to the end another might do it. Truly I will appeal to all that know me, whether they believe me so much an Idiot, that I should not understand it was the same thing to engage the King's Guards, whilst another kill'd him, as to kill him with my own Hands. But, however, by their swearing against me, they have secur'd their own Lives and Estates, and made my Blood the Price of theirs. I confess I was so unfortunate and unhappy, as to be invited by Colonel Rumsey (one of the Witnesses against me) to some Meetings, where some Things were discours'd of, in order to the asserting our Liberties and Properties, which we looked upon to be violated and invaded. But it was he, and Mr. West, and some Gentlemen that are fled, who were the great Promoters of those Meetings. I was near a Quarter of a Year ill of the Gout, and, during that time, Mr. West often visited me, and still his Discourse would be concerning *Lopping the two Sparks* ; that was the Word he us'd, meaning the King and the Duke ; and propos'd it might be done



at a Play. This was his frequent Discourse; for he said, then they would die in their Calling; it was his very Expression. He bought Arms to do it with, without any Direction of mine; I never saw the Arms, nor I never saw the Men that were to do it; though they said they had Fifty employed to that End. I told several of them, that the killing the King would carry such a Blemish and Stain with it, as would descend to Posterity; that I had eight Children, that I was loth should be blemish'd with it; and withal I was confident the Duke of Monmouth would revenge his Father's Blood, if it were but to vindicate himself from having any Hand in it. Mr. West presently told me, that the Duke of Monmouth did not refuse to give an Engagement, that he would not punish those that should kill the King.

And now I desire to forgive all the World from the very Bottom of my Heart; and I pray God of his Mercy from my Heart to forgive them, even Mr. Sheppard, who delivered me up, who promised to carry me into Holland; but instead of that, he brought me into the Condition wherein I now am. I do desire with all my Heart to forgive the Witnesses, and withal, do earnestly beg, that they may be observ'd, that some Remarks may be set upon them, whether their End be Peace, and that they die the common Death of all Men. Certainly, though it be the Law of the Land I ought to die; and the King may justly and reasonably put me to Death for being in those Meetings where a War was debated; yet I think these Men are guilty of my Blood, that were as deep in as I, and have betray'd me, and taken it away. Then in the next Place, I beg Leave, Mr. Sheriff, to speak one short Word of Advice to my Friends, that hath been often given to me, though I was not so fortunate and so happy as to take it; and that is, that they would neither hear any Man speak, nor speak themselves, that which they would not have repeated; for there is no such thing as Faith in Man to Man, whatever there is in Man to God: Either the Tears of a Wife, or a Family of little helpless Children, something or other, will tempt and provoke Men to betray one another. When God hath a Work to do, he will not want Instruments, for he can make them; nor will he want a way to do it, for he can contrive it, and bring it to pass. And I do most heartily desire, and my earnest Prayer to the Almighty is, That this may be the last Blood spilt upon this Account. I know, Acts of Indulgence and Mercy in the King would make him much easier in his Government, and would make his People sit much easier under it; and that the Lord may incline his Heart to Mercy, ought to be the Prayer of every good Man. What hath happen'd, and what hath been the present Occasion of our Calamity, I suppose every Man knows; what Provocations have been on the one Hand, Fears and Necessities, Jealousies and Sufferings of the other, I will not intermeddle with, resolving to use my utmost Endeavour to make that Peace and Reconciliation with my God, which is impossible for me to make with Man; and to make it my hearty Prayer to the great God, before whom I am in a little Time to appear, that he would staunch this Issue of Blood, and find out some other way to preserve these Kingdoms in Unity and Peace, to the Honour and Glory of his great Name, and the eternal Comfort of his People.

One Word, Mr. Sheriff, I desire Leave to speak as to Ireland, because the King press'd it hard upon me, and several People have been with me about Ireland, how far Ireland was concern'd in this Matter. I am very inclinable to believe, could I have charg'd any body there, with being engag'd in the Matter for which I suffer, I might have had my Life; but by the Blessing of God I will charge no Man wrongfully, no not to save my own Life; and these being some of the last Words I am to speak, I do aver here, as in the Presence of God, before whom I am now going to appear, that I do not know an Englishman nor Protestant in Ireland engag'd in it. What I did know, was only of one Scotch Gentleman in the North; and the King knows it, but he says he does not believe it. For they that were concerned, I was never in any of their Councils: I never saw any of those Lords but the Duke of Monmouth, and that was, I believe, above six Months ago. I never saw nor spoke with one Lord, only my Lord Howard. I heard my Lord Howard say, That they did not value Ireland; for it must follow England.

I have no more to say, Mr. Sheriff; but truly you will do an Act of a great deal of Charity if you will prevail with the King for an Act of Indulgence and Liberty to his People: I think so: And so the Lord have Mercy upon me.

Dr. Cartwright. You blame them for that which is their Virtue, and not their Crime; that they have been Witnesses for the King.

Walcot. I was not for contriving the Death of the King, if you'll believe me.

Dr. Cartwright. You blame them for betraying of you in contriving the War, upon which the Death of the King must have follow'd, if your Treason had gone forward, for else you could not have defended yourself from that Justice to which he hath brought you; and therefore for you to lay that as a Crime upon your Witnesses, is indeed very strange.

Walcot. Sir, I think it was but reasonable, that I should suffer that is due from Justice, and reasonable by the Law; but these Men, they did not come in against me, till they did it to save themselves.

Dr. Cartwright. Better late than never: A Man had better save his Soul and Body too, than die, as now you do, for Crimes that ought to make every good Man's Heart relent; and therefore for your blaming them, it was for that which was their Duty to do; they have not committed a Crime in that, but a very meritorious Act.

Walcot. They have reveal'd it with that aggravating Circumstance, which I think no rational Man will be guilty of.

Dr. Cartwright. That Circumstance which you call aggravating, is no Aggravation at all; that is rather a Mitigation of your Crime, to make them believe that you were tenderer of the King's Person, than to shoot him when he was not armed. But you confess you were consulting this Crime.

Walcot. I was not to have a Hand in the King's Death.

Dr. Cartwright. But it was propos'd when you were there.

Walcot. It was so.

Dr. Cartwright. And it was agreed to be done.

Walcot. Truly I do not know how far it was agreed; I was there many Meetings.

Dr. Cartwright. These many Meetings you could not but be sensible of,

Walcot. There were several Meetings, wherein the Business of the King's Life was never spoke of.

Dr. Cartwright. That was agreed in those Meetings; but you had a tenderer Conscience.

Walcot. I say, they were for asserting our Liberties and Properties.

Dr. Cartwright. I would fain have you explain that.

Walcot. Truly, Sir, since you press me to speak, we were under general Apprehensions, and so were those Lords that are likely to suffer, as I have heard; they were under general Apprehensions of Popery and Slavery coming in.

Dr. Cartwright. What Sign was there of it? You had no Persecution at all; you were allowed by Law to meet five in a House, besides those of the Family. It is true, the Conventicles have been disturb'd of late, and I would have you look upon it as a Judgment of God to bring you to this for forsaking the Church of England: You have forsaken Communion with that Church in that Way you were instructed from your Youth.

Walcot. I do not come here to dispute of Religion, but I come here to die religiously, if it please God to enable me.

Dr. Cartwright. I pray God enable you: But I would not have you charge that as a Crime upon the Witnesses, which was their Duty.

Walcot. I can't tell how to excuse my Witnesses for aggravating things against me, and making them worse than really they were.

Dr. Cartwright going to reply.

Walcot. Pray Sir, give me Leave; for a Man to invite a Man to a Meeting, to importune him to this Meeting, to be perpetually soliciting him, and then deliver him up to be hang'd, as they have done me—

Dr. Cartwright. It was a Crime to solicit you to those Meetings; but when you were in, it was a Duty in you and in them to reveal it: If God had given you the Grace to reveal them, the Turn had been theirs, which now is yours. And whereas you say you cannot excuse them, that is uncharitable.

Walcot. I do forgive them, and I desire with all my Heart God would forgive them.

Dr. Cartwright. You confess you were guilty enough to take away your Life?

Walcot. I was so. The same Measure we mete to another, that Measure God will mete to us: Then, Sir, I do leave it to God.

Dr. Cartwright. Then you pray this may be the last Blood spilt upon this Account?—Walcot. I do so.

Dr. Cartwright. Would you not have Traitors brought to their End? You talk of spilling Blood, as if it were innocent Blood now spilt, when you do confess and own the Guilt. But I will give you no further Disturbance, but my Prayers to Almighty God for you, that God would give you Mercy. And then turning to Hone,

Dr. Cartwright. Mr. Hone, give Glory to God, and unburden your Conscience; for you have but a short time to stay here.

Hone. I have nothing further to say, but that I have been guilty of the Crime.

Dr. Cartwright. You are so.

Hone. Yes, I am guilty of this Crime according to the Law of the Land.

Dr. Cartwright. Ay, and according to the Law of God.—Hone. Yes.

Dr. Cartwright. You say, according to the Law of the Land, a Man may be sworn out of his Life by false Witnesses; but you were guilty of conspiring the Death of the King, and raising an Insurrection.

Hone. Truly I must say, as the Captain well minded, I was drawn in. Thou sawest a Thief, and thou consentedst with him: So I say, that I was drawn in: I saw the Thief, and consented; I have looked upon myself since to be the more guilty of Blood, and my Circumstance was to be drawn in, and ensnared; for I never was at any of their Meetings, none of their Cabals, but in a public Coffee-house or Tavern, where they discours'd the Matter of Fact; and I was to meet the King and the Duke of York, but I did not know at that time when, or where, nor what was my Business.

Dr. Cartwright. But you were to assist?

Hone. Yes, I promised that, to assist.

Dr. Cartwright. Do you beg God and the King's Forgiveness for it from the Bottom of your Heart, that you have been guilty of this? For if the Blind lead the Blind, both shall fall into the Ditch; as well he that leads, as he that is led, altho' he that leads may fall deeper. There are Circumstances make one Man's Crime greater than another; the Greatness of theirs does not lessen yours.

Hone. I believ'd that then I was very near another Snare: I was resolv'd to go down into the Country, and not meddle in the Thing at all; and had been in the Country, but meeting with Keeling, (I freely forgive him for whatsoever is done) he call'd me; and discoursing with him, I did say I was for killing the King, and saving the Duke of York.

Dr. Cartwright. Why was you for saving the Duke of York?

Hone. I do not know what to say as to that: There was no Reason.

Dr. Cartwright. What was your own private Reason for killing the King, and saving the Duke of York?

Hone. As to that, I think this: That the Duke of York did openly profess himself to be a Roman Catholic, and I did say, I had rather dispose of the King than the Duke of York.

Dr. Cartwright. Had you rather a Papist should reign over us, as you take him to be, than the King?

Hone. I do not know what to say to that.

Dr. Cartwright. That does deserve a Reason, Mr. Hone; you ought to give some Reason of that; you cannot but have some Reason. If you had a Design to kill the Duke, and save the King, then it might be to prevent Popery; but you say the quite contrary. God in Heaven forgive you for your murderous Design!

Hone. I know as little of this as any poor silly Man in the World; I was fain to gather it; I had it not so downright; I was drawn into it; however, I am now to die: As for the Witnesses, I desire the Lord to forgive them.

Dr. Cartwright. They have not wrong'd you, they have done their Duty.

Dr. Cartwright. Rouse. What say you?

Rouse.



*Reply.* As a Man, and a Christian, in the first Place, as God hath made me a Christian through his Grace, that the World may understand, that I do not die, as Captain *Walcot* says, an Atheist; I do here declare, in the Presence of God, and this vast Number of People, what Faith I die in: In that very Faith which was once deliver'd, and in the Belief of that Doctrine which the Church of *England* makes Profession of, and is agreeable to the Word of God, being founded upon the Doctrine of the Prophets and Apostles, whereof *Jesus Christ* is the Corner-Stone. There have been very various Opinions concerning me, upon the Account of the various Employments that I have been exercis'd in, both here and beyond Sea: It has been my Lot to fall under such Circumstances, and to fall under such Misrepresentations and Centures, upon the Account of some publick Employments that I have been in for the King, and after I return'd from *Flanders*, upon the Account of Disbanding; it was almost morally impossible for such a one in my Capacity to stand right in the Affections and Opinions of all People. When I was employ'd in *Flanders* in the Payment of that Army, I was then between two Rocks; I will leave it to the Judgment of all Sorts of People. You know the Country, I need not particularize, nor reflect upon Opinions, and the like. But I having been bred up in *England*, and had that Education it pleas'd God to give me, I was not fond of, nor carried off with, that Debauchery in those Times; and sometimes, more than once or twice, it was my Lot, that I was like to have been murder'd for pleading for, and justifying the Actions of the King of *England*. Since my Return, and being employ'd under Sir *Thomas Player*, and some others, about disbanding, there it came to my Lot, because I could not humour some Gentlemen, who neither fear'd God, nor honour'd the King, (I will not say so of all; for I know some were very worthy Gentlemen, that scorn'd any of those Actions, which some would attempt. There is one worthy Gentleman I can speak very honourably of) that so they might have their Pockets full of Money, did not value how the Accounts were stated; and at the very same Time I was under many Temptations of Handfuls of Guineas in my Hand to do so and so, to cheat the King; and because I would not do that, I was look'd upon as a Jesuit. I did waive all these Things under those Circumstances. It hath been my Lot likewise, being employ'd by Sir *T. P.* and the rest of the Commissioners, to fall into those Companies and Places, where my Lord *Shaftesbury* and others have been; and have had some kind of Discourse, which was not Treason, but rather a thing that I ever abhor'd and declar'd a Detestation of. Since these Hurly-burries, concerning Parliaments going off and coming on, did discontent the People upon one Account or another, I confess I have been a Hearer, and have understood too much of some kind of Meetings, which I pray God forgive them for, and especially those that call themselves Protestants, being ten thousand times worse than any others. That there have been such kind of Designs, and Meetings, and Clubs, I have not been ignorant of; God forgive me that I have not been as careful and as diligent, and as ready and forward, to discover it a great while since! That I ever had a Hand in it, or the least Thought, or Resolution, or Intention, to appear in it; but rather, on the contrary, have declar'd my Opinion against it, both in the Sight of God and Man, as a Breach of the Laws of God, and the Laws of the Land, and contrary to our Duty, who are bound to pray for the King, and all that are in Authority; I do declare, in the Presence of God, I am a perfect Stranger, and I thank God my Conscience is clear. I have acquainted his Majesty in Counsel, and I have had the Honour to be admitted into his Majesty's Presence in private almost half an Hour, on *Saturday* was seven night, where I was as clear and above-board, and as faithful to his Majesty, as I could be, in a humble manner, according to my Duty; where I offered to have some Time and Place allotted, that I might give him a whole Scheme of the Business; for there were a great many Gentlemen that had a Respect for me. It was their Opinions, that I had a general Knowledge of all the Clubs, and all the Designs, that ever were since the King came in; but they were under a Mistake. I gave his Majesty an Account to the best of my Knowledge; and when I had done, his Majesty seem'd to be pleas'd, and to thank me for it; but before I had Power to put it in Writing, and wait upon his Majesty, the Providence of God did so order it, the Council thought it fit, that I should be committed to Prison, where I was some Days. I have had more Kindness among *Heathens* and *Indians*. I pray God to forgive them for it: I had not Liberty to send to my Wife, big with Child, in two Days, where I was.

Sir, I shall not hold you in Suspense, and multiply Words, but what is most proper to this Occasion. What I have given to his Majesty in Counsel, and what I have spoken to his Majesty in private, is nothing but the naked Truth to clear my own Conscience, that I may not go out of the World with any thing upon me: I wish those that call themselves Protestants would discharge their Duty better to God and the King, than either I or the best Subject ever did. I have look'd upon it as an Obligation, ever since I knew what it was to be a Man, to carry myself obedient to those that God has set over me, especially the King, and those that are in Authority; and I have made it my Practice to pray for the King, as for my own Soul. That it has been my Lot to be acquainted with those Vanities of Clubs, and Persons, no rational Man will wonder, considering the Circumstances and Places I was call'd to. There is one particular Gentleman, Mr. *Sheriff*, I must desire the Favour to clear myself by something that I took Occasion to speak of Yesterday. I did acquaint you, Mr. *Sheriff*, with what I had spoken to the King, how I was interrupted in the further Discovery of what I had a Mind to say. What was further said Yesterday, it was nothing but the naked Truth: In the first Place, as to what was afterwards discours'd of, as to some particular Persons, namely and particularly Sir *Thomas Player*, I must do Justice to all the World. That he hath been acquainted with the Lord *Shaftesbury* none here will wonder; but that he hath been very shy of his Company since he came out of the *Tower*: For he told me many times he never was in his Company but once; for he did not like some Things, and saw some Designs, that he was afraid were going on; and thereupon Sir *Thomas Player* was so ingenuous and honest to the King, as to break off. I always look'd upon him as a very loyal Subject, and I must declare in the

Presence of God, and all these People, I never heard him speak one dishonourable Word of the King; what he may have had with others, is best known to himself. I have been in several Clubs eating and drinking, where it has been discours'd to accommodate the King's Son, the Duke of *Monmouth*. That there was a Design to set up the Duke of *Monmouth*, I will not say, while the King reigns; tho' some extravagant hot-headed Men have taken upon 'em to discourse these Things, but not any worthy Man; I know those that were worthy to be call'd by that Name, have declar'd in my Hearing, that in Opposition to the Duke of *York*, if the King be seiz'd, they should stand by the Duke of *Monmouth*. There are others, (I will not give Nick-names to any; you are wise Men, and know what I mean by speaking in the general) that were for a Commonwealth; and some there were, two or three Persons, (I shall be as plain as I can, and I hope you will bear with me, since it came to my Lot to come to the Knowledge of it; some were) for the Duke of *Monmouth*, some for a Commonwealth, and some, but very few, not worth naming, were for the Duke of *Bucks*: But that I think fell at last between these two, being the greater Part, as far as I did apprehend by discoursing here and there in the City, which I did very frequently do. But the way of these Gentlemen's discoursing these Things was only one at a time, especially a very industrious Gentleman, that hath made it his Practice a long time, (for it hath been my Lot to be acquainted but two Months, and that too long) which is the Witness that comes against me; and I pray God to forgive him, and I blame him not for discovering me, but for the Words he spake himself, by way of instigating me to enter into a Design against the King; they were his own Words, and not mine. I blame him not for discovering any thing whereby the King may be served. He did tell me several times there were Clubs in *London*, but I could never get out of him the Places where the Clubs were. Yet I endeavour'd what possibly I could to come to the Bottom of that Design; for my Intent was to make a faithful and true Discovery, that I might not go to *Whitehall*, or a Justice of Peace, with an idle Story, or a Sham; But at last I got out of him, that *Rich. Goodenough* was chiefly instrumental: This was a very few Days before Notice was given, that this certain Person, *Thomas Leigh* the *Dyer*, was sworn against by one *How*: I ask'd him the Meaning: He told me, that *How* was a very Rascal. I asked *Leigh*, Sir, What Course shall be taken? For, what by the *Doctors-Commons* of the one Hand, and what by the Persecutions of the other, we must think of a Way how to relieve it. There is some Design in Hand, says *Leigh*; don't you know? No, said I, I would be glad to hear, there is an Invasion, said he, going on, a Design against the King and the Government; but that was only a Fallacy; but he discover'd afterwards to me, that there was a Resolution, and a certain Number of People about the City and the Nation, to make an Attack upon the *Tower of London*, upon the City of *London*, upon *Whitehall*, and upon *St. James's*: I said, What do you design then? Have a Care that you don't shed more innocent Blood; for the Land is stained with Blood too much already. No, said he, the Resolution, as Mr. *Goodenough* saith, is not to spill a Drop of Blood, but only to secure the King's Person, that the Papists do not kill him; and then, saith he, we will deal with the Duke of *York* as we please. They were his own Words, to the best of my Remembrance. Afterwards this Gentleman was sworn against by one Mr. *Keeling* in *East-Smithfield*; saith he, He's a Rogue and a Dog, and I have seen him but once these nine Months, and I had no Discourse, but only drank a Glass of Drink; which proves since to the contrary. Being then in Company at the *King's-head Tavern*, in *Switthins-Alley*, near the *Exchange*, News was brought, he was sworn against; he did not know what to do, but found out a Place near *London-Wall*, and desired me to go to one or two about the Matter; he knew not how to obscure himself, this House was beset, Messengers after him, and likewise a kind of Judgment or Execution; how to put both Ends together, he knew not. I told him, if he would, I had a Bed; he might go to my House. I never heard a Word from *Rich. Goodenough*, one way nor another, of any Design against the King and the Government, whom I have known this seven Years; only this *Lee* told me, his Hand was as deep as any other. It's true, this Gentleman comes and swears against me, that I should be the only Person to engage in taking the *Tower of London*, Sir *John*—you know very well in what Capacity I have been, and how very incapable I was in my Person to take the *Tower of London*. I speak in the Presence of God, before whom I am to appear in a few Minutes, I never had any such Thought, never had any such Desire, never consulted with any Persons of Quality, never discours'd of any Arms in order to it; but only this I was saying. This Fellow being set on, (and I think a more proper Person than any Man in the World) for that he was a little low in the World, he was under a Temptation of being thrown out by an *Anabaptistical Church*, for some kind of Failings; he was under a Temptation to make himself Somebody; therefore he did close with Mr. *Goodenough*, and some others; and when the first Proclamation came forth, he himself told me, (I never knew it before) that *Rumsey*, Capt. *Walcot*, *Nelthrop*, and *Goodenough*, and *West*, were concerned in this Design; he was the Man told me: And when the second Proclamation came out, then he could tell me of those too; I told him he was a Wretch he had not discover'd it betimes. As to his swearing against me, for which God forgive him, that I had a Hand in taking the *Tower of London*; the Thing is this: He knew I was intimately acquainted with a certain Captain, one *Blague*, who was my Servant twenty-one Years ago in *Virginia*; he hath been a very faithful and honest Servant, I believe, to his Majesty for these fifteen Years, and particularly five Years, in three of his Majesty's Men of War. I know very well the Man is of such a Principle, that he abhors to engage in any wicked Design. But only *Leigh* discoursing at random about taking the *Tower*, Captain *Blague* gave this Answer (for he is a very jocular Man: ) If I were of a Mind to take it, were it for the Service of the King, if there were an Enemy coming in, saith he, I would with six Ships well mann'd, and arm'd with Guns, undertake to take the *Tower*. Upon what Account he said it, I don't know; but I believe in my Conscience he had no more Design to put such a thing in Practice, than I have to cut my own Throat at present. Captain *Blague* had heard these Discourses *pro* and *con*, saith



saith he, two or three hundred Men would do it: It's weak in such a Place; I wonder his Majesty does not make it stronger. Now, when he came to swear, as soon as he was taken up, he took Occasion to swear against me, all the Discourse he used in pressing me to undertake this Design.

Mr. Sheriff Rich. Pray, if you have any thing that was not told in Court, discover it, but you need not go over that which was in Court.

Rouse. Mr. Sheriff, I have nothing at all to say, either to blame the Judges, or the Jury, or the Witnesses themselves, the greatest of all. I thank God, I was not any way to have had any Hand in it: But the very Words themselves, that came out of his Mouth, he makes me the Author of; But I freely forgive him, as I desire God would forgive me: Though he did tell me positively there were five hundred Arms to be brought out of the Country. I heard of such a thing, I confess, here and there; but could never know the Authors of it, nor the Clubs where it was discoursed: It was lately that he told me, Goodenough told him, that the King was to be taken off as he came from Windsor; that there were several things to be done in order to it; that they wanted a Place of Meeting; and some thought of Salisbury-Plain, and some of Black-beath, but the most convenient Place pitch'd upon was Black-beath. They were discoursing how to gather the People together; some were for communicating it privately, others for a Ball. They asked my Thoughts: Said I, The best Way will be, if you throw up a Silver Ball, to get the People together: For my Design was to get what I could out of them. Thereupon he went to Mr. Goodenough, and discours'd him, and told him, That my Opinion was, to throw up a Silver Ball, and declare, All those that will come and drink a Bowl of Punch shall be welcome; and that by this means they would have gathered thirty or forty thousand Men in two or three Days Time, which otherwise would have been a Fortnight a-doing: But for himself, I will not blame him, nor lay any thing to his Charge of which he is not guilty. I must needs give him his Due. I do not remember, that ever he insisted upon shedding of Blood; but that he hath discoursed in very opprobrious Terms, and base Language, of the Duke of York, by calling him Rogue and Dog, and such Things. And that *We will do his Work*: That is true. And, that after the King's Decease, the Duke of Monmouth, having a Vogue with the People, must of Necessity succeed. I cannot tell what I can say more as to that; that is the chief Thing I have to say, if I have not forgot any Thing.

Mr. Sheriff Rich. Mr. Rouse, you would do well to name those Persons that were with you in that Consultation.

Rouse. There was no Consultation at all, Sir. That I had was from this Thomas Lee's Mouth himself, That there were five hundred Arms to be brought in: That he had it from Richard Goodenough, and Nelthrop, and Mr. West; and that Mr. West particularly knew from whom these Arms were to come; for he gave me a Hint, that Part of the Arms were bought by Mr. West.

Mr. Sheriff Rich. Who propos'd the Way of the Ball?

Rouse. Sir, he was saying, there were several Propositions made in the Club where Goodenough was, and some thought of one Way, and some another; but they could not find out a proper Way. Saith he, What do you think? Said I, If the People meet together, they may throw up a Ball; just in that careless way I said so. So he came to me afterwards, and said, that he had discoursed with Mr. Goodenough, and Mr. Goodenough told him, that there were forty thousand Pounds in Bank, and if such a Ball cost thirty or forty Pounds, it mattered not, to carry on such a Design as that was.

Here Captain Walcot spake.

Capt. Walcot. Sir, I desire you to take Notice of this, among other things, that so far as I ever heard of this Business, it is of no longer a Date than August or September last: I would not have this Consequence of it, so as to stir the Popish Plot.

Mr. Sheriff. Do you know any thing of the Popish Plot, that hath not yet been discovered?

Capt. Walcot. No, Sir.

Hone. I had but the Knowledge in March last of this Business.

Capt. Walcot. I do not know, nor ever heard, that it was older than August or September last.

Mr. Sheriff. Ordinary, do your Office.

Ordinary to Walcot. Have you fully discharged your Conscience?

Capt. Walcot. I have.

But it being said, that Rouse was interrupted.

Mr. Sheriff North. If you have any thing to say, Mr. Rouse, go on, but do not make Repetitions.

Who pull'd his Paper out of his Pocket, and look'd on it.

Rouse. He declar'd further, Mr. Sheriff, that when once the thing came so far, that the Tower and City were taken, and so many Men gathered together, they would quickly increase; and the Method was to go to Whitehall with Swords in their Hands, and to demand Privileges and Liberties, not to take away the King's Life, but only let the Duke of York look to it; for he was resolv'd upon it, that he should not succeed the King. Then he delivers another Paper, being his Petition to the King, and some more Notes in Short-hand.

Ordinary. Have you fully satisfied your Conscience?

Rouse. I have, Sir, a Word or two to speak to the People. I have discharged my Conscience, as to any thing as to what I was acquainted with. It had been happy for me, if I had not heard of it; but that I had a Hand in it, I thank God, I am free.

Dr. C. You had a Hand in the concealing?

Rouse. That I had.

Dr. C. And in maintaining the Correspondency without discovering it, and you do diminish your Crime.

Rouse. No, Sir, I don't desire it. Mr. Sheriff, I do freely acknowledge and confess, that it is just in God in the first Place, and righteous and just in the King, that I die; and that I die justly for concealing it. I would lay no Blame upon the King, nor any other Person in the World. I did not conceal it upon any Account to his Majesty's Prejudice, nor any Man in the Nation; and I hope God will give more Grace to those Persons that do succeed. I beg a Word or two; I had almost forgot, as a

Man, and as a Christian, That it is a thing of such evil Consequence, I have found it by bitter Experience now, for such and such publick Places to be visited, especially by those that are Professors of the Protestant Religion, and particularly Coffee-houses, where it is very well known too much Time is spent, and Families, and Wives, and Children, suffer too much. I pray God the People may take Notice of it, and lay it to Heart, that spend their Time so, thinking it is but a Penny and a Penny, and so discourse of State Affairs, as if so be they were God's Counsellors in the Government of the World, running from the Coffee-house to the Tavern, and from the Tavern to the Coffee-house, which hath been the Debauchery of this Age; and so bring them into this Dilemma, to discourse of those Things neither pleasing to God, nor the King, nor themselves, but their Prejudice. The Profanation of the Sabbath-day is commonly discours'd of in this Place. God forgive me for not observing it as I should! I pray God those that follow me may be more careful of their Duty to God and Man, for the Good of themselves, their Souls, and their Families; those that are young especially, and coming up, that they may chiefly mind their Concerns for Eternity, and that they would pay their Duty and Homage to the King, and those that God has set over them; and not neglect that great Command, to pray for the King, and all that are in Authority.

Being ask'd if they had any thing more to say, they said, No. Mr. Ordinary then pray'd with them, and sung a Psalm, and then they desir'd to pray themselves; which was granted.

Having ended their respective Speeches and Prayers, the Executioner did his Office.

The Attainder of Captain Walcot was afterwards in Trin. 7 Will. 3. reversed in the King's-Bench for Error in the Entry of the Judgment. Judgment was, *Quod interiora extra ventrem capiantur, & in ignem ponantur, & ibidem comburantur*; the Words *ipso vivente*, or *in ejus conspectu*, being omitted, which Words were held to be a necessary Part of the Sentence. 2 Salk. 632. 4 Modern Reports, 395.

A Writ of Error was afterwards brought in Parliament upon this Reversal, and the Reversal was affirmed. Show. Cases in Parl. 127--137.

The next Day was appointed for the Execution of Lord Ruffel.

About Nine in the Morning the Sheriffs went to Newgate, to see if my Lord Ruffel was ready; and in a little time his Lordship came out, and went into his Coach, taking his Farewell of his Lady, the Lord Cavendish, and several other of his Friends at Newgate. In the Coach were Dr. Tillotson and Doctor Burnet, who accompanied him to the Scaffold built in Lincoln's-Inn-Fields, which was cover'd all over with Mourning. Being come upon the Scaffold, his Lordship bow'd to the Persons present, and turning to the Sheriff, made this following Speech:

Mr. Sheriff,

I expected the Noise would be such, that I should not be very well heard. I was never fond of much speaking, much less now; therefore I have set down in this Paper all that I think fit to leave behind me. God knows how far I was always from Designs against the King's Person, or of altering the Government. And I still Pray for the Preservation of both, and of the Protestant Religion. Mr. Sheriff, I am told, that Capt. Walcot yesterday said some Things concerning my Knowledge of the Plot: I know not whether the Report is true or not.

Mr. Sheriff. I did not hear him name your Lordship.

Writer. No, my Lord, your Lordship was not nam'd by any of them.

L. Ruffel. I hope it is not; for, to my Knowledge, I never saw him, nor spake with him in my whole Life; and in the Words of a dying Man, I profess I know of no Plot, either against the King's Life, or the Government. But I have now done with this World, and am going to a better: I forgive all the World heartily, and I thank God I die in Charity with all Men; and I wish all sincere Protestants may love one another, and not make way for Popery by their Animosities. I pray God forgive them, and continue the Protestant Religion amongst them, that it may flourish so long as the Sun and Moon endure. I am now more satisfied to die than ever I have been.

Then kneeling down, his Lordship pray'd to himself; after which Dr. Tillotson kneel'd down and pray'd with him; which being done, his Lordship kneel'd down, and pray'd a second time to himself; then pull'd off his Peruke, put on his Cap, took off his Cravat and Coat, and bidding the Executioner, after he had laid down a small Moment, do his Office without a Sign, he gave him some Gold; then embracing Dr. Tillotson and Dr. Burnet, he laid him down with his Neck upon the Block, and it was cut off at two Strokes.

The Executioner held up the Head to the People, as is usual in Cases of Treason, &c. which being done, Mr. Sheriff order'd his Lordship's Friends or Servants to take the Body, and dispose of it as they pleased, being given them by his Majesty's Favour.

The Paper deliver'd to the Sheriff by my Lord Ruffel.

I thank God I find myself so compos'd and prepared for Death, and my Thoughts so fixed on another World, that I hope in God I am now quite wean'd from setting my Heart on this. Yet I cannot forbear spending some time now, in setting down in Writing a fuller Account of my Condition to be left behind me, than I'll venture to say at the Place of Execution, in the Noise and clutter that is like to be there. I bless God heartily for those many Blessings, which he in his infinite Mercy hath bestow'd upon me through the whole Course of my Life; that I was born of worthy good Parents, and had the Advantage of a religious Education, which I have often thank'd God very heartily for, and look'd upon as an invaluable Blessing; for even when I minded it least, it still hung about me, and gave me Checks; and hath now for many Years so influenced and possess'd me, that I feel the happy Effects of it in this my Extremity, in which I have been so wonderfully (I thank God) supported, that neither my Imprisonment, nor the Fear of Death, have been able to discompose me to any Degree; but, on the contrary, I have found the Assurances of the Love and Mercy of God, in and through my blessed Redeemer, in whom only I trust; and I do not question, but that I am going to partake of that Fulness of Joy which is in his Presence; the Hope whereof does so wonderfully delight me, that I reckon this as the happiest Time of my Life, though others may look upon it as the saddest.

I have



I have liv'd, and now die, of the Reform'd Religion, a true and sincere Protestant, and in the Communion of the Church of England, though I could never yet comply with, or rise up to, all the Heights of some People. I wish, with all my Soul, all our unhappy Differences were remov'd, and that all sincere Protestants would so far consider the Danger of Popery, as to lay aside their Heats, and agree against the common Enemy; and that the Churchmen would be less severe, and the Dissenters less scrupulous; for I think Bitterness and Persecution are at all times bad, but much more now.

For Popery, I look on it as an idolatrous and bloody Religion, and therefore thought myself bound, in my Station, to do all I could against it. And by that I foresaw I should procure such great Enemies to myself, and so powerful ones, that I have been now for some time expecting the worst. And, blessed be God, I fall by the Ax, and not by the fiery Trial. Yet, whatever Apprehensions I had of Popery, and of my own severe and heavy Share I was like to have under it, when it should prevail, I never had a Thought of doing any thing against it basely or inhumanly, but what could well consist with the Christian Religion, and the Laws and Liberties of this Kingdom. And, I thank God, I have examined all my Actions in that Matter with so great Care, that I can appeal to God Almighty, who knows my Heart, that I went on sincerely, without being moved, either by Passion, By-end, or ill Design. I have always loved my Country much more than my Life, and never had any Design of changing the Government, which I value, and look upon as one of the best Governments in the World, and would always have been ready to venture my Life for the preserving of it, and would have suffered any Extremity, rather than have consented to any Design to take away the King's Life: Neither ever had Man the Impudence to propose so base and barbarous a thing to me. And I look upon it as a very unhappy and uneasy Part of my present Condition, that in my Indictment there should be so much as Mention of so vile a Fact; tho' nothing in the least was said to prove any such Matter; but the contrary, by the Lord Howard. Neither does any body, I am confident, believe the least of it. So that I need not, I think, say more.

For the King, I do sincerely pray for him, and wish well to him, and to the Nation, that they may be happy in one another; that he may be, indeed, the Defender of the Faith: that the Protestant Religion, and the Peace and Safety of the Kingdom, may be preserved, and flourish under his Government; and that he in his Person may be happy, both here and hereafter.

As for the Share I had in the Prosecution of the Popish Plot, I take God to Witness, that I proceeded in it in the Sincerity of my Heart, being then really convinced (as I am still) that there was a Conspiracy against the King, the Nation, and the Protestant Religion: And I likewise profess, that I never knew any thing, either directly or indirectly, of any Practice with the Witnesses, which I looked upon as so horrid a thing, that I could never have endur'd it. For, I thank God, Falseness and Cruelty were never in my Nature, but always the farthest from it imaginable. I did believe, and do still, that Popery is breaking in upon the Nation; and that those who advance it will stop at nothing, to carry on their Design: I am heartily sorry, that so many Protestants give their helping Hand to it. But I hope God will preserve the Protestant Religion, and this Nation: Though I am afraid it will fall under very great Trials, and very sharp Sufferings. And indeed the Impiety and Profaneness that abounds and appears so scandalously barefaced every-where, gives too just Reason to fear the worst Things which can befall a People. I pray God prevent it, and give those who have shew'd Concern for the publick Good, and who have appear'd hearty for the true Interest of the Nation, and the Protestant Religion, Grace to live so, that they may not cast a Reproach on that which they endeavour to advance; which (God knows) hath often given me many sad Thoughts. And I hope such of my Friends as may think they are touch'd by this, will not take what I say in ill part, but endeavour to amend their Ways, and live suitable to the Rules of the true Reform'd Religion; which is the only thing can administer true Comfort at the latter End, and revive a Man when he comes to die.

As for my present Condition, I bless God, I have no Repining in my Heart at it. I know for my Sins, I have deserved much worse at the Hands of God: So that I cheerfully submit to so small a Punishment, as the being taken off a few Years sooner, and the being made a Spectacle to the World. I do freely forgive all the World, particularly those concerned in taking away my Life: And I desire and conjure my Friends to think of no Revenge, but to submit to the holy Will of God, into whose Hands I resign myself intirely.

But to look back a little; I cannot but give some Touch about the Bill of Exclusion, and shew the Reason of my appearing in that Business; which in short is this: That I thought the Nation was in such Danger of Popery, and that the Expectation of a Popish Successor (as I have said in Parliament) put the King's Life likewise in such Danger, that I saw no way so effectual to secure both as such a Bill. As to the Limitations which were propos'd, if they were sincerely offer'd, and had pass'd into a Law, the Duke then would have been excluded from the Power of a King, and the Government quite alter'd, and little more than the Name of a King left. So I could not see either Sin or Fault in the one, when all People were willing to admit of t'other; but thought it better to have a King with his Prerogative, and the Nation easy and safe under him, than a King without it; which must have bred perpetual Jealousies, and a continual Struggle. All this I say, only to justify myself, and not to inflame others: Tho' I cannot but think my Earnestness in that Matter has had no small Influence in my present Sufferings. But I have now done with this World, and am going to a Kingdom that cannot be mov'd.

And to the conspiring to seize the Guards, which is the Crime for which I am condemned, and which was made a constructive Treason for taking away the King's Life, to bring it within the Statute of Edward III. I shall give this true and clear Account: I never was at Mr. Sheppard's with that Company but once, and there was no undertaking then of securing or seizing the Guards, nor none appointed to view or examine them: Some

Discourse there was about the Feasibleness of it; and several times, by Accident, in general Discourse elsewhere, I have heard it mention'd, as a thing might easily be done, but never consented to as fit to be done. And I remember particularly at my Lord Shaftesbury's, there being some general Discourse of this Kind, I immediately flew out, and exclaim'd against it, and ask'd, If the thing succeeded, what must be done next, but massacring the Guards, and killing them in cold Blood? Which I looked upon as so detestable a Thing, and so like a Popish Practice, that I could not but abhor it. And at the same time the Duke of Monmouth took me by the Hand, and told me very kindly; My Lord, I see you and I are of a Temper; did you ever hear so horrid a Thing? and I must needs do him that Justice to declare, that I never observ'd in him but an Abhorrence to all base Things.

As to my going to Mr. Sheppard's, I went with an Intention to taste Sherry; for he had promis'd me to reserve for me the next very good Piece he met with, when I went out of Town; and if he recollects, he may remember I ask'd him about it, and he went and fetch'd a Bottle; but when I tasted it, I said it was hot in the Mouth; and desir'd that whenever he met with a choice Piece, he would keep it for me. Which he promis'd. I enlarge the more upon this, because Sir George Jefferies insinuated to the Jury, as if I had made a Story about going thither; but I never said that was the only Reason; And I will now truly and plainly add the rest.

I was, the Day before this Meeting, come to Town for two or three Days, as I had done once or twice before; having a very near and dear Relation lying in a very languishing and desperate Condition; and the Duke of Monmouth came to me, and told me, he was extremely glad I was come to Town; for my Lord Shaftesbury and some hot Men would undo us all, if great Care be not taken; and therefore for God's sake use your Endeavours with your Friends, to prevent any thing of this Kind. He told me, there would be Company at Mr. Sheppard's that Night, and desir'd me to be at Home in the Evening, and he would call me; which he did: And when I came into the Room, I saw Mr. Rumsey by the Chimney, altho' he swears he came in after; and there were things said by some with much more Heat than Judgment, which I did sufficiently disapprove, and yet for these things I stand condemn'd: But I thank God, my Part was sincere, and well meant. It is, I know, inferred from hence, and was press'd to me, that I was acquainted with these Heats and ill Designs, and did not discover them; but this is but Misprision of Treason at most. So I die innocent of the Crime I stand condemn'd for, and I hope nobody will imagine, that so mean a Thought could enter into me, as to go about to save myself by accusing others; the Part that some have acted lately of that kind has not been such as to invite me to love Life at such a Rate.

As for the Sentence of Death pass'd upon me, I cannot but think it a very hard one; for nothing was sworn against me (whether true or false, I will not now examine) but some Discourses about making some Stirs. And this is not levying War against the King, which is Treason by the Statute of Edward III. and not the consulting and discoursing about it, which was all that was witness'd against me. But, by a strange Fetch, the Design of seizing the Guards was construed a Design of killing the King, and so I was in that cast.

And now I have truly and sincerely told what my Part was in that, which cannot be more than a bare Misprision; and yet I am condemn'd as guilty of a Design of killing the King. I pray God lay not this to the Charge, neither of the King's Council, nor Judges, nor Sheriffs, nor Jury: And for the Witnesses, I pity them, and wish them well. I shall not reckon up the Particulars wherein they did me Wrong; I had rather their own Consciences should do that, to which, and the Mercies of God, I leave them. Only I still aver, that what I said of my not hearing Colonel Rumsey deliver his Message from my Lord Shaftesbury, was true; for I always detect'd Lying, tho' never so much to my Advantage. And I hope none will be so unjust and uncharitable, as to think I would venture on it in these my last Words, for which I am so soon to give an Account to the Great God, the Searcher of Hearts, and Judge of all Things.

From the time of chusing Sheriffs I concluded the Heat in that Matter would produce something of this kind; and I am not much surpris'd to find it fall upon me. And I wish what is done to me may put a Stop, and satiate some People's Revenge, and that no more innocent Blood may be shed; for I must and do still look upon mine as such, since I know I was guilty of no Treason; and therefore I would not betray my Innocence by Flight, of which I do not (I thank God) yet repent, (though much press'd to it) how fatal soever it may have seem'd to have proved to me; for I look upon my Death in this manner (I thank God) with other Eyes than the World does. I know I said but little at the Trial, and I suppose it looks more like Innocence than Guilt. I was also advis'd not to confess Matter of Fact plainly, since that must certainly have brought me within the Guilt of Misprision. And being thus restrain'd from dealing frankly and openly, I chose rather to say little, than to depart from Ingenuity, that by the Grace of God I had carried along with me in the former Parts of my Life; and so could easier be silent, and leave the whole Matter to the Conscience of the Jury, than to make the last and solemnest Part of my Life so different from the Course of it, as the using little Tricks and Evasions must have been. Nor did I ever pretend to a great Readiness in speaking: I wish those Gentlemen of the Law who have it, would make more Conscience in the Use of it, and not run Men down by Strains and Fetches, impose on easy and willing Juries, to the Ruin of innocent Men: For to kill by Forms and Subtilties of Law, is the worst Sort of Murder: But I wish the Rage of hot Men, and the Partialities of Juries, may be stop't with my Blood, which I would offer up with so much the more Joy, if I thought I should be the last were to suffer in such a Way.

Since my Sentence, I have had few Thoughts but preparatory ones for Death; yet the Importunity of my Friends, and particularly of the best and dearest Wife in the World, prevail'd with me to sign Petitions, and make Addresses for my Life: To which I was very averse: For (I thank God) tho' in all respects I have liv'd one of the happiest and contented'st Men in the World, (for now near fourteen Years) yet I am so willing to leave all,



that it was not without Difficulty that I did any thing for the saving my Life that was begging. But I was willing to let my Friends see what Power they had over me, and that I was not obstinate nor sullen, but would do any thing that an honest Man could do for their Satisfaction, which was the only Motive that sway'd, or had any Weight with me.

And now, to sum up all, as I never had any Design against the King's Life, or the Life of any Man whatsoever; so I never was in any Contrivance of altering the Government. What the Heats, Wickednesses, Passions, and Vanities of other Men have occasion'd, I ought not to be answerable for; nor could I repress them, tho' I now suffer for them. But the Will of the Lord be done, into whose Hands I commend my Spirit; and trust that thou, O merciful Father! hast forgiven me all my Transgressions, the Sins of my Youth, and all the Errors of my past Life, and

that thou wilt not lay my secret Sins to my Charge; but wilt graciously support me, during that small Part of my Life now before me, and assist me in my last Moments, and not leave me then to be disorder'd by Fear, or any other Temptation; but make the Light of thy Countenance to shine upon me; for thou art my Sun and my Shield: And as Thou supported me by thy Grace, so I hope thou wilt hereafter crown me with Glory, and receive me into the Fellowship of Angels and Saints, in that blessed Inheritance, purchased for me by my most merciful Redeemer, who is, I trust, at thy Right-hand, preparing a Place for me; into whose Hands I commend my Spirit.

Signed, WILLIAM RUSSEL.

The Attainder was afterwards reversed by Act of Parliament, 1 William and Mary. Vide State Trials, Vol. VIII. p. 57. 471.

*A Defence of the late Lord RUSSEL's Innocency. To which are prefix'd two Letters upon the Subject of his Lordship's Trial. By Sir ROBERT ATKYNS, Knight of the Bath.*

*First LETTER concerning my Lord RUSSEL's TRIAL.*

S I R,

I AM not without the Apprehensions of Danger that may arise by advising in, or so much as discoursing of publick Affairs; yet no Fear of Danger shall hinder me from performing that Duty we owe to one another, to counsel those that need our Advice, how to make their just Defence when they are called in Question for their Lives; especially if they are Persons that have by their general Carriage and Conversation appear'd to be Men of Worth, and Lovers of their King and Country, and of the Religion establish'd among us. I will follow the Method you use, and answer what you ask, in the Order I find in your own Letters.

I cannot see any Disadvantage or Hazard by pleading the general Plea of *Not guilty*: If it fall out upon the Proofs that the Crime is only Misprision of Treason, and not the very Crime of Treason, the Jury must then find the Prisoner not guilty of Treason, and cannot upon an Indictment of Treason find the Party guilty of Misprision, because he is not indicted for the Offence of Misprision, and Treason and Misprision of Treason are Offences that the Law hath distinguish'd the one from the other, and the one is not included in the other; and therefore if the Proofs reach no farther than to prove a Misprision, and amount not to Treason, the Prisoner may urge it for himself, and say, that the Proofs do not reach to the Crime charged in the Indictment: And if the Truth be so, the Court ought so to direct the Jury, not to find it.

Now, being present in Company with others, where those others do consult and conspire to do some treasonable Act, does not make a Man guilty of Treason, unless by some Words and Actions he signifies his Consent to it, and Approbation of it: But his being privy to it, and not discovering it, makes him guilty of Misprision of Treason, which consists in the concealing it, but it makes him not guilty of Treason. And if the same Person be present a second time, or oftener, this neither does not make him guilty of Treason; only it raises a strong Suspicion, that he likes it, and consents to it, and approves of it, or else he would have forborn after his having been once amongst them. But the strongest Suspicion does not sufficiently prove a Guilt in Treason, nor can it go for any Evidence; and that upon two Accounts:

First, The Proofs in case of Treason must be plain, and clear and positive, and not by Inference, or Argument, or the strongest Suspicion imaginable: Thus says Sir Edward Coke in many Places in his Third Institutes, in the Chapter of High Treason.

Secondly, In an Indictment of High Treason, there must not only be a general Charge of Treason, nor is it enough to set forth of what Sort or Species the Treason is, as killing the King, or levying War against him, or coining Money, or the like; but the Law requires that in the Indictment there must be also set forth some *Overt* or *Open Act*, as the Statute of the 25th of Edw. the 3d calls it, or some Instance given by the Party or Offender, whereby it may appear he did consent to it, and consult it, and approve of it. And if the bare being present should be taken and construed to be a sufficient *Overt* or *Open Act*, or Instance, then there is no Difference between Treason and Misprision of Treason; for the being present without consenting makes no more than Misprision; therefore there must be something more than being barely present, to make a Man guilty of Treason, especially since the Law requires an *Overt* or *Open Act* to be proved against the Prisoner accused. See Sir Edward Coke's Third Institutes, fol. 12. upon those Words of the Statute, (*per overt fact*) and that there ought to be direct and manifest Proofs, and not bare Suspicions and Presumptions, be they never so strong and violent: See the same *folio*, in the upper Part of it, upon the Word (*Proveablement*). And the Statute of the 5th of Edw. 6. cap. 11. requires that there should be but two Witnesses to prove the Crime: So that if there be but one Witness, let him be never so credible a Person, and never so positive; yet if there be no other Proof, the Party ought to be found *Not guilty*: And those two Witnesses must prove the Person guilty of the same Sort or Species of Treason. As for Example, if the Indictment be for that Species of Treason of conspiring the King's Death, both Witnesses must prove some Fact or Words tending to that very Sort of Treason: But if there be two Witnesses, and one proves the Prisoner conspired the Death of the King, and the other Witness proves the conspiring to do some other sort of Treason, this comes not home to prove the Prisoner guilty upon that Indictment: For the Law will not take away a Man's Life in Treason upon the Testimony and Credit of one Witness, it is so tender of a Man's Life, the Crime and the Forfeitures are so great and heavy.

And as there must be two Witnesses, so by the Statute made in the 13th Year of his now Majesty, chap. the 1st, (intituled, *For the Safety*

of his Majesty's Person) those two Witnesses must not only be lawful, but also credible Persons: See that Statute in the 5th Paragraph. And the Prisoner must be allowed to object against the Credit of all, or any of the Witnesses; and if there be but one Witness of clear and good Credit, and the rest not credible, then the Testimony of those that are not credible must go for nothing, by the Words and Meaning of this Statute; See the Statute. Now were I a Jury-man, I should think no such Witness a credible Witness, as should appear either by his own Testimony, or upon Proofs made by others against him, to have been *Particeps Criminis*; for that proves him to be a bad, and consequently not so credible a Man; especially if it can appear the Witness has trepann'd the Prisoner into the committing of the Crime: Then the Witness will appear to be guilty of a far higher Crime than the Prisoner, and therefore ought not to be believed as a credible Witness against the Prisoner; for he is a credible Witness that had the Credit of being a good and honest Man, which a Trepanner cannot have; and this Trepanning proves withal, that the Trepanner did bear a Spite and Malice against the Person trepanned, and intended to do him a Mischief, and designed to take away his Life. Shall such a one be a credible Witness, and be believed against him? God forbid!

Then again; it cannot but be believed, that such Persons as have been guilty of the same Crime, will out of a natural Self-love be very forward and willing to swear heartily and to the Purpose, in order to the convicting of others, that they may by this Service merit their Pardon, and save their own Lives: And for this Reason are not so credible Witnesses, such as the Statute of the 13th of Car. 2. does require. Read over the whole Chapters of Sir Edward Coke of High Treason, and of Petty Treason; for in this latter of Petty Treason there is much Matter that concerns High Treason.

I wish with all my Soul, and I humbly and heartily pray to Almighty God, that these Gentlemen that have given so great Proof of their Love to the true Religion, and of the just Rights and Liberties of their Country, and of their Zeal against Popery, may upon their Trial appear innocent. I am so satisfied of their great Worth, that I cannot easily believe them guilty of so horrid a Crime. I pray God to stand by them in the Time of their Distress.

I wish I might have the Liberty fairly to give them the best Assistance I could, in that wherein I might be any way capable of doing it. I beseech Almighty God to heal our Divisions, and establish us upon the sure Foundations of Peace and Righteousness, I thank you for the Favour you have done me, by imparting some publick Affairs, which might perhaps have been unknown to me, or not known till after a long time, for I keep no Correspondence.

When there is an Occasion, pray oblige me by a farther Account, especially what concerns these Gentlemen: And tho' I have written nothing here but what is innocent and justifiable, yet that I may be the surer against any Disadvantage or Misconstruction, pray take the Pains to transcribe what Notes you think fit out of this large Paper; but send me this Paper back again inclosed in another, by the same Hand that brings it.

There is, nor ought to be, no such thing as constructive Treason; this defeats the very Scope and Design of the Statute of the 25th of Edw. 3. which is to make a plain Declaration, what shall be adjudged Treason by the ordinary Courts of Justice: The conspiring any thing against the King's Person is most justly taken to be to conspire against his Life. But conspiring to levy War, or to seize the Guards, is not conspiring against the King's Life. For these are Treasons of a different Species.

Your faithful Friend and Servant,

R. A.

*The Second LETTER.*

S I R,

I Thank you for the unexpected Account you gave me by your last Letter; but this exact Narrative you have now sent me of the Trial of that Honourable Excellent Person, my Lord Russel, hath exceedingly obliged me. It was a thing I much desired, but I knew not from what Hand to gain it; for I was a little impatient to hear what could be prov'd of so foul a Nature as High Treason against a Person of whom I had ever entertain'd a very high Esteem. And tho' I had a very small and short Acquaintance with him, yet no Man that has known any thing of the public Affairs, or of our late Transactions, could be a mere Stranger to his great Worth. He had as great a Name for a true and honest English Gentleman, and for good Temper, and Prudence, and Moderation, as ever I knew any Man have, and was generally beloved by all that love our Religion and Country. I presume your Relation of the Proofs at his Trial is certainly true in every Part, and in the very Words; and it is a thing that might be had by many Hands, the Proceedings being so public, and I suppose deliberate: Presuming



to be true, this I will affirm, that upon this Evidence, both that against him, and for him, (might I have been permitted to have made his Defence for him at his Trial after the Evidence given) I could easily have satisfied any equal and understanding judicious Man, that my Lord ought to have been acquitted; and had I been one of the Jury that tried him, I make no Doubt I could clearly have convinced all my Fellows, (if they were honest and indifferent) that they ought not to have found him Guilty. This Species, or Sort of High Treason that the Witnesses inclin'd to prove against him, was a Conspiracy with others to levy War against the King.

The two first Witnesses, viz. Rumsley and Sheppard, tho' what they say may raise a strong Suspicion upon my Lord, and make it probable that he was guilty, yet neither of them do come home and close to the Person of my Lord Russel; as they do (I confess) against the Earl of Shaftesbury, Sir Thomas Armstrong, and Ferguson.

The first does not affirm, that the Lord Russel did join in the Discourse, or agree to any thing in the Consult; but only says, he was present; which extends no farther than to make a Misprision of Treason, and this too not directly and positively, as legal Proof ought to be to convict a Man of Treason; The latter, (Sheppard) when he applies what he swore to the Person of the Lord Russel, only says, He believes the Lord Russel was there at that Time when the Discourse he speaks of was used; which is a very imperfect uncertain Proof, and not positive enough: so that neither of these were full Witnesses. As to the Evidence given by the Lord Howard against my Lord Russel, it is strange to me, (as the Evidence is stated) that any Credit should be given to it; that he should be believ'd against those Execrations, that (it seems) he had so solemnly, and so lately, used to the contrary of his Evidence; especially when by giving this Evidence he must merit his own Pardon, and save his own Life, which extremely takes off from the Credit and Weight of his Evidence.

What Mr. West says in reference to my Lord Russel, was but bare Opinion and Hearsay, and is no Proof at all in Law; so that instead of two plain, direct, manifest and positive, and two credible Witnesses, as the Law requires in Treason, here is not, in my Opinion, so much as one positive credible Witness. The Lord Howard (as your Case and Narrative states it) is not credible, tho' direct and positive; none of the other three are positive, tho' more credible. In the Statue of the 25th of Edward the Third, of Treasons, the Word *Proveablement*, (as Sir Edward Coke observes upon it, in his *Third Institutes*, fol. 12) imports direct and manifest Proofs, not Presumptions and Conjectures,

and (as may be added) not Probabilities: And so the Words (*per Overt Fact*) do (as he observes) strengthen that Sense of the Word *Proveablement*; and the Act of Treasons made since this King's Time, requires there should be two credible Witnesses. Now, tho' the Lord Howard was not, by the Evidence offer'd against him by the Lord Russel, utterly disabled from being a Witness; yet I will be bold to say, it made him no credible Witness in this Case. That the Lord Russel made no use of these Things in his Defence, tho' a Man of Parts, is no wonder to me; the ablest Man under that Terror, and upon so speedy a Proceeding, and where it is impossible to be so compos'd and free from Distraction, may easily pass by many just Advantages, which a Stander-by, with less Abilities, might quickly have apprehended. I am far from reflecting upon the Court that try'd him; this Matter that I observed, rested principally upon the Jury. And he is found guilty and condemn'd, and it may be before this comes to your Hand, put to Death too: If it hath so happen'd, (as possibly it may) that the Earl of Bedford, and his other great Relations, have prevail'd with the King for a Respite of the Execution, I wish, and heartily beg of Almighty God, that these Considerations may yet be made use of to the King, (with whom it then rests) as *Tabula post Naufragium*, to save the Life of this Noble Lord. Much more than this may be said, were there such an Opportunity, before the King (and I so intend it, and no otherwise); and if I might be any ways serviceable in it, I would come up to London barefoot, rather than neglect so good an Office. And I ever thought it a Severity in our Law, that a Prisoner for his Life is not allow'd the Assistance of a grave and prudent Lawyer, or some other Friend, to make his Defence for him, even as to Matter of Fact, as well as to Law. I know, 'tis said, the Court is of Counsel for the Prisoner; but for my part I should never desire to depend upon that only. I know what this is by Experience. If the Case be in any Part of it mistaken, I have lost all my Observations, and beg your Pardon for all this Trouble; it is out of the great Honour and Zeal I have for that good Lord; But the Narrative you give is very ably and well compos'd, and in very good Method; and, I think, could not have been better done, which inclines me to think it very true also. I could be contented the Earl of Bedford (to whom I am known) might have the View of this Letter, if it come not too late, and may be thought of any Use. I heartily thank you for your Favour, which obliges me to be

Your faithful Friend and Servant,

July 27, 1683.

R. A.

### A Defence of the late Lord RUSSEL's Innocency: By way of Answer or Confutation of a Libellous Pamphlet, intituled, An Antidote against Poison\*.

THE Pamphlet styles itself, *An Antidote against Poison*; but it is so far from deserving that Title, that it may be truly said, *That the Antidote itself, is the rankest Poison*.

We read in History that the noble Emperor called Henry of Luxemburg, was poisoned in the Sacrament; and Pope Victor was poisoned in receiving the Chalice. Who could have suspected such horrid Villainy in the Administration of such sacred and solemn Rites? Who could with Horror and Amazement contrive the mingling of a deadly Poison with the Bread and Water of Life? To make those consecrated Elements (which ought to be the Savour of Life unto Life) to be the dreadful Messengers of sudden Death? Surely had those outward Signs been changed into the very Body and Blood of the Lord of Life, (as they that acted in those execrable Villainies profess'd to believe) there must needs have been a Miracle wrought in altering likewise the Substance and malignant Nature of those Poisons, that they should not have wrought those direful Effects; which yet they did. There appears the like wicked Policy in the Author of this Pamphlet; who, under Pretence of prescribing an Antidote against Poison, under the Visard and Disguise of preventing Mischief, does most deceitfully infuse the worst of Poisons, and labours to intoxicate a whole Nation. This Author would have the World believe, that the noble Lord, in the composing of his Speech, was wholly govern'd by his *Confessor*; and that the Compiler of it was infected with those Doctrines, that the Northern Climate has of late furnish'd us with. The very Language and Spirit of Coleman! Sure the Soul of Coleman is by Transmigration enter'd into this Author: It is easy to guess at his Religion. He supposes all that were present at my Lord's Trial, must needs be surpris'd to find the Truth of the Case so truly and unfaithfully set down in my Lord's Speech.

But whoever will take the Pains to read the Trials, publish'd by Authority, (which no Man will suspect of Partiality toward the Person tried) will receive abundant Satisfaction in the Truth of what was said by the Lord Russel, and discover the shameless Impudence of this malicious Author.

The Indictment (as we find it printed at large in the Trial, fol. 706.) charges the Prisoner, *That he, intending to disturb the Peace of the Kingdom, and to move War and Rebellion against the King, and to subvert the Government, and to depose, or put down, and deprive the King from his Title and Kingly Name of the Imperial Crown of his Kingdom of England, and so bring and put the King to Death and Destruction, 2 Nov. 34 Car. 2.* and at other Times, maliciously and traitorously, with divers others, did conspire, compass, imagine and intend;

1. To deprive the King of his Title and Government.  
2. And to kill the King, and to subvert the Government.  
3. And to move insurrection and Rebellion against the King.  
And fulfil and perfect these Treasons and traitorous Compassings and Imaginations, the said William Russel did meet, together with divers other Traitors, and consult, agree and conclude,

1. To move and stir up Insurrection and Rebellion. And,  
2. To seize and destroy the King's Guards.  
The operative and emphatical Words of this Indictment, are the *intending, conspiring, and concluding*.

The Things intended and conspired were,  
1. To move and stir up War and Rebellion against the King.  
2. To depose the King.

3. To kill the King. And in order to the accomplishing of these horrid Crimes,

The Things concluded on were,

1. To move and stir up Insurrection and Rebellion.

2. To seize and destroy the Guards. This is the very Sum and true Method of the Indictment, if it be truly printed in the Trials.

Note, Here is no *Open Act* or *Deed* charged to be done by the Lord Russel, unless his meeting together with others be meant to be an *Open Act* or *Deed*: But then again, that Act of Meeting terminates merely in consulting, agreeing, and concluding. They met only to consult, agree, and conclude; but they acted nothing in pursuance of that consulting, agreeing and concluding, for any thing that appears in the Indictment: So that the Meeting properly hath not the Nature of an Acting or Action, or of a Thing done. But the Effect of the Indictment is, that the Lord Russel and others did consult, agree, and conclude to do something, but the Indictment stops there, and goes no farther, for it sets not forth any thing done at all. So that here is no *Overt-Act* or *Deed*, and the Indictment is void; for there is no Act charged but Meeting, and that was merely in order to consult and agree: And they did agree upon a Thing to be done, but it is not said they did it, or did any thing towards it. I repeat this the oftner, that it may be the better understood and minded, being very material. Read the Indictment.

The Indictment is grounded upon the Stat. of 25 Edw. 3. cap. 2. (the old Statute of Treasons) So the Attorney General declares himself, fol. 721, of the Trial.

Now let us see how far this Charge in the Indictment will make my Lord guilty of any Treason within that Statute.

The Body of that Stat. of 25 Ed. 3. of Treasons, is printed together with the Trial, (See the Trial, fol. 722.) so that it need not be repeated here, tho' there are some other Clauses in that Statute not printed in the Trial.

The Occasion of making that Statute appears to be the Variety of Opinions that then were, what should be accounted Treason, and what not; which was very mischievous to the Subjects, and gave too great a Liberty to the Judges of the ordinary Courts.

To cure this mighty Mischief, and to prevent that arbitrary Power of Judges, this excellent Statute makes a Declaration what shall be adjudged Treason by the ordinary Courts of Justice. Not but that there might be like Cases, or other Facts amounting to Treason, besides those there enumerated; but those other Facts or Treasons must not be adjudged by those ordinary standing Courts (such as the Gaol-Delivery of Newgate, and the Court of the King's Bench at Westminster itself are): But in such Cases those Courts must forbear proceeding, and the Case must be reserved for the Determination of the King and Parliament. See that Statute in the printed Statutes at Large.

So that the Court of Gaol-Delivery at Newgate must judge only and proceed upon no other Treasons but what are there enumerated and specified.

Now the Treasons in that Statute enumerated and specified (for the Word *Specified* is the very Word used by that Statute) are these:

1. Compassing or imagining the Death of the King, Queen, or Prince.  
2. Violating, or carnally knowing, the Queen, King's eldest Daughter unmarried, Prince's Wife.

3. Levying

\* See *The Antidote against Poison*, in State Trials, Vol. VIII. p. 443.



3. Levying War against the King. Not a compassing or imagining to levy War, but an actual levying War; it must be a War begun. And several other Sorts of Treasons are there specified, not to our Purpose to be recited.

The Statute further requires, That the Person indicted be *probably* attainted of some one of these Treasons by *Overt Deed*, that is, some open manifest Act or Deed done, which must of Necessity also be expressly set down in the Indictment, and fully and clearly proved at the Trial by two Witnesses.

See Sir Edward Coke's Third Institutes, in his Chapter of High Treason, fol. 12. in his Exposition of the Words of that Statute, (*per Overt Fact*) and there, fol. 5. upon the Words (*Fait Compasser*) he tells you the Nature of that *Open Deed* that the Statute intends. It must be a Deed, and not mere Words: It must be a Deed tending to the Execution of the Treason imagined. That Deed must be an *Open Deed*, that is, it must be fully proved, and made open and manifest at the Trial by clear Proof.

So that if the Indictment fail of setting forth *one of those Treasons* that are there enumerated, it is not a good Indictment upon that Statute.

If it do set forth one of those Treasons, yet if it do not set forth some *Open Deed* done by the Party indicted, that is, such a Deed as does properly and naturally tend to Execution of that sort of Treason set forth in that Indictment; in such Case also the Indictment is not good.

If both these, *viz.* the Treason intended, and a proper, suitable open Deed, be well set forth in the Indictment, (which make a good Indictment) yet if that very sort of Treason intended, and that open Deed or Fact, so set forth in the Indictment, be not also fully, clearly, and manifestly proved upon the Trial against the Prisoner, he ought to be acquitted.

It will not suffice either to prove it by one Witness, or to prove any other sort of Treason, (not charged in the Indictment, nor any other *Overt Deed*) other than what is so set forth in that Indictment, though it be by never so full a Proof; but upon that Indictment the Prisoner ought to be acquitted, if that special Treason, and that special *Overt* or *Open Deed*, set forth and expressed in that very Indictment, be not fully proved.

Now let us examine the Indictment in this Case against the Lord Russell, and the Proofs against him, as they are publish'd by Authority, and observe how they agree with the Statute, and how the Indictment and Proofs agree the one with the other.

It may be admitted, that here is in the Indictment against the Lord Russell, a Treason sufficiently charged and set forth, *viz.* one of the Treasons specified in that Stat. of 25 Edw. 3. namely, that the Lord Russell did compass and imagine the Death of the King. This is not denied, but it is duly charged in the Indictment. For those other Charges in the Indictment, *viz.* his intending to depose the King, and his intending to move or levy War and Rebellion against the King; these are inserted into the Indictment as Aggravations of that horrid Crime of intending to kill the King, or as open Acts of the other; but of themselves alone, they are no distinct substantial Charges, nor are they any of the Treasons specified in this Act, upon which Act this Indictment is solely grounded. For tho' by the Act of 13 of this King that now is, cap. 1. intituled, *An Act for the Safety and Preservation of the King's Person*, it is made High Treason (during the now King's Life only) to compass or imagine to depose the King, or to compass or imagine to levy War against the King, if such Compassing or Imagination be expressed by Speaking or Writing, (altho' without any open Deed) yet the Lord Russell was not indicted upon that Statute, (as the Attorney-General himself acknowledged openly at the Trial) but only upon the old Statute of 25 Edw. 3. so that those late-made Treasons are not to our Purpose.

So that the only Treason charged in the Indictment, as a substantial Charge, is that of *imagining to kill the King*. And so the Lord Chief Justice agrees in his Direction to the Jury. See the Trial, fol. 61.

But where is that other Requisite, that other most material Part of the Indictment, of the *Open Act or Deed*? without which the rest serves for nothing: For it is not enough by this Statute to make a Man guilty of conspiring or imagining the Death of the King, unless the Party indicted have expressed that Imagination by some *Open Deed*; and that must be plainly set down in the Indictment too, or else the Indictment (as was said before) is no good Indictment. And it must appear to the Court upon the Indictment not only to be an *Open Deed*, but such a Deed as has a natural Aptitude and Tendency to the Execution of that very Treason so imagined. And there is no such set forth in this Indictment, and therefore the Indictment itself was insufficient and void.

And that which seems to have a Colour of an *Overt Fact*, or *Open Deed*, set forth in this Indictment, was not fully and sufficiently proved neither: And then, though the Indictment had been sufficient, yet for want of due Proof, the Party indicted ought to have been acquitted.

To these two Points or Matters shall the ensuing Discourse confine itself, And if this Undertaking be made good, the *Antidote* will appear to be a rank Poison, the Lord Russell's Speech justified, and his Innocency and Loyalty cleared, and his Honour vindicated.

The *Overt Fact*, or *Open Deed*, set forth in the Indictment, (if there be any) are the Things said to be consulted of, agreed and concluded on, *viz.* 1. To move and stir up Insurrection and Rebellion. 2. To seize and destroy the Guards. (*Peruse the Indictment carefully*).

Now neither of these are *Open Deeds*, in the Nature of them.

The first, which is to stir up Insurrection and Rebellion: This is a distinct Species of Treason itself: it is the same with a levying of War (specified in this Stat. of 25 Edw. 3. which is the only Statute we have to do with in this Case of my Lord Russell); and if it had been set forth in the Indictment as a Deed done, or Thing acted, that is, if it had been laid in the Indictment that the War was actually levied, or the Insurrection or Rebellion actually raised or stirred up, (as it is not, for it is only mentioned as a Thing agreed and concluded on, and not done) yet it had not been a sufficient proper *Overt Fact*, or *Open Act*, to make it a good Indictment: Because (as is said before) levying of War is a distinct Species from that of compassing to kill the King; and therefore cannot be made an *Overt Fact*, or *Open Deed*, to manifest an Imagination of killing the King: For that one Species of Treason cannot be a proper open Act to another Species of Treason, as will be proved hereafter.

Sir Edward Coke in his Third Institutes, fol. 14. in the third Clause or Paragraph of that Folio, tells us, that the Connexion of the Words is to be observ'd, *viz.* [thereof be attained by *Overt* or *Open Deed*.] This, says Sir Edward Coke, relateth to the several and distinct Treasons before expressed; whereof that of imagining to kill the King, and that of levying War against the King, are two distinct Species of High Treason. And therefore, says Sir Edward Coke, the one of them cannot be an *Overt Act* for another, that is, levying of War cannot be an *Overt Act* for that sort of Treason in imagining to kill the King, much less when the Indictment does not charge it as a War actually levied, but only an Agreement or Conclusion for levying a War. Such Agreement can be no open Deed to manifest an Intent or Imagination of killing the King. This is the main Question between us.

The other only Colour or Pretence to an *Overt Fact*, or *Open Deed*, must be that of seizing or destroying the King's Guard: For no other but these two are set forth in the Indictment, or look any thing like *Overt* or *Open Acts*.

And this latter is nothing like to an *Overt Fact*, or *Open Deed*, in the Nature of it; for it is not said to be done, but only agreed on, and concluded on to be done. If it had been but alledged in the Indictment, That in pursuance of this Agreement or Conclusion of the Conspirators, a View was accordingly taken of those Guards, and reported to the rest, (whereof the Lord Russell was one) that it was feasible, (whereof there is some Colour or Proof against some of them) this had been more to the Purpose: But being laid so imperfectly as it is, the Indictment itself must needs be insufficient, for the Reasons before given.

But, alas! the noble Lord is gone; and he is gone from whence he would not be recalled, a Place of infinite Bliss and Glory, out of a spiteful malicious World: It is we, it is the King and Kingdom, it is the whole Protestant Part of the World, that suffers the inestimable Loss of him: Not to speak of the unspeakable Grief of his dear and disconsolate Widow, and other noble Relations. *Factum infectum fieri nequit*. So that we may seem to labour in vain, and it comes too late. But something may be done for the Benefit of his hopeful Posterity, and some small Satisfaction may be made to his noble Family, by a Writ of Error for reversing of this Attainder, and the avoiding of the Record; for the Stat. of 29 Eliz. cap. 2. extends only to such Attainders for High Treason as then had been before the making of that Statute, and does not hinder a Writ of Error in this Case, if the King will sign a Petition for it.

But to examine this last *Overt Fact*, or *Open Deed*, a little farther;

*Viz.* To seize and destroy the King's Guards.

The Guards! What Guards? What or whom does the Law understand or allow to be the King's Guards, for the Preservation of his Person? Whom shall the Court that tried this noble Lord, whom shall the Judges of the Law that were then present, and upon their Oaths, whom shall they judge or legally understand by these Guards? They never read of them in all their Law-Books: There is not any Statute-Law that makes the least Mention of any Guards. The Law of England takes no Notice of any such Guards; and therefore the Indictment is uncertain and void.

The King is guarded by the special Protection of Almighty God, by whom he reigns, and whose Vicegerent he is: He has an invisible Guard, a Guard of glorious Angels.

*Non eget Mauri jaculis nec arcu;  
Nec venenatis gravisda sagittis,  
Crede, pharetra.*

The King is guarded by the Love of his Subjects:

The next under God, and the surest Guard.

He is guarded by the Law and Courts of Justice.

The *Militia* and the *Trained Bands* are his legal Guard, and the whole Kingdom's Guard.

The very Judges that tried this noble Lord were the King's Guards, and the Kingdom's Guard, and this Lord Russell's Guard against all erroneous and imperfect Indictments, from all false Evidence and Proof, from all Strains of Wit and Oratory misapplied and abused by Counsel.

What other Guards are there? We know of no Law for more. King Henry VII. of this Kingdom (as History tells us) was the first that set up the Band of Pensioners. Since this the Yeomen of the Guard; since them certain arm'd Bands, commonly now-a-days (after the *French Mode*) called the King's Life-guard, ride about and appear with naked Swords, to the Terror of the Nation: But where is the Law? Where is the Authority for them?

It had been fit for the Court that tried this noble Lord on this Indictment to have satisfy'd themselves, from the King's Council, what was meant by these Guards; for the alledging and setting forth an *Overt Fact*, or *Open Deed*, in an Indictment of Treason, must be of something that is intelligible by Law, whereof Judges may take notice by Law. And herein too the Indictment fails, and is imperfect.

But admit the seizing and destroying of those who are now called the King's Life-guard, had been the Guard intended within this *Overt Fact*, or *Open Deed*; yet the Indictment should have set forth, that *de facto* the King had chosen a certain Number of Men to attend upon and guard his Person, and set forth where they did attend, as at *Whitehall*, or the *Mans*, or the *Savoy*, &c. and that these were the Guards intended, by the Indictment, to be seized and destroyed: That by this setting forth the Court might have taken notice judicially what and who were meant. But to seize and destroy the King's Guards, and not shew who and what is meant, makes the Indictment very insufficient.

So much as to the Indictment itself.

In the next place, let us look into the Proofs, as they are at large set forth and owned in the printed Trial; and let us consider how far those Proofs do make out the Charge of the Indictment, *viz.* the compassing and imagining the Death of the King; and how far they make out that *Overt Fact*, or *Open Deed*, (such as it is) of seizing or destroying the King's Guards, in order to the effecting of that compassing and imagining the Death of the King. And it must appear by proof to be in Truth, so intended



intended by the Conspirators, and levelled to that End; for if it were done, yet if it were done quite to another Intent and Purpose, and not to that of compassing the King's Death, it does not come home to this Indictment.

There are but three Witnesses that can be thought to bring the Matter home, and to fix any thing upon the Lord Ruffel; Colonel Rumsey, Mr. Sheppard, and the Lord Howard.

It is true, two of the three, that is Col. Rumsey, and the Lord Howard, positively prove a traitorous Design, or Discourse at least, by some of the Company, of making an Insurrection or Rebellion, or (to speak it in the Language and Phrase of this Stat. of 25 Edw. 3.) of levying War against the King, (for all these signify one and the same thing) and they prove the Lord Ruffel was sometimes present at those Meetings: But is that enough? Admit he were present, and heard the Debate of it, (which yet is not fully and directly proved) yet if he did not join in the Debate, and express, and some way signify his Approbation of it, and consent to it, it makes him not at all criminous. It is true, his after-concealing of it might have made him guilty of Misprision of Treason; but that is a Crime of another Nature, and is another distinct Genus of Crimes, of which he was not indicted.

Col. Rumsey, as to the Overt-fact, (as they would make it) says, *There was some Discourse about seeing what Posture the Guards were in: And being asked by one of the Jury, by whom the Discourse was? he answers, By all the Company that was there (whereof, as he said before, the Lord Ruffel was one). So that my Lord Ruffel may (I agree) be understood to be one that discoursed about seeing what Posture the Guards were in: Nay, the Colonel says, All the Company did debate it: And he says further, The Lord Ruffel was there when some of the Company undertook to take the View of those Guards. And being asked by the Attorney General, to what Purpose the View was to be? The Colonel answers, It was to surprise our Guards, if the Rising had gone on.*

The Chief Justice observing to the Witness that he ought not to deliver a doubtful Evidence, and to speak it with Limitations, that made it not so positive; as by saying, *I apprehend so and so*: then the Colonel grows more positive, and says further, *That a Rising was intended*; but afterwards he says, *There was no Debate of the Rising*. At last the Witness being asked by Sir George Jeffries, whether the Prisoner were present at the Debate concerning the Message from the Lord Shaftesbury to the Company then met, and the Answer return'd to it; he flatly says, *The Prisoner was present at that Debate (which Debate did indeed concern the Rising)*. Being asked by the same Person, whether my Lord was averse to it, or agreeing to it; he answers like an Echo, *Agreeing to it*. Nay, then he says, my Lord Ruffel did speak, and that about the Rising at Taunton, and that he did discourse of the Rising: But what were his Words? Being question'd again by the Chief Justice, whether my Lord did give any Consent to the Rising, he answers still like an Echo, *My Lord, he did*. And this last Answer is the weighty Part of his Evidence, if there be any Weight at all.

Now mind the Defect of the Witness's Memory in some other most material Passages. He thinks the Lord Grey did say something to the same Purpose, with the Answer deliver'd by Ferguson to Lord Shaftesbury's Message.

He does not know (says he) how often he himself (the Witness) was at Mr. Sheppard's House where this Debate was. He says he was there more than once, or else I heard, says he, Mr. Ferguson make a Report of another Meeting to the Lord Shaftesbury. And then he says, *That this was all at that Time that he remember'd*; and before this he had said no more against the Lord Ruffel, but that he was present; and after this, upon much interrogating of him, he proceeds to tell a great deal more, indeed all the rest that has been before observed to proceed from him. And after all, he says, he thinks he was not there above a Quarter of an Hour. He says, he was not certain whether he did hear something about a Declaration there, or whether Mr. Ferguson did report it to my Lord Shaftesbury, that they had debated it. And the Witness speaking of a View to be taken of the Guards, to surprise them; the Lord Chief Justice seems to be surpris'd at that Word: *The Guards!* he never met it in all his Books. What Guards? Why you know it is mention'd in the Indictment; but he might yet very well ask what Guards? And the Colonel answers, the Guards at the Savoy and the Meuse.

The Colonel says, He thinks the Duke of Monmouth, and the Lord Grey, and Sir Thomas Armstrong, were the Persons that undertook to view the Guards. And he thinks, Sir Thomas Armstrong began it, and Mr. Ferguson. And he says, further Direction was given to take a View of the Guards, *if the Rising had gone on* (as it never did); and then he mentions the very Day that had been appointed for the Rising, viz. the 19th of November; and that the Message from the Lord Shaftesbury was, he thinks, a matter of a Fortnight before that Day, or something more; for he thinks it was concluded Sunday Fortnight after my Lord Grey met. The Mention of my Lord Ruffel's Consent to this Rising, comes in at the last, and after many Questions ask'd him, and not till that very particular Question was put to him; and he answers in the very same Words as the Question was ask'd. The Chief Justice ask'd him in these Words: Did my Lord give any Consent to the Rising? The Colonel's Answer was, *Yes, my Lord, he did*. But how did my Lord Ruffel signify that Consent? What Words did he use that may clearly express it? For this is the pinching Proof. If it had been certain and clear'd by remembering the Manner of his consenting, or how it did appear; why was not this put home to the Witness? This is the material Part of his Evidence, without which the rest had not come home to the Prisoner: And why did not the Witness deliver this of himself? And before his giving this home Evidence, he had said, *That was all at that Time that he remember'd*: And this was at the same Time with that of the Message, and of the Discourse about viewing the Guards. He afterwards doubts whether he was any more than once there with that Company, or whether he heard Mr. Ferguson report things to the Lord Shaftesbury; which shews a wild kind of Memory in a Witness, and the Colonel is no Fool, nor Baby; so that there is but one Time positively spoken of by this Witness. How strangely uncertain is he in the Matter of the Declaration, to which he was examined! A most noted thing! And he cannot tell whether he heard any thing of it there, Vol. III.

or whether Mr. Ferguson told him of it. It is to be suspected too, that what he has delivered positively at last so late in his Evidence, and after so much interrogating of him, was but mere Hearsay too, and then it would not have been any Evidence. He has not, it seems, a good distinguishing Head or Memory, as a Witness ought to have in case of Life, and a Life of so high a Value as this of that noble Lord.

And many other material Passages this Witness delivers under that Limitation, as he thinks.

The Rising was intended, but never took Effect; and the View was no more than appointed and undertaken; but the seizing of the Guards, as this Witness says, was not to be unless the Rising had gone on, which it never did. He speaks nothing of any View made of the Guards, or any Report upon it: But he swears my Lord Ruffel consented to the Rising. That is his stabbing Evidence; but by what Words, or how he signified his Consent, not a Word, though mighty material.

But what is this Conspiracy for a Rising? And a Conspiracy to seize the Guards? (in case the Rising had gone on) What are these to the Crime charged in the Indictment against the Lord Ruffel, for conspiring the Death of the King?

Here is not a Word of any such Matter, nor of seizing the Guards in order to it, no not one Word.

And that is the only material Part of the Indictment (as shall appear more plainly hereafter.)

The second Witness, Mr. Sheppard, mentions the meeting (at his House) of the Duke of Monmouth, and among the rest, the Lord Ruffel, and they discours'd of surprising the Guards; and that the Duke, the Lord Grey, and Sir Thomas Armstrong (as he remembers) went one Night to view the Guards; and the next Day at his House they said it was very feasible, if they had Strength to do it: And then he says, there was two Meetings there, and, as he remembers, my Lord Ruffel was both times there. Being ask'd by the Attorney General, besides the seizing of the Guards, if there were any Discourse of Rising; he answers, *He did not remember any further Discourse*, for he was often gone out of the Room: And this is the Effect of that he says.

If any thing of this comes near my Lord Ruffel, it is those Words, first giving an Account of who they were that were met, and that my Lord Ruffel was one of them; he says the Substance of their Discourse was how to surprise the King's Guards: This may be true, if one or two of the Company only discourses it; for it does not necessarily affirm, that every one did speak in that Discourse, he does not mention one Word spoken by my Lord Ruffel, nor that he approv'd of, or consented to any thing. At the worst, for any thing that he says, it can be but Misprision: He can say nothing as to the intended Rising. Now Colonel Rumsey's Evidence is altogether of that Rising, and the seizing of the Guards was to have been, if the Rising had gone on; and this was at the same Time that Mr. Sheppard speaks to: And yet Mr. Sheppard being asked if there was any Discourse of Rising, he answers, he did not remember any further Discourse.

Nor does Colonel Rumsey certainly remember any thing of a Declaration read amongst them, whether he heard it there, or whether by Mr. Ferguson's Report of it to my Lord Shaftesbury; which is one of the principal things that Mr. Sheppard speaks to (besides that of seizing the Guards). And as to the Declaration, Mr. Sheppard says, he cannot say my Lord Ruffel was there when that Declaration was read.

So they agree in nothing but in the Discourse of seizing the Guards, and that my Lord Ruffel was then present.

So that as yet the Sum of the Proof by Colonel Rumsey is, that my Lord Ruffel consented to the Rising, which is too general; and the Sum of the Proof by Mr. Sheppard is, that my Lord Ruffel was present in Company when the Company discours'd of seizing the Guards, but he knows nothing of the Rising.

The third Witness (the Lord Howard) discourses much about a Conspiracy to rise, but he speaks most (of what he says) by Report from the Earl of Shaftesbury, and from the Duke; so it goes for no Evidence against my Lord Ruffel; and the Chief Justice did the Prisoner that Right, as to declare as much to the Jury: And the Lord Howard clears the Duke from any such horrid Act as the killing the King, the Duke said he would not suffer it; and if the Duke be innocent in that, it is probable that my Lord Ruffel, and the rest of the Company that met, had no Discourse about killing the King, nor any Thought that way; which yet is the great and only substantial Charge of this Indictment, which must still be minded and observ'd.

My Lord Howard does indeed prove two several Consults, one at Mr. Hambden the younger's, the other at my Lord Ruffel's about the Middle of January last, and after, and that my Lord Ruffel was at both; and these Consults were of an Insurrection, and where to begin it, and of providing Arms and Money, and of sending into Scotland to settle an Understanding with the Lord of Argyle. And being asked what my Lord did say, he answers thus, viz. *Every one (says he) knows my Lord Ruffel is a Person of great Judgment, and not very lavish in Discourse*. But did he consent? was a Question ask'd by Sir George Jeffries. The Lord Howard answered, *We did not put it to the Vote, but it went without Contradiction, and I took it that all there gave their Consent: That Lord Ruffel join'd in the Council of Six, that he approv'd of his being chosen for one, that he said one Word in these two Consults, there is not any Proof by the Lord Howard; only he says, He took it that all there consented*. Is that enough? O strange Evidence!

I will not here take notice, or examine, how far the Lord Howard is a credible Witness in this Case, but refer the Reader to the Testimony of my Lord of Anglesey, Mr. Howard, and Dr. Burnet; or how far any of the three Witnesses are to be believed, having all three upon their own Testimony been *Participes Criminis*, and it is suppos'd have their Pardons, or are promis'd Pardons: Not that this is offer'd to disable them quite from being Witnesses, but surely, all things considered, it much lessens their Credit in this Case; nor does it make them the more credible, because no other Witnesses can be had. But then consider that most excellent Character given of the Prisoner by Persons of Honour, and of the highest Esteem for Ability and Integrity, and such as contradicts, and is inconsistent with the Charge of the Indictment, and whatever is of Weight in the Evidence



Evidence against him; and especially if you give any Credit to the Lord Howard himself, who upon his Oath does declare, as in the Presence of God and Man, that he did not believe that either the Duke of Monmouth, or my Lord Russell, had any Design to murder the King; which is the only effectual Charge of this Indictment. These things consider'd, it seems very strange to me, how the Lord Russell could be found guilty of a compassing and imagining the Death of the King, for so is the Verdict.

This answers most of the Observations made by the Author of the *Antidote* upon my Lord Russell's Speech, restraining the Expression, as he says, of his Innocency to the Design upon the King's Life, and to killing of the King, and of his omitting to mention the general Raising; which, as this Author boldly affirms, was fully proved upon him; and that my Lord's Professions of his Innocency, as to any Plot upon the King's Life, or to kill the King, or his knowing any thing thereof, these (says the Author) are no plain Declarations of his Innocency, as to the Crime charged and proved upon him, of conspiring and consulting to raise an Insurrection. Nor was there any Need of my Lord's answering that, for it was little material.

How uncertain, how disagreeing, how unapplicable to the Charge of the Indictment those Proofs are, has been fully observ'd already; and the Author grossly mistakes in his Judgment, when he takes the conspiring and consulting to raise an Insurrection to be the Crime charged in the Indictment; for (as was observ'd before) the Charge of the Indictment is, the compassing and imagining to kill the King; and that of a Conspiracy to raise an Insurrection, or to levy War, is none of the Crimes or Treasons enumerated or specified in the Act of 25 Edw. 3. and therefore could not be the Crime charged in the Indictment, which is grounded only upon that Act of 25 Edw. 3. (as the Attorney General acknowledges) for it is an actual levying of War, and not a conspiring only to levy War, or raise an Insurrection, that is the Treason specified in that Act of 25 Edw. 3. And therefore the Mention of other things are but by way of Aggravation, for the more ample setting forth of the Crime charged, which is of compassing the King's Death: And that the conspiring to make an Insurrection, cannot be an open Deed to prove a compassing the King's Death, has been already spoken to, and shall yet be more fully.

Nor is the Author more mistaken in his Observations upon the Matter of Fact, and his unwarranted Conclusions and Inferences raised from thence, than he is in his Determinations of Matters in Law arising from that Fact.

The Death of the King (says the Author) in that Law of 25 Edw. 3. is not restrained to killing of his natural Person, but extends as well to his civil Death as natural: As to conspire to depose the King, to imprison him, or laying any Force or Restraint upon him; these (says the Author) are all High Treason, for compassing his Death, natural or civil: If so, why then we are at never the more Certainty for this excellent Law of 25 Ed. 3.

I agree, that conspiring to depose the King, to imprison him, are Treasons; but it is not so plain that they are Treasons within this Law of 25 E. 3. upon which this Indictment is grounded. It is true, they are made Treason by the late Act of 13 of the now King, and have by several temporary Acts (such as this of 13 Car. 2. is) been made Treason: But this proves, that they were not judged by those Parliaments, that pass'd those temporary Acts, to be Treasons within the Statute of 25 Edw. 3. For why then were these temporary Acts made? What need was there of them? Sir Edward Coke, 3 *Instit.* fol. 9. in the last Paragraph but one of that fol. says, A Conspiracy to levy War is no Treason; he means within the Act of 25 Edw. 3. But it has been made Treason since Sir Edward Coke's time, viz. by 13 Car. 2. And let it be remembered, that the great End of making this excellent Law of 25 Edw. 3. (as appears by the Preamble) was to avoid Uncertainty, and Variety of Opinions, and to prevent the Arbitrariness of Judges, in the ordinary Courts; and the Act takes care, that doubtful Cases, such as are not plainly within the Enumeration of the Act, are to be reserv'd for the Judgment of the King and Parliament. And herein consists the Excellency of this Law: *Quod fieri possit, quam plurima Legibus ipsis definiantur: Quam paucissima Judicis arbitrio relinquuntur.* And as the learned Lord Bacon, in his *Advancement of Learning*, fol. 447. says, That is the best Law, which gives least Liberty to the Judge; he the best Judge, that takes least Liberty to himself: *Misera est servitus, ubi Jus est vagum.* And this Law is a Declaration of Law, and therefore ought not to be extended to like Cases in the Construction of it: And it is made in the Punishment of the greatest Offences, and is as penal as a Law can be; and therefore ought not to be expounded by Equity, that is, to be extended to like Cases.

It is true, the Opinion of the Judges hath been, That conspiring to depose or imprison the King, is a compassing or imagining the Death of the King. And if a Man declares by Overt act, that he will depose or imprison the King; this, says Sir Edward Coke, 3 *Instit.* fol. 6. upon the Word (*Mort*) is a sufficient Overt-act, for the Intent of killing the King. Mind him well; he does not say, that conspiring to depose or to imprison the King is an Overt-act, to prove the conspiring the King's Death; which is the Opinion the *Antidoter* maintains, and for which he cites all his Cases afterwards cited. But Sir Edward Coke says, That conspiring to depose or imprison the King being declared by Overt-act, this Overt-act is also a sufficient Overt-act for the Intent of killing the King.

It is one thing to conspire to depose the King, and another thing to declare that conspiring by some open Act: They differ as much as thinking does from acting. Now in this Case of the Lord Russell, the Author of this *Antidote*, and some others, (as appears by the printed Trials) would have us believe that very conspiring to levy War is an Overt-act to prove the compassing and imagining the King's Death: For which there is not the least Ground from Sir Edward Coke. First they are different Species, as Sir Edward Coke observes in his third *Institute*, fol. 14. the third Paragraph; and therefore (says he) the one of them cannot be an Overt-act for another; that is, conspiring to levy War, nay the actual Levying of War too, which is one Species of Treason, cannot be an Overt-act for the compassing the Death of the King, which is another Species of Treason. But this is that the *Antidoter* labours; only, says Sir Edward Coke, the Overt-act of the one, may be an Overt-act for another sort or Species of Treason.

And I agree it, if the Overt-act in the one sort of Treason, may as fitly and as properly in its own Nature, and as equally, be also an Overt-act in the other sort, and had a Tendency to the Execution of that other sort. And it also does appear by the Proofs, to be so intended by the Conspirators. As for Example: Actual seizing of the King's Guards (not a Conspiring to seize the King's Guards, and such Guards as are not plainly set forth in the Indictment what they are) may in its Nature be an Overt-act, to make manifest the compassing of the King's Death, and is an Act proper enough, and has in its Nature a Tendency towards the Execution of the Conspiracy to kill the King: But then it must be proved to be so intended and designed, that is, in order to the killing of the King. But if it appear otherwise upon the Proof, (as here it did) that it was not so intended, but design'd merely in order to a Rebellion, and levying of War, (for which also it is as apt and proper in its Nature, and has as great a Tendency that way) then it cannot be applied nor made use of as an Overt-act, to prove the compassing the King's Death (as in this Case of my Lord Russell it was): For this (as Sir Edward Coke well says, fol. 14. the latter Part of the third Paragraph of that *Folio*) would be to confound the several Classes or Species of Treason: And the Confusion of Species is abominable in Nature.

And where Sir Edward Coke seems to comply with the Opinion and Practice of some Judges, that the Overt-act of *deposing* may be a good Overt-act of *killing*, (which, with the Distinction that I have offered, is just enough) yet he has some Hesitation; for he concludes that Opinion of his with these Words, fol. 6. in his third *Institute*, upon the Word [*Mort*]. But, says he, peruse advisedly the Statutes of 13 Eliz. cap. 1. And why those Statutes? Because by those Statutes, conspiring to depose the Queen is made Treason; which needed not (as has been observed already) if it was Treason within that Clause of compassing the King's Death, within the Statute of 25 Ed. 3. The like may be observed in many other such temporary Laws, as that of 25 H. 8. cap. 22. 26 H. 8. cap. 13. 28 H. 8. cap. 7. 1 Ed. 6. cap. 12. and 5 & 6 Ed. 6. cap. 11.

And it is worthy Observation, tho' by way of a short Digression, that in many, if not in every one of these temporary Laws of Treason, there is an express Clause and Provision still, that Concealment, or keeping secret of any High Treason, should be adjudged Misprision of Treason: As if there were great Need of that Caution, lest the Judges might judge concealing of Treason for High Treason.

Now to shew the Tenderness that the Judges heretofore shewed in the expounding of this Statute of Treasons of 25 Edw. 3. and how cautious they were in extending it beyond the strict Sense and Letter of the Statute, read the Case in *Mich. 19 Hen. 6. fol. 47. Case 102.* A Man was indicted in the King's Bench of Petty Treason (which is declared too by the same Statute of 25 Edw. 3. cap. 2.) for killing his Mistress, whom he served. And because the Words of this Stat. of 25 Edw. 3. declare it Petty Treason where the Servant kills the Master, they were in doubt whether it ought to be extended to the Mistress, or not. And there the Judges of the King's Bench (before whom the Case was) sent to the Judges of the Court of Common-Pleas then sitting, and to the Serjeants there, to know their Opinion of the Case. And by Advice of all the Judges of both Courts, it was adjudged Petty Treason for the Servant to kill the Mistress, not only within the Meaning, but within the very Words of that Statute; for Master and Mistress are in Effect but one and the same Word, they differing only in Gender.

Sir Edward Coke says, 3 *Instit.* fol. 20 & 22. The Judges shall not judge à simili, or by Equity, by Argument, or by Inference of any Treason; but new or like Cases were to have been referred to the Determination of the next Parliament: *Ubi terminatæ sunt dubitationes Judiciorum*, says *Bracton*.

Let us in the next Place examine the Authorities in Law, and Book-cases, cited by this Author of the *Antidote*, and see how far they make good his Opinion, that meeting and consulting to make an Insurrection against the King, or raise a Rebellion, (which is the same with levying War, within the Words of 25 Edw. 3.) tho' the Rebellion be not actually raised, is High Treason within this Law of 25 Edw. 3. For so he proposes the Question, fol. 5. of his Book. And if he does not confine his Argument to that Statute, he says nothing to the Lord Russell's Case.

To prove the meeting and consulting to make an Insurrection against the King, or raise a Rebellion within the Kingdom, (tho' the Rebellion is not actually raised) is High Treason within the Statute of 25 Edw. 3. cap. 2. (which, put all together, is the Position the *Antidote* maintains): He cites the Case of *Constable*, mentioned in *Calvin's Case*, Sir Edward Coke's 7th *Rep.* fol. 10. b. and thence infers, that whatsoever tended to the deposing of Queen Mary was adjudged Treason for compassing her Death.

And this no Man denies; and it agrees with the Judgment of Sir Edward Coke, in this Chapter of Treason, fol. 6. upon the Word [*Mort*], where he says, He that declareth by Overt-act to depose the King, does an Overt-act of compassing and imagining the Death of the King: And so says Sir Matthew Hale's *Pleas of the Crown*, fol. 11. towards the latter End. But what is this to the Point in Hand, which merely concerns a Meeting and Consulting to make an Insurrection, or raising a Rebellion, which is the same Thing with conspiring to levy War? Conspiring to depose the King, and conspiring to levy War, are different things; as conspiring to levy War is clearly held to be a distinct Treason from conspiring the Death of the King. And therefore the former of these (as hath been before observed) cannot by Law be an Overt-act of the latter, as appears by the said Treatise of the *Pleas of the Crown*, fol. 13. towards the latter End. Nor was conspiring to levy War, without an actual levying of it, any Treason within the Statute of 25 Ed. 3. upon which Statute only the Indictment of the Lord Russell is grounded, as is acknowledged by the Attorney-General. And therefore to supply that Defect, the Statute of 13 Car. 2. does expressly make it to be Treason. But the Lord Russell was not indicted upon that Statute of 13 Car. 2. and for this Reason he ought to have been acquitted upon this Indictment grounded only upon the Statute of 25 Edw. 3.

And if practising with a foreign Prince to make an Invasion, (when no Invasion followed, as the Case of Dr. Story was) *Dyer* 298. be all one with conspiring to levy War, when indeed no war is raised; it is out of all Dispute,



pute, that such Practising, and such Conspiring, cannot be Treason within the Statute of 25 Edw. 3. though it be Treason within the Statute of 13 Car. 2.

In the Case of the Lord Cobham, 1 Jacobi, there was more in the Case than conspiring to make an Insurrection (which is all that the Author of the *Antidote* takes notice of): There was also an actual Rebellion raised, as appears by the said little Treatise, styled, *The Pleas of the Crown*, fol. 13. for the People were there assembled to take the King into their Power, as that Book puts the Case of the Lord Cobham.

And so it is in the Case of the Lord Grey: For there they had not only conspired to make an Insurrection, but farther, to seize the King; and get him into their Power; which is a direct conspiring against his Person, which naturally tends to the Destruction of his Person, and is the same with conspiring his Death, as hath been usually expounded: But 'tis otherwise merely to conspire to make an Insurrection, which can be no more than conspiring to levy War. The Case of Sir Henry Vane, and Plunket, had many other Ingredients to mount them up to Treason, which differentiates them from my Lord Russell's Case.

As to the Point of Misprision of Treason, with which the Author of the *Antidote* concludes, I have fully declared my Opinion already in the former Part of this Discourse; and, I think, plainly evinced, that tho'

the noble Lord might be present while others might between themselves privately debate Matters, and conclude upon them, yet it did not clearly appear by any Proofs, that this noble Lord ever gave the least Consent to what was so concluded; without which Consent it could not amount to Treason, but at the most be a Misprision only. Nor must any Man's Life be taken from him upon Presumption or probable Arguments, but by plain, direct, and manifest downright Proofs. But a more strong, and indeed a violent Presumption lay quite the other way, that this noble, prudent; and pious Lord could never be guilty of such a Crime, as to conspire the Death of King Charles the Second: It was extremely against his Interest so to do; for the Life of that King, so long as it continued, by the Blessing of God, was the great Security, both he and all good Protestants had against the greater Danger that might happen by the Change arising by the Death of that King, of losing our Religion, and all our Civil and Religious Rights, as the Experience we have lately had, hath sadly taught us: And if any thing were consulted between this excellent Lord and those with whom he met, as is more than probable, it was how to secure themselves against those Dangers they saw so near approaching, if the Life of King Charles the Second should fail; there was so great a Cause to fear them, considering who was like to succeed in the Throne.

*The Magistracy and Government of England Vindicated. In Three Parts: Containing, I. A Justification of the English Method of Proceedings against Criminals, &c. II. An Answer to several Replies, &c. III. Several Reasons for a general Act of Indemnity. By Sir Bartholomew Shower.*

IN the present Age, when the Variety and Multiplicity of new Prints is such, that the Money and Time required for their Purchase and Perusal, is more than an ordinary Gentleman can reasonably allow; it may deservedly be thought a Nuisance to the Publick to have their Numbers increased; especially since the Complaint of the ingenious Author of the *Trimmer's Character*, that for this very Cause, he could almost have wished himself unable to read; but yet the Support of Magistracy and Government is a noble Theme, so useful to the Publick, and so generally agreeable to the Humour of Mankind, that the mere Subject will (I presume) be an Excuse for this Publication, if any thing can be so.

At this time of Day none would have thought that a Necessity should happen of writing upon such a Topick, when every English Protestant was entertaining himself with the pleasing Prospect of impartial, due, and indifferent Administrations, when Authority was becoming amiable and easy to the People, when the People were inclining to a Zeal and Affection for the Honour of Magistrates; in short, when the Law was recovering its clouded Credit: In this Conjunction none expected to see all the Pillars and Posts in the Town daubed with plentiful Title-pages, (like so many Histriomastixes of William Prynne's) directing their Spectators to Books of Obloquy and Reproach, not only on the Persons and Opinions, but the Authority of Judges; when neither of the three are corrigible, or so much as censurable any otherwise than in and by a Parliament: much less was it expected, that Gentlemen of the long Robe would appear in Print to ridicule their own Profession, and expose our Law even to the Scorn of Foreigners. It would not have been so very strange to have seen a Doctor of the Commons exercising his Wit and Railery on the Common Law Proceedings, when he saw his dearest *Diana*, I mean his Excommunication Process, in Danger of becoming useless, and a fair Occasion given him for such an Essay from the Disgust of the People against *Westminster-Hall*.

But none imagin'd, that Satires and Invectives upon past Proceedings should be writ by Lawyers, who expect a farther Benefit from their Profession by the Grace and Favour of the Government; which if they happen to acquire, according to their Expectations, I would only remember them, that Mocking is Catching in the Proverb. There was once upon a Time a certain Master of Arts, who, whilst at Cambridge, did ridicule and expose the Clergy of the English Church, by writing the pretended Causes of their Contempt; but the *Templars* said, that he, whilst at London, did give an Occasion for a third Part to the same Tune, or at least a new Edition of the Book, with Additions by the Author himself, even of his own dull—as proper for the like Use. In petty Corporations they who have most complained of other Hardships have frequently outdone their Predecessors, when once they have got their Places. A whining, complaining Servant doth often prove a peevish, imperious Master; and I am sure in the Inns of Court, the most noisy, troublesome and mutinous Students and Barristers make the stiffest and most magisterial Benchers. I make no Application, but I leave the Reader to what he pleaseth. Better things are to be hoped of all concerned in publick Government.

Since the Press seems open, and Lawyers Books are published without a Licence, another may assume the same Liberty with equal Authority, and with more Reason, when his Province is only to correct the Misrepresentations of Things, Actions and Persons, tho' made by Authors of Age, Experience, Figure, and Learning, (I will not say Candour or Honesty) especially since they are private Men, and having vented their own Thoughts in Print, they remain no longer theirs, but are equally exposed to the Censure or Applause of every Reader. Besides, 'tis generally presumed, that an Author expects a publick Animadversion, or otherwise he would never have become such. He presumes his Arguments irrefragable, and then an Answer does him no Mischief; and if they are otherwise, he deserves it. And surely he stands as liable to be corrected by others, as others were to be censured by him. And it is more warrantable certainly to write and print for the Vindication of former Proceedings, that it can be either candid or genteel to arraign or expose them; especially, since to do so, is, and must needs be, mischievous to past, present, and future Governments, as Experience will unquestionably teach us; but the other is, and will be, of Service to future Administrations, by maintaining the Reputation and Credit of judiciary Proceedings.

It is well known, that the Lord Russell being so unfortunate as to fall under the Accusation of Treason, was the most pitied of any under those Circumstances, by all who knew either his Family or personal Character; great Expectations were then had of the Issue of that Trial, the Event gave great Occasion for Discourse afterwards, and almost ever since; the printing of his last Speech, with the several Answers to it, did much augment the Talk. It cannot but be remember'd how various and different the Sentiments of most were upon that Subject; the Debates concerning it generally concluded in a Pity to his Person and Relations, as a great Misfortune upon both, and in Truth upon the Nation, that a Gentleman of such Qualifications should be guilty of so much Inadvertency, (to say no worse) as to engage so frequently in such Consults as he unhappily did. Some blamed the Jury, most censured the Witnesses, but very few arraigned either Counsel or Court; and in Truth, the Fairness and Indifference of that Trial was such, that his own Relations were pleased, and his Enemies angry, with those that then sat upon the Bench; and thus it continued till the present Revolution.

Then the Memory of that unfortunate Gentleman was revived by the Publication of a Defence of his Innocency. The Name subscribed to the Title-page is so great, that I should be afraid to proceed, but that I am resolved not to be known; and therefore if any thing falls from my Pen indecent or disrespectful, he must excuse it, as a Privilege claimed by Authors, especially of Books that have no Name to them.

To begin at the End; For what Purpose was that Pamphlet printed?

It could not be for the Good of the Nation, as a Means for Consumption of Paper; for, as I have been told, that's a French Commodity.

It could not be for the Bookseller's Profit, only, for a Reason to be guessed at.

It could not be for the sake of that Lord's Memory, or any of his surviving Relatives; for no Man will think it a Service to them, to renew the Thoughts of that unhappy Accident in so noble, antient, and worthy a Family. In Truth, the whole Treatise is nothing but a painting to the Life the too deep Concern of that Branch on't in a weak as well as criminal Enterprize; for what else doth signify the Expression, pag. 4. that being present at a Consult of Traitors a second Time, or oftener, raises a strong Suspicion, that the Party who does so, likes it, consents to it, and approves it; or else he would have forborn after his having been once amongst them? And many other such Expressions there are with the like Reflections, as pag. 7. that *Rumsey* and *Sheppard*, the two first Witnesses, &c. raise a strong Suspicion upon my Lord, and make it probable that he was guilty. And in the same Page the Author seems to agree him guilty of Misprision. And pag. 17. he republishes the Evidence of *Rumsey*, that there was a Consent, and this the Author agrees to be High Treason; but he then endeavours to invalidate the Credibility of that Evidence, by shewing the Wildness of his own Memory. Now how this could serve the Reputation of the Deceased, or cure the Resentment of his Relations upon that Account, I confess myself utterly unable to imagine. Nor can any Reader suppose the Title verified by the Book, viz. *A Defence of Innocence*, when there's not one Word to be read of it but in the Frontispiece. Surely there's no Thanks due to the Author from that Family, no more than was an extraordinary Fee due to that Lawyer who pleaded for a Defendant to this Effect: *My Client, I must confess, is a Wag, but not so great a Wag as the Counsel of the other Side would represent him; their Proof is very strong, but not so strong as they would boast it to be; our Defence is but dark and weak, but not so weak as they would argue it.* So that the Book could not be writ for a Service to that Family, unless a Concession of Guilt can be called a *Vindication of Innocence*.

It could not be for the sake of the Government: For it can never be deemed a politick Service to rake into old Sores, when lenifying and moderate Methods are more advisable; and if every thing should be republished which hath given Disgust to the People, few would escape the Lash, the Righteous themselves would scarcely be saved; for Abundance of them have tript either in their publick or private Conversation, and some in both, and that notoriously too: I name nobody. Besides, the Government must of Necessity never allow the Doctrines divulged in this Pamphlet, unless 'tis intended that its Being and Continuance shall be as precarious as a *Beneficito* Judgeship, and as dependent upon the People's Humour,



Humour, as that is upon the King's: Nor can any Government countenance and encourage the Arraignment of a considerable Number of wealthy worthy Citizens, with the printed Censure and Insinuation of their being a Parcel of corrupt, ignorant, injudicious, dishonest, and partial Fellows; and this is done to the full, when said, that the contrary would have sworn to a Not Guilty, or at leastwise they should, if the Author had been there. But most of his Readers are of another Opinion, notwithstanding the second Letter, pag. 7.

It could not be for the sake of popular Applause; for it's thought, that the Treatise will never deserve or procure it, especially if you take it in Pieces, and consider them apart, and with sober Reflections. So that no Man can tell what it was writ for.

When the Title of the Book, and the Name of the Author was first published, Mankind was full with a pregnant Expectation of some rare, abstruse, uncommon Learning upon the Point of Treasons, with which the World was before unacquainted. No Man looked for a Preachment concerning the Body and Blood of our Saviour, the World to come, and the Guards of Heaven, as Topicks proper for an Animadversion upon that Trial, especially from such an Author. But there's nothing strange under the Sun.

The Preface is an Encomium upon the Author himself, declaratory of his Readings for publick Services, and seems to be calculated for a Cooler, or a Defence against the Heats and Rigours of an harsh and oppressive Government, for an Help to such as may possibly hereafter fall into the like Danger and Trouble: And to teach the People the Fear and Jealousy of a Possibility of such Occurrences again, can never be thought a publick Service. As to part of the Preface, it is so dark, that a slender Understanding can never reach the Sense of it, I mean that long Paragraph, *The Copies of, &c.*

The first Letter begins with a seeming Shew of a bold Resolution in the Author to perform the Duty of a friendly Counsel, maugre all the Inconveniences that might happen to himself thereby. But it concludes with an extraordinary Caution and Care to prevent all Danger, even to such a Degree as much diminishes the Credit of that invincible and heroick Resolution at first boasted of. And if his Courage had been so strong, why were not these Letters published formerly, and in Times, when, in the Author's Judgment, there was more Occasion for their Use, than the present can possibly afford? But rather it may be again asked, why they are printed at all, the Observations contained in them having been printed not above 500 Times already, and perhaps with as much Advantage? Was it a Secret to the World, that a Variance between the Indictment and the Evidence might be alledged on the general Issue? Did no Man in Town know that Treason and the Misprision of it are different Crimes? Is the Distinction between them such a new Invention, and so very useful, as to be an Equivalent for the want of Counsel in capital Trials, as the Preface and Letter do insinuate, if they do any thing? Who ever doubted, but that Proofs of Treason must not be by Hearsay or Argument only? Was it ever a Question, for this hundred Years, but that every Indictment of Treason must contain an Overt-act? Or that less than two Witnesses was allowable for Proof of that Crime? Or did any Man ever scruple but that *Keeble's* Statute-book contains a true Copy of the 13 Car. 2. cap. 1. which requires Witnesses credible? Now if these Questions must be answered in the Negative, how can the Advice of these Letters be assistant to a better Defence than was known long since?

The Book itself begins with Stories of Transubstantiation of Bodies, and Transmigration of Souls, as much to the Purpose, as the Parson's Text was to his Doctrine, who preach'd upon the Certainty of the Day of Judgment from that Verse in *Genesis*, *And Adam knew Eve, and she conceived, &c.* But perhaps the Author intended all that first Page for a Flourish, and to entice his Reader into a patient Perusal of what follows, and prejudice him against the Sheet he pretends to answer. He is very frank in styling it a libellous Pamphlet, and the Author some rank bigotted Papist; but to what Purpose no Man can divine, unless it were to expose him to the Rage of the Mob; but his Name was never posted, and so he is safe from that Danger.

The Assertions are two, that there was neither Charge nor Proof; that the Indictment and Evidence were both insufficient.

I must confess, that it would be a mighty Addition to the Liberty of the Subject, to have the Law established and declared to be what the late Judge doth argue it is; for then there would be a Freedom for Malecontents to endeavour their own Satisfaction by Conspiracies and Consults, and that with Impunity. But as the Law was, and always hath been taken to be, an English Subject hath very little Colour for his Pretence to such a Privilege as that Doctrine gives.

The Indictment is, That at such a Place and Time he did compass and imagine not only to deprive the King of his Government and Royal State, but to kill and put him to Death, and to procure a miserable Slaughter amongst the King's Subjects; and to subvert the Government of England, and to raise a Rebellion against the King. Then follows, *That to fulfil and perfect these Treasons and traitorous Imaginations, he, together with other Traitors, did then and there with them traitorously consult, conspire, conclude and agree to raise a Rebellion, and to seize and destroy the Guards of the King's Person, contra, &c.* Now whether these last Acts be not a natural and genuine Evidence of the former, let any rational Man judge. But I will particularly prove, that this Indictment was sufficient to warrant the Judgment which the Court gave, and pronounced upon a Verdict, that the Accused was guilty of that Fact in the Indictment, and then answer the Objections started against it.

First, There's a sufficient Treason alledged. And secondly, Here's a sufficient Overt-act. Both these I'll agree are necessary; and if either were wanting, the Indictment was naught. Now it must be agreed to me, that the first is clear and plain; for by the Law, to compass or imagine the Death of the King, Queen, or their eldest Son, is High Treason. It is true, by the same Law, some open Act of which human Justice can take a Consuance, is requisite to be proved; the very Words of the Statute do expressly require it; and in Truth it is no more than what must have been, had no such Words been used: For Thoughts are secret, and can never be arraigned, proved, or censured, any otherwise than as they

are discovered by some Overt-act; so that the Clause requiring an Appearance of the Compassing and Imagination by some Overt-act or open Deed, is no more than would have been impliedly requisite, had the Clause been omitted. 'Tis the Imagination and Compassing which is the Treason, that alone is the *Crimen læsæ Majestatis*, which is prohibited and condemned; the Overt-act is not the Treason, that's only a necessary Circumstance, without which no Court can ever take Consuance of the other. And it is necessary to alledge some such Deed, a *necessitate rei*, without respect to the Words of that Statute. I insist the longer upon this, because it is used as an Objection, that the Clause of *proveably attain'd by, &c.* is restrictive, whereas it is not so; for it is only to make that first specified Treason of Imagination and Compassing to be a thing intelligible and triable: And farther to prove this, it is considerable, that this Requisite of the Overt-act is of Use and Necessity barely, and only in the Case of that which is first mentioned, *viz. Compassing*. For the other sorts of Treason are Acts themselves whereof Notice may be had, as levying of War, violating the Queen's Bed, and the like; and in an Indictment you need only alledge the Facts themselves, as that there was a War levied, there was a carnal Knowledge had, and the like. And this farther appears from the very Form of Indictments used ever since that Statute; for there never was an Indictment (and if there were, it could never be good) barely averring an Overt-act without an express Allegation of the Compassing.

Then the Matter results solely into this Question, Whether the Fact here laid be naturally and necessarily declaratory of the Party's Imagination to destroy the King; for if so, the Indictment is undoubtedly good; and it can never be called a constructive Treason, or a thing devised by the Judges Interpretation of the Statute; for they adjudge no more Treason, than what the Statute declares, and that is an Imagination of the King's Death. Now whatsoever is significative of a Man's Intention or Imagination, is a sufficient Overt-deed to demonstrate, that that Man had such Intention or Imagination; and whatsoever is expressive or significative of a Man's intending, compassing, or imagining of the King's Death, is a sufficient Overt-act to prove and make such a Man a Traitor within this Law. Now that a Consult about, and an Agreement and Conclusion actually to seize the King's Guards, and raise a Rebellion, are a natural and genuine Declaration, that the Person who did so consult, agree, and conclude, did compass and imagine the Death of the King, is surely plain enough: For a Rebellion, if successful, can determine in nothing else but the King's Death, either natural or civil, which is all one within this Law. Now he that designs and intends the necessary Means naturally conducing to a particular End, that Man may certainly be said to intend and design that End, *Causa Causæ est Causa Causati*. If the Deed tend and conclude to the Execution of the Treason, that's a sufficient Overt-act, says *Coke*, 3 *Inst.* 12. And in the same Book, fol. 6. he hath these Words, *That he who declareth by Overt-act to depose the King, is a sufficient Overt-act to prove, that he compasseth and imagineth the Death of the King; and so it is to imprison the King, to get him into his Power; and to manifest the same by some Overt-act, this is also a sufficient Overt-act for the Intent aforeaid.*

In 3 *Inst.* p. 12. 'tis held, That a Preparation by some Overt-act to depose the King, or take the King by Force and strong Hand, or to imprison him till he hath yielded to certain Demands, that is a sufficient Overt-act to prove the Compassing and Imagination of the King's Death; for that this, upon the Matter, is to make the King a Subject, and to depose him of his Regal Office; and so he says it was resolved by all the Judges of England, *Hil. 1. Jac. 1.* in the Case of the Lord Cobham, Lord Grey, Watson and Clark, Seminary Priests; and so he tells us in the same Place, that it had been resolved by the Justices in the Case of the Earls E. and S. Now if we consider the Reason why these were Overt-acts of Treason, it will appear to be only because of their natural Tendency to the Accomplishment of that particular Treason of Compassing, which holds the same in the Author's Case, as well as in those there mentioned.

A Conspiracy with a foreign Prince is agreed by my Lord *Coke*, *ib.* 14. to be Treason, if it be to invade the Realm; and an Overt-act of such Practice to be a sufficient Overt-act of a compassing the King's Death; and the Reason is, because such Actions cannot be thought to be intended for any other Purpose; and yet that particular Act may be accomplished; and it may so happen as that the King's Death may not follow, and yet they are Overt-acts of that treasonable Imagination, because of their Conduciveness and Tendency thereto. The Case of Cardinal Pole was, writing a Book of the Pope's Supremacy, in which were contained Incitements of Charles the Emperor to an Invasion of this Realm; and that was held an Overt-act of imagining the King's Death. In the Lord Cobham's and Sir Walter Raleigh's Case, a Conspiracy, Consult and Agreement to promote an Insurrection, and procure an Invasion, was held an Overt-act, 1 *Jac. 1.* and their meeting, consulting and agreeing, was laid as an Overt-act, though discovered before the Thing took Effect. Dr. Story's Case, which is mentioned by the Lords Dyer and *Coke*, was no more than a Practice or Persuasion to promote an Insurrection and Invasion; and the Overt-act that was alledged, was the writing of Letters for that Purpose, which is no more influential towards it, not so much as frequently meeting, consulting and conspiring, and at last concluding and agreeing to make an Insurrection. The Case of Mr. Coleman was no other; for whatsoever the Indictment laid, the Evidence was only of Letters to the like Effect (as to this Point) with those of Dr. Story; and the Case of Dr. Story was before the 13 *Eliz.* which made a new Treason during her Life; for the Trial was in *Hilary* Term, and the Parliament did not begin till *April* following. A Machination or Agreement to raise a Rebellion naturally tends to the Destruction both of King and People, and an Advice to it hath been adjudged so. As in the Reign of *Hen. 4.* one *Balsbal* going from London, found one *Bernard* at Plough in the Parish of *Osley* in the County of *Hertford*; *Balsbal* told him, that King *Rich. 2.* was alive in *Scotland*, (which was false, for he was then dead) and advised him to get Men, and go to King *Richard*; in *Mich. 3. Hen. 4. Rot. 4.* you'll find this adjudged Treason. *Throgmorton's* Case is as plain, for



for his was only a Conspiracy to levy War within this Realm; he did not join in the Execution, and the Conspiracy alone was declared to be a sufficient overt Act by the Judges. 'Tis no Answer to it to say, that a War was afterwards levied, for *quoad* him 'twas a bare Consult; his Offence was no more than that. In Sir Henry Vane's Case, Meeting and Consulting were alledged and held to be overt Acts. The Case of *Constable*, mention'd in *Calvin's Case*, was only an Act tending to deposing the Queen, as dispersing Bills in the Night, that *Ed. 6.* was alive and in France, and held an overt Act declarative of his compassing her Death, and he was executed for it. And in the Report of *Calvin's Case* you have several other Cases mentioned, where Endeavours to draw Subjects from their Allegiance have been adjudged overt Acts of this Species of Treason, the Compassing, &c.

The Word *Compass* in the Statute is of a larger Extent than only to mean an actual Assault on the King's Person, and an Endeavour to cut his Throat; it most certainly implies any Consult or Practice of another thing directly which may produce that Effect, as the dissuading People from their Fidelity: Such was *Owen's Case* in *K. Ja. I.* his Time, in the 13th Year of that Reign. This Advice was to this Effect: That King James, being excommunicated by the Pope, might be killed by any Man, and that so to do was no Murder; for being convicted by the Pope's Sentence, he might be slaughter'd without a Fault, as an Executioner hangs a Criminal condemned by Law; and for this he was hang'd as a Traitor. He that denies the Title to the Crown, and endeavours to set it upon another's Head, may do this without a direct and immediate desiring the Death of him that wears it (so said *Saint John* in his Argument against the Earl of *Strafford*); and yet this is Treason, as was adjudged in the Case of *Burton*, and in the Duke of *Norfolk's Case*, 13 *Eliz.* This denying of the Title, with Motives, tho' but impliedly, of Action against it, hath been adjudged an overt Act of compassing the King's Death, as it was in *John Sparhawk's Case*, *Pafch. 3 Hen. 4. Rot. 12.* The like was the Case of *John Awater*, who was indicted for a Treason of that Nature in *Kent*, and the Indictment removed into *B. R. Trin. 18 Edw. 4. see Rot. 17.* and he was thereupon afterwards outlawed as a Traitor; and so was *Tho. Heber* at the same time; and Words significative of an actual Intention have been held so, as are the Opinions of *Yelver. 107. 197. Arthur Crobagan's Case, Cro. Car. 332.* and abundance of others might be named as they are reported in our Law-Books, but I do not particularly mention them; for that their Authority in some of them is very slender, and may be ill used, to the straining of rash unadvised Words into a Signification of a Man's compassing, when perhaps the Man never thought as he spoke: However all of them do evince, that advised and deliberate Preparations moving to a Danger to the King's Person, have all along been held overt Acts of a compassing his Death: and some of them prove, that Preparatives and Motives to the levying of a War have been held Treason, as was *Sir William Ashton of Suffolk*, 31 *Hen. 6.* mentioned in *Cro. Car. 119.* for making Ballads reflecting upon the King, and writing Letters to the Men of *Kent*, exciting them to rise to aid the then Duke of *York*, &c. *ad guerram levandum*, and no mention of any War actually levied. *Germain and Taylor's* Indictment hath very little more in it mentioned, than the like Preparations and Incitements to a Rebellion; and yet the Treason there laid was a compassing of the King's Death, *anno 2 Ed. 4.* The Case of *Thomas Burdett*, in 17 *Ed. 4.* as at large it appears in the same Report of *Cro. Car.* amounts to no more than the Indictment in Question, *viz.* that he compassed the King's Death; and to accomplish that Intention, he did disperse diverse Writings, &c. *ad intentionem* that the People should rise and levy War, &c. the Judgment in that Case, Drawing, Hanging and Quartering. The like in *Collingbourne's Case*, 2 *Rich. 3.* in the same Rep. 122. where he is indicted in like manner, for exciting and moving the People to an Insurrection and War, and he incurred the like Judgment; which Cases are infinitely short of this in question: And it cannot but be wonder'd, that any Man, who has read them, should question, whether a consulting and conspiring about Rising, and an actual Agreement and Determination to rise, be an overt Act of compassing the King's Death. In the very Trial of the Lord *Stafford* it is affirmed by *Sir William Jones*, (who was certainly of great Authority with the Author) that the meeting and consulting together is an overt Act, tho' the Thing agreed on be never put in Execution; and 'tis there resolved by the Judges, that the same Treason may be proved by two Witnesses to several overt Acts, tho' one speak of Words or Actions that were spoken or done at one Time and Place, and another speak of Words and Actions at another Time and Place, which argues, that Words, much more a Consult and Agreement, may make an overt Act. Even in the Case of *Stephen Colledge*, in which though the Trial had been censured, yet the Indictment never was, and in that Indictment the Treason is laid as in this Case, that he traitorously imagined and compassed the King to depose, kill and destroy; the overt Acts are, that he armed himself, and advised others to arm, and spoke several Words, &c. Here was no War levied, only a Preparation, and yet that was allowed an overt Act: And as for the Words, if they are allowed to be one, with much more Reason may meeting, consulting, concluding, and agreeing to do.

As to the Objection, surely there is no Weight in the first, which is *Page 10.* that criticizes upon the Word *sait* Act, and that 'tis only a Meeting to agree, and an Agreement to do, but 'twas not done. Suppose they had concluded and agreed to poison or stab, &c. according to the Opinion in that Page, this was no Treason; for 'tis only agreeing and concluding upon a thing to be done, but it is not done. He doth in *Page 13.* argue, that this can never be an overt Act of compassing the King's Death, because levying War is a distinct Species of Treason, and a conspiring to levy War is not a levying War; and even levying War itself cannot be assign'd as an overt Act of Compassing, unless the Indictment were particularly for that; but surely another sort of Act that favours of another Species of Treason, if it naturally conduce to the accomplishing of the first Species, *viz.* that of Compassing, it may be assigned as an overt Act of it; and *Sir Henry Vane's Case* is quite otherwise; for there a levying War was the overt Act alledged of the Compassing, and allowed by all the Judges; and all the Indictments in the *West* upon *Mon-*

mouth's Rebellion were so; and yet drawn by very good Advice; Besides, what Answer can be given to the Cases which I have cited, where Consults, Conspiracies, Practices, Advices, Letters, Persuasions, and other Motives and Preparatives to an Insurrection, have been held overt Acts of an Imagination of the King's Death, tho' no War was levied, tho' no Insurrection was made?

'Tis apparent from what was said before, that to take the King Prisoner, or to seize his Person, is a compassing of his Death; and if so, then to sit in Council to conspire the effecting of that, is an overt Act of compassing the King's Death; and this Case amounts to that: Here was a Consultation to seize upon the King's Guards, which could tend to nothing but the seizing of his Person; and then the Consequence is plain. The Author says, *Page 14.* If it had but been alledged in the Indictment, that in pursuance of the Consult and Agreement, there had been a View of the Guards, and a Report made, that the thing was feasible, this would have been more to the Purpose. How much more, no Man can tell; for every Objection in the Book would have been as good against that as this. The great Objection he seems to rely on, is, That the Law takes no Notice of them: For once I will suppose that it doth not, and then let us observe if any Argument can be drawn from thence: Perhaps the thing was not used or known when the 25 *Ed. 3.* was made. Can nothing be Treason, if the Plot laid to accomplish it be concerning a thing not *in esse* at the Time of the Statute? Certainly it may. If several Malcontents should consult, and agree, and prepare (in order to an Insurrection) to seize the Tower, Portsmouth, Hull, and Plymouth Fort, would not this be an overt Act of Treason? And yet our Law takes no Notice of any Garisons there or any where else; they have no relation to the Militia, nor were there any Arms in those Places in *Ed. 3.* his Time, that we read of in our Law-Books: If this be otherwise, why did not the Author find Fault with *Rouffe's* Indictment, which was tried much at the same time with this in question? Suppose all the Gentlemen Pensioners, Grooms of the Stole, Gentlemen of the Bed-chamber, and the like, killed in the Night, and the Doors in *Whitehall* broken up, and all the Swords, Muskets and Pistols were taken away, and yet it happen'd that the King's Person was left untouch'd; would this be an Act of Burglary and Murder only? We have no Law-Books that take notice of Arms at *Whitehall*, or such Names as those Servants go by; and suppose, at the same time, upon the Consult, that the Conspirators did move, discourse, debate, and conclude of an Insurrection, would it not then be Treason? If not, nothing can be so, unless the King's Person be murdered or seized; and the Statute should not have said *Compass* or *Imagine*, but *Seize* or *Kill*, &c. It suffices then, that the Guards are in common Understanding known to be used and employed for the Attendance upon, and Preservation of his Person. If common Sense and Reason be Judge, no Man can think but that he who intended to move an Insurrection, and seize the Guards, had a further Design upon the King's Person: and then this is Treason; if otherwise, the King of England is in a worse Condition than the worst and meanest of his Subjects; for a King must not, cannot, in or by our Law, assault, strike, seize, attack, or imprison in Person, and consequently cannot defend himself; and shall not his Servants, Guards and Attendants, (which are all of the same Nature) wear a Sword, or carry a Musket, before him? If they do so, is it not then known that they do it? If it be commonly known to be so, doth not he that seizes and destroys those Attendants, endanger the King's Person? And if that be so, the Inference is easy. It can never be, it will never be allowed for Law, that a Seizing all the King's Guards is only a Breach of the Peace, unless we renounce the Law, and will judge more by Inclinations and Partyships than by Reason and Precedents. As to the Distinctions between an actual seizing them, and a Consult and Agreement to seize them, what I have urged before overthrows it, and what the Author says doth not maintain it; for both have a Tendency to the Execution of the Treason intended.

I will not take the Pains to remark upon all the Inconsistencies of the Concessions and Denials in the Book; they are obvious to the Readers. As to his Quarrel at the King's Guards as an illegal thing, and terrible to the People, somewhat of the French Growth, I hope the King will always preserve them for his own personal Preservation, notwithstanding the Author's Opinion. As to his temporary Laws, which declare Words Treason, most Part of them were affirmative of the old Law, and were made only in Compliment to a new-crown'd Head, when they prohibited nothing but what was before so; and for the rest, no Conclusion could be made from them for the Maintainance of his Assertion, if he had repeated them; which since he does not, nor will I.

As to the Cases cited by the Author of the Antidote, (which I have mentioned) he agrees to *Constable's Case*, but does not distinguish it in its Reason from that in Dispute. He denies the Authority and Law of *Dr. Story's Case*, which nobody ever denied before him. He says, that in the Lord *Cobham's Case* there were People assembled, but gives not any Answer to what the Antidote affirmed, *viz.* That the overt Act taken notice of in the little Book, called, *The Pleas of the Crown*, was only the conspiring to make an Insurrection. He doth confess, that in the Lord *Grey's Case* there was only a Conspiracy: He says, that in *Sir Henry Vane's* and *Plunket's Case*, there were several other Ingredients to mount them to Treason; but what they were, nobody must learn, at least not from the Author, for he names none of them.

He consumes half a Page in an Encomium upon the Judiciousness of that Court, which made a conscientious legal Scruple, Whether the Murder of a Mistress by her Servant were Petit Treason, by reason of the Difference of her Gender? But at last he tells us, that the Judges of the Common Pleas did upon much Deliberation satisfy those of the King's Bench, that Master and Mistress were in Effect but one.

In the Conclusion of the first Letter, he says, that conspiring against the King's Person, is most justly taken to be to conspire against the King's Life; but in the Book he will not allow a conspiring and agreeing to seize (*i. e.* beat and destroy) the Guards, which are ordinarily and commonly known to attend the King's Person, to be a conspiring against his Person; which whether it be or not, the next Trial of this Nature will



determine. Now, after all, what can be a greater Reflection upon the Learning, Judgment and Integrity of the King's Counsel, Judges and Recorder, than to declare and publish in Print, that the first prosecuted, the second tried, and the last condemned, a Gentleman as a Traitor, when the Charge had nothing in't of that Nature: If true, the bare printing it is unbecoming the—But as for their Reputations, let them justify themselves. The Reason of my undertaking to explode such a Reflection, was my own and every Man's Duty to the present Government, (the King and Queen's Majesties being both concerned, and eminently too, in the Consequence of such Doctrines) and a Love to my Countrymen, that they may not presume upon the Authority of such a Defence; for if they do, they may find their Mistake, when noosed through the Power of Truth, the contrary Opinion.

As to the Proof, I will not rake into it, since the Author hath represented too much of its Strength, and *De mortuis nil nisi bonum*; it can never be thought a grateful Province to debate or convince of Guilt; but yet I may say so much, that there was Evidence enough to justify all concerned in the Prosecution and Trial, though for several Reasons the Attainder is fit to be reversed; but hardly for those which this Author mentions.

Since the Writing of this Sheet, there came to my Hands a Treatise, calling itself, *The Lord Russel's Case*, which favours more of Policy than

Law, and his Topicks are the Rights of the People and Power of Parliaments; they argue the Author to be a greater Statesman than Lawyer, and therefore much too great for me to encounter; and a Debate concerning the Heads he insists on is neither safe nor allowable without Doors. I shall make but three Remarks on what he says: First, He may assure himself, that that Power from which he argues his Law, is now apparently lodged in the Commonalty, not in the Nobility. Secondly, The King's Solicitor (whom he reflects on) twitted more Reason and Law than yet hath been or ever will be answered: And thirdly, The Indictment contained no new constructive Treason, but only that which was plainly and directly declared in and by the 25 *Edw. 3.* if the Letters of it make Words, and the Words Sense, and one Man may be allowed able to read them as well as another.

Since the writing of the last Paragraph, there came to my Hands another Pamphlet, written by a new Observer; but I suppose the Judges that shall be, will correct that sort of Licentiousness which he assumes in his Remarks; which if they do not, they'll have fine easy Places on't, as well as their Predecessors, and much good may it do them!

*Etas parvum peior avis tulit  
Nos nequiores, mox daturos  
Progeniem vitiosorem.*

Horat.

### *A Second Vindication of the Magistracy and Government of England, by way of Answer to the several Replies, &c.*

IT is very observable, that since the late Revolution, nothing hath more disturbed our Peace than the Liberty of the Press; and amongst all our new Prints, the most malignant and mischievous Libels on the present Government have been written by those Lawyers who pretend themselves the greatest Zealots for its Honour and Service; which may be suspected as false, unless it be withal considered, that some modern Royalists have nothing recommendatory of themselves, but the Miscarriages of others; and others of them have such great ones of their own, that an Extenuation or Excuse is impossible; and therefore to cloud their own Deformities, they would blacken other Men's Reputations; and, in order to it, they have censured Innocence, and arraigned Laws; and where a Slip or Fault hath been, though so small as scarcely to deserve the Name of one, they have magnified it into an execrable Villainy: And for a Colour of such their Calumny and Slander, they have vented new Gospel and Law both; nay they have broached such Notions to the World, as are directly fatal to that Crown of which they boast themselves the Makers and Supporters; and yet, in doing so, they pretend to merit—

It is strange, but true; for the Fact is plain, and the Consequence too: Upon the present Change, the Republicans of both Gowns did deem it their Policy and Interest to bespatter and reproach other Men's Actions, and, like base and mean Spirits, gave ill Names and Words to every thing in which themselves had not been concerned, and made Reviling so customary, that it is become the modish Sin of the Age. It is most certain, the old *English* Honour, Frankness, Ingenuity and Good-nature is quite abandoned from some Companies and Places in the Town, and instead of Folly, we have assumed Vice in our common Conversation; instead of Drollery and Banter, the new-fashioned Wit at ----'s allows nothing as acceptable but Lying and Slander; nay, the very Spark of a Courtier hath changed his Note; whereas fustian, gross and false Flattery was wont to be his Talent, he is now got to the other Extreme, *i. e.* revengeful, weak and false Characters, both of Persons and Actions: Which is the worst is difficult to determine, but Falshood is the most predominant Humour in both; and that Age is surely unhappy, which is plagued with a Surfeit of either, especially when the Excess is so great as now, that no Gentleman can be thought a good Companion, no Clergyman a true Protestant, no Lawyer an honest *Englishman*, no Courtier a faithful Servant, unless he can and do rail, and snarl, and scold, and that at Things that were justly used in former Times, and must necessarily be used in these Times, and will be so in all Times whatsoever, even in *Secula Seculorum*: These little stinging Animals do value themselves upon their Honesty, because they find Faults, but it is in Cases where no Eye can spy them but their own; they value themselves upon their Wit, because their Censures are sharp and biting; but that is so easy, so very easy a Province, that Nature teaches even the rudest of her Breed to be satirical, and the Natural oftentimes outdoes the pretended Scholar in Ribaldry, and hath perhaps a better Faculty that way, than Fancy for Picquancy of Reflection.

Now as the Fact is thus criminal and ridiculous both, so must the Consequence prove fatal to the Government, which they would be thought (but intend not) to support; for when once resolved to arraign all past Proceedings, they are forced, for the Maintenance of such their Reflections, to vent those Opinions, Doctrines, and Rules in Divinity and Law, which have in every Age (save one) been justly exploded, as destructive to the Honour and Being of the then Possessors of the Crown; and can conduce to no other End than the utter Subversion of this, and every other Government, that doth but smell of a Monarchy.

It cannot be denied, but in most Reigns there have been some Occasions given for Disgust to the People, that Kings have borne too hard upon their Subjects, that the Subjects have worthily complained of some Warps from the Law; but no Man ever with Sense pretended, that this is a Reason to induce a Belief, that every Act of State, and every Judgment of Law in former times, was arbitrary and unwarrantable: No surely, the Publishers of such Reflections are of another Thought themselves; and some Folks imagine, they who formerly were engaged in seditious Practices against the Crown, would now, upon the present Occasion, explode that Law, which doth condemn such Practices, that they may with Impunity repeat them, whensoever the King or his Ministers shall chance to disoblige them, and that this is the true Reason of half the new Libels and Invectives upon past Proceedings.

It is now apparent to all Mankind, that every Line, or at least Page, of some Men's Works, are designed only as a Courtship to the Mob, by

bridling the Sovereignty, and clipping the Prerogative, even to such a Degree, as doth absolutely deprive it of those Rights, Powers, and Authorities, which the ancient Law, continued Usage, and our present Representatives, consent to allow it.

To check this growing Itch of pamphletting the Nation into another Change, and to vindicate the Rights of the Crown, and justify the Magistracy of England, from the Obloquy which was industriously thrown on it in one Particular, there was, three Months since, a Sheet printed and published, at which some Men took Offence; but others were of Opinion, that its Publication was seasonable and well-timed; that its Reflections on the trifling Defence, which it assumed to answer, were just and smooth, and very soft, considering the Occasion given for a more satirical Style, from the Fondness and Incoherence of the Defender's Expressions and Inferences; and that the Mode of managing his Argument was modest and tender, with a decent and due Regard to the Memory of the unfortunate Deceased, which had suffered more than enough of Injury by that pretended Justification.

A cholerick and sedulous Inquiry hath been made after the Author's Name; but the Inquisitor is still at a Loss, notwithstanding his Confidence of a certain Knowledge who it was, that came behind and struck him, &c. But to give him some Satisfaction, after all his Fatigue in searching, I will ascertain who it was not; he may assure himself, that none concerned in that Trial were concerned or privy to its Vindication; and when it was composed and writ, the Party intended it chiefly for his own and the World's Diversion, from the ungrateful Necessity of reading always on one Side, by the Interposul of a few Lines on the other; that our Humours might not be quite soured, and our Genius turn too peevish, through the Influence of Satire and Libel, with which the World hath too much abounded of late Years; nor had there been one Word more published upon that Subject, but that the Authority of the Defender doth challenge a Vindication, and the Word of a Priest says, that it needs one; both shall have an Answer presently.

But, first, it is remarkable, that this new Reply hath got a Licence, when none of his other elaborate Works could procure one; however, it is possible, that the Licenser may hereafter renounce or retract his Allowance in this Case, as he hath done in several others already, when his Superiors are acquainted with the Contents and Tendencies of that to which he hath given his *Imprimatur*; for it is not to be supposed, that Ministers of State will ever be so incurious of their Master's Honour, and the Rights of his Crown, as to approve their Diminution, when once they perceive it.

The single Point which the Advocate for Magistracy assumed to maintain, was, that the Indictment in question was legal and good, sufficient both for Matter and Form, and did warrant the Judgment which was pronounced upon the Verdict, that affirmed its Truth; this seems the principal Assertion in that Paper, which, whether his Precedents and Authorities, Arguments and Reasons, are sufficient to prove, the Reader must judge; that the Cases he cites, are truly reported for so much as he uses them, none can deny; and that the Law is with them upon the whole Matter, shall be farther evinced.

But since that Sheet hath made some Noise amongst angry Men, (which was little expected by him that wrote it) it will not, I hope, be thought impertinent to spend a few Paragraphs upon the boisterous and blustering Invectives and Remarks made against its Author, in a pretended Reply. In his Vindication, therefore, I shall observe the Temper, the Wit, the Guess, the Reason, the Religion, and lastly, the Law, of that Replication.

As to the Temper, it seems to be writ under some Disappointment; for the Author doth in every Sentence declare his Passion, and plainly tells us, that he was then discomposed; but whether his Displeasure were conceived at a past or present Chief, is not so easy to determine: To expose his Fury, it is enough to repeat his Epithets of Daring, Bold, Impudent, Presumptuous, Base, Ingenuous, Insolent, &c. and all this despised by his reputed Author, and smiled at by the real one. He is pleased to call the Sentence and Execution a plain Murder; which if so, sure I am, that he is bound in Conscience to prosecute an Indictment against the Judges, the Recorder, the Grand and Petit Jury, the Witnesses, the Clerks, the Solicitors, the Gaoler, the Sheriffs, and the Executioner; for they were all concerned either as Accessories, or Principals, and demerit a Halter, if the Repliant's Opinion be Law: But it is observed amongst *Honest Men*, that none of these Parties shew any Fear on't; and the Reason they give for it is, because the Indictment was as good



as their Jurisdiction, and the Concurrence of those two makes them as safe as an Act of Indemnity can do; but all this was Passion.

As to the Wit on't, most of his Readers are at a Loss where to find it, unless it be in his *English Verses*, which do so hit the Sense of the Original, and contain such strong and pregnant Flights of *English Poetry*, that some of his Readers have compared them even with *Sternhold and Hopkins*; and others are of Opinion, that they do not come short of the *Essays* of the two *Gray's-Inn Poets*, one of which translated *Grætius, de Veritate Christianæ Religionis*, and the other *Coke upon Littleton*, into Rhyme; but the Generality do declare, that for Height of Fancy, Propriety of *English*, and Exactness of Rhyme, he hath much out-done all those: But for my part, I believe, that last Rhapsody was added, not so much for the Ingenuity sake, as to menace the Answerer with a Design to sacrifice him whenever an Occasion should offer itself, and consequently to do what the whole Book complains of; but that Advocate is not so much a Coward as to be afraid on't.

As for the Guess, it is very cunning, and argues more Figure-knowledge than true Judgment in Styles, Modes, Dialects, or Peculiarities of Speech or Writing; for he will have the Author of that Sheet to be the Author of the *Antidote*, tho' he never saw it till he had the Misfortune to have read the *Defence*; and his particular Idioms are as different from those of the *Antidote*, as they are from those of the *Defence*; but this is all Guess. He will have it one of the Counsel of that Trial, because he hath put *Counsel before Court*: A cunning Man would have guessed the contrary, as supposing it done *fallendi gratia*, for the sake of Disguise; but he may be assured it was mere Accident, that occasioned that Fault. He will have it to be the then Solicitor, because of his Reputation, which is supposed to be touched in that *Defence*: But his Readers think, that that Gentleman's Figure for Learning, Honour, and Virtue, is so far above the Reach of a little Pamphlet, that all the virulent Reproaches of the *Reply* cannot fully it, nor is it in the Power of his Tongue or Pen to prejudice his Character in the World; but however, it is prudent to suppose to myself an eminent Adversary, that if a Foil be my Fortune, it may be the easier.

But since we are at guessing; the World guesses, that he who wrote the *Reply*, did write the Half-sheet called the *Justification*; and it is really sportive to read the *Justifier* commending the *Defender* for a learned worthy Person; and the *Repliant* doing the same good Office for the *Justifier*, and almost in the same Words commended him: Nay, he spends a whole Page in the fulsome Praises upon that *Small Bulk Author*, and rejoices that the Work was done this Hands, which is a very pretty Jest. However, it is at most but *R. for A.* and *A. for R.* and *R. A.* still, which is much better than the contrary Practice, of which some Authors have been guilty.

As to the reasoning Part, the Reader must excuse my Brevity; for in Truth there is very little in it of that Nature; however, a few Remarks may quicken and revive that Faculty against the next Turn. The Advocate owns it to be writ in Answer to his *Defence*, ergo it reflects upon the Nation's Wisdom. He expresses a Resentment at my Lord *Ruffel's* engaging in such a weak and criminal Enterprize, ergo he reflects upon the Nation's Justice. He names the Lord *Ruffel*, (though with the most tender Appellations that could be used) ergo he reflects on that Lord's Memory. He vindicates the Indictment as good, ergo he justifies all the Proceedings in that Case. He argues, that the Sentence was legal upon such a Verdict, ergo is against the Reversal. He puts a Case, offers a Point, and makes a Proof on't, ergo he is transcendently impudent. These and such-like, are the Infatuations, and do demerit a Laugh.

As to Religion, I see none in it, unless it be in the Mention of the devilish Powder Plot, which is still as much to the Purpose of his *Reply*, as the Story of Transmigration of Souls was to that of his *Defence*; only Meekness is transparent in his Style, Humility in the Title-Page, and true Christian Charity in his Menaces of an Exception out of the Act of Indemnity, which he repeats three or four times at least, as if his whole Interest were designed to promote it. The Gentleman's Danger is from publick and scandalous Actings in the Eye of the World; which were (says he) labouring to support the Government, every Man knows what Sort; lashing the Innocent with a bitter and sharp Tongue, and inveigling of *Juries* with rhetorical Flourishes. Now to examine a little these three monstrous Transgressions, let us go backwards. As to the last, a Duty can never be a Crime; every Servant owes Truth to his Master, while such; Every Advocate is to do his utmost, and a Failure in it had deserved both the worst of Names and Punishment, which the *Repliant* could invent, or his Interest procure. For all Mankind must agree, that the now Servants of the present Crown are obliged to do the like upon the like Occasion; if otherwise the *Jacobite's* Side will be the safest. I will not reflect on the Weakness of the *Juries* that were thus inveigled, if any such there were; but rather suppose, that the Oaths of Witnesses, not the Pleading of Counsel, did govern their Consciences. As to the second, that is false, and needs no other Answer. As to the first, that Gentleman's Honour and Merit afterwards is as remarkable as his Fault at first, if it were any; but however he is likely to have abundance of Company, in Desert at least, if not in Censure; for a Duke of *York's* Creature is certainly as culpable as a King *James's* Servant. And *Andrew Marvel's* Characters in his *Growth of Popery*, will be as true a Directory to decypher Criminals, as the Four Volumes of noted Trials. And perhaps, if the Ordinance of *May 10, 1650*, should chance to be revived, Danger and Fear may seize other Men, as well as those that served past Governments; it is therefore thought advisable for all to sit down quiet, and forgive and forget what is past, but serve God and their Majesties for the future, and not belabour the excepting one another; for if any should be such Fools, the Knaves will get the better of it, and the Righteous scarcely be saved. So much for Religion.

Now for the Law, if we can find it: But because the *Defender* seems somewhat displeased at the Repetition of that unhappy Lord's Name, whose Case gives Occasion for the present Question; let us therefore put it like Mooters: *John a Styles* was indicted, for that he, at

such a Time and Place, did compass to deprive his natural Lord and King, that then was, of his Regal State, and to destroy his Life, and to subvert the Government, and raise a Rebellion; and to fulfil that Imagination, he, together with others, did then and there consult and agree to raise a Rebellion against the said King, and to seize and destroy the Guards of the said King's Person, contrary to, &c. The Question was not, Whether *J. S.* was Not guilty, nor if the Witnesses swore false, whether his Attainder were fit to be reversed; but the Dispute was, Whether that Indictment was legal; whether, supposing *J. S.* to be found Guilty, the Court that pronounced the Sentence of Treason against him ought to have arrested such Judgment on the Motion of *J. S.* that the Indictment was insufficient. The Sheet argues, that the Indictment was good, and consequently the Sentence pursuant thereto was warrantable by the Laws of this Land. The Argument seems founded both upon the Reason of Things, and the Authority of Precedents.

First, The Reason alledged was, That the last Part, which in Lawyers Terms is called an Overt Act, was a natural and genuine Sense or Declaration, or overt Signification of the first Part, which is an internal secret Thought, i. e. the Imagination and Compassing, which is the Treason prohibited and condemned. That the latter directly and consequentially tending and conducing, in the common Sense and Reason of all Mankind; (excepting the *Defender*, and two or three more) to the Accomplishment of the former, makes a good and sufficient Charge within the Statute *Edw. 3.* A Repetition is tedious, and an Abridgment is scarcely possible, the whole Sheet being but a Breviate; I shall therefore refer you thereto.

Secondly, The Authorities there urged, are either the Opinions of Judges and other Lawyers, or Precedents of Indictments of the like, or the same Nature, from which the Legality of this may be justly concluded: The substance of them on the whole Matter is, That overt Acts to depose the King, or depose him of his Regal Office, or take him by Force or strong Hand, or to imprison his Person till he yields to the Demands of those who practise such Endeavours, are sufficient overt Acts to prove the Compassing and Imagination of his Death: That levying War, causing an Insurrection, promoting an Invasion, nay, that Consults, Conspiracies, Practices, Advices, Letters, Persuasions, and other Motions and Preparations to an Insurrection or Invasion, tho' none succeed, have been held overt Acts of imagining the King's Death. I will not repeat the Cases, but as Occasion offers from the other Side.

The Objections there mentioned and answered from the Penning of the Statute are too trivial to deserve a Remembrance, nor would they have ever been thought otherwise, but that *J. S.* was a noble Person, and the *Defender* a great Man, and the Prefacer thought so too, either by himself or others. These and such-like Ingredients, have made some Semblance of Difficulty: And in truth, had there been a real Doubt in the Case, the Author of the *Remarks* on that Trial, who wanted neither Sense nor Will to censure it, had his Opinion so inclined, I say, he would certainly have fallen foul on it in those invidious Observations of his upon the late Times. He quarrels with the Legality of the *Jurors*, the *Defender* with that of the Indictment, and both with the Evidence. The Author of the Sheet differs from them in the two first, but agrees with them in the last, that Testimony delivered for Fear of Life, or Hopes of Pardon, or other Reward, is hardly creditable; but that is not the Point; Let us see if the *Replication* doth overthrow the Charge as insufficient, and for my Part I cannot find a Line of Argument in it, but only It is naught, because it is naught. The consulting and concluding to make an Insurrection and Rebellion, and seize the King's Guards, is not a Declaration of the Party's compassing the King's Deposal or Death; and why? Because conspiring to levy War is not a levying War, and levying War is a distinct Treason; that is the Substance of the tenth Page, if I can read: The Sheet said truly, That levying War itself might be alledged as an overt Act of Compassing, and hath been so frequently, and meeting and agreeing to rebel and seize the Guards, hath a direct Tendency to promote a Demise of the King either Natural or Civil, and therefore might as well be alledged an overt Act as most Things whatsoever.

I had almost forgot one Clause, and that is the Unnecessariness of making 13 Car. 2. if it should be as the Advocate argues; I suppose he means the first Paragraph, for the second is agreed to be introductive of a new Law, &c. but the first is only a Paraphrase upon the 25 *Edw. 3.* It is thus, That if any person or persons whatsoever shall, with intent to depose, compass, imagine, invent, devise, or intend Death or Destruction, or any bodily harm, tending to Death or Destruction, or any Imprisonment, or Restraining of the Person of our Sovereign Lord the King, or to deprive or depose him from the Style, Honour or kingly Name of the Imperial Crown of this Realm, or of any other his Majesty's Dominions or Countries, or to levy War against his Majesty, within this Realm or without, or to move or stir any Foreigner or Stranger with Force to invade this Realm, or any other his Majesty's Dominions and Countries being under his Obedience; and such compassings, Imaginations, Intentions, Devices or Intentions, or any of them, shall express, utter or declare by any Writing, Uttering, Preaching, or malicious abused Speeches, being legally convicted thereof by the Oaths of two lawful and credible Witnesses upon Trial, or otherwise convicted or attainted by due Course of Law; then every such &c. Now what is this but a Confirmation of the old Statute in Words at Length; which was agreed to be so in the *House of Commons*, 1 Jac. 2? When a Motion was made to renew that Law, the Lawyers Answer was, That the 25 *Edw. 3.* did the same Thing; and a Man may boldly say it, that here's nothing declared Treason, but what had been adjudg'd so before, and Attainders and Executions had pursuant to it: The Sheet mentions Cases enough, and to the Purpose, though some think otherwise; but I'll not repeat them.

In the eleventh Page the Reader is refer'd to the Justification in the Half-sheet; and therefore let's examine that a little: A third Part of it is spent upon the Evidence, but that is not within my Province, which is only to vindicate the Vindication. As to the rest, the Force of it, if any, seems only to be founded on his first Assertion, The Conspiring to do a Thing is not the doing a Thing; and he quotes two great Men's Names for



for it: for I would agree that, tho' he had spared the Authority to justify it; but this is sufficiently answered in the Sheet: He offers an Argument from the late Statutes declaring Treasons, because they were temporary; but I answer, as the Sheet doth, they were in Affirmance of the old Law, and I can shew him three or four temporary, and an hundred other Acts of Parliament that are so, and therefore that is no Argument at all; but I am, as the Party I justify was, confin'd to a Sheet, and therefore cannot enlarge.

He lays down a Rule for Construction of Statutes, that a Thing particularized in one Part is not to be construed within the general Words of another Part; but that Rule hath near fourscore Exceptions in the Books; besides it comes not to this Case; for here's compassing the King's Death made Treason, and declar'd by overt Act; then levying War is made Treason: Now, says the Repliant, nothing can be an overt Act of, and conduce to promote and accomplish the first, that doth any ways concern the latter: I say it is a *non sequitur*; for there are several Instances mentioned in the Sheet, which respect the levying War, and yet are a genuine Evidence of the Intention and Compassing; and if so, the Judges who have ruled such Indictments to be good, did neither assume an arbitrary Power, nor transgress any Rule of Law, as the Half Sheet insinuates.

Then the Lord *Cobham's* Case is endeavoured to be answered, by a Wonder, that Sir *Edward Coke*, late Lord Chief Justice, and then Sheriff, should differ from Mr. Attorney *Cook*; for we know his Thoughts in Sir *Walter Raleigh's* Time, and his Speeches in *Car. 1.* his Time; they are as different each from other as the Times were, and in this Particular that Gentleman hath had more Followers than Precedents; but the Query is, What is Law?

Then Sir *Henry Vane's* Case is endeavoured to be answered by this, that *Sydesfin* mentions not the overt Act in the Indictment, but he doth say, the Treason alledged was a Compassing the King's Death; and every Man knows what Sir *Henry Vane* did to accomplish that: He neither sign'd the Warrant to execute that Murder, nor was he actually concerned in it. The Justifier says, he does not remember it printed any-where but in *Sydesfin's* Report: For the Refreshment of his Memory, I'll tell him of another Book where it is, and that is *Keble's* first Volume of Reports, 304. and there the Indictment is said to be for Compassing the King's Death, and endeavouring to accomplish the Treason, by changing and usurping the Government, and levying War; which Case doth directly overthrow all the Defender's, Justifier's, and Repliant's Arguments, from the Distinctness or Difference of the Sort of Treason.

Then for Dr. *Story's* Case, he says, 'tis hard to justify it for Law; whereas there are above forty Places in our printed Law-Books, where 'tis cited and agreed to be Law: Now, 'tis pretty odd, that a Case so resolved, and so ratified, should one hundred and eighteen Years after be arraigned in Print; for 'twas *Hil. 13 Eliz.* If any thing be Law, that is so, and not distinguishable from this Case in question, but that the Evidence was different, which the Justifier would make a Reason to invalidate this Indictment; the Logick of it passeth all Understanding: Besides, 'tis observable, that the Benches were filled both with Learning and Integrity in 1571 and 1662; neither of those Times were *Tory* or *Popish*; and in *Dyer*, 208. the Reason given was, that it could not tend but to the great Peril of the King's Person, and therefore an Attempt to promote such Invasion, tho' none followed, was adjudged as aforesaid. In 2 *Anderson*, pl. 2. fol. 5. *Grant's* Case, 'twas held, That when any Person intendeth or contriveth to levy War, for a Thing which the Queen by her Law or Justice ought or may do in Government as Queen, 'tis not material whether they intend any Hurt to her Person; but if they intend to levy War against the Office and Authority of the Queen, that's enough; and that Resolution overthrows the Justifier's Notion, that *J. S.* his Design was only to defend the Laws, though the 13 *Eliz.* also was then in Force; 'tis a good Argument to answer that Pretence.

Now I have repeated and observed all the Replication or Justification offers in Answer to my Friend's Sheet, the Reader may perhaps expect some new Matter, not so much for Confirmation, as to give Occasion for a farther Defence. In Sir *Fr. Moor's* Rep. fol. 621. pl. 840. on the Trials of the Earls of *Essex* and *Southampton*, before the then High Steward, the Justices did there resolve, that when the Queen sent to the Earl of *Essex* the Keeper of her Great Seal, and others, with a Command to him to disperse the Persons armed which he had in his House, and to come to her, and he did refuse to do so, and continued the Armour and armed Persons in his House, that this was Treason; and they did also resolve, that when he went with a Troop of Captains and others, from his House to the City of *London*, and there prayed Aid of the Citizens to assist him in Defence of his Life, and to go with him to Court, that he might get into the Queen's Presence, that he might be sufficiently powerful to remove from her his Enemies, who were then attendant, that this was High Treason, because it tended to a Force on the Queen, &c. I make no Inference; let the Reader do that; 'tis plain, that an actual mental Intention of Hurt is not material in the one Case or other. As the Duke of *Norfolk's* Case is related by *Camden* in his History of *Q. Elizabeth*, 163. the Treason which the Duke confessed, was a Plot to seize upon the Tower of *London*, and deliver the Queen of *Scots*, and that's all.

There's nothing remains in doubt, but the Legality or Illegality of the King's keeping Guards for the Preservation of his Person; they say the Law takes care of him, and therefore he is to take none of himself; and that the Judges are his Guards, and therefore he needs no other; that *Henry VII.* was the first that had any other. But let us reason a little: Can it be supposed, that he should be so sacred in his Person, so great in his Power, and of such Authority as to make War or Peace abroad, and raise Forces and suppress them at home, as the Danger or Defence of his Realm should require, and not be able to provide for his own personal Safety *de presenti*? Can he only punish by his Judges afterwards, or prohibit by Proclamation before, but not defend himself for the present? Is it Sense to suppose it? The Kings of *England* might have, and actually had, Soldiers or Guards (call them what you will) even in Times of Peace, and long before *Hen. VII.* as well as continually since; I may be

so bold as to defy any Man to shew me the Year, the Month, the Week, or the Day, since the Conquest by *William I.* that *England* was without armed Men, actually upon Duty in some Part or other of the Nation. This Sheet is not intended for a studied Argument on this Subject; and perhaps it would be difficult to justify a standing Army as warrantable, when there's no Occasion for it; but to say he can't by Force, even by Force provide for his own personal Safety, when he apprehends it in Danger, as every *English* King hath continual Reason to do, especially if some Men's Doctrine prevail, it may be modestly affirmed unreasonable: Hath not every Subject Power to keep Arms, as well as Servants, in his House, for Defence of his Person? Is not his Mansion called his Castle? And yet the Law protects him too by Prohibitions *a parte ante*, and Punishments *ex parte post*: There are many Tenements in *England*, which oblige to the annual Payment of certain Sums towards Soldier's Wages, for defence of the King and Kingdom; there are others obliged to the annual finding certain Quantities of Grain in Kind, for the supplying the King's Castles and Garrisons, as well as Household; which being annual, do demonstrate the Lawfulness of their Continuance, even in Times of Peace; and their being immemorial, do conclude a Common Law Right in the Kings of *England* to have those Occasions, as they do conclude him a Right to have them supplied by such-like Services: Nay, Grand Serjeantry is either by Services of Attendance on the King's Person in Time of Peace, or for Military Aids in Time of War. The Crown may raise Forces by Commission, or the Militia, to suppress Insurrections, in case the Civil Power of the Sheriff is not sufficient or ineffectual. The Kings of *England* have the sole Power and Force of the Nation: Complaints have been in Parliament against billeting Soldiers contrary to the Will of the Hosts, but never for maintaining a Guard for their own Person at their own Charge; Complaints have been made of a standing Army, but never of a select Company for his personal Preservation; a Terror to the People may as well be pretended from his Coachmen, Footmen, or Grooms, if their Numbers be great: Besides, for a competent Power in Arms he always may have Occasion, when his Subjects know nothing on't; 'tis his Province to foresee and prevent, as well as suppress and punish, domestick Tumults; and the Business of War is separately his Office, and that exclusive of his Subjects, any otherwise than as they are bound to obey and fight, or desired to assist with Aids and Subsidies; and for this, to avoid a numerous Volumn of Citations, I'll name one notable Roll or two in Parliament, 6 *Ric. 2. Mem. 9.* the Manner and Way of the Prosecution of the War being given in Charge to the Commons to advise upon, they answered, That this *nece doit nec flayt* appertain *al eux, mes al Roy*; and so they did, 31 *Edw. 3. Parte prim. n. 11.* and 2 *Ed. 3. n. 5.* 'Tis true, in 5 *Ed. 2. n. 4.* Ordinances were made, that the King without the Assent of his Barons could not make War; but those that were repealed and dampned, 15 *Edw. 2. Parl. Rot. M. 13.* because prejudicial to the Royal Power of a King; and this is sufficiently affirmed by the Act concerning the Militia, in *Car. 2.* his Time. It is well known in what Time *Bryan* Chief Justice said, that if all the Subjects of *England* should war with the Subjects of another Kingdom, that this is no War unless the King denounces it: It suffices for my Friend's Point, that the King may lawfully have armed Men or Guards, when himself judges his Person or People to be in Danger, or stand in need of them: And that he may, when Reasons of State will not admit their Publication to the World. But however, some standing Force the Crown ever had, and ever will have, though not always to such a Degree as shall be burthensome or oppressive; and our old Law-Books say, that Arms as well as Laws are necessary for the Prince, not only in, but against the Times of Necessity, I mean War or Tumult: Besides, in *Bracton*, lib. 2. cap. 3. *de Corona*, 'tis said that *Crimen laesae Majestatis* is the greatest Crime, because of the Greatness of the Person against whom 'tis committed; his Description of it is, *Presumptio contra personam ipsius Regis*; then when he particularizes the several Sorts of Treason, the first which he names is, *Si quis ausu temerario machinatus sit in (i. e. towards) mortem domini Regis, vel aliquid egerit vel agi procuraverit ad seditionem domini Regis vel exercitus sui, licet id, quod in voluntate habuerit, non perduxerit ad effectum.* I'll make no Inference, there needs no Paraphrase, the Words are plain; an Act tending to the Destruction of the King's Host is High Treason against his Person: *Agere ad seditionem exercitus Regis est presumptio contra personam Regis, & presumptio contra personam Regis est crimen laesae Majestatis*: Now can *Bracton* be thought to speak only of Treasons in Time of War? *Glanvil*, lib. 14. cap. 1. *Crimen laesae Majestatis dicitur de seditione domini Regis, vel regni, vel exercitus*; and *Flou*, lib. 1. cap. 20. *De seditione exercitus sui*; & cap. 21. the same Words, *Seditionem ejus, vel exercitus sui*; this was the Sense of the old Law, and is very appositely applicable to the Case in question, as I could easily shew, would my Paper bear it. There is one Thing which I had quite forgot, and that is, that the Instrument of Grievances which the Prudence of the present Parliament hath provided, complains of a Standing Army; the Answer is easy, 'tis not of personal Guards: And the wise Inquiry of the House of Commons, into the Quantum requisite to maintain such and such Forces during the present Occasion, and of the Expences of the Crown in Household, Courts, Guards, &c. afterwards do plainly shew, that that was not the intended Grievance. Now, to sum up what is not answered at all, or endeavoured to be so by the Defender, nothing is said to the Reason of the Thing, or the Necessity and Nature of an overt Act, to the Opinion of *Coke* in the Places cited, to the Case of Sir *Walter Raleigh*, the Case of the Cardinal, the Case of Mr. *Coleman*, the Case of *Constable*, the Case of *Owen*, the Case of *Burton*, the Cases of *Sparhawk*, *Awater* and *Heber*, the Indictment against Sir *William Ashton*, *Germain* and *Taylor*, and *Thomas Burdett*, *Collingbourne* and *Colledge*, nor to the Opinion of the Judges in the Lord *Stafford's* Case, as if 'twere all Impertinent; but the Reader is Judge if it be so.

Now for the Prefacer, I'll be as short upon him as he was upon my Friend; he said that the Sheet needed a Vindication, and I have given it one; and if this needs another, I hope the Crown will find a Friend to write some Third. He seems so us'd to the Word *Libel*, that he cannot forbear calling it an infamous one; he says, it has not one true material Word in it: I'll remember,



remember him of one, that Mocking is Catching in the Proverb, that is *A Grumbletonian in the Stirrup generally proves a Tyrant—in the Saddle*; that's enough for him to remember: If he wants any more Truth, and that he may not say, this hath none in't, Treasons are easier committed than distinguished, by some Men especially; and the Reason why I say this is, because of his *Odious* Preface, where he is grumbling still, for I always thought that he had smarted too much for libelling on Ministers of State, and Male-Administrations, to venture again; but when a Priest meddles with Law, he is like an Apothecary at Politicks, he generally runs himself into a Noose; for he'll never leave off 'till he's advanced one way or another. To conclude, the Design of the Sheet was to justify the Prerogative of the King and Queen, and the Rights of their Crown; and the Republican is angry that either should have any, and from thence flames the Passion; nay, rather than it should be allowed, they'll attempt another Change, from which good Lord deliver us, *Prov. xxviii. 2.*

During the Composure of the Premises, News was brought me, that another Pen had been procured to attack the Vindication, viz. The Author that runs a-muck at all Mankind, except his own Patrons: A deserved and full Remark upon so voluminous a Book, is not here to be expected; however, this *Appendix* may serve for an Advertisement to the World, that the new Repliant is in several Particulars obliged to Solicitor *Coke*, and the other Regicides Defence on their Trials for much of his Materials. Time is wanting to shew the Parallel; at present 'tis fit to be observed, that his blind Side is also apparent, consequently capable of a sufficient Answer; and to give my Reader a Specimen thereof, I'll take Notice of a few (amongst many) Mistakes, both in Fact and Law, which he hath wilfully committed. In the first Page he says, that to justify what hath been taken ill, accuses the present Government of Injustice; which is false. In *pag. 2.* he says, That the Vindication ventures on a Point of Law, which it pretends is the Result of the Evidence given; there's no such Pretence in the whole Paper, the only Debate was upon the Indictment. He says, in the same Paper, that it's said his Relations were pleased with the Justness of the Trial; it only says, his Relations were pleased, and his Enemies were angry with those who then sat upon the Bench, and that's true; for some of his Relations cannot deny it, the Fact is so well known. The last Line of *page 3.* and first of the next are also false; for 'twas neither written, perus'd, nor approv'd by any of his pretended Criminals: I believe they thought the Point too clear to need a Vindication; but this is just like his wonted Positiveness in his Remarks; where, for Instance, he says, that one of the Judgments he cavils at, was the first that was ever given without Argument or Reasons delivered in Court, which is also false; for in *Plowden's Comment, 459.* in *Sir T. Worth's Case*, the Author takes express Notice, that the Reasons of the Judgment were not disclosed when the same was pronounced; and fifty other Cases I could name him of the same, but one Instance is enough to falsify a general indefinite Position, though there are several more even in that very Book.

But to run over his Volume, *pag. 2.* is only a farther scurrilous Reflection to vindicate his own Remarks, and an impertinent Bombast of Words on the Phrase of *English Proceedings*: The third Page assigns four Reasons of Printing, the two last are applicable to himself only, and he thinks so of the fourth, or else his Story is foolish like---In the fourth Page he bolsters himself in his Raillery, by resorting to his Refuge of the Parliament's Authority that reversed the Judgment, which all Men agree to be just, but it was not because the Recorder did not arrest the Judgment on that trivial Exception to the Indictment, but because the Prosecution was supposed malicious, and the Evidence supposed false or deficient, or both.

The fifth, sixth, eighth, ninth and tenth Pages are all impertinent to the Point in Question, and contain nothing but a Vindication of his justly condemned Clamour in his former Book; concerning which, I'll boldly say it, in seventeen Points of twenty he is out in his Law; if 'twere convenient to publish the Proof on't, I could make it plain. His Design is to shew in those Pages his Wit and Fancy, more than Candour or Law: For my part I am of his Friend's Mind, that he comes not short of the old Observator for managing a Dialogue: But all this is not to the Purpose, he is not come at it yet, the twelfth Page favours of the same Kidney, and the thirteenth and fourteenth are no better: There he vents his Gall, and that in Ribaldry; no softer a Name than Tools can be afforded to Men of Worth and Honour: If himself be one, as some suppose him, I am sure it is not to the present Government; for he plainly condemns it, and declares the People, i. e. his sort of them, unsatisfied with it, for its Sparingness in Vengeance; and it is because others are not punished for maintaining the Law, and themselves not preferred for arraigning it: Some Men know my Meaning. He says, he is only for mumbling of Judges and Council, *Causa patet.*

But I must tell him two things, 1. The Inclinations of *Englishmen*, and the Laws of the Land, will never quadrate with a Commonwealth.

2. His supposed Criminals do not depend on their Number, but the Law, which ought and will justify them; if it doth not please, let it be changed by Parliament; or if the Author thinks that a tedious way, let us burn all our Law-Books at once, and then perhaps his *Remarks* and *Reply* will be thought to be Reason, and himself the greatest and only Lawyer in the Realm; but till then he must give others leave to know, and to say, that they know he is mistaken: For Resolutions, and Opinions, pursuant and agreeable to the Opinions and Rules of former Ages, I mean frequent and repeated Precedents, approved by the Lawyers of the Age that used them; I say, these will be the Law to the End of the World, unless altered by new Statutes.

And now we are come to debate the Question, all that is past is upon the Times, and not the Point. In *p. 18.* is his Reasoning part, which is no more than was said before in, &c. To redargue him I must repeat; if therefore he will observe what is said by the Sheet, *p. 22.* I will say no more on't, but submit to the Judgment of the Reader; he says, the Inferences are ridiculous; I say, they are rational and genuine: The single Issue is, if his or my Friend's Arguments are the most logical and natural, let the Reader judge.

Now for Authority, let us see if he urges any on his Side, or answers that on the other. He admires (*p. 24.*) at the Assurance of the Sheet-Author, and others admire at his. He says, the Parliament had often adjudged it; but none can shew any Judgment in the House of Lords, or Vote of the Commons House to that purpose. I have shewn the Sense of the present Parliament in the Point of Guards, and his temporary Laws are already answered; nor would any Man but he, and one more, pretend that they are Judgments in the Case. Surely it will not be pretended, that his Case of the Earl of *Northumberland*, in *Hen. IVth's* Time, is any thing to the Purpose: Nor is it any Argument to say, no King of *England* was ever killed for want of Guards.

Now for Cases, *p. 26.* He saith, that in the Earl of *Essex's* Case, there was an actual War levied, and that, as I said before, destroys the Argument from the different Sorts of Treason. As to Cardinal *Pool's* Case, he only says, there was another Statute in force then, but no Record or History says, that he was indicted on any other than the *25 Edw. 3.* As to *Dr. Story's* Case, he tells a long Tale out of *Camden* about the Fact, but answers not one Word to the Indictment; whatsoever the Evidence was, the Indictment was as the Sheet alledges, and that is enough.

His Answer to *Coleman's* Case is that, that things happening afterwards proved more, but the Evidence was no more than what my Friend alledges. As to *Sir Henry Vane's* Case, his Answer is his own Hear-say of what was proved, but the Indictment he never perused, argued like a Lawyer! As to *Constable's* Case, and the rest, he gives no Answer, but only that Repetition of a Number of Cases makes a Mutter and a Noise, and so it does when they govern and rule the Matter in question, and are not answered. *Owen's* Case, he says, the Author presses it strangely, and that is all. He says, the Cases of *Burton*, Duke of *Norfolk*, *Awater*, *Heber*, and *Crahagan*, are not to the Purpose, let the Reader judge if they are not pertinent. As to the Opinion of the Judges in the Lord *Stafford's* Case, he does not mention it, but says, the reviving that Case might have been spared, and that is all; a pretty Answer! As to *Colledge's* Case, he talks of a Proof of a Self-defence, but nothing to the Point it was urged for. As to the Cases of Lord *Cobham*, *Grey*, and *Rawleigh*, in *32, 33, 34, 35 Pag.* setting aside his scandalous Invectives and Reflections upon those Times, Ministers, and Governments, he no ways attempts to answer the Argument drawn from them, viz. That the Charge was the same as in the Case in dispute.

Now I appeal to any Man of Sense and Reason, that will read and think closely, if the Repliant hath offered any one Argument more than the Lord *Ruffel's* Case, Defence and Justification had alledged. If he hath shewn any one Judgment where such Indictment was resolved naught; if he hath given Answer to *Dr. Story's*, *Collingborn's*, *Sir William Ashton's*, *Burdett's*, and *Sir Henry Vane's* Indictment; in short, if he hath answered any two of the Cases cited; or if he hath done any thing but reflect on past and late Times, and if the Indictment remain not good, both for Matter and Form, notwithstanding all these pretended Replies. Upon the whole, I desire the Reader to peruse the Book cited; and to judge if there be not Precedents enough unanswerable to justify the Indictment in question, and that the Recorder gave a good Judgment upon the Verdict that affirmed its Truth; *quod fuit probandum.*

To conclude, Since the Repliant is in love with *Horace*, I would advise him to consider one Hint of his,

---Forum, putealque Libonis  
Mandabo ficiis---Hor.

### The third and last Part of the Magistracy and Government of England vindicated, with Reasons for a general Act of Indemnity, &c.

IT hath been the observed Misfortune of most mix'd Governments, particularly of our own, never long to enjoy the intire Friendship of all its individual Subjects; the lowermost Side hath too frequently acquired the greatest Share of the People's Love, or at least Pity: It's then no Point of Wonder, that the Servants of former Crowns should have incurred their Proportion of Envy, Hatred and Reproach; and amongst all those none more obnoxious to it, than the Ministers, Officers, and Instruments of Justice; for such are the vitiated Sentiments of Persons interested in all Suits, that the Vanquish'd is certainly injured, or thought or said to be so, which is all one, by the Persons themselves, their Friends, or Relatives, their Patrons or Creatures. In Truth there's scarce a Trial on the Plea or Crown Side, but one Party, and sometimes both, do leave the Court with a swinging Curse or two on Judge, Counsel, Jury, Witnesses, and perhaps all concerned; upon which Account, it can never be deemed a justifiable, much less a commendable and meritorious Employment, for Lawyers to note and report, and afterwards publish to the World, the Clamours of such Malecontents, with the Addition of Sarcasm instead of Argument, and blushing Lyes instead of Law and Precedents, VOL. III.

and all this under the Pretence of serving their Majesties and the Government; but 'tis a mere Pretence; for first, it's not their Province; these Publications are made by them, not as Legislators or Judges, but as private Persons; and one of their *Libels* seems calculated only for private Lucre, as either the Hopes of a Place, or Increase of Practice, by telling the Town, in the first and last Pages, where the Author lives, of what Profession, and how long standing; an Art learn'd from some of those exquisite Doctors inhabiting towards the Fields, whose Knowledge and Conversation is pretended to be in Heaven: Another writes for Bread, and scribbles that he may eat, &c. A third, or rather the first and prime is inspired with Venom and Revenge, even the pure Spirit on't; as one balk'd, he is angry at all; and because some were not his true Friends, he's resolv'd to make Enemies of those who despise him, and of them the Number is great. But secondly,

It's of no use to the present Government, for Truth only can be a sure Basis of Respect to that; and in case of Slander, the Filth rebounds, and the Dirt thrown most surely turns on, and dawbs their own Faces, especially when they arraign those as ignorant, whose Learning, Knowledge,



and Judgment are so clear and acknowledged, as to render the Censors unworthy even of being their Bag-bearers; the like when they censure those as corrupt, who have always boldly done their Duty, even in Defiance of a Court Cabal, or a popular Faction; who have always adhered to an old English Law, and their just Opinions in it, tho' Frowns from Whitehall, or Clainours from Wapping, tho' Lampoons from Grub-street, or a worse Usage from an *Observator*, tho' a *Superfedeas* or a *Take him, &c.* were the only Reward they could expect for such their (formerly called Puritanical, now Arbitrary) Justice: Gentlemen who never poll the Law (which the great and good Sir *Mat. Hale* did truly call robbing the Poor of Justice) for the acquiring a Farm or an Office, or a lumping Sum for Sale of it; who never begg'd an Executorship for to gain a Fortune; Gentlemen who never gave strain'd Opinions concerning the Revenue, when made for their Clients the Farmers, but clamour'd at the same, when used by their King with more Moderation; Gentlemen who parted with their Places, tho' of Honour and Profit, rather than comply with a Court-opinion or a Club-notion, when others (I name nobody) offered entire and everlasting Service, if they could have preceded or succeeded them, (Teste, . . . *apud St. James's*, and the City of *Gloucester*) but missing their Aim then, as now they do, their Gall must have a Vent, and so it hath with a Vengeance, when a true and bold Justice is made the Subject on't: The Reason is plain, those Men's Repute is too great for Truth, Probity, and Usefulness: An Eclipse is necessary, if possible; for if otherwise, the Defender will never be *Keeper*, the Remarker *Solicitor*, nor the *Gray's-Inn* Poet wear Scarlet in *Wales*; their Hopes are but small, unless they can Postpone all their Betters by Death, Commitments, or that which is but little worse, Reproach and Slander; but some think their Sting grows weak, for 'tis apparent that there are a sort of Men, who tho' they might and did love his Majesty when as Prince, yet do not, will not, cannot love him, or any Man else, as King; and this is now pretty plain. But thirdly,

The Libels are criminal, and injurious to common Justice, for they create a Disrespect and Contempt upon all Justiciary Proceedings: To arraign all past is to excite a Suspicion of all present and future Administrations; whereas *Plowden* saith, fol. 38. *It's a good and sure Way to believe the last Judgment*; and if so, 'tis plain what Name the contrary Practice deserves; besides, were it otherwise, the Institution of Judges and Courts are vain, and our State, as *Englishmen*, the most unfortunate; for we have no Rule but *ex ore Judicium*, or from particular Statutes, and of them they are the Expeditors. Now let's inquire which is Law, the Defender's Fancy in his Argument *inter S. and B.* or the Judgment in the Exchequer-Chamber, affirmed by the Lords. If the judicial Resolution be so, then the Publication of his Argument was injudicious, and I am not to follow him as my Guide; but perhaps he'll tell me, That manifest Reasons and good Lawyers ought to govern me; if so, then I ask him, Who shall I follow in the E. of *D's* Case of a *Capias pro sine puis Judgment*, &c. whether the Eleven best Lawyers, or the Vote of the House? If the latter, why not so in the former Case? and if otherwise, then his Judgment was mistaken; so that *quacunq; via data*, there's no Infallibility in this World, and consequently no Excuse for private Censures of publick Proceedings in Courts of Justice: Besides, the Books are pretty clear, that such things are punishable; but I leave the Reader to peruse them at Leisure. Then let us consider the Confusion that must ensue upon the publick countenancing such a Practice as these Scriblers have introduced; for if allowed on a Disbanded Judge, 'tis so on a Sitting one, for the Case is the same in respect of private Lawyers, who pretend to think their Judgments erroneous or corrupt; but surely both are unlawful. Besides all this, in the present Case,

They have palpably wrested the Law in divers Instances: I need name no more than the Indictment in question, which that it was legal and good, most Men do now agree, especially since the Dint of the Opposal seems current only on the Evidence, with a Waiver of the other, and more since that Guards are proved lawful, and the *Observator* concedes it the most legal Part of the Procedure; and the Justice of Parliaments, &c. supposed written by the Defender, strains all its Forces on the Evidence and the Times: And their Follower, the Poet, in his new *Nonconformist*, pag. 10. runs the same way too: Only,

There remains one Objection to the first Vindication, which is, that it affirms, Words may be Treason within the twenty-fifth of *Edw. 3.* and the Remarker challenges a Proof of it, and asks where it may be found; and the *Nonconformist* quarrels at the Lawyer that did assert it, and some others have done the same *ore tenus*.

I confess, that the first Sheet did publish the Assertion, but waived its Evidtion, for fear of a strained Use of such Opinion to ill Purposes, for the serving a Turn upon particular Occasions; nor had there been any more said on it, but that their Confidence and Malice seems so exorbitant as to extort a Check; for the Regulator is grown so confident of his own Knowledge, as to undervalue the greatest of Judgments; whereas his Common-place-book affords us no Titles but those of Collusion and Malice prepenfe; and his Practice hath been much of the same Stamp, only that sometimes he hath added a little of the Lunatick, as appears by his *Rhymes, Prophecies, Dreams, Politicks*, and other *Religious Works*.

To prove the Assertion, I depend not on the Authority of the Sense of the Commons House, 1 Jac. 2. (tho' let the Cryer for Justice, or who else pleases contradict it) it was in Fact then affirmed and agreed unto, and upon that the then King's Council and Courtiers desisted the Motion and Prosecution of a Bill to make Words, &c. But that's a supernumerary Argument, there's more than enough besides.

I am not to maintain, that all rank, malicious and gross Words against the King or Queen's Person are such, nor that whosoever drinks an Health to our Sovereign Lord the People, or to the late King *James*, is a Traitor: But that Words significative and expressive of a present Intention to do an Act to the King's Destruction, such Words deliberately, maliciously, and advisedly spoken, on purpose to accomplish the Demise of the King, as by Promise of Money, with Importunity to commit the Fact, may be an *Overt-fait* to prove the Imagination within 25 *Edw. 3.*

To evince this, let us think a little—and 'twill be plain.

The Words of this Statute are clear, and of an easy Construction, if we will allow those dull old Times to speak Sense. They are to this Effect: That if it shall compass or imagine the Death, &c. and *de cœo provablement fait, attain per evert fait*: Now the Objection is this, That Words are not Deeds within that Clause: to this the Answer is very clear; for by all the grammatical and other Rules for Interpretation of the Sense of Words, the latter Part of a Sentence is to be construed (if used by way of Opposition) as opposite to the thing mentioned and intended in the foregoing Part, and not as opposed to every thing which it may *ex vi termini* exclude in other Cases; and this is an agreed Difference, both amongst Divines in Exposition of Sentences in Scripture, and Grammarians in almost all Cases whatsoever. Now to apply this:

*Overt-fait* is used not in Opposition to Words, for there's no such thing mentioned; but it is added in Contradistinction to that which was before specified, *viz.* Thoughts, and such are Imagination and Compassing; and therefore *Overt-fait* must mean any open, manifest thing as can truly discover those Thoughts, as may proveably attain the Traitor of such his Imagination; and it is a most natural and proper Mode of Speech, if they did intend, as most undoubtedly they did, that the Thought should be the thing prohibited, then 'tis as plain they intended by the Word *Fait* any Discovery of such Thought by Words or Actions: and so said *Newton* in 19 H. 6. That to imagine the Death of the King is Treason, tho' he do no Act towards it, if such Imagination be disclosed, that it can be tried if he did so think and imagine. If that Thoughts and Words are mentioned both in a Sentence, and afterwards Deeds in Opposition, then the last will exclude both the former; but here, when used only in Contradistinction with Thoughts, it seems plainly otherwise. That Deed, when used in Opposition to Thought, doth include both Words and Acts, none can deny; a thousand Instances might be given of it; and in the exactest propriety of Speech, Words are Deeds when and as contradistinguish'd from Thoughts; for the Soul thinks, even as abstractedly considered from the Body, but Man never speaks without Action and Motion: The Difference is plain, and needs no Explication. But farther:

I would fain know, What is a Consult or Plot, but the mutual and reciprocal Declaration of two or more Traitors Minds each to the other? Each declares his traitorous Imagination by Words, and so of an Agreement to commit the actual Murder, 'tis but a Declaration of their Minds by Words each to the other, only they do happen to agree. Now suppose one Man thinks and intends to destroy the King, and by Words doth willingly, deliberately, and advisedly declare this to another that is not of his Mind, tho' by Mistake is thought to be such, is not this the same thing? If a Man traitorously offers and promises to another a thousand Pounds to perpetrate the villainous Act; if he accept it, and a parole Agreement is made between them accordingly, surely the Apologists for Treason will agree that to be an *Overt Thing*, and both guilty, if it can be proved by two Witnesses of Credit. Suppose then the Party offered and promised doth abhor and refuse, will that make a Distinction? If it does, 'tis without a Difference: Perhaps the Word *Consult* will be called a new Cant; we know whose Coin it is, and who gave it the first Stamp; 'twas no less a Man than Sir *William Jones*, who at the time of such his Invention was no Prerogative Lawyer, tho' considerably so in Times then lately past: Nor is it imaginable what is the Meaning of a Conspiracy or Plot to take away the King's Life, but a Communication by Words between several Traitors concerning such Act, and the Method of its Accomplishment, and a Declaration by Words of each Man's being fixed in that Purpose; which, if it be proved by sufficient Testimony, will undoubtedly be an Evidence of a Compassing, &c. which is the Treason prohibited and punishable; nor can the Meeting make it more so; for they could not discourse unless they met; and therefore 'tis the Words only that are the manifest *Overt-Fait*. Nor doth *Hugh Pyne's* Case or the Resolution of the Judges therein, contradict this, notwithstanding the Confidence of the Remarker, that it did; they only say, that the Words in that Case were not Treason, that those Words were not an Evidence of Compassing, that for those Words he could not be indicted upon that Statute; but their Opinion doth plainly imply, that had the Words been Evidence of a Compassing, &c. as they were only slanderous and reflective, it had been otherwise; and the Instances therein mentioned are full to this, as *John Quick's* Indictment was only for Words to King *Henry*, unless standing up and speaking will alter the Case: *Thomas Kier's*, *John Cliphams*, and *John Mirfield's*, are all for Words, and some others there specified. Besides it's observable, that in most Indictments on this Statute, some Words have been alledged in them as an *Overt-fait*, to demonstrate the Imagination, which would be impertinent, if the Law were thought otherwise. I will not insist on *Colledge's*, because the Case hath been cavilled at, tho' with no Colour as to the Indictment: Part of *Patrick Harding's* Indictment was *loquenda publicavit*; but I'll not dwell on that, because foolishly drawn; but *Arthur Croghagun's* Case in *Cro. Car.* is pretty full, and for Words; and the Words of the Book are, That the traitorous Intent and Imagination of his Heart was declared by his Words, and therefore held High Treason within the expresse Provision of 25 *Edw. 3.* and upon his coming into England he was arrested, &c. Now no Answer can be to this, but that he came into England; but the Words only shewed his Intent, and by that Book the Words are alledged as the *Overt-fait*; besides the Case of *Blanchflower* and *Atwood*, Mich. 5 Jac. 1. B. R. in *Yelverton's* Reports 107. *per curiam*, resolved that Words may be Treason, and that is an expresse Resolution; for there was then no temporary Law in Being concerning Parole Treasons, that I know of. The Case of *Berisford* and *Presse*, Hill. 8 Jac. 1. B. R. *Yelvert.* 107. adjudged, That Treason may be committed by Speech as well as by Act, for any thing which discovers the Mind of a Man to be traitorous to his Sovereign, is capital to the Party: *Hitcham ad Brook Pasch.* 1 Car. 1. *Hutt.* 75. held *per cur.* that the speaking of Treason was Treason, and that *sermo est index animi*, as well as Preaching or Writing; and no Man can doubt but those are Acts, and Speech is as much so.

Besides, if the Consequence of the contrary Doctrine be well considered 'twill appear to be a plain Evasion of the Statute of 25 *Edw. 3.* as is manifest



manifest upon the Reading it : And the common Books are full of this ; for otherwise no Action could lie for saying a Man hath spoke Treason. But here's enough said to answer the Challenge, Where's the Authority for such an Assertion ? Tho' infinitely more might be said for it ; nay, 'tis as easy to dumb-found the contrary, as 'tis to transcribe Law Cases. If this doth not give them Satisfaction, they shall remain unsatisfied for me, I'll plague the World no more with writing on this dull, flat, unprofitable Subject, Crown Law, lest I should provoke our new Scriblers to double the Plague by their Replies : If they attempt an Answer, I'll leave the Tobacconist and Grocer to confute them : And unless a Trunk or Band-box chance to bring them to my View, I'll never be tempted to read them ; and of this they may assure themselves, I say it to compliment the Reader with Patience to peruse the rest of the Sheet, being ascertained never to hear more on't, at least not from this Hand.

Some perhaps may wonder at the Reason of the Publication of these Sheets, and conceive them the Product of Malice on one Side, as those virulent Pamphlets are on the other : To solve that Scruple, I need only repeat the Reasons alledged in the first ; but a Repetition is damnable dull, as well as tedious and irksome : I'll therefore add a new one, and that's to shew the Reasonableness as well as the Necessity of a general, indefinite, speedy Act of Oblivion ; for though the Blood-hounds fret, and huff, and bounce, as if all their Madnefs and Rage were founded on a true Basis ; yet 'tis apparent from the Premises, that their Foundation is false, and the Law is direct and plain in their Teeth, and doth and will justify in most of the Particulars, at which they foam their Curses and Execrations. Reason therefore, as well as Necessity, enjoins a Silence as to what is past, for otherwise the Kingdom can never have its desired Satisfaction : For in Points justifiable, or at least doubtful, the Justice of inflicting Punishments can never be vindicated. Did I call them Punishments ? I beg the Reader's Pardon for the Improprity ; however I'll not name their proper Term, but with Calmness endeavour to evince three Things.

1. That it would be grateful to the Nation in general, and every good Man in particular. 2. Conducing to the Settlement and Interest of the present Government. And lastly, That 'tis consistent with, and promotive of, the highest and truest Justice.

First, The Nation did and doth expect it, for Revenge is never natural but when freshly pursued, and Time wears off the Sense of Injuries, by the Intervention of new ones either real or imaginary, which is all one as to this Purpose : The Horror of any Crime, or at least the Detestation of the Criminal, grows faint and languid upon the Removal of the Object, especially if Time interposes with the Accession of present Fears, which at present do more affect us than greater, if more distant. It can never therefore be thought the Desire of the People of England, to have their Neighbours or Acquaintance harrass'd and persecuted by Fines, Confiscations, Imprisonments, Marks of Disgrace, or the like, for Actions done in the last or former Reigns, about which the World hath been so much divided, if lawful or not : Besides, that this was the general Expectation of the Kingdom on the new Settlement, or at least the Coronation, of which Nature there never was an Instance before this without an Act of Grace ; and it is most plain, that none are Adversaries to it, but the Republicans and the Jacobites, not for that they need it not, as I shall shew anon, but for different Ends ; each drives at and wishes a Change, it matters not to what ; for if to the latter, the other hopes a Commonwealth will be the more desirable : If the Republican succeeds, then the other believes a Restoration the more easy ; but both dislike the present, and therefore dread a Settlement, and consequently dread the People's Satisfaction and Quiet under their Majesties, and consequently dread an Act of Indemnity : 'Tis true, the Cry for Vengeance is loud, but 'tis only from these two Corners ; which leads to the second Particular, That

It will establish and promote the Interest of the present Government : While the popular Bully is full of Damme's and Menaces, there's certainly Danger, and where there's Danger, there's Fear ; now Fear causes an Aversion, and Aversion begets Hatred ; and the Object of it is that from whence the supposed Danger arises, which is from the Government irritated by the Venom and Fury of those hot-headed Animals : Whatsoever hath Power and Will to hurt me, must and will be abhor'd ; and though none are immediate actual Patients, yet the being possibly obnoxious to it, and the want of Security for the contrary, doth of Necessity cool their Respect to the present Power, under which they are not safe ; and this tempts them and their Friends upon Contrivances and Attempts of Danger, both to themselves and the Publick ; and Danger by the Attempt is no Discouragement where the like Danger attends their Forbearance : And this is of Weight, unless Cromwell's Politicks be thought Christian, to cherish and promote a Plot, as of Advantage to Settlement, if reasonably discovered, and subtilly managed ; but however 'tis as true, that Enemies who are desperate, ought never to be thought inconsiderable ; for they may shake and batter what they can't destroy, they may do mischief, though they can't work Ruin, to their Adversaries ; upon which Account, the Temptation of continual impending Danger is fit to be removed. Besides,

The Want of Security, and the Fear of Danger, making Men uneasy in their Thoughts, replenishes them with Complaints and Murmurs at every awkward Action, or supposed Miscarriage, of the Government feared ; it makes them Mutineers at publick Taxes and Impositions, partly because they think it strengthens and increases the Power of hurting them, and partly because it sponges and bleeds them of that, which they fear an Occasion of themselves to bribe Black-rods, Serjeants at Arms, and other Gaolers with ; and in a Conjunction when extraordinary Aids are indispensably requisite, no Temptation to Complaint is deserving of Countenance ; besides, that it cramps Trade, and discourages Projects for publick Good, &c. But farther, it's the living, not the dead, the happy, contented, and cheerful, and free, not the oppressed, miserable, forlorn, or imprisoned Subject, that doth Service to the Crown and the Publick.

It hinders all such as are thought to be so obnoxious from any bold Essays for the Use of the present Government ; for that if success be the Attendant of such their Attempt, they continue unsafe notwithstanding ;

for no Man will adventure an Hazard to secure that Authority, which he is not sure will make him safe, if he doth undertake the present Adventure, and escapes that Danger, and performs the Service ; so that Self-preservation renders it their Policy to unhinge themselves from, or to be shy of the present Power ; of which a considerable Number might prove useful Friends, which are now Neuters at least, if not Enemies.

It's observable in all foreign Policies, either to work a total Extirpation of the whole Party, or an universal Indemnity, after so grand a Revolution as this was ; the former is not to be practis'd here, for two Reasons : 1. Because we want People : 2. Many of our Friends must be banished too, for divers of the supposed Criminals were instrumental to the present Change, &c. Ergo the latter only is, and can be most advisable ; for once I'll suppose their Numbers but small, in Comparison to the Saints and Innocents (if any such there are in the Nation) ; yet under our present Circumstances, all are to be obliged as Friends that possibly may ; but if the thirteen Heads, with the Surrenderers Clause, and all its and their Subdivisions had been reduced into a Law, in the designed Act of Attainder, one third at least of the Nation had been involved, who, with their disobliged Relatives and Dependents, is not so contemptible a Flock, though but of Sheep for the Slaughter. Besides,

It's impolitick, as well as unjust, to deny or delay it to those who have submitted to the Government, yielded it Obedience, and quietly bore its publick Charges according to their Proportion, and yet give a free, full, and general Pardon both in Scotland and Ireland, to all that took up Arms, for all their Sins then past and present : It provokes the former to repent their Non-concurrence with the latter, for 'twas but resuming their Quiet and Submission at pleasure, and then they were safe, which now they are not, but under continued Menaces and Dangers of both, as appears in their being baited by every barking Cur, that can but write with Gall in his Ink, or speak with a Damme in his Mouth.

Experience farther tells us, that nothing turns or changes the Humour of the English Commoner, like Rage, Insolence, and Cruelty in their Fellow-Subjects, when made Superiors, and such is raking into old Sores thought to be ; it matters not whether justly or no as to this Purpose, the Effect is generally such : The Star-chamber in Car. 1. his Time, the Major-generals in Cromwell's : The Tophamizing of Abhorers in Car. 2. his Time : The Western Campaign, and the other criminal Prosecutions in the Beginning of Jac. 2. I say, all the Violences used in these several Periods (and yet they have their respective Provocations) did most notoriously alter the Kidney of the Commons, and made even their once beloved first dreadful and terrible, then odious and loathsome ; they produced considerable Changes in their several Consequences : I could come nearer Home, even to the teasing of Moor and North, and other Citizens of London, which first turn'd the Stomach of that City, as is now apparent ; but *Sat verbum*, &c. But farther,

The want of this renders both the Policy and Honour of the great Bel-lowers for Vengeance to be justly suspected : 1. Their Honour in taking Care of their own Servants, for all their Excesses upon the Revolution, and opposing the Indemnity of all others, as by the Act appears. 2. Their Policy ; for that it's observable in Story, that the Association in Queen Eliz. Time, was under a Protestant Prince for the Protestant Religion, and no ill Success attended it, yet those wise Ancestors of ours thought fit to secure themselves, by turning the Association into a Law, and a general Act of Indemnity ; I do not say they needed it, but the Associates in that Reign thought it needful ; and 'tis very considerable, that in no Reign was there more Peace and Quiet than in Her's, and in none were there ever more free and general Pardons : and in truth the latter was the Occasion of the former ; for when Men are once safe and quiet, no small Temptations will provoke any more Adventurers, though they like another better, yet Men being easy are generally contented. There was one free and general Pardon of the Queen's at first confirmed, 5 Eliz. cap. 11. another 8 Eliz. cap. 18. 13 Eliz. cap. 28. 18 Eliz. cap. 24. 23 Eliz. cap. 16. 27 Eliz. cap. 30. 29 Eliz. cap. 9. 31 Eliz. cap. 16. 35 Eliz. cap. 14. 39 Eliz. cap. 28. 43 Eliz. cap. 19. Eleven in Number, and never five Years without a Parliament-Pardon, and this made Parliaments and Crowns the Darlings and Desire of the People. Besides, it's the Interest of each Party amongst us, though some don't see it ; the Whig ought to promote it for two Reasons : 1. Left being the lesser Part he chance to feel the Want of it, and for that he hath given some Provocation. 2. That if it be the greater, the Memory of his Vengeance and Fury may be forgotten, and himself restored to the good Opinion of the rest of Mankind, by one Act at least of good Nature : The Tory ought to pursue the same Measures, and much for the same Reasons, for his Top-gallantry hath been, and if re-practis'd will be again as odious and loathsome to the moderate and good, as ever it was, or as the others could be. Temper therefore is now the Game, and a Veil over all that's past is certainly the most Politick, especially considering the Multitude of the supposed Criminals, and the Justice of their several Excuses, which comes next. For,

Lastly, It's consistent with, and promotive of the true and highest Justice ; for in most of the Cases the Law was doubtful, and to punish Opinion in Matter of Law is as unjust, as to persecute Mistakes in Matters of Religion is unchristian ; and new Laws for Government *ad futuro* are more agreeable to natural Equity, than a retrospective Fury ; that it was doubtful, is plain, the modern Scriblers have sufficiently proved it. In two of the Cases cited they differ themselves ; for Dr. Story's Case, the Defender cries, 'tis not Law, the Remarker agrees 'tis, and that he was well hanged ; for Plunket's Case, the Defender cries, he was well hanged, for there was Treason enough in his Charge, the Remarker insinuates as if he suffered hardly ; now, what shall a little Lawyer believe between these two great Bodies of Learning ? The like may be said of Soame's Case, and the other above-mentioned. But what is more : In the voluminous Argument against the Dispensing Power, owned by Sir R. A. he doth concede, that there are some Prerogatives so personally and inseparably inherent in the Crown, that no Act of Parliament can cramp or diminish, or at least take away ; and that being granted, I'm sure all that the rest of the Book says can never make that a plain Case, and in truth his own Argument shews and leaves



it a disputable Point; and if that were doubtful, every particular else may well be buried in Oblivion; besides, in Cases of Construction, the Nature of the thing admits of no Doubt, and then there's no Colour for Punishment. Besides,

In respect of inferior Persons, by our Constitution, they are obliged to submit to and follow *Westminster-hall*, which is the *Lex loquens Angliæ*, and when all these Things are duly considered, there will remain but few grand execrable Criminals, who are fit to be made Examples of, only to tickle some, aggrrieve others, and terrify none; for that will be the Consequence; for that's the Case of all Violence, where the Justice of the Thing is not clear and undoubted. Then for Exceptions;

Let us think a little: Is it reasonable that some should suffer for not being afraid of Punishments never declared or promulgated, and others should escape, because their Countenances are more fawning, or that by Consent their Relations have play'd on the other Side, or that their swinging Fortunes enable them to scatter Mice for their personal Indemnity, or that they have had the lucky Principle of being faithful to all Changes, and true to nothing else, or that they have been forward to subvert their old Master, after their Fire and Folly had ruined him, and endangered themselves? These and such-like are no Pleas for Justice, and yet this is the Case. Farther,

The Drift is to magnify and aggrandize Punishments by Bill, which by the standing Laws and common Justice of the Realm could not be inflicted; and they urge two Reasons for it: 1. Their particular Pardons will otherwise excuse them. To that I answer, Either they are valid in Law, or not; if not, there's no need of Bills; if they are valid in Law, the same Law and Justice of the Land injoin their Allowance; even the same Law by which the Country-man plows his Land, the Gentleman receives his Rent, the Trader recovers his Debt, and the Senator sits in the House; and by the same Reason that these enjoy their Properties, the Criminal ought to have his Pardon allowed, for one's a Right accrued by the Law, as well as the other. 2. The common Channel is too smooth; Severity is sometimes necessary, and that now, if ever; and therefore the legislative Authority ought to exert its Power, and punish according to Demerit. To answer that, I say, either they are no Offences by Law, and there needs a Bill to make them such, and inflict Evils upon them as such; or else they are Offences, but deserve a greater Punishment than a common Court may pronounce: Now, if the first be the Case, then I'm sure 'tis rank, palpable, tyrannical Injustice, and that's the Plague of living under an arbitrary Power, for none can know what's not criminal: If they mean the latter, as I suppose they do, then I ask, to what End were Punishments invented in Societies, but to restrain Men from doing particular Actions, through the Power and Influence of Fear? And how could that Conse-

quence be expected, when the Penalty was never known before? Is it inflicted? And to inflict an Evil afterwards, which was not known before, is to make a Man suffer that which he could not fear, because he could not know it, and this because he did not fear it: And the Justice of that is plain too.

I agree with the Satirists, that there are some Precedents of this late Method of proceeding, but most of them are repealed; I'll name two that are so, the Earl of *Strafford's*, which the very Law itself did injoin Posterity not to observe, or follow, or do the like. I can't forget one Expression of his, to this Effect, upon the Trial: If there be an Error in a Judge, so that he give a Sentence otherwise than a Man of better Understanding conceives Reason for, there's no Cause the Offence should be heightened, because he was not so wise a Man as he might have been, nor so understanding as another; which if allowed, will make it more eligible to follow a Plow than serve a Government, to dig in a Ditch than bear an Office; for all Men stand obnoxious to the Constructions and Passions of succeeding Times. There's one Instance more, and that was Sir *Tho. Haxey's*, who was attainted for Treason, for bringing in a Bill into the Commons House against the Prerogative, though while and as a Member: I suppose the Sparks will not much applaud the Justice of that Procedure for their own sakes; but, as I said before, that, and most others of their Precedents, were repealed, when a cooler Assembly met upon the next Session, and so was *Haxey's*, in 1 Hen. 4. Cott. abr. rec. 362, 363.

But if Vengeance be requisite, it ought to be without respect of Persons, the Justice of it ought to be impartial, true, and Catholick: And then come in the Pensioners and Surrenderers, the Regulators and Promisers, the old High Commissioners, and the new Creed-makers, &c. and, God knows, *quis non*, &c. To conclude, our Saviour's Rule, if observed, will be the most infallible Indemnity that can be contrived, and that is, *John viii. 7. Let him that is without Sin amongst you, cast the first Stone*. And in truth a Censor of the Manners of others ought himself to be pure, clean, and innocent, *in omni re quacunq;* and if there be no Danger but from such, I am sure there's no Danger at all, and that it should be so, is the truest Justice in the World, *quod fuit probandum*.

I'll not mention the Argument from the Vacancy, that the Government was dissolved, every thing reduced into its primitive State of Nature, all Power devolved into individuals, and the Particulars only to provide for themselves by a new Contract; for if so, there's yet no new Consent for Punishment of Acts done before the Dissolution, and consequently Revenge, for that is at an End; Indemnity therefore ought to be promoted by those who made that Vote, for otherwise their Truth may be suspected, &c.

### The Lord Ruffel's Innocency further defended; in answer to the Magistracy and Government of England vindicated.

THERE is a Pamphlet very lately published, which styles itself, *The Magistracy and Government of England vindicated*.

It appears by the following Part of the Title, to be no less than a *Justification of the Proceedings against Criminals*; impudently declaring, in plain and express Words, as also by all his subsequent Discourse, That by the Criminal he means the late Lord Ruffel, Pag. 2. Column 2. in the middle of it.

And the Author does professedly own, That the Book is written by way of Answer to a small Discourse or Argument lately printed, which bears the Title of *A Defence of the late Lord Ruffel's Innocency*.

It argues a transcendent Boldness in this Answerer to call this Noble Lord a Criminal, and to justify those Proceedings against him, which all honest Men ever accounted no less than Murder, under a Pretence and Colour of a legal Proceeding, and to presume to publish such a Discourse as this, after the King and the Two Houses of Parliament have, by the most solemn Judgment that can be given, pronounced that Noble Lord to have been innocent; and thereby have done so great Right to his Memory, and that with so high a Zeal, and so mighty a Concernment for him, as the like cannot be shewn in former Precedents.

It is most evident, that the Author was composing this scandalous Libel even when he very well knew the Bill was brought down from the Lords to the Commons, for reversing this Noble Lord's Attainder; and the Author could not but observe with what Zeal and Affection the Bill was entertained at its first Entrance into that House.

The Author, by endeavouring to conceal himself, is from thence, as he plainly professes, encouraged to take the more Liberty to lay about him in the dark, (as he fancies) and thinks to escape unseen; and not only strikes at the Author of the Lord Ruffel's Defence, but, as far as in him lies, wounds that Noble Lord in his Honour, whose Justification and Defence was so undertaken, and labours to overthrow that Right and Justice that hath been done by the supreme Authority of the Nation.

This is no way agreeable to a noble and generous Soul, to come behind a Man and strike him; it rather follows the Example of that devilish *Powder-Plot*, to destroy and blow up the King, and both Houses, and to do it in such a close and clandestine way, as it should not be known who hurt them: for he was too much a Coward to set his Name to it.

But it is very easy to tell you what are the first Letters of this Author's Name, without casting of a Figure. His Argument in Law plainly speaks his Profession, and what Robe he wears; and his Style and Phrase of speaking having appear'd in so many noted Trials, as do in so many visible and legible Characters disclose the Author; Sir R. S. does under his Hand readily and utterly disclaim it, and is heartily believ'd in what he says.

This slanderous Author acknowledges, that upon the Lord Ruffel's Trial, some blamed the Jury, most censured the Witnesses, but very few are

arraigned the Counsel or Court. Here it evidently appears how our Author is concerned, first for the Counsel, and then the Court; and Self hath the Preference, tho' it be here with a Breach of good Manners to name the Counsel before the Court.

Page 1. He takes it heinously, that any Gentleman of the *Long Robe* should appear in Print to ridicule their own Profession; this grossly speaks our Author one that was of Counsel in the Trial. *Et tu Brute?*

If it had been an open Enemy, a Doctor of the Commons exercising his Wit and Raillery on the Common Law Proceedings, then (as he expresses himself) this Author could have borne it; but he did not imagine that Satires and Invectives upon past proceedings should be writ by Lawyers.

In Reply to which it may be justly said, That when Lawyers will make use of their Wit and Rhetorick, as this Answerer has done, to bolster up an unjust and revengeful Proceeding, and out of ambitious Designs, to get or continue in Favour, and to gain greater Preferment, or shew their Parts, will engage in Causes of Blood, and help to destroy the Innocent, and be instrumental in subverting the Laws and Government, it is every Lawyer's Duty, as far as in him lies, to vindicate the Profession, by utterly disclaiming and abhorring all such Practices: And the Defender can appeal to all that have known his Conversation for above these forty Years and under, whether ever he used any such pitiful, mean and ungenerous Arts and Methods, better becoming the Stage than a Court of Justice; and whether he did not, when it was in his Power, constantly restrain and condemn that scandalous and disgraceful Way of Practice. And he can as freely appeal to all that will be at the Pains to read his printed Argument, (which this concealed Author so unjustly censures) whether any such bitter reviling and revengeful Humour appears in any Part of what he so publish'd, or the least reflecting on any particular Person, but only in the general, and no further than the mere Justice of the Cause did extort from him; so far was he from this Author's scurrilous and rude Course of reflecting upon any Person's private Conversation; but some Men's Faculties lie this Way, and they are very well known, tho' after such manifest and gross Provocations, that have been given by this Author, and such publick and scandalous Actings of his in the Eye of the World, it might justly be said with the Poet:

*Difficile est Satiras non scribere.*

The Author of this Answer, in his first Paragraph, would have the World believe, that he writes upon no other Design than to support Magistracy, and the Government; a noble Theme! (as he terms it). Every Man knows what sort of Government he labour'd to support but the other Day, and how far he was instrumental in it; but it is rather thought fit to leave him to a general Act of Indemnity and Oblivion, than take any Revenge upon him.



He seems to allow the Lord *Russel's* Defender, in his fourth Paragraph, to be an Author of Age, Experience, Figure, and Learning (but he will not say Candour or Honesty). Thus he writes.

The Lord *Russel's* Defender is very glad he hath so little of this Adversary's Commendation, for it would gain but small Esteem amongst Men of true Worth, to be commended by him. It might be said to him, with the Philosopher upon the like Occasion, being commended by an infamous Person, *What Ill have I done, that thou shouldst thus commend me?* Yet that Candour and Honesty, which he covertly refuses to allow, is that which the Lord *Russel's* Defender prefers before all this *Answerer's* mercenary Wit and Rhetorick.

In his fifth Paragraph he judges the Lord *Russel* very unfortunate to fall under the Accusation of Treason; and says, that noble Lord was most pitied of any under those Circumstances.

That noble Lord's Misfortune (among other Things) was his falling under the Lash of so bitter and sharp a Tongue as your's, who, however, you seem now to mention that Lord with Pity, had then no Pity for him, but used him with Severity, as may appear by your own printed Narrative of that Trial, and your Rhetorical Flourishes in a Case of innocent Blood, which contributed in a high Degree to inveigle the Jury, and bring that noble Lord to the Scaffold.

He confidently says in the same Paragraph, that in Truth the Fairness and Indifference of that Trial was such, that his own Relations were pleased.

How untrue this is, in both the Parts of it, that the Trial was very fair and indifferent, and that his nearest Relations were highly exasperated and offended, shall appear before we part.

In the sixth Paragraph of his Sheet, he complains, that the Memory of that unfortunate Gentleman was received by the Publication of the Defence of his Innocency.

Why, what Hurt in the reviving of his Memory? His Memory is precious, he died a Martyr for his Religion, and for the Rights and Liberties of his Country, and fell a Sacrifice under cruel and merciless Hands.

It is indeed this *Answerer's* Conscience that lies in his Face; the reviving of this noble Lord's Memory speaks Terror and Amazement to the *Answerer*. Thus did bloody Herod, when he heard of the Fame of Jesus, he presently cries out, *This is John whom I beheaded.*

He does prepare himself to make use of indecent or disrespectful Language, (as himself expresses it) and comforts himself with the Thought, that his Name shall not be known: A pitiful and unmanly Dealing, not becoming a Person pretending to Ingenuity. The Lord *Russel's* Defender dealt otherwise, and owns his Name, and will let the World know what this *Answerer* is.

In the four next ensuing Paragraphs, he is much to seek for what End and Purpose the Lord *Russel's* Defence was printed in that Pamphlet (as his wonted Rhetorick thinks fit to call it).

It could not be (as he most contemptuously says) for Consumption of Paper.

Nor for the Bookseller's Profit, for a Reason to be guess'd at.

Forbear, for Shame, to use these sly and silly Intimations; they are fitter for School-boys, or the Mountebank's Stage, or for *Billinggate*, than for a Man of your Figure; one may be ashamed to have any Dispute with such an Empirick, or rather a jesting and jeering Merry Andrew. Pray keep this Sport for the next *Bartholomew Fair*, and learn more Gravity and Civility.

It could not be (as he farther proceeds upon the same Inquiry) for the sake of the Lord *Russel's* Memory, or any of his surviving Relations; for what was written in the Lord *Russel's* Defence, is (says he) but a painting to the Life the too deep Concern of that noble Lord, in a weak as well as criminal Enterprize.

This is wonderful Boldness and Daring in this *Answerer*, still to pronounce him a Criminal, (that noble Lord) whom the supreme Power of the Nation, and the highest Judicature and Authority, have adjudged innocent. And yet he has the Impudence to intitle his undutiful Pamphlet, *The Magistracy and Government of England vindicated*: And to publish this, after he, as well as any Man, knew that the Act of Parliament had pass'd, asserting the Innocency of that noble Lord, and the Barbarity and Injustice of the Proceedings against him; wherein this *Answerer* had so great an Hand, and so bitter and sharp a Tongue.

One would think, that an ordinary Wit might have served to put him in Mind, that as yet there is no Act of general Pardon and Indemnity pass'd: And who knows upon whom the great Exception may light?

But he gives a very just Occasion to the Lord *Russel's* Defender, to let the World know for what End and Purpose he long since writ, and so lately printed, so despised a Pamphlet; by which, even his Adversary may be convinced, it was not merely for Consumption of Paper, or for the Bookseller's Profit, but truly for the sake of that Lord's Memory, in asserting his Innocency, and at the Desire, and for the sake of his surviving Relations. And for the Truth of what is thus affirm'd, he does appeal to those noble Relations of his who are yet alive.

While that noble Lord was upon his Trial, or very soon after, there came a Letter to his Defender's Hand, who was then in the Country, near eighty Miles from London, and this from a Person of great Honour, and one of the nearest Relations to that noble Lord, requesting the Author of his Defence to afford the best Advice he could; and accordingly he heartily and freely gave it: Much of which does appear by what is printed by him.

This was not the only Letter he received from that Lord's great Relations upon that sad Occasion: But after that Bloody Stroke had been given, a Paper was published, as the Speech intended by that dying Lord.

In Answer to which, the now *Answerer* and Adversary (as is too evident) did publish his first Pamphlet, intitled, *An Antidote against Poison*, compos'd (to use his own Words) of some Remarks upon the Paper printed by the Direction of the Lady *Russel*, and mentioned to have been deliver'd by the Lord *Russel* to the Sheriffs at the Place of the Execution. Thus far of the Title of that pretended *Antidote*.

In the latter End of his second Page, that which is mentioned in the Discourse out of his Pamphlet called the *Antidote*, and which is barely

repeated in order to be answered and confuted, he grossly mistakes in this latter Pamphlet, and falsely affirms, it is admitted to be true; and from thence endeavours to have the Lord *Russel's* Defender understood as arguing against the Lord *Russel*, and acknowledging his Guilt: Which is a very unworthy way of dealing by this pretended *Answerer*, but easily discern'd by any wary and intelligent Reader. Nay, this *Answerer* himself immediately after, before he is aware, clears the Lord *Russel's* Defender again from the Imputation, by taking Notice, that the Defender of the Lord *Russel* endeavours to invalidate the Credibility of the Evidence given against the Lord *Russel*.

This Reply declines the taking Notice of many of this *Answerer's* Paragraphs, that are spent merely in vilifying the Lord *Russel's* Defender, it being obvious, that they were intended only to render mean and contemptible the Person he undertakes to answer; it being beneath this Reply to repeat them, and to follow the *Answerer* in his rude and scurrilous way of writing.

It was indeed no Secret to the Learned, that a Variance between the Indictment and the Evidence might be alledged on the General Issue; nor that Treason, and the Mispriison of it, are different Crimes; nor that Proofs of Treason must not be by Hearsay nor Argument only; nor that less than two Witnesses are not to be allow'd for Proof of that Crime; nor that the Witnesses ought to be credible: But these are not so generally known to such as are not profess'd Lawyers, and may be usefully remember'd to such as are brought upon their Trials for their Lives, and are denied the help of Council when they most need it, and are apt to be more under a Consternation, when they are beset with such sad Apprehensions of their Danger, and baited at by a Multitude of crafty Wits, and such as abuse their Parts and Eloquence to destroy the Innocent, and the Court (it may be) not always so indifferent as they should be. And these useful and well-intended Assurances, as are ordinary and useles, as the pretended *Answerer* would represent them, were very thankfully entertain'd, and made use of by several Persons of great Abilities, and of the best Quality, who afterwards fell under the like cruel and malicious Prosecution; but they were no profess'd Lawyers. And most of these are still living, and will and do testify the Truth hereof.

The *Answerer*, in his fourth Page, falls to argue the Points in Law upon the great Head and Title of Treason.

This Reply forbears to repeat what the *Answerer* says upon this Subject, or to repeat what this *Replyant* has formerly printed, but therein refers himself to what is so printed.

Only finds it necessary to state the Point in Question in as few and plain Words as he can, and leave it to any impartial Reader to judge of it.

The great Statute of Treason, viz. that of the 25th of *Edw. 3.* was the only Statute upon which the Lord *Russel* was indicted; and this is acknowledged and profess'd by the Attorney-General, as appears by the printed Narrative of the Trial, and he could best know his own Meaning.

They could not proceed against the Lord *Russel* upon the late Statute of Treasons, made in the 13th of *Car. 2.* for that Statute limits the Prosecution to a certain Time after the Treason committed, which was elaps'd in the Lord *Russel's* Case.

Now the Statute of 25 *Edw. 3.* does specify and enumerate the several and particular Heads, and Sorts or Species of Treason, that might be proceeded upon, and tried and adjudged, in the ordinary Courts, viz. in the King's-Bench, or Judges of Oyer and Terminer, or Gaol-Delivery: Such as that of *Newgate*, or the Sessions for Gaol Delivery at the *Old-Bailey*, where the noble Lord *Russel* was brought to his Trial.

The Scope and Drift of that Statute of 25 *Edw. 3.* (as appears by the Preamble) was to confine those arbitrary Courts, and the ordinary Judges, to plain manifest Rules, what they should adjudge Treason, and what not, it being of so great concernment to the Lives of Men; and not to allow the Judges or Lawyers a Latitude or Liberty to make what they thought fit to be Treason; or to exercise the Tongues and unruly Noises of Lawyers in a Matter of that Moment. And that Statute of 25 *Edw. 3.* being in its Nature a confining, restraining an explanatory Law, ought therefore not to be largely extended or improved, and stretched beyond the plain Words, and apparent Sense of them.

Now among other several Species, or Heads, or Sorts of Treason, particularly enumerated by that Statute, there are these two, pertinent to our Case; viz.

1. Compassing or imagining the Death of the King.
2. Levying War against the King.

Whereupon the common Reader (for whose Satisfaction this is written) may easily observe this Distinction, that the first of these is Treason, (in the very Imagining or Conspiring) tho' the King's Death do not ensue.

But the latter is not Treason in the conspiring and imagining, but the Treason must be in the actual levying of War.

So that barely to consult, conspire, or imagine to levy War, tho' there be never so plain nor so open or overt an Act of such consulting, or conspiring, or imagining of it, will not amount to this Species or Sort of Treason, upon this Statute of 25 *Edw. 3.* which is the only Statute upon which the Lord *Russel* was concern'd.

For that Statute of 25 *Edw. 3.* did not intend to make it Treason, to consult or conspire to levy War, without the actual levying of War.

This will not be denied nor disputed by the Lord *Russel's* Adversaries, nor by this *Answerer*.

But, perfectly to evade this Statute, and the manifest Intent and Meaning of it, they insist,

That tho' conspiring to levy War be not Treason within the Statute of 25 *Edw. 3.* yet to conspire, consult, agree, or conclude, to stir up, or raise, or move Insurrection, and Rebellion against the King, and to consult or conspire to seize the King's Guards, (which signify one and the same thing with consulting or conspiring to levy War) these (say they) may be an Open or Overt Act, to prove a consulting or conspiring to kill the King. What is this but to confound the several and distinct Sorts and Species of Treason, which the Statute of 25 *Edw. 3.* doth so carefully and industriously labour to distinguish?

And what is this, but to make a bare conspiring and consulting to levy War, without any actual levying of it, to be Treason within this



Statute of *Edw. 3.* which plainly this Statute would not have to be so taken? And so the good Design and Scope of the Statute, the Security of Men's Lives, is wholly overthrown by this Artifice; and what shall be taken to be Treason, and what not, will be still as uncertain as it was before the making of that *Act of 25 Edw. 3.*

And it was then a needless idle Thing in those that made the Statute of *13 Car. 2.* and so of former Statutes, to make the conspiring to levy War to be Treason; for by this Practice and Construction it is already made so to their Hands, by *25 Edw. 3.*

Now the Lord *Ruffel* was indicted for conspiring to kill King *Charles II.* and the Overt or Open Act, alledged to shew and signify it, is nothing but his consulting and conspiring to raise and stir up Insurrection and Rebellion, and consulting to seize the King's Guards, (tho' they were not actually done) which are just the same Thing with conspiring to levy War; which plainly is no Treason within the Statute of *25 Edw. 3.* and therefore most clearly the Lord *Ruffel* was not guilty within that Statute, upon that Indictment and Evidence.

Since the Lord *Ruffel's* Defender has composed this short State of his Case, upon this great Point, there hath come to his Hands a printed Half-sheet, which has excellently well done the same Work, which had it been but a few Hours sooner, had saved the Labour of this Part of the present Discourse and Argument: This Half-sheet is justly intituled, *A Justification of the late Act of Parliament, for the reversing the Judgment against the Lord Ruffel.*

There is but one Point more to speak to, and then the Lord *Ruffel's* Defender will bid his Answerer and Reader adieu: And it is that Point which the Answerer's first Print, viz. his *Antidote against Poison*, did not mention, and so no Occasion was given them to consider of it; but it is largely debated by Court and Council, at the Lord *Ruffel's* Trial; yet being then but suddenly started, tho' it were well argued by the Lord *Ruffel's* Council assigned, no Authorities however were then cited (tho' called for by the Court) to justify and make good the Arguments and Reasons urged by the Council; and it is a Point in Law, which the Act of Reversing the Judgment against the Lord *Ruffel* is principally, and in the first place, grounded upon, viz. That there had been an undue and illegal Return of Jurors to try that noble Lord, (too often practised of late) and that the noble Lord was refused this lawful Challenge to them for want of Freehold. The Truth of this, as to Matter of Fact, doth evidently appear by the large Narrative of the Trial, printed by that Lord's Adversaries; and this is not in the least touched upon by the printed Half-sheet, styled, *A Justification of the Act for Reversal of the Judgment against that Lord.*

That Point in Law now only remains to be spoken to, viz. That in all Cases of the Trial of a Man, especially in a Trial for his Life, the Jurors ought to be Freeholders, even at the Common Law, and before the Statute of *2 H. 5. cap. 3.* and that not only in Trials within the City of London (as the Lord *Ruffel's* was) but in all other Cities or Towns Corporate, where there was a Jurisdiction of trying for Life in Cases criminal.

It was not material at the Common Law, how much, or of what yearly Value, that Freehold was, or is to be; but some Freehold (tho' never so small) the Jurors ought to have, or else it was a just Cause of Challenge.

It was indeed the Statute of *2 H. 5. c. 3.* that first fixed the yearly Value of the Freehold, and required it should be of *40s. per Annum*, which *40s. per Annum* was then in that King's Reign (being so long since) equivalent to a much higher Value now.

And therefore the Books and Authorities that speak of Freeholds of a less Value than *40s. per Annum*, must of Necessity be understood not to speak of Cases within that Statute, but of Cases at the Common Law.

*3 H. 4. fol. 4. b. Rolle's Abridgment, Title-trial, fol. 648.* It is there held, that Freehold of any Value was sufficient for a Juror. This proves that Freehold is requisite, and that it was so before the Statute of *2 H. 5.* it being in the Reign of King *Henry V's* Father; and with this agrees *Kelloway, fol. 46. towards the End.*

Some other Cases, after the Time of King *Henry 5.* prove the same, as *16 Edw. 4. fol. 8.* Half an Acre of Land, so it be within the Hundred, says that Book, is sufficient; and it is well known, that as to this Qualification of having Freehold, the same Rule governs in the rest of the Jurors, as in those of the Hundred, *10 H. 6. Brooke's Abridgment, Challenge 192. Hale's Pleas of the Crown, 260.*

Nor do these Authorities distinguish, at all, between Cases Criminal and Civil, nor in Cases Criminal between that of Treason and in Cases less criminal.

This being so at the Common Law, and the Statute of *2 H. 5. c. 3.* only adding the yearly Value, viz. *40s. per Annum* Freehold, which before at the Common Law might be of any lower Value: Now, though

that Statute of *2 H. 5.* be repealed, as to Trials in Treason, as in Truth it is, by the latter Statute of *2 and 3 of Philip and Mary, cap. 10.* which enacts that all Trials in Treason shall be according to the Course of the Common Law; the Result is, that still there must be Freeholders to try, tho' they may be Freeholders, as at the Common Law, of any yearly value whatsoever.

That the Statute of *2 H. 5.* (while it was in Force) did extend to Cases of Treason, though Treason was not expressly mentioned in it, and the Statute speaks very ambiguously and obscurely) appears by the Authorities following, viz. *Stamford's Pleas of the Crown, 161;* and *Poulton de Pace Regis & Regni, 187;* and by the Statute of *33 H. 8. c. 23.* in the Provision, that reserves to the Party the Challenge, for want of *40s. Freehold*, even in case of Treason, tho' it makes the reason triable in any County.

See Sir *Christopher Blunt's* Case, Justice *Croke, 37 Eliz. fol. 413.* In an Information of Intrusion, by the Queen; a Juror was challenged for want of Freehold, and upon Examination of the Juror, it appeared he had Freehold of *15s. per Annum* Value, and that was adjudged sufficient; which admits it had been a good Cause of Challenge, had there been no Freehold at all; and it necessarily implies, that it was required by the Common Law, for no Statute interposed as to any lower Value than *40s. per Annum.* Nor does this Case distinguish between the Case of Intrusion upon the Queen, and any other Case.

But it may reasonably be argued, if Freehold be necessary in a Juror, who is to try a Case of Intrusion only *a fortiori*, it is requisite in a Case of High Treason; but in that Case of Sir *Christopher Blunt*, another Juror was challenged that had no Freehold, and he was therefore set aside.

Now that the Challenge, for want of Freehold, extends to the City of London, and other Cities and Boroughs, as well as to the Counties, is abundantly proved by the Statutes of *11 H. 6. c. 1. 7 H. 7. c. 5. and 23 H. 8. c. 13.* to which the Reader, for Brevity's sake, is referred.

It is no-where maintained, that an Agreement to poison or stab, &c. is no Treason, if the very Act do not ensue, as the Answerer very falsely alledges in the second Column of his sixth Page, toward the lower End; for those have a manifest Tendency towards killing, nor are they any distinct Species or Sorts, or Kinds of Treason from the killing the King, as that of levying of War, and seizing the King's Guards, (especially not shewing what Guards) are a distinct Species from that of killing the King, and need not necessarily be understood to terminate and conclude in a killing the King. Taking the King Prisoner, or seizing his Person, may more reasonably be thought to aim at a killing of the King, or have a Tendency towards it.

And the Indictment ought surely to have declared and expressed clearly and plainly what Guards were meant, there being Variety of Guards; for every Indictment ought to contain Certainty.

Herein the very Indictment was faulty.

The bold Answerer hopes the King will always preserve those Guards, tho' the Parliament have declared their Sense to the contrary, when the present extraordinary Occasion shall be over.

This daring presumptuous Answerer, in Defiance of the Act for Reversal of the Lord *Ruffel's* Attainder, the Trial having been partial, unjust, and illegal, as the Act affirms it, yet dares to aver in his last Page, that there was Evidence enough to justify all concerned in the Prosecution and Trial.

The Answerer, towards his Close, takes great Care, and is much concerned, to justify the King's Solicitor that then was.

And this would incline one to think, that the then King's Solicitor was not the Author of that *Antidote against Poison*, nor of this last Print intituled, *The Magistracy and Government vindicated*; which are so much alike in their Style and Strain. And, in Truth, that late King's Solicitor doth utterly deny, that he had any Hand in either of them. And Sir *George Jeffries*, the last Lord Chancellor, could not compose this last. This being so, it may easily be judged where it must fix: For this, look into the printed Trial.

I now refer the Answerer to justify himself at Law, if he happen to be in Danger of an Exception out of an Act of General Pardon and Indemnity, where he may have a fairer Opportunity to defend himself in his own more immediate Concern, for endeavouring to subvert the Law, which ever proves too hard for all its Opposers. And I will so far follow his Humour and Vein, as to conclude with Verses too.

*Rode, Caper, Vitem; tamen hic cum flabis ad Aras,*

*In tua quod fundi cornua possit, erit.*

Which I thus Englisth:

*Go, spiteful Satire, browse that Sacred Vine  
(The Law); but know there shall not want for Wine  
To pour upon thy Head, which may suffice  
To render Thee a perfect Sacrifice.*

### The Case of William Lord Ruffel, tried for High Treason, July 13, 1683.

THE Indictment is very long: But for Substance it is, for conspiring the Death of the King, and intending to levy War, and to that End to seize the Guards: For the Indictment concludes, *And the Guards for the Preservation of the Person of our said Lord the King to seize and destroy, against the Duty of his Allegiance, against the Peace, &c. and also against the Form of the Statutes, &c.*

Those that gave their Evidence against the Prisoner, were *Rumsey, Sheppard*, and my Lord *Howard*.

The Overt Act of conspiring the Death of the King, is consulting to levy War, and to that Intent to seize the Guards: So that the Design to seize the Guards, is the Overt Act assigned of conspiring the King's Death.

The Quere then is, Whether my Lord *Ruffel* was guilty of High Treason within the Statute of *25 Ed. 3.* (for upon that Statute he was tried) and I conceive he was not; and therefore his Attainder ought to be reversed.

But before I speak to the Matter of Law, on which I shall chiefly insist, I must desire you to observe some Inconsistencies and Contradictions in the Evidence.

First, That none of these Persons had their Pardons; which was other-

wife in the Popish Plot: For no Person gave Evidence before he had his Pardon. Therefore, being unpardoned, though they might be legal, yet not credible Witnesses: Both which are required by the Statute. For whilst the Fear of Death attends a Man, he is thinking how he may save his Life, rather than to speak nothing but the Truth; and he that is so base to purchase his own Life at the Price of another Man's, will be sure not to speak less than the Truth.

Next, I observe how the King's Council, by the Questions they put to the Witnesses, did lead, if not, in a manner, dictate to them what to say.

And I take Notice, that my Lord *Howard*, who must be supposed to have a full Knowledge of the Plot, yet never says a Word of their Intent to seize the Guards, which was the principal Thing in the Evidence of *Rumsey* and *Sheppard*: For, had there been any such Intent, it is strange, that my Lord *Howard*, who had brought in so many other Things by Head and Shoulders, should forget so remarkable a Piece of Evidence, and so home as that.

This is only in general: But, in particular, do but observe *Rumsey's* Evidence.



He says, he was not there above a Quarter of an Hour; and whilst he was there, two Things were debated and resolved, and a third Thing discoursed. Surely they were Things which they did not much value; or else they were Men of wonderful Dispatch, that could receive and debate the Message which he brought from my Lord Shaftesbury, then debate the Matter of the Guards, and come to a Resolution in both; and afterwards discourse about the Declaration; and all this in a Quarter of an Hour, or else Rumsey is perjured.

In the next Place, it is very remarkable, where he says, *He was not certain whether he was at another Meeting, or else heard Mr. Throgmorton make a Report of another Meeting to my Lord Shaftesbury.* And again he says, that he was not certain, whether he did hear something about a Declaration, when he was at that Meeting; or that Mr. Fergusson did report it to my Lord Shaftesbury, that they had debated it. To say no more of it, it is very strange, that a Man cannot be certain, whether he knows a Thing of his own Knowledge, or by Hearsay: And if in so plain Matters as those he spoke on uncertain Knowledge, it is not unreasonable to suppose, that he might as easily be mistaken in the rest of his Evidence.

Then as to Sheppard; he first swears, point blank, that my Lord Russell was at two Meetings at his House. But, being pressed by my Lord Russell, he can remember but one; and when that was, he could not recollect himself, tho' not above eight or nine Months before, as he confesses. It's strange that a Man should be so much in a Wood about so remarkable a Thing. But surely it must be hard upon the Prisoner, that the Time could not be fixed: For if Witnesses may give Evidence at that rate, it will be much ado for any Prisoner to make his Defence.

As to my Lord Howard; his Evidence is so notorious, that I need say nothing of it, but refer you to the printed Trial for your Satisfaction: Only I will take Notice of one thing which he says, to reconcile what he said to my Lord of Bedford, my Lord Anglesey being present, and what he afterwards swore against my Lord Russell at his Trial. Says he, *Your Lordship knows, that every Man that was committed, was committed for a Design of murdering the King.* Now I laid hold on that Part: For I was to carry my Knife close between the Paring and the Apple; and I did say, that if I were an Enemy to my Lord Russell, and to the Duke of Monmouth, and were called to be a Witness, I must have declared, in the Presence of God and Man, that I did not believe either of them had any Design to murder the King.

As to the first, what he said to my Lord of Bedford, was as to the Plot in general; and if to any particular Part of it, it must be as to the *Insurrection*; for there was to be my Lord Russell's Province.

Secondly, My Lord Howard knew, that all that were committed, their Commitments run as well for *levying of War*, as for *conspiring the King's Death*. So that his Lordship must find out something that will reconcile himself to himself, better than his *Knife between the Paring and the Apple*; or else it will follow, that he solemnly said one thing, and swore another.

I have but only touched these Things; because I hasten on to the Matter of Law. For tho' it were without Contradiction, that every thing sworn against my Lord Russell were true, yet it did not amount to *High Treason*.

First, Because a *Conspiracy to levy War* is not an *Overt Act of imagining the Death of the King*.

In arguing of this, I will not meddle at all with the Original of *Allegiance*, nor the true Nature of it; neither make any Discourse, that heretofore it was a less Offence to plot against the King's Life, than against the Government; but I will leave those fore Places, and endeavour to prove my Point, by considering these five Things:

First, Whether any Court, the Parliament excepted, can try a Man upon an Indictment for High Treason, that is grounded upon the Common Law.

Secondly, To what End and Intent the Statute of 25 Edw. 3. cap. 2. was Enacted.

Thirdly, Whether [*Conspiring the Death of the King*,] and [*Levying of War*,] are distinct Species of Treason.

Fourthly, Whether every Law is not to be construed, most strictly to restrain the Mischief against which it was Enacted.

Fifthly, What is the true Meaning and Signification of being *provably attainted by Overt Deed*.

1. As to the first, it seems to be out of doubt: At this Day there can be no such Thing as an Indictment at Common Law for High Treason; tho' for other Things there may: Because there is no Precedent of it, since the Statute of 25 Edw. 3. For nothing is more common than for every Prisoner that is arraigned for High Treason, to demand upon what Statute he is indicted, and the Court, or King's Counsel, to tell him the particular Statute. Besides, every Impeachment before the Lords in Parliament, is grounded upon some Statute: And if so, *a fortiori*, no inferior Court can try a Prisoner upon an Indictment for High Treason, grounded upon the Common Law. For the Law, which greatly delights in Certainty, especially in case of Life, will not allow of an Indictment at Common Law: Because no Issue can be joined upon it, by reason of the Uncertainty.

As to the second, *viz.* To what End or Intent the Statute of 25 Edw. 3. was made? I thus answer:

Edward III. was a victorious Captain, and potent Prince, whereby he became very renowned; but that which made his Name the greater, and his Fame the more lasting, was those good and wholesome Laws which were enacted in his Time; by which he restored and beautified the Government, that had been defaced, and almost destroyed, by the illegal Proceedings during his Father's irregular Reign. And of all the Oppressions under which the Nation groan'd, there was none that lay heavier upon the People, than the extravagant Licence which the Judges took in the Interpretation of Treason. And this appears by the particular and universal Joy expressed by the whole Land, at the making of the said Statute; for tho' he called Parliaments very frequently, and none of them proved abortive of good Laws, yet that Parliament which was held in the 25th Year, did more than any of the rest: And of all the beneficial Laws that were then enacted, the second Statute, whereby *Treason* was reduced to Certain-

ty, gave the People the greatest Cause to lift up their Heart and Voice in thankfulness to God, and the King; because the Jaws of their devouring Monster were broken, which had torn in pieces so many Families, and threatened Destruction to the rest. So that this Statute was made to restrain and limit Judges from calling any thing *Treason*, that might be so by Inference or Implication, and only to judge upon that which is literally so within that Statute. For it is there provided, that if any such-like Treasons shall come before any of the Justices, that they must stay, without going to Judgment, till the Cause be declared before the King and his Parliament. And all subsequent Statutes of *Treason* are all as so many Confirmations of this Statute: For they had been needless, if the Judges could have called any thing *Treason*, but what is literally such within that Statute. And the Statute itself had been made to no purpose, if it had not strictly restrained the Judges. And my Lord Chancellor Nottingham was of Opinion, that even the Lords in Parliament could not proceed upon an Indictment for *High Treason*, unless the Fact therein alledged were first declared by some Statute to be *Treason*.

3. As to the third Thing, it never was, nor ever will be denied, That *Compassing the Death of the King*, and *Levying of War*, are two distinct Species of *Treason*, unless all *Treasons* are of the same Kind. But if there are several Sorts of *Treasons*, then it will follow, that these are also distinct: Because in every Statute of *Treason*, which mentions *Conspiring the Death of the King*, and *Levying of War*, they are named distinctly. Besides, they are different in the manner of Proof: For that which is necessary to prove the one, does in no Sort prove the other. And furthermore, the one may be effected, and the other never so much as intended or designed. As for Example, the King may be murdered, and no War levied nor intended. And moreover, in the one Case it is *Treason*, as well to intend as to execute it, without tacking it to any other Thing: But it is not so in the other; for it is in itself, and abstractly from every thing else, *Treason*, as well to compass the King's Death, as to kill him. But an Intention to levy War, and doing all Things in order to it, is not *Treason*, unless the War be levied, except by Implication or Inference. And I am persuaded, that the want of observing, that these are distinct Species of *Treason*, has been the Occasion of that Mistake of calling a *Conspiracy to levy War*, an *Overt Act of conspiring the King's Death*.

4. As to the Fourth, no doubt, every Statute is to be construed most strictly to restrain the Mischief against which it was enacted. For the uninterrupted Course of all Judgments and Resolutions hath been accordingly; and nothing can more directly thwart common Sense, than to make it otherwise. And therefore, if the Statute be absolute, the more forcibly it is construed to restrain that Mischief, the more truly is the Intent of that Statute pursued. For how shall any Evil be suppressed, if the Remedy must be applied but by Halves? The Law then would be rather a Mockery, than a Means to redress the Evil, if it shall not be taken most strongly against it. Either it is, or it is not, a Restraint of the Grievance complained of. If it is not, why was it made? If it is, why must it not be understood in that Sense, whereby the Mischief or Evil may be more effectually suppressed and prevented?

5. As to the Fifth, the Answer will be best understood by considering, first, the Signification of the two Words apart, *viz.* *Provably* and *Overt*.

*Provably*, signifies to prove, or make good by Evidence, Argument, Reason, or Testimony.

*Overt* has all these Significations, *open, clear, plain, apparent, manifest, notorious, evident, publick, known, undoubted, certain, perspicuous.*

These then being the Significations of those Words, what can follow more naturally, than that to be *provably attainted by Overt Deed*, is, that the Fact must not only be direct, apparent, and notorious to the Point, but it must also be proved clearly, evidently, plainly, and perspicuously, void of all Doubt or Obscurity? And those two Words being taken together, do the better expound each other, and seem to be choice Words, and Words of Art, cull'd out by the Penners of that Statute, as the most expressive, to exclude all Implications or Inference, that might be made in case of *Treason*.

These Things being premised, which are as easily proved as alledged, there will remain very little, besides Shifts and Evasions, to prove, that a *Conspiracy to levy War* is an *Overt Act of Compassing the King's Death*.

The Things that are chiefly and commonly urged to maintain that Opinion, are these two:

First, It would be of dangerous Consequence, if a *Conspiracy to levy War* may not be interpreted an *Overt Act of compassing the King's Death*: Because there is no means left to prevent it, and the Mischief attending it, when the War is levied.

Secondly, If a War be levied, the Death of the King must needs be intended, and will certainly ensue, if the Rebels prevail.

In Answer to these it may be replied, That the one of them is but a bare Objection, and the other no substantial Argument; because it begs the Question, which is surely a feeble way of arguing.

But I will give a more particular Answer to them. And it will be more proper to begin with the second; because in speaking to it, the other will in great measure receive an Answer.

Now as to the second, it may be observed, that the Death of the King is made so certain and necessary a Consequence of *Levying a War*, that by reason of that Certainty a *Conspiracy to levy War* is an *Overt Act of Compassing the King's Death*. If therefore the Certainty will not hold, but that many Cases may be put, and Instances produced, wherein the King's Death is not intended, nor did ensue upon the Prevailing of the Party, then is the whole Weight and Strength of the Argument of no Effect.

The Huguenots in France have heretofore assembled in Arms; and tho' they repeated it several times, yet on which of those Occasions does it appear, either by the Cause of their coming together in that manner, or by the Effect of it, that it was levell'd at the King's Life? No, the Cause of their Rising in Arms was for the Asserting of their Religion and just Rights. For as soon as their reasonable Demands were satisfied, they laid down their Arms more willingly than they took them up; neither did they attempt any thing against the King's Life, when he was in their Power; but

after



after they were answered in those Things to which they had Right, both by the Laws of Nature and the Government, immediately they returned home in Peace, and upon all other Occasions proved the most firm and loyal Subjects of all other in that King's Dominions; and so this present King of France must testify for them, if he will do them Right.

If the Protestants in France should at this Time rise in Arms, upon so just a Provocation as now they have, it would be senseless to suppose, that they levied the War with a principal Design to murder the King, and not for the Defence of themselves and just Rights, which are so inhumanly, and against all Law and Justice, at this Time, invaded and ravished from them. Story is full of like Cases and Instances to this. But to speak more particularly to England: What was the Baron's War? The Answer to which must be, That they took up Arms to assert their Rights and Liberties, which the King, contrary to his Oath, withheld from them: and tho' it lasted near forty Years, yet the King's Death was never intended, nor his Life in any Danger: For as soon as their just Demands were answered, they put up their Swords, and every Man returned home, and pray'd for the Life of the King. And out of English Story, what one Instance can be produced, where the Cause of War was declared to be against the King's Life; or if the Party prevailed, the King was to be put to Death by their general Consent and Approbation? For tho' it be true, that there are some instances, where they have been murdered after the War; yet it is also as true, that it was by private Assassination, and not by the Consent and Privy of those who levied the War: For all those who were concerned in the Murder, were afterwards condemned and executed for it, as Traitors: As in the Case of Edw. 2. and Ric. 2.

As for that of Charles the First, which is so much press'd and urged, tho' the Cause of War had been expressly against his Life; yet as one Swallow does not make a Summer, so neither does one Precedent prove the Point. But besides, in that Case of Charles the First, to infer from thence, that the King's Death is principally intended by levying of War, is altogether as weak an Argument, as to say, because a Thing falls out by Accident, therefore that very Thing was the principal Design and Aim of the whole Action. For in that War, those who first took up Arms, did it to oppose the King's arbitrary Practices; and though he was afterwards put to Death, yet it was altogether against their Consent or Desire; and most of the Army was against it, and would have prevented it, but that they were at that time so broken into Factions and Parties, that they durst not trust one another. For after that Tragedy was acted, those who first took up Arms, immediately upon it laid them down, and were afterwards the chief Instruments of the late King's Restoration.

But if the King's Death be the principal Thing intended by levying of War, to what Purpose is the War levied? Cannot the King be taken off more easily by Poison, or a private Assassination? To the effecting of which, Opportunity cannot be wanting; and so with more Certainty the End is obtained, and a less Hazard run in the Execution, than could be done by a War; except those who levy the War to kill the King, are not content with the Murder of him, unless they cut the Throats of all those that would defend him. Indeed to do it by an open War, rather than by Poison, or a private Assassination, is the more generous Way; for they give him fair Warning to look to himself, like a noble Enemy, that scorns to kill his Adversary basely. 'Tis indeed to go round about, for the nearest Way. Therefore a War, when levied, must be for some other Intent, than to take away the King's Life: Since Englishmen, if they enjoy their Properties, no Prince is so great and happy in the Heads, Hearts, Hands and Purfes of his Subjects, as an English King.

But yet, allowing that upon every War levied the Death of the King would certainly ensue if the Rebels prevail; yet this Question does naturally arise, viz. Where is that Statute which does in express Terms say, That a Conspiracy to levy War is Treason? For if it be not so expressly and literally within some Statute, then it is a constructive Treason, and consequently no such Treason, as upon which the Judges may proceed, if the Statute of 25 Edw. 3. was made to any Purpose: For that the Statute restrains all constructive Treason, or none. But if the Judges may, in any one Case, make a constructive Treason, they may do it in all; and so we are left in the same Uncertainty about Treason, as we were before that Stat. 25 Edw. 3. was made.

If the Judges might judge upon constructive Treason, yet it seems to be a far-fetched Construction to make Conspiracy to levy War, an Overt Act of compassing the King's Death: For this is not to be probably attained by Overt Deed.

First, Because the conspiring the Death of the King, and levying of War, are Two distinct Species of Treason; and therefore, it would be very unnatural, and too much forced, to join these together, and, as it were, to make them one and the same Thing, that are so different and divers, not only in the Manner and Matter of Proof, but also in themselves.

For then, Secondly, a Conspiracy to commit any other Treason, may also be called an Overt Act of imagining the King's Death: Which was never yet pretended.

Thirdly, A conspiring of any one Treason may then be an Overt Act of any other Treason.

Fourthly, Any other criminal Act may then as well be called an Overt Act of conspiring the King's Death.

Fifthly, This is to make a Conspiracy to levy War, Treason in itself. For there is very little Difference between calling a Thing Treason in itself, and to make it an Overt Act of some Treason within the Statute.

Sixthly, Because a Conspiracy to levy War, was not Treason at Common Law.

Seventhly, The Statutes of 23 Eliz. and the 1 and 3 Jac. 4. which make it High Treason to reconcile any to the Church or See of Rome; or to be so reconciled, were enacted to no Purpose, if a Conspiracy to levy War is an Overt Act of the Compassing the King's Death. For what can tend more plainly and directly to levy War, than to persuade the People to renounce their Allegiance to the King, and to promise Faith and Obedience to some other Power? So that these, and all other Statutes concerning Treason, which have been made since the Statute of 25 Edw. 3. are as so many Con-

firmations of it; and consequently prove, that the Judges can call nothing Treason, but what is literally such, within that, or some other Statute.

Eighthly, My Lord Coke says, That Conspiracy to levy War is not Treason, unless the War be levied in fact. And questionless his Opinion is very good Law; because in many Cases it is not Treason to levy War; & a fortiori, a Conspiracy cannot. For look into the Statute of 12 Q. Mary, and there you will find several Things provided against, which are plainly and directly a levying of War, and yet they are declared to be but Felony.

But it may be objected, That by Stat. 3 and 4 Edw. 6. the Offences mention'd in 1 Queen Mary were made Treason. It is very true; yet it does not alter the Case, but rather proves the Point. For, First, They being made Treason by Statute, proves that it was not so in itself. Secondly, Because in the two next succeeding Reigns it is declared to be but Felony. For the Statute of Queen Mary is confirmed by 1 Eliz. 16. And thereupon the Argument is the stronger; because those two Queens were of different Religions. Thirdly, Because when a Thing is declared an Offence by Act of Parliament, and is afterwards made a less Offence by Statute, it proves that it was not so great in itself; but that the necessary Circumstances of Time and Affairs requir'd it should then be such.

But the Case is yet stronger, because in some Cases it may be but a Trespass to levy War; as it was in the Case of my Lord Northumberland, 5 Hen. 4. He did actually raise Forces, and such as were taken to be a levying of War: For which he was question'd before the Lords, and tried for High Treason. But though the Lords did find the Fact, yet they adjudged it but a Trespass; because the Powers raised were not against the King, but against some Subjects. This Precedent seems to carry great Weight in it: First, Because it is a Judgment given in the highest Court of Judicature: Secondly, Because it was given so soon after the making the Statute of 25 Edw. 3. who must be supposed to understand the Intent and Meaning of that Statute full as well as succeeding Ages.

The Case of those who aided Sir John Oldcastle might also be urged; who were acquitted, because in their Defence it did appear, that by reason of Fear, and to save themselves, they were constrained to what they did. Which is Ground for another Argument, if there were Occasion; because it proves that the Maxim in Law, *Actus non fit reus, nisi Mens sit rea*, holds in Case of Treason, as well as in all other Cases. But I think there is no need of it: For if War may be levied, which is neither Treason nor Felony, it must be a very unnatural Construction of a Conspiracy to levy War, to make it an Overt Act of compassing the King's Death.

Thus the second Thing objected has received a full Answer, and likewise the first, in a great measure. Yet I will add a few Words, that no Doubt may remain.

If the Consequence on all Hands be duly considered, the Danger will be found to lie on the other Hand: Yet be it as great as can be pretended, it must be remembered, that the Law has settled the Point; and so it must stand, till by the same Authority it be altered. For the Rule in Law is not to be forgotten, *Nemo Legibus Sapientior*. It is pretended, that out of a tender Regard which the Law, and all Subjects, ought to have for the King's Life, a Conspiracy to levy War is taken to be an Overt Act of compassing the King's Death: To this it may be answered by way of Question, How comes it about, that this Age should have a greater Care of the King's Life than our Forefathers had? Can it be imagined, that they did not understand the Nature of the Government as well as we do? Nor did know of what Consequence to the Publick the Preservation of the King's Life is? Can it be thought, that they did not impartially weigh and consider the Consequence on all Hands? Yet however, let the Defects be never so many, seeing it is settled by Law, it cannot be altered but by the same Power: For if it may, then let the Consequences be seriously debated, of leaving it in the Breast of the Judges to rectify the Mistakes, or Defects, be they fictitious or real. For then, when a Turn is to be served, the Law will be sure to be defective; and so in Effect they shall *Legem dare*. Treason will then be reduced to a Certainty; that is, if the Judges please; otherwise not: There will be then no need of Parliaments: For the Judges shall both declare and make Law. What will all our Laws signify, though made and penn'd with all the Wisdom and Caution that a Parliament is capable of, if the Judges are not tied up and bound by those Laws? It renders Parliaments useless, and sets the Judges above that great Council. They can undo what the other has done. The Parliament chains up some unruly Evil; and the Judges let it loose again. But besides, where is this dangerous Consequence, as is objected? Indeed there had been some Weight in the Objection, had a Conspiracy to levy War been wholly unpunishable. But the Law has provided a Punishment commensurate to the Offence; which though it does not extend to Life, yet is sufficient to deter Men from the Commission of it. Yet if a Conspiracy to levy War is to be punish'd in as high a Degree as a War when levied, this would be to punish Thoughts as highly as Deeds; which if it be just, yet is *summum jus*.

Mr. Solicitor Finch twitter'd out two or three imperfect Precedents, viz. that of my Lord Cobham, Dr. Story, and Plunket. These, as they are not altogether to the Purpose, so they are so very modern, that no great Regard is to be had to them; and they rather prove the Ignorance or Boldness of those Judges, than that a Conspiracy to levy War is an Overt Act of compassing the King's Death: Because the Statute of 25 Edw. 3. has provided, That if any such-like Treasons come before the Justices, they must tarry without going to Judgment, till the Cause be shew'd before the King and his Parliament: And therefore for those Judges to take upon them to judge upon that which was doubtful, and not literally nor expressly a Treason, was to assume the Part which the King and Parliament had reserved to themselves. And therefore, upon what has been said, this Conclusion will follow, that no Man can (before the Judges) be convicted of Treason, unless the Fact be expressly and literally Treason within some Statute, and he be thereof probably attainted by some Overt Deed; and consequently a Conspiracy to levy War is not an Overt Act of Compassing the King's Death, but a Trespass, or High Misdemeanour: And therefore, the Judgment against my Lord Ruffel was manifestly unjust; and so, of course, it ought to be reversed.



If a Conspiracy to Levy War were Treason of itself, or an Overt Act of imagining the King's Death, yet my Lord Russell was not guilty of High-Treason within the Stat. of 25 Edw. 3. because the Overt Act assigned against him, was his being of a Counsel of six to manage an Insurrection, and in order to it to seize the Guards, for had he actually seiz'd the Guards, yet it could not be Treason within the Statute 25 Edw. 3.

First, Because the Guards are not settled by Act of Parliament, and consequently they have no legal Force: For the Law has pronounced, that all standing Force other than the Militia is in *terrorem populi*, Illegal, and a Grievance; and the Reason of it is clear; because the Law does never protect or countenance any thing that is, or may be burdensome, or that is useless: And it is so evident, that in the *Pensionary Parliament*, this Vote, pass'd in the House of Commons, *Nomine Contradicente*: That all standing Force other than the Militia is Illegal, and a Grievance: And though they have the King's Commission, as may be objected; yet his Commission cannot make that lawful that is illegal, no more than he can tolerate a Riot, or pardon a common Nuisance: For if several Persons were try'd for a Riot, and it manifestly appear upon the Evidence to be such, would their producing the King's Commission keep them out of the Compass of the Law? Or should those who did assemble together to suppress them, be guilty of *Levying War*, because those other Persons had the King's Commission? Therefore if my Lord Russell had assembled a Force sufficient to seize the Guards, the most that could have been made of it, was to bring it within the Statute of the 1 Qu. Mary 12. which makes it but Felony. And this being duly compared with the Precedents urg'd by Mr. Attorney, and Mr. Solicitor, will retort them strongly upon themselves.

Secondly, It could not be Treason within the statute 25 Ed. 3. because at the Time of making that Statute, there was no such thing as the Guards: For the first Thing of that Sort was the Band of Pensioners which Hen. 7. set up, in Imitation of what he had seen, and learned in France: For in Ed. the 3d's Time, though he was the Third that without Interruption had succeeded to the Crown; yet Succession had not then obtained so sacred a Reputation, as not to stand in need of the People to uphold them in the Throne; and therefore Kings were then too wise to do any thing that would be so apparent a distrust of the People, as to call in Guards to their Aid. And besides, the constant Wars, either with France or Scotland, made them stand continually in need of the People's Supplies; and therefore they would be sure cautiously to avoid all Things, that might give the Nation occasion of Offence: And nothing could be more distasteful to the People than to be nosed by a standing Force, which the Law had adjudged to be Illegal and a Grievance. And therefore, as there were no such Things as Guards at the making of that Statute 25 Ed. 3. so that Statute cannot be supposed to take notice of them.

Thirdly, If the Guards were Established by Act of Parliament, yet if they were so Established since the 25 of Ed. 3. my Lord Russell was not within that Statute, because it provided for nothing but what was lawfully in being at the time when it was made. So that if it were an Offence to seize the Guards, my Lord Russell ought to have been Indicted upon that Statute which did so make it an Offence. For if a Prisoner is Indicted upon a wrong Statute, and the Evidence proves nothing of the Statute on which he is Indicted, but comes very home, and point blank to the Statute on which he ought to have been Indicted, he may plead specially to it, and the Court must direct the Jury to bring him in Not Guilty.

Fourthly, My Lord Russell was not within the Statute of 25 Ed. 3. Because the Indictment concluded falsely; and more falsely than any Indictment that I ever saw or heard of. For it says, [And the Guards for the Preservation of the

Person of our said Lord the King to seize and destroy, against the Duty of his Allegiance, against the Peace and also against the Form of the Statutes.] This Conclusion contains in it four Parts, and none of them is true: First, That the Guards are for Preservation of the King's Person. It will be an easier Matter to find a World in the Moon than that the Law has made the Guards a lawful Force, or any Statute that has Established any Force, particularly for the Guard of the King's Person. And though the Law had Established any such Force; yet it was not done by the 25 Ed. 3. and therefore in this the Indictment concluded falsely.

The Second Thing is this, That to seize and destroy the Guards was against the Duty of his Allegiance. To speak fully to the Nature of Allegiance would require a long Discourse. But a few Words will lay this upon its Back. It cannot be deny'd, that Nature and the Law did nothing in vain: And if so, can it be imagin'd that the Law would establish such a Thing as the Guards, which had made so much a better Provision for the Preservation of the King's Person, even the Duty and Interest of every one of his Subjects? In the next Place, *Subjection* and *Protection* are Convertible Terms, and therefore if the Subjects do not receive Protection by the Guards, it is not against their Allegiance to seize and destroy them: Whereas to seize the Militia is against their Allegiance, because they receive Protection by them. Besides no Man becomes an Offender, till the Law has been promulg'd so as that no Man can reasonably be supposed to be ignorant of it. Now then, though the King by his Commission might make the Guards such a lawful Force; yet *non constat* that they are so Commission'd by him. For it has not been publish'd in that due manner and form, as that the Nation can regularly take Notice of it. And besides, there is no Record enter'd, or remaining of it in any Court, or any other Place; whereby the People may come to a certain knowledge of it, Which is also a forceable Argument against the Legality of such a Commission. So that tho' in other Cases *Ignorantia Juris* is not allowed; yet in this Case it is a very good Plea, That it was not against my Lord Russell's Allegiance to seize the Guards, though the King's Commission did make them a lawful Force.

The Third thing is, That it was against the Peace, which is an untrue Conclusion. For it is not against the Peace to seize any Force that is not countenanced by Law. And a Needle may sooner be found in a Cart-load of Hay, than any Statute that hath Established the Guards. And if the King's Commission can make a Force a lawful Force, then it's hard to say, whether the Rebellion in Ireland did not act upon sufficient Authority, since no clear Answer has yet been made to the Commission under the Broad Seal, which the Rebels produced to justify their Proceedings. In the next place, every Treason is against the Peace. But to conclude, because it is against the Peace, therefore it is Treason, is neither Law nor Reason. For every Offence is against the Peace; but every Offence is not Treason. Furthermore, the King's lawful Commission is not to be oppos'd in any Case; and the Indictment upon it will run, that it is against the King's Crown and Dignity, and against the Peace. Therefore to conclude, that it is Treason, is a *non sequitur*: For it is not Treason in many Cases, to seize and destroy those that Act by the King's lawful Commission.

The Fourth thing is that it was against the Form of the Statutes. The Statutes thus mention'd must be those Statutes, or at least must comprehend some Statute that settles the Guards for the Preservation of the King's Person: For the Seizing of the Guards is the Overt Act assigned of *Compassing the King's Death*. Now if there be no such Statute, then is this Part of the Conclusion of the Indictment also false. And consequently the Judgment against my Lord Russell ought to be revers'd.

## CXXII. The Trial of Colonel ALGERNON SIDNEY\*, at the King's-Bench for High-Treason, Novemb.

21, 1683. Mic. 35. Car. II.

ON November the 7th *Algernon Sidney*, Esq. was by *Habeas Corpus* † brought up to the Bar of the Court of King's-Bench, and the Clerk of the Crown having read the Return, Mr. Attorney General informed the Court there was an Indictment against the Prisoner, and prayed he might be charged with it.

Cl. of Cr. *Algernon Sidney*, Hold up thy Hand. [Which he did.]

Midd. ff. The Jurors for our Lord the King, upon their Oaths do present, That *Algernon Sidney*, late of the Parish of St. Martin in the Fields, in the County of Middlesex, Esq. as a false Traitor against the most illustrious, most excellent Prince, our Lord Charles II. by the Grace of God, King of England, Scotland, France and Ireland, and his Natural Lord, not having the Fear of God in his Heart, nor weighing the Duty of his Allegiance, but moved and seduced by the Instigation of the Devil, utterly withdrawing the cordial Love, and true, due and natural Obedience, which a true and faithful Subject of our said Lord the King should bear towards him the said Lord the King, and of Right is bound to bear; contriving, and with all his Strength intending, to disturb the Peace and common Tranquillity of this Kingdom of England, and to stir up and move War and Rebellion against the said Lord the King, and to subvert the Government of the said Lord the King, in this Kingdom of England, and to depose and deprive the said Lord the King, from the Title, Honour and Regal Name of the Imperial Crown of his Kingdom of England, and to bring and put the said Lord the King to Death, and final Destruction, the thirtieth Day of June, in the five and thirtieth Year of the Reign of our Lord King Charles II. now King of England, &c. and divers other Days and Times, as well before as after, at the Parish of St. Giles in the Fields, in the County of Middlesex, maliciously and traitorously, with divers others Traitors to the Jurors aforesaid unknown, did conspire, compass, imagine and intend to deprive and cast down the said Lord the King, his supreme natural Lord, not only from the regal State, Title, Power and Rule of his Kingdom of England; but also to kill, and bring and put to Death the same Lord the King, and to change, alter and utterly subvert the ancient Government of this his Kingdom of England, and to cause and procure a miserable Slaughter among the Subjects of the said Lord the King through his whole Kingdom of England, and to move and stir up an Insurrection and Rebellion against the said Lord the King, within this Kingdom of England. And to fulfil and perfect those his most horrid, wicked and diabolical Treasons, and trai-

\* Burnet's history of his Own Times, Vol. I. p. 570. —† Note. This *Habeas Corpus* was granted the Day before, which was before the Indictment was found by the Grand Jury, for it was not presented to them till after he was brought to the Hall.

terous Compassings, Imaginations and Purposes, the same *Algernon Sidney*, as a false Traitor, then and there, and divers other Days and Times, as well before as after, maliciously, traitorously and advisedly, did assemble himself, meet and consult with the aforesaid other Traitors to the Jurors aforesaid unknown, and with the same Traitors did treat of, and for those his Treasons and traitorous Compassings, Imaginations and Purposes, to be executed and fulfilled. And that the aforesaid *Algernon Sidney*, as a false Traitor, maliciously, traitorously and advisedly, then and there, and divers other Days and Times, as well before as after, upon himself, did assume, and to the aforesaid other Traitors did promise that he would be aiding and assisting in the Execution of their Treasons and traitorous Compassings, Imaginations and Purposes aforesaid, and to fulfil, perfect and reduce to Effect those their most horrid Treasons and traitorous Compassings, Imaginations and Purposes aforesaid, the same *Algernon Sidney*, as a false Traitor, then and there, falsely, maliciously, advisedly and traitorously did send one *Aaron Smith* into Scotland to invite, procure, and incite divers evil-disposed Subjects of our said Lord the King, of his Kingdom of Scotland, to come into this Kingdom of England, to advise and consult with the aforesaid *Algernon Sidney*, and the aforesaid other unknown Traitors in this Kingdom of England, of Aid and Assistance to be expected and supplied from the Kingdom of Scotland to fulfil, perfect, and to reduce to Effect those their most wicked, horrid and traitorous Treasons aforesaid. And that the aforesaid *Algernon Sidney* to fulfil and perfect those most wicked, horrid and devilish Treasons, and traitorous Compassings, Imaginations and Purposes aforesaid; and to persuade the Subjects of the said Lord the King of this Kingdom of England, That it is lawful to make and stir up an Insurrection and Rebellion against the said Lord the King that now is, the said thirtieth Day of June, in the five and thirtieth Year of the Reign of the said Lord the King that now is, at the Parish of St. Giles in the Field, in the County of Middlesex, falsely, unlawfully, wickedly, seditiously and traitorously, did make, compose and write, and caused to be made, composed and written, a certain false, seditious and traitorous Libel, in which said false, seditious and traitorous Libel, among other Things, is contained as followeth in these English words, viz. *The Power originally in the People of England is delegated unto the Parliament, he (the most serene Lord, Charles II. now King of England, meaning) is subject unto the Law of God, as he is a Man to the People, that makes him a King, inasmuch as he is a*



King, the Law sets a Measure unto that Subjection, and the Parliament judges of the particular Cases thereupon arising, he must be content to submit his Interest unto theirs, since he is no more than any one of them in any other respect than that he is, by the Consent of all, raised above any other; if he doth not like this Condition, he may renounce the Crown; but if he receive it upon that Condition (as all Magistrates do the Power they receive) and swear to perform it, he must expect that the Performance will be exacted, or Revenge taken by those that he hath betrayed. And that in another Place in the said false, seditious and traitorous Libel, among other Things, these false, seditious, and traitorous English Sentences are contained (that is to say), We may therefore change or take away Kings, without breaking any Yoke, or that is made a Yoke which ought not to be one, the Injury is therefore in making or imposing, and there can be none in breaking it, Against the Duty of his Allegiance, against the Peace of the said now Lord the King, His Crown and Dignity, &c. And against the Form of the Statutes in this Case made and provided, &c.

How say'st thou? Art thou Guilty of this High Treason whereof thou standest indicted, or not Guilty?

Col. Sidney. My Lord, I find here an Heap of Crimes put together, distinct in Nature one from another, and distinguished by Law; and I do conceive, my Lord, That the Indictment itself is thereupon void, and I cannot be impeached upon it.

L. C. J. We are not to admit of any Discourses, till you answer the Question, Whether you be Guilty or not Guilty.

Sir George Jeffries. Sir Robert Sawyer. Mr. Att. Gen. If he will demur, my Lord, we will give him Leave.

Col. Sidney. I presume your Lordship will direct me, for I am an ignorant Man in Matters of this Kind, I may easily be surprized in it, I never was at a Trial in my Life of any Body, and never read a Law-Book.

L. C. J. Because no Prisoner under your Circumstances is to have Counsel, but in special Cases to be assigned in Matters of Law, the Court is bound by their Oaths and Duty of their Places, that they shall not see any Wrong done to you: But the Business that we are to tell you now is, you are to plead Guilty, or not Guilty, or Demur, which is a Confession in Point of Law.

Col. Sidney. Under favour, my Lord, There may be Indictments that are erroneous, and if they are erroneous and vitious, they are null, and ought not to be answered to.

Mr. Just. Withins. If you please to demur to it you shall have Liberty to make any Exceptions.

Col. Sidney. I don't demur, 'tis only Exceptions. I think in Matters of Life, a Man may give in his Exceptions to the Bill, and plead not Guilty afterwards. I am sure in Sir Henry Vane's Case, the Court said it, and offered him to do it; that which, under Favour, I hope to do.

L. C. J. You must plead or demur.

Col. Sidney. My Lord, if I put in Exceptions to the Bill, I don't plead 'till those Exceptions are over-ruled. This was in the Case of Sir Henry Vane.

L. C. J. Sir, I must tell you, you must either plead or demur.

Col. Sidney. My Lord, there are in this Indictment some Treasons, or reputed Treasons, that may come within the Statute of the 13th of this King, which is limited by Time, the Prosecution must be in six Months, and the Indictment within three. Now, my Lord, if that this Business that is mentioned, be above six Months before my Commitment, or above three before the Indictment, I think, under Favour, I ought not to answer to these Matters.

L. C. J. You are mistaken in the Law. That will be saved when the Fact comes to appear. If they alledge the Thing to be at a Time, which, according to that Allegation would maintain the Indictment, if upon the Trial, it appear otherwise, the Court is bound to take notice of it when you come to your Trial, but we are not bound to examine that before you have pleaded.

Col. Sidney. My Lord, every body will acknowledge, that there have been, or may be, vitious Indictments. Now if I plead to an erroneous Indictment, and am acquitted, I may be indicted again. Bills of attainder have been upon Errors in original Indictments, as that of the Duke of Somerset. Now if there be here several Things distinct in Nature, distinguished by Law, that are put together, 'tis impossible to make a positive Answer to any one. If any one should tell me, that I by myself, or by others, by Sword or by Pistol conspired to kill the King, I can say, I did it, or I did it not. If any one say, I have levied War, and by several Acts undertake to prove I have done it, I can say I have done it, or I have not. But here I don't find any thing specified, or can tell upon what Statute I am indicted. I pray I may see the Record.

L. C. J. That we can't do. You shall hear it read again if you will, if you think it to be a void Indictment, Demur to it if you will.

Col. Sidney. My Lord, I desire you to accept of this. [Shewing a Parchment.]

L. C. J. What is it? Put in what Plea you shall be advised; but if you put in a special Plea, and Mr. Attorney demurs, you may have Judgment of Death, and by that you waive the Fact.

Col. Sidney. I can't make any Objection to the Bill after I have pleaded, Not Guilty, for I accept the Bill thereby to be good.

L. C. J. If you can assign any Matter of Law, do. But otherwise what a kind of thing would it be? All Criminals would say, in all Cases, I doubt whether the Bill be good or bad. And after I have thus considered of it, I will plead. You are misinformed, and this the Court tells you as a Duty incumbent on them.

Mr. Just. Withins. If you demur, and shew what your Causes are, we will assign you Counsel.

Col. Sidney. I desire you would not try me, and make me to run on dark and slippery Places I don't see my Way.

L. C. J. Don't apprehend yourself to be so, as if the Court would run you on any Inconvenience. But they are bound to see the Methods of Justice preserved, they are those that you, and all the King's Subjects are bound to conform to. If any one of us were in the same Condition, we must observe the same Methods of Law.

Cl. of Cr. Art thou Guilty or not Guilty?

Col. Sidney. Then pray, my Lord, will you tell me this, Is it true, that

a Man, how vitious soever an Indictment is, must answer or demur to it?

L. C. J. He must either answer or demur.

Col. Sidney. Are there no Exceptions to be admitted?

L. C. J. None: And if you don't do the one, or the other, Judgment passes, as if you had pleaded Guilty.

Col. Sidney. Here is a Plea.

Mr. Just. Withins. Will you stand by it? Consider yourself, and your Life, if you put in that Plea, and Mr. Attorney demurs, if your Plea be not good, your Life is gone.

Col. Sidney. Pray, my Lord, give me a Day to consider of it.

L. C. J. No, we must not introduce new Methods or Forms for any body. The same Case that is with you may be with other People.

Col. Sidney. My Lord, I do not pretend to any thing but what is Law, and due to every Man upon English Ground. I would be very sorry to do that which may be hurtful.

L. C. J. You have the Rule of the Court. You must do one or the other. Call him to it.

Col. Sidney. I desire this may be read. [Shewing the same Parchment.]

L. C. J. It shall not be read unless you put it in as a Plea.

Mr. Sol. Gen. I must do my Duty. Mr. Williams exceeds his Liberty, he informs the Prisoner several Things.

Mr. Williams. I only said, if it was a Plea, put it in, Mr. Attorney can hear all I say. [Whereupon Mr. Williams was reproved by the Lord Chief Justice.]

Col. Sidney. I only give it as Exceptions to the Bill.

Cl. of Cr. Art thou Guilty or not Guilty?

Col. Sidney. If any one should ask me any particular Thing, I could tell how to answer.

L. C. J. He asks you a particular Thing. 'Tis the Duty of the Court to pronounce Judgment, if you do not plead.

Col. Sidney. Why then, if you drive me upon it, I must plead.

L. C. J. I am sure there is no Gentleman of the long Robe would put any such thing into your Head. There was never any such thing done in Capital Matters.

Col. Sidney. My Lord, I am there indicted for Conspiring the Death of the King; I have not conspired the Death of King: I am there indicted for Levying of War; I have not done that: I am indicted for having invited in others of another Nation; I have not done that neither: I am there indicted to have written a seditious Libel to stir up the Spirits of the People against the King; I have not written any thing to stir up the People against the King.

L. C. J. We are not to hear all this, you must plead as other People, or else in plain English we will pronounce Sentence. We ought to give all Men Satisfaction that will be satisfied; but if they won't be directed we can't help that.

Col. Sidney. My Lord, if you put me upon this inevitable Necessity, it lies upon you; I must plead then.

Cl. of Cr. Art thou Guilty or not Guilty?

Col. Sidney. Not Guilty.

Cl. of Cr. Culprit, How wilt thou be tried?

Col. Sidney. By God and my Country.

Cl. of Cr. God send thee a good Deliverance.

L. C. J. If you be not guilty, I pray God you may escape.

Mr. Att. Gen. My Lord, will you please to appoint a Day for his Trial, that he may take notice of it now?

L. C. J. What time would you have?

Mr. Att. Gen. A Week's Time, do you think that will be enough?

Col. Sidney. No, pray, my Lord, give me a Fortnight's Time.

Mr. Att. Gen. I won't oppose it.

Col. Sidney. In the next Place I desire a Copy of the Indictment.

L. C. J. We can't grant it by Law.

Col. Sidney. I desire you would please to give me Counsel.

L. C. J. We can't do it; if you assign us any particular Point of Law, if the Court think it such a Point as may be worth the debating, you shall have Counsel: But if you ask for Counsel for no other Reason than because you ask it, we must not grant it. The Court is bound to see that nothing be done against you, but what is according to the Rules of Law. I would be very loth to draw the Guilt of any Man's Blood upon me.

Col. Sidney. Has not every Body Counsel?-----L. C. J. No.

Col. Sidney. I have several Points of Law.

L. C. J. Tell us them.

Col. Sidney. My Lord, will you oblige me that am an ignorant Man, and confess myself so, upon hearing my Indictment for Things I know not of a long Time, presently to raise a Point of Law?

L. C. J. 'Tis not we oblige you, Mr. Sidney, 'tis the Law obliges you. We are the Ministers of the Law, 'tis the Law says we are not to allow you Counsel without making your Objections, that the Court may understand whether it be fit: 'Tis the Law says we may not allow you a Copy of the Indictment. Therefore don't go away and say that we as Men sitting here impose upon you, we sit here only to administer the Justice of the Nation.

Mr. Just. Withins. Sir, you will have a Fortnight's Time to consider of Objections in Law.

L. C. J. If you will have it read, you shall. Those Things that you may have by Law, God forbid but you should have the Benefit of them.

Col. Sidney. I desire, my Lord, to hear it read again.

Mr. Att. Gen. Would you have it read in Latin?

Col. Sidney. Yes, if you please, I do understand a little Latin.

Then the Indictment was read in Latin.

Col. Sidney. What is that Statute;

L. C. J. When you come to your Trial, Mr. Attorney will tell you what Statute he goes upon. And he may give in Evidence any Act of Parliament that comprehends Treason.

Col. Sidney. Methinks he should say what Statute he goes upon.

Mr. Just. Withins. Sir, would have a new Indictment for you?

L. C. J. He must take notice of his Trial this Day Fortnight. Lieutenant of the Tower, you may take the Prisoner back again.

Then the Lieutenant of the Tower took away his Prisoner.



ON the 21st of November, *Algernon Sidney*, Esq; was brought to the Bar of the Court of King's-Bench by *Habeas Corpus*, and Proclamation for Information being made, he desired Pen, Ink and Paper, which were granted him. And he also desired, that two persons, (*viz*) *Mr. Wynn* and *Mr. Gibbs*, might write for him, which was also allowed by the Court.

*Col. Sidney*. My Lord, when I was last here before your Lordship, I did desire a Copy of my Indictment, and I thought the Law did allow it me. But being in an hurry, carried first to a Tavern, then led through Soldiers, and surprized absolutely, I could not give that Reason why I thought the Law allowed me a Copy. My Lord, I was denied a Copy, and thereby I was deprived of the Benefit of a special Plea I designed to have put in. This would have been a great Help to your Lordship, and to me; the Denial of which hath been a great Prejudice. Now, my Lord, that which I thought was Law then, I think I can give a better Testimony that 'tis so now upon the Statute of 46 *Edw. III.* wherein 'tis expressed, that *tout parties & tout gens*, that is, all People shall have a Copy of every Record; and it enumerates several Matters, as well that against the King as other People. This is a general Law still in force: My Lord *Stafford*, had a Copy, and my Lord *Stafford*, and the Lords in the Tower had Copies of their Indictments. And, under favour, I think it was never more necessary than to me, there never having been, perhaps, a Charge so long and so confused. Now, my Lord, I have a Copy transcribed of this Statute. [*Shewing a Paper.*]

*L. C. J.* We remember the Law very well. *Mr. Sidney* did move for a Copy of the Indictment, and the Court denied him then, and so shall now. And yet all this while we shall deny you nothing that is Law. You shall have the Right that becomes a Subject in your Condition. And we must tell you, that notwithstanding all that Case we ought not to have given you so much Favour (perhaps in strictness) as we did. And because you did particularly take notice of the Case of *Sir Henry Vane* last Time, I will shew you the Court did indulge more to you than was done to that Person. In *Sir Henry Vane's* Case, by the Opinion of all the Judges, it was declared, that no Copy ought to be given, neither of the whole, nor any part of the Indictment, except they shew Matter of Law. But your Counsel, since you went away, moved for the Copy of the Indictment; and to satisfy them, I directed the Case that you took notice of to be read in the Court: And I thought they had been sufficiently satisfy'd. You had the Indictment read to you in *Latin*, which was denied in the Case of *Sir Henry Vane*. And there is a later Case known to most Persons here. By the Opinion of all the Judges of *England*, a Copy of the Indictment was denied to my Lord *Russel*. Therefore arraign him upon the Indictment; we must not spend our Time in Discourses to captivate the People.

*Col. Sidney*. Is not this a good Law, my Lord? [*Holding out the Paper.*]  
*L. C. J.* You have the Rule of the Court.  
*Mr. Just. Withens*. Any thing the Law will allow you, you shall have; but I am sure if you did advise with your Counsel, they must tell you the same Thing.  
So the Clerk of the Crown called the Jury, and after several Challenges, the Names of the Jury were as follow,

<i>John Amger,</i>	} Jur'	<i>Josias Clerke.</i>
<i>Richard White,</i>		<i>George Glisby.</i>
<i>William Linn,</i>		<i>Nicholas Baxter,</i>
<i>Lawrence Wood,</i>		<i>William Reeves,</i>
<i>Adam Andrews,</i>		<i>William Grove, and</i>
<i>Emery Arguise,</i>		<i>John Burt.</i>

*L. C. J.* Look you, Gentlemen of the Jury, there are some Gentlemen at the Bar, as we are informed, are apt to whisper to the Jury; 'tis no part of their Duty: nay, 'tis against their Duty: And therefore, Gentlemen, if you hear any of them by you that offer to whisper, or make Comments in this Cause, as you are upon your Oaths, and I doubt not but will do your Duty between the King and the Prisoner; so I expect if you hear the Counsel say any thing, you will inform the Court. Let us have no Remarks, but a fair Trial in God's Name.

*Cl. of Cr.* You that are sworn, look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of *Algernon Sidney*, of, &c. (as in the Indictment) your Charge is to inquire, &c.

Then Proclamation for Evidence was made.

*Mr. Dolben*. May it please your Lordship, and you Gentlemen that are sworn, This is an Indictment of High-Treason preferred against *Algernon Sidney*, the Prisoner at the Bar. The Indictment sets forth, That he, as a false Traitor against our most Illustrious Prince, *Charles the Second*, his natural Lord, not having the Fear of God in his Heart, &c. On the Thirtieth of June, in the Thirty Fifth Year of the King, and divers other Days and Times, as well before as after, in the Parish of *St. Giles in the Fields*, in the County of *Middlesex*, traitorously, with divers Traitors unknown, did conspire the Death of the King, and to levy War within the Kingdom. And, to complete these Traiterous Purposes, did then, and there maliciously, advisedly and traitorously, send one *Aaron Smith* into *Scotland*, to excite some ill disposed Persons of that Kingdom to come into this, and to consult with the said *Algernon Sidney*, and other Traitors, of and upon Assistance from the Kingdom of *Scotland* to carry on those Designs. And the Indictment sets forth further, that to persuade the People of *England* it was lawful to raise Rebellion, the said *Algernon Sidney* did cause to be written a false seditious Libel, in which are contained these *English Words*, *The Power originally in the People of England is delegated unto the Parliament. The King is subject to the Law of God, as he is a Man to the People that makes him a King. In as much as he is a King, the Laws sets a measure unto that Subjection, &c.* (as in the Indictment.) This is laid to be against the Duty of his Allegiance, against the Peace of the King, his Crown and Dignity, and against the Form of the Statute in that Case made and provided. If we prove him Guilty, we doubt not but you will find it.

*Mr. Att. Gen.* My Lord, and you Gentlemen of the Jury, the Prisoner at the Bar stands indicted of the highest Crimes, the conspiring the Death of the King, and the Overthrow of

the *English Monarchy*. Gentlemen, we shall use this Method in our Evidence. We shall shew by many Witnesses, that there was a Design of raising and making a Rebellion within this Kingdom: For, Gentlemen, you must take notice, and I think there is no *Englishman* but does believe, that for several Years last past a Design was laid, and for that purpose several secret Insinuations were made use of, and public Libels spread abroad to persuade the People, that the King was introducing Arbitrary Power; that he subverted all their Rights, Liberties, Properties, and whatever was dear to them. They endeavoured to make the World believe the King was a *Papist*. And when, Gentlemen, by such Stratagems they had worked upon many incautious Persons, when they thought they had gotten a sufficient Party, then there was a Design of an open Rising, (for they thought all Things were ripened) and that was to be in several Parts of the Kingdom. Some Persons, to effect this Design, were for a present Assassination of the King. Others would do it in a more fair and gentle way. They thought it below Persons of that great Quality as the Prisoner is, and therefore were for doing it by open Force.

When we have given that general Evidence, we shall then come to shew you what Share and Part the Prisoner had in this Design. For certainly he was looked upon as a very eminent Person, whose Education abroad, and former Practices at home had rendered him fit for to advise and proceed in such Affairs. We shall prove when these Matters were ripe, this Gentleman was of the Council of State, of the Six that were to manage this Matter of the Rising. We shall shew the several Consultations they held; one at *Mr. Hambden's House*, another at the House of my Lord *Russel*. There we shall acquaint you what Debates they had; for they acted like very subtle Men; and there they debated, whether the Rising should be first in the Country or City, or both together. They came to a Resolution it should be in both Places at once. Then, when they had asserted that Point, they come to consider the Time of Rising; and upon that they thought fit to call in Aid of *Scotland* first; and that was this Gentleman's particular Province. For he, being a Man of great Secrecy, was to send an Emissary into that Kingdom, and invite some Persons over to treat with them about it. We shall prove that an Emissary was sent, and this Gentleman gave him a considerable Sum to bear his Charges. We shall prove that several *Scotch Gentlemen*, in Pursuance of this Resolve, came here to treat with this great Council of State, about this Affair: And shall make it appear to you, that as soon as ever the least Discovery of this Plot was, These Persons concealed themselves and withdrew, as the rest of the Plotters that have fled from Justice.

Gentlemen, this was not enough for this Gentleman to consult on these several Passages, but to demonstrate to the World, that his Head and Heart was entire in this Service, and that he might carry it on the more effectually, he was at this very time, when this Emissary was gone into *Scotland*, preparing a most Seditious and Traiterous Libel; we instance in some particular Words of it; but we shall shew you, that the whole Design of this Treatise is to persuade the People of *England*, that it is lawful, nay, that they have a Right to set aside their Prince, in case it appear to them, that he hath broken the Trust laid upon him by the People. Gentlemen, he does use in that Treatise several Arguments drawn from the most Rebellious Times that ever were in *England*, from the late Rebellion (I must needs use that Word, notwithstanding the Act of Oblivion, when a Gentleman shall now attempt to do those Things for which he was pardoned then) and from other Kingdoms, where Rebellion hath been prosperous against Princes. Then he falls to reasoning, and uses great Reason in the Case, that all the Power of the Prince is originally in the People, and applies that Discourse, that the Power of the King was derived from the People upon Trust, and they had already declared the King had invaded their Rights, and therefore he comes to argue, they might assume that original Power they had conferred. And he tells the King, that is no hard Condition; if he thinks it so, he should lay down his Crown, if not, he threatens the Condition would be exacted, or otherwise should be revenged by those he had betrayed; and who but this Gentleman and his Confederates, that thought himself not only able to govern this Nation, but many Monarchies, should call him to Account for it? For he lays down this Principle, that tho' all the People do rise against their Prince, it is no Rebellion. The whole Book is an Argument for the People to rise in Arms, and vindicate their Wrongs. He lays it down, *That the King has no Authority to dissolve the Parliament; but 'tis apparent the King hath dissolved many; therefore he hath broken his Trust, and invaded our Rights. And at last concludes with that Passage laid in the Indictment, We may therefore shake off our Yoke; for 'tis not a Yoke we submitted to, but a Yoke by Tyranny (that must be the meaning of it) they have imposed on us.*

Gentlemen, if we prove all these Matters to you, I doubt not you will do right to the King and Kingdom, and shew your Abhorrence of those Republican Principles; which, if put in Practice will not only destroy the King, but the best Monarchy in the World.

*Mr. Sol. Gen.* Pray call *Mr. West*.

*Mr. Finch.*

[*Who appeared.*]

*Col. Sidney*. I pray one Word, my Lord, before *Mr. West* be sworn: I have heard, my Lord, *Mr. West* hath confessed many Treasons, I desire to know whether he is pardoned, or no?

*L. C. J.* I don't know that.

*Col. Sidney*. My Lord, how can he be a Witness then?

*L. C. J.* Swear him: For I know no Legal Objection against him. He was a good Witness in my Lord *Russel's* Trial.

*Col. Sidney*. My Lord, if another did not except against him, 'tis nothing to me.

*Mr. North*. Pray give an Account to the Court of what you know of a general Insurrection intended in *England*.

*Col. Sidney*. What he knows concerning me.

*L. C. J.* We will take care of that, that no Evidence be given but what ought to be.

*Col. Sidney*. Is it ordinary that he should say any thing, unless it be to me and my Indictment?

*L. C. J.* *Mr. Sidney*, You remember in all the Trials about the late *Papish Plot*, how there was first a general Account given of the Plot in *Coleman's*



man's Trial, and so in *Plunket's*, and others: I don't doubt but you remember. And Sir *William Jones* against whose Judgment, I believe, you won't object, was Attorney at that time.

Mr. North. Mr. *West*, What do you know of the general Insurrection lately design'd?

Mr. *West*. My Lord, I have had the Honour to know Colonel *Sidney* several Years; but I don't remember that I ever saw him from the time I came acquainted with any part of the Conspiracy, till the Discovery that was at the Council.

Mr. North. Pray give an Account of what you know of the Plot in general.

Mr. *West*. My Lord, in *October* last, Captain *Walcot* came to me, and told me that my Lord *Shaftesbury* had designed an Insurrection in *November*; I used some Arguments to dissuade him from it. But a little afterwards he came and told me, the Thing was wholly disappointed, and then it went off, and my Lord *Shaftesbury* went for *Holland*. Colonel *Rumsey* afterwards, about *Christmas*, said there were some Lords and Gentlemen intended to make an Insurrection; the Persons were the Duke of *Monmouth*, my Lord of *Essex*, my Lord *Howard*, my Lord *Russel*, the Prisoner at the Bar, and Mr. *Hambden, jun.* After some time he told me they had altered their Measures, and were resolved not to venture upon an Insurrection in *England*, 'till they had a Concurrence in *Scotland*. Afterwards I was not privy to any thing else, but what I had the Report of from Mr. *Nelthrop* and Mr. *Ferguson*. Mr. *Nelthrop* told me the Prisoner had said—

Col. *Sidney*. My Lord, I am very unwilling to interrupt the Gentleman—

L. C. J. You must not interrupt the Witness. Go on, Sir.

Mr. *West*. Mr. *Nelthrop* told me, the Prisoner at the Bar had sent *Aaron Smith* into *Scotland*, and given him a Sum of Money to bear his Charges, and sent Letters to some *Scotch* Gentlemen to invite them to Town. The Letter bore a Cant of settling some Business in *Carolina*; but the Business was coming up about the Insurrection. After this Mr. *Smith* returned, and some *Scotch* Gentlemen with him; and soon after Mr. *Ferguson* gave an Account of that Affair, and said, the *Scotch* proposed, if they might have Thirty Thousand Pounds in ready Money, they would undertake to make an Insurrection in *Scotland*, without the Concurrence of *England*. He said this Proposal was agreed to, and Money would be soon ready; and he said that *Sheppard* would return the Money. That the Arms were ready bought, and my Lord of *Argyle* would go into *Scotland*, and head the *Scots*. He told me when Things were thus settled, some difference arose about raising the Money; and at last he told me, my Lord *Grey* did offer to raise ten thousand Pounds out of his own Estate, if the rest would pay their Proportion. Then the *Scots* came down to less, but that would not be complied with. The Places for the Rising were *Bristol*, *Taunton*, *York*, *Chester*, *Exeter*, *London*. That there had been some Debates, whether they should begin at *London* or the other Places, and at last it was resolved they should begin at *London* with the rest of the Places.

My Lord, This was the Account I had of the Matter in general of Mr. *Ferguson*; but he said they were disappointed. Afterwards he told me the Prisoner at the Bar, and Major *Wildman*, were very instrumental in working of it off, because they could not agree upon the Declaration to be made upon the Insurrection. The *English* were for a Commonwealth: but the *Scotch* Gentlemen answered fairly, it might come to it in time, but the Noblemen there would not agree to it at present. As to the Prisoner in particular, I know nothing, and did never speak with him 'till since the Discovery.

Mr. Att. Gen. Colonel *Rumsey*. [Sworn.]

Mr. North. Pray, Sir, will you give the Court an Account of what you know of any Insurrection intended, and how they designed to carry it on?

Col. *Rumsey*. My Lord, the latter end of *October*, or the beginning of *November*, I was desired by my Lord *Shaftesbury* to go to Mr. *Sheppard's* to know of the Gentlemen that were met there, what was done about the Rising intended at *Taunton*; and I had their Answer, that Mr. *Trenchard* had failed them, and that it must cease for that time. That was all at that time.

Mr. Sol. Gen. What else do you know of any Insurrection afterwards?

Col. *Rumsey*. After that we had several Meetings at Mr. *West's* Chamber, where we had divided the City into twenty Parts, and seven Parts Mr. *Goodenough* had brought an Account of; the other thirteen he said nothing of; for he had not spoke with those that were to tell him how many Men they would afford. There was there Captain *Walcot*, Mr. *West*, the two *Goodenoughs*, Mr. *Borne*, Mr. *Wade*, and myself.

L. C. J. What was the result of those Debates?

Col. *Rumsey*. To see what Number of Men they could produce in the City for the Insurrection.

L. C. J. Was there a Rising designed?

Col. *Rumsey*. Yes.

L. C. J. And did these People meet?

Col. *Rumsey*. There was no time set.

Mr. Sol. Gen. When was the Meeting?

Col. *Rumsey*. There were several Meetings in *March*, and *April*, and *May*.

Mr. Sol. Gen. After the Meeting at *Sheppard's*?

Col. *Rumsey*. Yes, a great while. It ceased, I think, six Weeks or three Months.

L. C. J. Who did you meet with at Mr. *Sheppard's*?

Col. *Rumsey*. There was the Duke of *Monmouth*, my Lord *Grey*, my Lord *Russel*, Sir *Thomas Armstrong*, Mr. *Ferguson*, and Mr. *Sheppard*.

Mr. Sol. Gen. Who did you expect should head this Army?

Col. *Rumsey*. That was never said any thing of.

Mr. Att. Gen. Who were to manage the Rising?

Col. *Rumsey*. We that met there.

Mr. Att. Gen. Had you no expectation of great Men?

Col. *Rumsey*. Mr. *West* told me, and Mr. *Goodenough*, that there was a Council, which were the Duke of *Monmouth*, my Lord *Essex*, my Lord *Howard*, Colonel *Sidney*, Mr. *Hambden*, and my Lord *Russel*, there were Six.

L. C. J. What did he tell you of them Six?

Col. *Rumsey*. He told me they were managing a Business with *Scotland*.

L. C. J. A Business, pray speak plain, tell all you know.

Col. *Rumsey*. For the Insurrection.

L. C. J. Say so then, we know nothing of the Business you were about.

Col. *Rumsey*. My Lord, Mr. *West* had that Discourse with my Lord *Howard* I never had; he is more fit to speak to that than me.

L. C. J. Speak your own Knowledge and no more.

Mr. *Jones*. After the Death of my Lord *Shaftesbury*, who were the Managers, and were to carry it on?

Col. *Rumsey*. I told you, Mr. *West* and Mr. *Goodenough* did tell me the Duke of *Monmouth*, my Lord *Essex*—

Mr. Att. Gen. He told you so before. Do you know there was an Insurrection then intended?

Col. *Rumsey*. Yes, because we met towards the Management of it; the Company that met at Mr. *West's* Chamber, and other Places.

Mr. Att. Gen. What Discourse had you with Mr. *Ferguson* about it?

Col. *Rumsey*. Not about those Gentlemen.

Mr. North. The next Thing we shall shew, shall be that the *Scotchmen* came to Town.

Col. *Sidney*. My Lord, I must ever put you in mind, whether it be ordinary to examine Men upon Indictments of Treason concerning me that I never saw, nor heard of in my Life.

L. C. J. I tell you, all this Evidence does not affect you, and I tell the Jury so.

Col. *Sidney*. But it prepossesses the Jury.

Mr. Keiling called and sworn.

Mr. Att. Gen. I ask you in general, what you know of the Rising to have been last Spring?

Mr. Keiling. My Lord, It was some time last Summer, Mr. *Goodenough* came to me, and brought me three Papers numbered on the backside; I asked him to what end he delivered them me? He told me, One was for myself, and I was to deliver the other Two to whom I could trust in the two Divisions. I asked him, what was the Design? He said, to raise Men. Says I, Do you design a general Insurrection? He said, if he did not, if the King was taken off this would do well; for then People would know how to have recourse to a formidable Body. And I have heard him say, that Colonel *Sidney*, whom I don't know, had a considerable Part in the Management of that Affair.

Mr. Att. Gen. We charge him with Conspiring, and there must be Confederates in the Case, Now then we come to the Prisoner, we will call my Lord *Howard*, that was one of the Persons that did consult.

The Lord *Howard* sworn.

Mr. Att. Gen. Pray acquaint my Lord and the Jury of your Knowledge, of what Transactions there have been with the Prisoner about this Affair of the general Rising.

Lord *Howard*. Truly, my Lord, in the entering of the Evidence I am about to give, I cannot but observe, what a natural Uniformity there is in Truth. For the Gentlemen that have been before, have so exactly instanced, in every Particular, with what I have to say, that two Talles could not more exactly fall into one another, though I confess I had not seen their Faces, 'till the Plot broke out, for some Months before.

My Lord, and Gentlemen of Jury, About the middle of *January* last, it was considered by some of us that met together, that it was very necessary and expedient to an Enterprize that had been long in Hand, and fallen flat then, that it should be revived by some Consult or Cabal, that should be set up to give life to it, and Governance to the Motions of it. The first (for ought I know) Movers of this were the Duke of *Monmouth*, the Gentleman at the Bar, and my Self: And there we did agree, that we should bethink ourselves of some few, we were willing it should not exceed Five, at the most Seven. This Agreement being at first between us Three; I remember the Duke of *Monmouth* undertook to engage my Lord *Russel*, and my Lord *Salisbury*; and this Gentleman Colonel *Sidney* for my Lord of *Essex*, and Mr. *Hambden*; and these being put together, did presently constitute a little Cabal, of as great a Number as was intended. This being settled among them, it was within a few Days after, I can't certainly tell when, but between the middle and latter end of *January* that I was told, that the Persons had agreed to enter into this Conjunction of Councils; and in order to that, they had appointed a Meeting at Mr. *Hambden's* House, to which I was invited. This, in time, was between the middle and latter end of *January*, but I can't tell exactly. When we came there, there were all those Gentlemen I before named, the Duke of *Monmouth*, my Lord *Essex*, my Lord *Russel*, Colonel *Sidney*, Mr. *Hambden*, and my Self. It was at Mr. *Hambden's* House which ranges on the same Row with *Southampton* House: And being met, Mr. *Hambden*, I suppose, did think it most properly belonged to him to take upon him the Part as it were to open the Sessions, that was, to give us a little Account of the Reason, End, and Intention of that Meeting: In which Discourse, he took Occasion to recapitulate some Design, that had been before chiefly carried on by my Lord *Shaftesbury*, before this time Dead; and also took notice of the ready Disposition and Inclination of the Minds of Men to go on with it; and did give one Instance of his Judgment of it, That it being a Design communicated to so many, it had not been so much as Revealed, or a Murmur or Whisper gone about it: From whence he took occasion to tell us, that it was absolutely necessary for the future, there should be some Council that should be as a Spring, a little to guide and govern the Motions of the rest, for that there were divers Things to be taken care of, which if not taken care of by particular Persons, would all miscarry. This was the Substance of the Prologue and Introduction he made. From hence he made a Transition to some particular Things, that he thought were most principally to be taken care of. And though it is impossible for me to remember the Order and Method in which we discoursed, or who said this or that; but that which the Sense of all resulted to was this: That since we did not come prepared for it, we should consider what were the Things that would hereafter challenge our particular Care, that was, the Time when, the Places where, and the Persons by whom these Things should be carried on. This led into some particular Discourse concerning some of these Heads: For the Time, that it should be shortly, lest the Minds of Men should chill; and then as to the Place where, whether in City or Country, or both jointly. In all these, some Opinions were given, but not settled to any Resolution, but they were



were committed to our Thoughts to be digested afterwards. But these being the Things that every one was to take upon his Thoughts, there was this Pre-requisite to the Undertaking, and that was to consider what *Magazines* were to be got; and that led to another Particular, which was, with what they should be gotten, and that was Money; and thereupon was propounded a considerable Sum to be raised: and, as I remember, the Sum propounded by the Duke of *Monmouth* was *Twenty-Five Thousand Pounds*, or *Thirty Thousand Pounds*. And then it was considered, how it should be raised without drawing Observation or Jealously. These are only the Heads that were then agreed on, hereafter to be better considered. But the present Resolution that was taken, was, that before any Procedure was made in any of these Things, or any Advance towards the Undertaking; the first thing to be considered was, How to make a Coalition of Councils between *Scotland*, and what we were doing here; and for that purpose, we should bethink ourselves of some fit Person to be sent thither, to Unite us into one Sense and Care. This is as much as occurs to my Memory upon that Meeting. About a Fortnight or three Weeks after, which I suppose carried it to the middle of *February* next, we had another Meeting, and that was at *Southampton-House* at my Lord *Russell's*, and there were every one of the same Persons; and when we came there, there happened to fall in a Discourse which I know not how it came in, but it was a little warmly urged, and thought to be untimely, and unseasonable; and that I remember was by Mr. *Hambden*, who did tell us, That having now united ourselves into such an Undertaking as this was, it could not but be expected, that it would be a Question put to many of us; To what end all this was? Where it was we intended to Terminate? Into what we intended to Resolve? That these were Questions he met with; and it was probable, every one had or would meet with from those Persons whose Assistance we expected; and that if there was any thing of a Personal Interest designed or intended, that there were but very few of those, whose Hearts were now with us, but would fall off: And therefore, since we were upon such an Undertaking, we should resolve ourselves into such Principles, as should put the Properties and Liberties of the People into such Hands, as it should not be easily invaded by any that were trusted with the Supreme Authority of the Land; and it was mentioned to Resolve all into the Authority of the Parliament. This was moved by him, and had a little Harshness to some that were there; but yet upon the whole Matter we generally consented to it, That it was nothing but a Public Good that we all intended. But then after that, we fell to that which we charged ourselves with at the first Meeting, and that was concerning sending into *Scotland*, and of settling an Understanding with my Lord of *Argyle*: And in order to this, it was necessary to send a Messenger thither to some Persons, whom we thought were the most leading Men of the Interest in *Scotland*: This led us to the inquiring on some particular Persons; the Gentlemen named, were my Lord *Melvin*, Sir *John Cockram*, and the *Campbells*; I am sure it was some of the Alliance of my Lord of *Argyle*, and I think of the Name. As soon as this was propounded, it was offered by this Gentleman Colonel *Sidney*, that he would take the Care of the Person; and he had a Person in his Thoughts, that he thought a very fit Man to be intrusted; one or two, but one in special, and he named *Aaron Smith* to be the Man, who was known to some of us, to others not; I was one that did know him, and as many as knew him, thought him a proper Person. This is all that occurs to me that was at the second Meeting, and they are the only Consults that I was at.

Mr. Att. Gen. What was he to do?

Lord Howard. There was no particular Deed for him, more than to carry a Letter. The Duke of *Monmouth* undertook to bring my Lord *Melvin* hither, because he had a particular Dependence upon him, and I think some Relation to his Lady: But to Sir *John Cockram* there was a Letter to be sent under the disguise of carrying on some Business of the Plantation in *Carolina*. This Letter I suppose was writ by my Lord *Russell* (tho' I know it not) for he was personally known to my Lord *Russell*, and I don't know that he was known to any of us. About three Weeks after this, then he was dispatched I suppose.

Mr. Att. Gen. To what purpose were these Gentlemen to come up?

Lord Howard. These were to acquaint us how they found *Scotland* tempered, and what Opportunities or Advantages there were or might be of putting them into a Commotion, and how Men might be raised, and how they would fall under *Argyle*, and also to keep Time and Place with us. After this, I was with Colonel *Sidney*, when he was going into *London*, and he did take out several Guineas, I can't tell how much it was, I suppose they might be about sixty, and put them into his Pocket (and set me down at my Lodging) which he said were to give *Aaron Smith*; whether he gave it or no, I don't know; and after that he was sent.

Mr. Att. Gen. Who told you so?

Lord Howard. Colonel *Sidney*. For I was inquiring of him; and he said, he had not heard of him in three Weeks, or but once, when he was about *New-Castle*. After this, I had Occasions that called me into the Country, and there I was. Some time after that I went to the Bath: And this is all the Account I can give.

Mr. Sol. Gen. Do you know that *Aaron Smith* did go?

Lord Howard. I know nothing but by hear-say. Colonel *Sidney* told me he was gone, and was upon the Road, and he heard from him about *Newcastle*.

L. C. J. Did you understand by the Discourse after he was gone, that he went in pursuance of that Debate?

Lord Howard. Yes, my Lord, That was the whole end of his going.

Mr. Just. Withins. I think you say, that Gentleman [speaking of Col. *Sidney*] undertook to send him.

Lord Howard. Yes, he did.

L. C. J. Will you ask him any Questions?

Col. *Sidney*. I have no Questions to ask him.

Mr. Att. Gen. Silence—You know the Proverb. The next Step is to shew you, my Lord, that these Persons came up immediately after *Aaron Smith* went down thither; and according to that which was said to be the shadow and pretence of their coming hither, they pretended they came about *Carolina* Business. Sir *Andrew Foster* and Mr. *Blathwaite*.

VOL. III.

Sir *Andrew Foster* sworn.

Mr. Att. Gen. Pray, Sir, give an Account what *Scotch* Gentlemen came up lately.

Sir *Andrew Foster*. My Lord, about the End of the Spring, or Beginning of Summer, as I remember, these Gentlemen, Sir *John Cockram*, and Commissary *Monro*, and the two *Campbells*, Father and Son, came up hither. I did not see the Father at all, but I saw the Son the Day of the Lord *Russell's* Trial; but the other two, I think, I saw a little before the Discovery of the Plot.

Mr. Att. Gen. What did they pretend they came about?

Sir *Andrew Foster*. They pretended they came to make a Purchase in *Carolina*, and I saw their Commission from the Persons said to be concerned in that Design.

L. C. J. Who do you speak of?

Sir *Andrew Foster*. Sir *John Cockram* and Commissary *Monro*.

Mr. Att. Gen. As soon as the Rumour came of the Plot, What became of those Gentlemen?

Sir *Andrew Foster*. Sir *John Cockram* absconded, but Commissary *Monro* never absconded; and the *Campbells* I heard were seized changing their Lodging from Place to Place.

Mr. Atterbury sworn.

Mr. Att. Gen. Mr. *Atterbury*, will you give my Lord and the Jury an Account what you know of these *Scotchmen*, their absconding and lying hid.

Mr. *Atterbury*. My Lord, upon the latter End of *June*, or the Beginning of *July*; the Beginning of *July* it was, I was sent for into *London* upon a Discovery of some *Scotch* Gentlemen that lay about *Black-Friers*; and when I came down there, there was the *Common Serjeant* and some others had been before me, and found them making an Escape into a Boat.

Mr. Att. Gen. Who were they?

Mr. *Atterbury*. Sir *Hugh Campbell*, and Sir *John Cockram*, and one that was committed to the *Gatehouse* by the Council, as soon as brought thither.

Mr. Att. Gen. We shall end here, my Lord: How long had they been in Town?

Mr. *Atterbury*. They had been in Town some little time.

Mr. Att. Gen. We have done with this Piece of our Evidence. Now, to shew that while this Emissary was in *Scotland*, at the same time the Colonel (which will be another Overt-Act of the Treason) was writing a treasonable Pamphlet. I will call you the Witnesses. It is all of his own Writings. Sir *Philip Lloyd*.

Mr. Att. Gen. Sir *Philip Lloyd*, pray, will you look upon those Papers, and give my Lord and the Jury an Account where you found them.

Sir *Philip Lloyd*. I had a Warrant, my Lord, from the Secretary by the King and Council, to seize Mr. *Algernon Sidney's* Papers; and pursuant to it, I did go to his House, and such as I found there I put up. I found a great many upon the Table, amongst which were these, I suppose it is where he usually writes; I put them in a Pillow-bier I borrowed in the House, and that in a Trunk; I desired Col. *Sidney* would put his Seal upon them, that there should be no Mistake; he refused, so I took my Seal, and sealed up the Trunk, and it was carried before me to Mr. Secretary *Jenkins's* Office. When the Committee sat, I was commanded to undo the Trunk, and I did so, and found my own Seal upon it. And I took the Papers out of the Bag I put them into before.

L. C. J. Was Colonel *Sidney* present when you seized these Papers?

Sir *Philip Lloyd*. Yes.

Mr. Att. Gen. Are these some of those Papers?

Sir *Philip Lloyd*. Yes, I verily believe it.

Mr. Att. Gen. In the next Place, I think we have some Papers of his particular Affairs which will prove his Hand. Call Mr. *Sheppard*, Mr. *Cooke*, and Mr. *Cary*.

Mr. North. Sir *Philip Lloyd*, When were they seiz'd?

Sir *Philip Lloyd*. Towards the latter End of *June*, my Lord.

Juryman. Which *June*?—Sir *Philip Lloyd*. Last *June*.

Mr. *Sheppard* sworn.

Mr. Att. Gen. Pray, will you look upon those Writings. [Shewing the Libel.] Are you acquainted with Colonel *Sidney's* Hand?

Mr. *Sheppard*. Yes, my Lord.

Mr. Att. Gen. Is that his Hand-writing?

Mr. *Sheppard*. Yes, Sir, I believe so. I believe all these Sheets to be his Hand.

Mr. Att. Gen. How come you to be acquainted with his Hand?

Mr. *Sheppard*. I have seen him write the Indorsement upon several Bills of Exchange.

Mr. *Cary* sworn.

Col. *Sidney*. My Lord, I desire you would please to consider this, that Similitude of Hands can be no Evidence.

L. C. J. Reserve yourself 'till anon, and make all the advantageous Remarks you can.

Mr. Att. Gen. Have you had any Dealing with him?

Mr. *Cary*. I never saw him write to my Knowledge, more than once in my Life, but I have seen his Indorsement upon Bills, and 'tis very like that.

L. C. J. Do you believe it is his Hand, as far as you can guess?

Mr. *Cary*. My Lord, it is like what came to me for his Hand-writing.

L. C. J. And you believe it to be his Hand?—Mr. *Cary*. Yes.

Mr. *Cooke* sworn, and the Papers shewn him.

L. C. J. What say you, Mr. *Cooke*?

Mr. *Cooke*. My Lord, I did never see Colonel *Sidney* write, but I have seen several Notes that have come to me with Indorsement of his Name, and we have paid them, and 'tis like to this.

L. C. J. And you were never called to account for Mispayment?

Mr. *Cooke*. No, my Lord.

Mr. Att. Gen. I pray it may be read. We will read as much as is necessary to prove the Indictment.

Col. *Sidney*. I pray it may be all read.

L. C. J. Mr. *Attorney* must have what Part he desires read, and you shall have what Part you will have read afterwards.

Col. *Sidney*. I desire it may all be read.

5 K

Mr. Att.



*Mr. Att. Gen.* Begin there. Secondly, There was no Absurdity in this, because it was their own Case.

*Clerk Reads.*

Secondly, There was no Absurdity in this, tho' it was their own Case; but to the contrary, because it was their own Case, that is, concerning themselves only, and they had no Superior. They only were the competent Judges, they decided their Controversies, as every Man in his own Family doth, such as arise between him and his Children, and his Servants. This Power hath no other Restriction than what is put upon it by the Municipal Law of the Country, where any Man, and that hath no other Force, than as he is understood to have consented unto it. Thus in England every Man (in a Degree) hath a Right of chastising them; and in many Places (even by the Law of God) the Master hath a Power of Life and Death over his Servant: It were a most absurd Folly to say that a Man might not put away, or in some Places kill an adulterous Wife, a disobedient Son, or an unlawful Servant, because he is Party and Judge, for the Case doth admit of no other, unless he hath abridged his own Right by entering into a Society where other Rules are agreed upon, and a superior Judge constituted, there being none such between King and People: That People must needs be the Judge of Things happening between them and him whom they did not constitute, that they might be great, glorious, and rich; but that they might judge them, and fight their Battles; or otherwise do Good unto them, as they should direct. In this Sense, he that is *singulis Major*, and ought to be obliged by every Man, in his just and lawful Commands, tending to the public Good; and must be suffered to do nothing against it, nor in any Respect more than the Law doth allow.

For this Reason *Bracton* saith, that the King hath three Superiors, to wit, *Deum, Legem, & Parliament*, that is, the Power, originally in the People of England, is delegated unto the Parliament. He is subject unto the Law of God as he is a Man, to the People that makes him a King, in as much as he is a King: The Law sets a Measure unto that Subjection, and the Parliament judges of the particular Cases thereupon arising: He must be content to submit his Interest unto theirs, since he is no more than any one of them, in any other respect, than that he is, by the Consent of all, raised above any other.

If he doth not like this Condition he may renounce the Crown; but if he receive it upon that Condition, (as all Magistrates do the Power they receive) and swear to perform it, he must expect that the Performance will be exacted, or Revenge taken by those that he hath betrayed.

If this be not so, I desire to know of our Author, how one or more Men can come to be guilty of Treason against the King, as *Lex facit ut sit Rea*. No Man can owe more unto him, than unto any other, or he unto every other Man by any Rule but the Law; and if he must not be Judge in his own Case, neither he nor any other by Power received from him, would ever try any Man for an Offence against him, or the Law.

If the King, or such as he appoints, cannot judge him, he cannot be judged by the Ways ordinarily known amongst us. If he, or other by Authority from him, may judge, he is a Judge in his own Case, and we fall under that which he accounts the utmost of all Absurdities. If a Remedy be found for this, he must say that the King in his own Case may judge the People, but the People must not judge the King, because it is theirs; that is to say, the Servant entertained by the Master may judge him, but the Master must not judge the Servant, whom he took only for his own Use. The Magistrate is bound by no Oath or Contract to the People that created him, but the People is bound to its own Creature, the Magistrate.

This seems to be the Ground of all our Author's Follies; he cannot comprehend that Magistrates are for or by the People, but makes this Conclusion, as if Nations were created by or for the Glory or Pleasure of Magistrates, and affects such a Piece of Nonfence; it ought not to be thought strange, if he represent as an absurd Thing, that the heedless Multitude may shake off the Yoke when they please. But I would know how the Multitude comes under the Yoke, it is a Badge of Slavery. He says, that the Power of Kings is for the Preservation of Liberty and Property. We may therefore change or take away Kings without breaking any Yoke, or that made a Yoke which ought not to be one; the Injury is therefore in Making or Imposing, and there can be none in breaking it.

That if there be not an Injury, there may perhaps be an Inconvenience; if the heedless Multitude may shake off the Yoke, I know not why the Multitude should be concluded to be heedless; it is not always so. *Moses* was Head of the Multitude that went out of Egypt; *Othniel* led them against the King of *Mesopotamia*, under the Conduct of *Phœbidas*; they obtained a Victory against the *Moabites*; they had the like Success under *Shamgar*, *Barak*, *Gideon*, *Jephthah*, *Samuel*, *Sampson*, and others against the *Canaanites*, *Midianites*, *Philistines*, and others; the Multitude that opposed *Saul* and *Ishbosheth* had *David* for its Head: and the ten Tribes that rejected *Rehoboam* chose unto themselves *Jeroboam*; the *Athenians* rising against the thirty Tyrants had *Thrasylbulus*; those that drove from *Thebes* were conducted by *Pelopidas*: When the *Romans* drove out the *Tarquins*, they chose *Brutus* and *Publicola*, and they destroyed the *Decemviri* under *Horatius* and *Valerius*. All the Multitudes that afterwards revolted from them under *Mauritius*, *Telerius*, *Spartanus*, and others, were not heedless; and we know of none that were, but all either found Heads, or made them. The *Germans* set up *Arminius*; the *Britons*, and others in later Times; the *Cartinians*, that rose against *Peter the Cruel*, had the Lord *Detraeta Mara*.

The *French*, when they grew weary of the corrupted Races of *Pharamond* and *Pepin*, and the same *Pepin* and *Hugh Capet*: The *Scots*, when they slew *James III.* had his Son to be their Head; and when they deposed and imprisoned Queen *Mary*, the Earl of *Murray* and others supplied the want of Age that was in her Son: And in all the Revolutions we have had in England, the People have been headed by the Parliament, or the Nobility and Gentry that composed it; and when the Kings failed of their Duties, by their own Authority called it. The Multitude therefore is not ever heedless, but doth either find or create Heads unto itself, as Occasion doth require: and whether it be one Man, or a few or more, for a short or a longer Time, we see nothing more regular than its Motions. But they may, saith our Author, shake off the Yoke; and why

may they not, if it prove uneasy or hurtful unto them? Why should not the *Israelites* shake off the Yoke of *Pharaoh*, *Jabin*, *Sisera*, and others that oppressed them?

When *Pride* had changed *Nebuchadnezzar* into a Beast, what should persuade the *Affyrians* not to drive him out amongst Beasts, until God had restored unto him the Heart of a Man? When *Tarquin* had turned the Regal Monarchy of *Rome* into a most abominable Tyranny, why should they not abolish it? And when the Protestants of the *Low Countries* were so grievously oppressed by the Power of *Spain*, under the proud, cruel, and savage Conduct of the Duke of *Alva*, why should they not make use of all the Means that God had put into their Hands for their Deliverance? Let any Man, who sees the present State of the Provinces that then united themselves, judge whether it is better for them to be as they are, or in the Condition unto which his Fury would have reduced them, unless they had, to please him, renounced God and their Religion: Our Author may say, they ought to have suffered: The King of *Spain* by their Resistance lost those Countries; and that they ought not to have been Judges in their own Case. To which I answer, That by resisting they laid the Foundation of many Churches, that have produced Multitudes of Men, eminent in Gifts and Graces; and established a most glorious and happy Commonwealth, that hath been since its first Beginning, the strongest Pillar of the Protestant Cause now in the World, and a Place or Refuge unto those who in all Parts of Europe have been oppressed for the Name of *Christ*: Whereas they had slavishly, and, I think I may say, wickedly as well as foolishly suffered themselves to be butchered, if they had left those empty Provinces under the Power of *Antichrist*, where the Name of God is no otherwise known than to be blasphemed.

If the King of *Spain* desired to keep his Subjects, he should have governed them with more Justice and Mercy; when, contrary unto all Laws, both Human and Divine, he seeks to destroy those he ought to have preserved, he can blame none but himself, if they deliver themselves from his Tyranny: And when the Matter is brought to that, that he must not reign, or they over whom he would reign, must perish; the Matter is easily decided, as if the Question had been asked in the Time of *Nero* or *Domitian*, Whether they should be left at Liberty to destroy the best Part of the World, as they endeavoured to do, or it should be rescued by their Destruction? And as for the People's being Judges in their own Case, it is plain, they ought to be the only Judges, because it is their own, and only concerns themselves.

*Mr. Att. Gen.* The latter end, the last Sheet of all, §. 35.

*L. C. J.* The Argument runs through the Book, fixing the Power in the People.

*Cl. of Cr.* The general Revolt of a Nation from its own Magistrates, can never be called Rebellion.

*Mr. Att. Gen.* §. 37.

*Cl. of Cr.* The Power of calling and dissolving Parliament is not in the King.

*Mr. Att. Gen.* So much we shall make use of; if the Colonel please to have any other Part read to explain it, he may.

Then the Sheets were shewn to Col. Sidney.

*Col. Sidney.* I do not know what to make of it, I can read it.

*L. C. J.* Ay, no Doubt of it, better than any Man here. Fix on any Part you have a mind to have read.

*Col. Sidney.* I do not know what to say to it, to read it in Pieces thus.

*L. C. J.* I perceive you have disposed them under certain Heads: To what Heads would you have read?

*Col. Sidney.* My Lord, let him give an Account of it that did it.

*Mr. Att. Gen.* My Lord, we will not delay Col. Sidney from entering on his Defence, only we have this Piece of Evidence to give further. One of his Accomplices was my Lord *Russel*, we will give in Evidence his Conviction. We will only ask my Lord *Howard*, Was your Lordship sworn as a Witness at the Trial of my Lord *Russel*?

*Lord Howard.* Yes.

*Mr. Att. Gen.* Whether or no, when you met, were there in those Debates any Reflections upon the King, that he had broken his Duty?

*Lord Howard.* Not that I remember.

*Mr. Att. Gen.* Why would you rise?

*Lord Howard.* If you mean upon the Misgovernment, not personally upon the King?

*Mr. Att. Gen.* Ay.

*Lord Howard.* Yes, and principally and chiefly that, which we thought was the general Disgust of the Nation, the imposing upon the City at that Time.

*Mr. Just. Withins.* That was complained of at that Time.

*Lord Howard.* Yes, my Lord, we took it all along to be the chief Grievance.

*L. C. J.* Have you any more Witnesses?

*Mr. Att. Gen.* Only the Record.

*Mr. Sol. Gen.* I know there is no Time mispent to make Things clear. If the Jury have a mind to have the Words read again —

*L. C. J.* If they have a mind, let it.

Then Mr. Trinder was sworn, and testified it to be a true Copy of the Record, and said he examined it at Fishmongers-Hall with Mr. Tanner. Then the Record of the Conviction of Lord *Russel* was read.

*L. C. J.* What will you go to next, Mr. Attorney?

*Mr. Sol. Gen.* We have done, unless the Jury desire to have the Words of the Libel read again. [But they did not.]

*Col. Sidney.* My Lord, I desire to know upon what Statute I am indicted.

*Mr. Att. Gen.* My Lord, I will give as plain an Answer, You are indicted upon the old Statute of 25 Edw. 3.

*Col. Sidney.* Then I desire to know upon what Branch of that Statute?

*Mr. Att. Gen.* Why, I will acquaint you, 'Tis upon the first Branch of that Statute, for conspiring and compassing the Death of the King.

*Col. Sidney.* Then I conceive, what does not come within that, does not touch me.

*Mr. Att. Gen.* Make what Inferences you please, Colonel, we will answer you.

*Col. Sidney.* I desire to know what the Witnesses have sworn against me upon that Point?

*Mr.*



Mr. At. Gen. Go on, you have heard the Witnesses as well as we.

L. C. J. He says you are indicted upon the Statute of 25 Edw. 3. which Statute makes it High-Treason to conspire the Death of the King; and the Overt-Act is sufficiently set forth in the Indictment; now the Question is, whether 'tis proved.

Col. Sidney. They have proved a Paper found in my Study of *Caligula* and *Nero*. That is Compassing the Death of the King, is it?

L. C. J. That I shall then tell the Jury. The Point in Law you are to take from the Court, Gentlemen: Whether there be Fact sufficient, that is your Duty to consider.

Col. Sidney. I say, my Lord; that since I am indicted upon that Statute, I am not to take Notice of any other. I am indicted for conspiring the Death of the King, because such a Paper is found in my House; under Favour, I think that can be nothing at all to me. For tho' Sir *Philip Lloyd* did ask me, whether I would put my Seal to it, he did not ask me till he had been in my Closet; and I knew not what he had put in, and so I told him I would not do it. Then came these Gentlemen upon Similitude of Hands. My Lord, we know what Similitude of Hands is in this Age. One told me within these two Days, that one came to him, and offered to counterfeit any Hand he should shew him in Half an Hour. So then, my Lord, I have nothing to say to these Papers. Then for Point of Witnesses, I cannot be indicted, much less tried or condemned on 25 Edw. 3. for by that Act there must be two Witnesses to that very Branch unto which the Treason does relate, which must be distinguished. For the levying of War, and conspiring the Death of the King are two distinct Things, distinct in Nature and Reason, and so distinguished in the Statute. And therefore the conspiring the Death of the King is Treason, and the other not. 1 Edw. 6. 12. 5 Edw. 6. 11. does expressly say, there must be two Witnesses to either of these Acts. Now here is my Lord *Howard*, (I have enough to say of him by and by) 'tis he only who speaks of six Men, whom he calls a select Council, and yet selected by no Man in the World. I desire to know who selected my Lord *Howard*? Who selected me? If they were selected by no body, 'tis a Bull to say they were a select Council: If they were not selected, but erected themselves into a Cabal then, they have either Confidence in one another, or find they are near equally able to assist in the Design. Here is nothing of all this,—These six men were Strangers to one another. For my own Part, I never spake with the Duke of *Monmouth* above three Times in my Life. and one Time was when my Lord *Howard* brought him to my House and cozened us both. He told the Duke I invited him, and he told me the Duke invited himself, and neither of them was true. Now that such Men as these are, not hardly knowing one another, should presently fall into a great and intimate Friendship, and Trust and Management of such a Business as this is, is a Thing utterly improbable, unless they were mad. Now I do find in my Lord *Howard*'s Deposition against my Lord *Ruffel*, that they were in Prosecution of my Lord *Shaftsbury*'s Design; and yet he acknowledges the Duke of *Monmouth* said he was mad, and he said himself so too. Now that they should join with four more in the Prosecution of the Design of a Mad-man, they must be mad too. Now whether my Lord *Howard* would have you think he was mad, because a Mad-man cannot be guilty of Treason, I cannot tell. My Lord *Howard* in his last Deposition at my Lord *Ruffel*'s Trial, fixes the two Meetings, one about the Middle of *January*, the other ten Days after: Now he fixes one to be the latter End of *January*, the other the Middle of *February*. Then he makes it to be the Prosecution of my Lord *Shaftsbury*'s Design. I do not find that any one there had any thing to do with my Lord *Shaftsbury*, for my Part I had not. I had not seen his Face in two Years. Then, my Lord, that I go upon is, whatever my Lord *Howard* is, he is but one Witness. The Law of God and the Law of Man, understood and taken by all Men, does require two Witnesses; *Moses* says so, so the Apostles the same after him, and *Christ* says the same, that every Matter is to be established by two Witnesses. There ought to be two Witnesses to the same Thing. Now for one to come and tell a Tale of a Tub, of an imaginary Counsel, and another of a Libel, a Paper written no body knows when, is such a Thing you can never go over it. But if the Law of God be, that there must be two Witnesses to the same Fact, there is an End of this Matter. And under the Judicial Law, the Penalty would be in this Case, to put a Man to Death. Now here there are but two Things, which if allowed of, no body will be safe for Perjury. The one is to suffer Men to give their Testimony, one to one Thing, and another to another, that the Fraud cannot be discovered; and the other is to take away the Punishment. Now the Punishment is taken away in some Measure: And do but take away the other Point, whereby the Fraud cannot be discovered; and then there is no Defence can be made. That both Witnesses should be to the same Point; see the Story of *Susanna*. Two Elders testified they saw her in the Act of Adultery: They were carrying of her to Death; both of them said the same Thing; until they were taken asunder and examined, the Fraud was not discovered; and then one said, she was under a Tree of the right Hand, and the other, under the Tree on the left; and she escaped and they were punished. But now if you apply it to several Facts, my Lord *Howard* may say what he pleases, and if another shall come with a supplemental Proof, no Justice can be had. But, my Lord, I desire this, if there be two Witnesses to prove the Conspiracy, and in that there were those Matters done that are Treason, I must answer to it; but if there be not, I presume I need say nothing to it. If you do not allow it me, I desire Counsel to argue it.

L. C. J. That is a Point of Fact, whether there be two Witnesses. I tell you before-hand, one Witness is not sufficient.

Col. Sidney. Why then there is my Lord *Howard*, and never another.

L. C. J. Nay, do not make those Inferences; I will tell the Jury, if there be not two Witnesses, as the Law requires in this Case, they ought to acquit you.

Col. Sidney. You confound me, I cannot stir. You talk of a Conspiracy; what is a Conspiracy to kill the King? Is there any more Witnesses than one for levying of War?

L. C. J. Pray do not deceive yourself; you must not think the Court and you intend to enter into a Dialogue. Answer to the Fact; if there be not sufficient Fact, the Jury will acquit you. Make what Answer you can to it.

Col. Sidney. Then I say there being but one Witness, I am not to answer to it at all.

L. C. J. If you rely upon that, we will direct the Jury presently.

Col. Sidney. Then for levying War, what does any one say? My Lord *Howard*, let him, if he please, reconcile what he has said now, with what he said at my Lord *Ruffel*'s Trial. There he said, he said all he could; and now he has got I do not know how many Things that were never spoken of there. I appeal to the Court, whether he did then speak one Word of that, that he now says of Mr. *Hambden*. He sets forth his Evidence very rhetorically, but it does not become a Witness, for he is only to tell what is done and said, but he does not tell what was done and said. He says, they took upon them to consider, but does not say what one Man said, or what one Man resolved, much less what I did. My Lord, if these Things are not to be distinguished, but shall be jumbled all up together, I confess I do not know what to say.

L. C. J. Take what Liberty you please. If you will make no Defence, then we will direct the Jury presently. We will direct them in the Law, and recollect Matter of Fact as well as we can.

Col. Sidney. Why then, my Lord, I desire the Law may be referred to me, I desire I may have Counsel to that Point of there being but one Witness.

L. C. J. That is a Point of Fact. If you can give any Testimony to disparage the Witness, do it.

Col. Sidney. I have a great deal to that.

L. C. J. Go on to it then.

Col. Sidney. Then, my Lord, was there a War levied? Or was it prevented? Why then, if it be prevented, 'tis not levied; if it be not levied, 'tis not within the Statute; so this is nothing to me.

L. C. J. The Court will have Patience to hear you; but at the same Time I think it is my Duty to advertise you, that this is but mispending of your Time. If you can answer the Fact, or if you have any Mind to put any Disparagement upon the Witnesses, that they are not Persons to be believed; do it, but do not ask us Questions this Way or t'other.

Col. Sidney. I have this to say concerning my Lord *Howard*: He hath accused himself of divers Treasons, and I do not hear that he has his Pardon of any: He is under the Terror of those Treasons, and the Punishment for them: He hath shewn himself to be under that Terror: He hath said, that he could not get his Pardon, until he had done some other Jobs, 'till he was past this Drudgery of Swearing: That is, my Lord, that he having incurred the Penalty of High-Treason, he would get his own Indemnity by destroying others. This by the Law of God and Man, I think, destroys a Man's Testimony. Besides, my Lord, he is my Debtor, he owes me a considerable Sum of Money I lent him in Time of his great Necessity; he made some Covenants with me for the Payment of that Money, which he hath broken; and when his Mortgage was forfeited, and I should take the Advantage the Law gives me, he finds out a Way to have me laid up in the *Tower*: He is a very subtle Man: At my Lord *Ruffel*'s Trial, he carried his Knife, he said, between the Paring and the Apple; and so this is a Point of great Nicety and Cunning, at one Time to get his own Pardon, and at the same Time to save his Money. Another Thing, my Lord, is, when I was Prisoner, he comes to my House, and speaks with my Servant, and says, how sorry he was that I should be brought in Danger upon this Account of the Plot, and there he did in the Presence of God, with Hands and Eyes lifted up to Heaven, swear he did not believe any Plot, and that it was but a Sham; and that he was confident if I had known any thing, I would have told it him. He hath said somewhat of this before, I have several Witnesses to prove both. He was desirous to go further, and he would not only pay my Debt by his Testimony against me, but he would have got my Plate and other Goods in my Hands into his Hands, and he desired my Men, as a Place of Trust, to put them into his Hands. And the next News was, that there was a Warrant against my Lord *Ruffel* and me. But then, my Lord, he made other Affirmations in the same Presence of God, that I was innocent in his Opinion, and he was confident of it; for if he had known any Thing of it, he would have told it. Now I know, in my Lord *Ruffel*'s Case, there was Dr. *Burnet* said something like it. And when he came to answer it, he said he was to face it out, and make the best of it he could. Now he did face it out bravely against God, but he was very timorous of Man. So that my Lord, he does say at the same Time, at my Lord *Ruffel*'s Trial, upon his Oath, that he did believe that the Religious Obligation of an Oath, did not consist in the Formality of applying it to the Place, &c. but in calling God to witness. So that when he did call God to witness before Dr. *Burnet* and my Servant, and others, and this is not consistent with the Oath he has taken here, as the Gentleman said at my Lord *Ruffel*'s Trial, unless he has one Soul in Court, and had another at my House, these Things are inconsistent, and cannot be true; and if he swear both under the Religion of an Oath, he swears himself perjured. Then, my Lord, he talks of *Aaron Smith*, what have I to do with *Aaron Smith*? He says, I sent him; my Lord, there is nobody else speaks a Word of it. Then by a strange Kind of Construction and Imagination, they will have it, that some Papers here, which are said to be found in my Study, have Relation to this Plot, as they call it; I know of none, nor am in none. Now, my Lord, I am not to give an Account of these Papers, I do not think they are before you, for there is nothing but the Similitude of Hands offered for Proof. There is the like Case of my Lady *Carr* some few Years ago: She was indicted of Perjury, and as Evidence against her, some Letters of hers were produced, that were contrary to what she swore in *Chancery*, and her Hand was proved; that is to say, it was like it: But my Lord Chief Justice *Keeling* directs the Jury, that tho' in Civil Causes it is a Proof, yet it is the smallest and least of Proofs; but in criminal Cases it was none at all. So that my Lord *Howard*'s Testimony is single; and what he talks of those two Businesses that he calls a Consult, and *Aaron Smith*, is destroyed by Want of Proof. What could six men do? Can my Lord *Howard* raise five Men by his Credit? By his Purse? Let him say as much for me, with all my Heart; for my Part, I do not know where to raise five men. That such Men as we are, that have no Followers, should undertake so vast a Design is very unlikely: And this great Design that was carried on thus, it had neither Offi-



ters nor Soldiers, no Place, no Time, no Money for it. That which he said last Time, which he forgot now, he talked of twenty five, or thirty thousand Pound, but no Man knew where it was to be had, but last Time he said, it was spoken in Jest. Now this is a pretty Cabal, that six Men should meet about a Business, and they neglect every one of the Points relating to the Thing they met about, make no Step about the Business, and if any one did speak of it, it was but in Jest. This is a very deep maintaining of the Plot. Then, my Lord, as to these Papers, I do not think I am to give any Account of them, I would say nothing to the Disparagement of Sir Philip Lloyd, I never saw him till he came to my House, but yet I say he is the King's Officer, and when I am prosecuted at the King's Suit, I think he ought to be no Witness. The Government of France is violent and absolute, but yet a few Years ago, a Minister of State had his Papers taken from him, and Abundance of them had dangerous Plots against the King in them; but because they were inventoried in his Officers Presence, or those deputed by him, there was no Use could be made of them, it was an irreparable Fault in the Process, and that saved him. The Similitude of Hands is nothing: We know that Hands will be counterfeited, so that no Man shall know his own Hand. A Gentleman that is now dead, told me, that my Lord Arlington about five Years ago, desired him to write a Letter, and seal it as well as he could; he writ it with Care, and sealed it with a Wafer and Wax upon it, and within a few Days, my Lord Arlington brought him five Letters, and he did not know which was his own. The Attorney shews these Papers to me, I do not know whether they are my own or no; but these very Papers, such as they are, do abhor, as much as any one can, such a Design. Look upon them, you see they are all old Ink. These Papers may be writ, perhaps, these twenty Years, the Ink is so old. But, my Lord, it is a polemical Discourse, it seems to be an Answer to *Filmar*, which is not calculated for any particular Government in the World: It goes only upon these general Principles, that according to the universal Law of God and Nature, there is but one Government in the World, and that is intire and absolute; and that the King can be bound by no Law, by no Oath, but he may make all Laws, and abolish them as he pleases: And this whether of Age or no, a Man, or a Child of Sense, or out of his Sense. Now, my Lord, what if any Man in his Cabinet should have written this Book? Then he has another Principle, he says, 'tis the same Thing whether a King come in by Election, by Donation, by Inheritance, or Usurpation, or any other Way; than which, I think, never was a Thing more desperately said. *Cromwell*, when one *White*, a Priest, wrote a Book, wherein he undertook to prove, *That Possession was the only Right to Power*, though he was a Tyrant, and a violent one, (you need not wonder I call him Tyrant, I did so every Day in his Life, and acted against him too) it would be so odious a Principle, he would not endure it, and he used him very slightly for it. Now this *Filmar*, that no Man must write against, is the Man that does assert it, that it is no Matter how they come by their Power, and gives the same Power to the worst Usurpers, as they that most rightly come to the Crown. By the same Argument, if the arrantest Rascal of Israel had killed *Moses*, *David*, &c. and seized upon the Power, he had been possessed of that Power, and been Father of the People. If this be Doctrine, my Lord, that is just and good, then I confess it may be dangerous for any Thing to be found in a Man's House contrary to it; but if a Commoner of England writes his present Thoughts, and another Man looking on his Book writes his present Thoughts of it, what great Hurt is there in it? And I ask Mr. Attorney how many Years ago that was written.

L. C. J. I don't know what the Book was in answer to. We are not to speak of any Book that Sir Robert Filmar wrote, but you are to make your Defence, touching a Book that was found in your Study, and spend not your Time, and the Court's Time, in that which serves to no other Purpose, than to gratify a luxuriant Way of talking that you have. We have nothing to do with his Book, you had as good tell me again, that there was a Parcel of People rambling about, pretending to my Lord Russell's Ghost, and so we may answer all the Comedies in England. Answer to the Matter you are indicted for. Do you own that Paper?

Col. Sidney. No, my Lord.

L. C. J. Go on then, it does not become us to be impatient to hear you, but we ought to advertise you, that you spend not your Time to no Purpose, and do yourself an Injury.

Col. Sidney. I say first, 'tis not proved upon me; And secondly, 'tis not a Crime if it be proved.

L. C. J. You began very materially in one Thing; it is material for you to apply yourself to take off the Credibility of my Lord Howard, that is a Witness; call your Witnesses to that Purpose, or if you have any other Point to take away the Credibility of any other Witness.

Col. Sidney. My Lord, I have seven or eight Points of Law.

L. C. J. I hear not one yet.

Col. Sidney. Why, my Lord, Conspiring to levy War is not Treason, and I desire to have Counsel upon that.

L. C. J. 'Tis not a Question. You had as good ask me, whether the first Chapter in *Littleton* be Law.

Col. Sidney. My Lord, I have neither made War, nor conspired to levy War.

L. C. J. You are still in a Mistake, you shall not think that we intend to dialogue with you, to let you know how far the Proof hath been given or not given, but when we come to direct the Jury, then we shall observe how far the Law requires there should be two Witnesses. But whether there be such a Proof, that must be left to the Jury.

Mr. Just. Withins. If you agree the Conspiracy, I will tell you my Mind of it; I cannot give you my Opinion in Law, till the Fact be stated.

L. C. J. The Law always arises upon a Point of Fact; there can be no Doubt in Point of Law, till there be a Settlement in Point of Fact.

Mr. Just. Holloway. My Lord has put you in a right Way: The Conspiracy is proved but by one Witness, if you have any Thing to take off his Credibility, 'tis to the Purpose.

Col. Sidney. Truly, my Lord, I do as little intend to mis-spell my own Spirit, and your Time, as ever any Man that came before you. Now, my Lord, if you will make a Concatenation of one Thing, a Supposition upon Supposition, I would take all this asunder, and shew, if none of these

Things are any Thing in themselves, they can be nothing joined together. L. C. J. Take your own Method, Mr. Sidney; but I say, if you are a Man of low Spirits and weak Body, 'tis a Duty incumbent upon the Court, to exhort you not to spend your Time upon Things that are not material.

Col. Sidney. My Lord, I think 'tis very material, that a whimsical Imagination of a Conspiracy should not pass for a real Conspiracy of the Death of the King; besides, if these Papers were found in my House, 'tis a Crime created since my Imprisonment, and that cannot come in, for they were found since. My Lord, if these Papers are right, it mentions 200 and odd Sheets, and these shew neither Beginning nor Ending; and will you, My Lord, indict a Man for Treason for Scraps of Paper found in his House, relating to an ancient Paper, intending as innocently as any thing in the World, and piece and patch this to my Lord Howard's Discourse, to make this a Contrivance to kill the King? Then, my Lord, I think 'tis a Right of Mankind, and 'tis exercised by all studious Men, that they write in their own Closets what they please for their own Memory, and no Man can be answerable for it, unless they publish it.

L. C. J. Pray don't go away with that Right of Mankind, that it is lawful for me to write what I will in my own Closet, unless I publish it; I have been told, Curse not the King, not in thy Thoughts, not in thy Bed-Chamber, the Birds of the Air will carry it. I took it to be the Duty of Mankind, to observe that.

Col. Sidney. I have lived under the Inquisition.

L. C. J. God be thanked we are governed by Law.

Col. Sidney. I have lived under the Inquisition, and there is no Man in Spain can be tried for Heresy.

Mr. Just. Withins. Draw no Precedents from the Inquisition here, I beseech you, Sir.

L. C. J. We must not endure Men to talk, that by the Right of Nature every Man may contrive Mischief in his own Chamber, and he is not to be punished, 'till he thinks fit to be called to it.

Col. Sidney. My Lord, if you will take Scripture by Pieces, you will make all the Penmen of the Scripture blasphemous; you may accuse David of saying, There is no God; and accuse the Evangelists of saying, Christ was a Blasphemer and a Seducer; and the Apostles, That they were drunk.

L. C. J. Look you, Mr. Sidney, if there be any Part of it that explains the Sense of it, you shall have it read; indeed we are trifled with a little. 'Tis true, in Scripture 'tis said, there is no God, and you must not take that alone, but you must say, The Fool hath said in his Heart, there is no God. Now here is a Thing imputed to you in the Libel; if you can say, there is any Part that is in Excuse of it, call for it. As for the Purpose, whosoever does publish, that the King may be put in Chains or deposed, is a Traitor; but whosoever says, that none but Traitors would put the King in Chains, or depose him, is an honest Man; therefore apply ad idem, but don't let us make Excursions.

Col. Sidney. If they will produce the whole, my Lord, then I can see whether one Part contradicts another.

L. C. J. Well, if you have any Witnesses call them.

Col. Sidney. The Earl of Anglesey.

L. C. J. Ay, in God's Name, stay 'till To-morrow in Things that are pertinent.

Col. Sidney. I desire to know of my Lord Anglesey, what my Lord Howard said to him concerning the Plot that was broken out.

Lord Anglesey. Concerning this Plot you are now questioned for.

Col. Sidney. The Plot for which my Lord Russell and I was in Prison.

Lord Anglesey. The Question I am asked, is, What my Lord Howard said before the Trial of my Lord Russell, concerning the Plot; I suppose, this goes as a Branch of that he was accused for. I was then in the Country when the Business was on Foot, and used to come to Town a Day or two in the Week, living near in Hertfordshire, and I understanding the Affliction my Lord of Bedford was in, I went to give my Lord a Visit, we having been Acquaintance of above fifty Years standing, and bred together in Maudlin College in Oxford. When I came to my Lord of Bedford, and had administered that Comfort that was fit for one Christian to give another in that Distress, I was ready to leave him, and my Lord Howard came in. It was upon the Friday before my Lord Howard was taken, he was taken (as I take it) upon Sunday or Monday, my Lord Howard fell into the same Christian Office that I had been just discharging, to compassionate my Lord's Affliction, to use Arguments to comfort and support him under it, and told him he was not to be troubled, for he had a discreet, a wife and a virtuous Son, and he could not be in any such Plot (I think that was the Word he used at first, though he gave another Name to it afterward) and his Lordship might therefore well expect a good Issue of that Business, and he might believe his Son secure, for he believed he was neither guilty, nor so much as to be suspected. My Lord proceeded further, and did say, that he knew of no such barbarous Design (I think he called it so in the second place) and could not charge my Lord Russell with it, nor any body else. This was the effect of what my Lord Howard said at that Time, and I have nothing to say of my own Knowledge more than this; but to observe, that I was present when the Jury did put my Lord Howard particularly to it; What have you to say to what my Lord Anglesey testifies against you? My Lord, I think, did in three several Places give a short Account of himself, and said it was very true, and gave them some further Account why he said it, and said, he should be very glad it might have been advantageous to my Lord Russell.

Col. Sidney. My Lord of Clare. I desire to know of my Lord of Clare, what my Lord Howard said concerning this Plot and me.

Lord Clare. My Lord, A little after Colonel Sidney was taken, speaking of the Times, he said, that if ever he was questioned again, he would never plead, the quickest Dispatch was the best, he was sure they would have his Life, though he were ever so innocent, and discoursing of the late Primate of Armagh's Prophecy; for my Part, says he, I think the Persecution is begun, and I believe it will be very sharp, but I hope it will be short, and I said, I hoped so too.

Mr. Att. Gen. What Answer did your Lordship give to it?

Lord Clare. I have told you what I know, my Lord is too full of Discourse.



courte for me to answer all he says; but for Col. Sidney, he did with great Asseverations assert, that he was as innocent as any Man breathing, and used great Encomiums in his Praise, and then he seemed to bemoan his Misfortune, which I thought real; for never was any Man more engaged to another, than he was to Colonel Sidney, I believe. Then I told, they talked of Papers that were found; I am sure, says he, they can make nothing of any Papers of his.

Mr. Att. Gen. When was this?

Lord Clare. This was at my House the beginning of July.

Mr. Att. Gen. How long before my Lord Howard was taken?

Lord Clare. About a Week before.

Mr. Att. Gen. I would ask you, my Lord, upon your Honour, would not any Man have said as much, that had been in the Plot?

Lord Clare. I can't tell, I know of no Plot.

Col. Sidney. Mr. Philip Howard.

Mr. Just. Withins. What do you ask him?

Col. Sidney. What you heard my Lord Howard say concerning this pretended Plot, or my being in it?

Mr. Phil Howard. My Lord, when the Plot first brake out, I used to meet my Lord Howard very often at my Brother's House, and coming one Day from Whitehall, he asked me, what News? I told him, my Lord, says I, there are abundance of People that have confessed the horrid Design of murdering the King, and the Duke. How, says he, is such a thing possible? Says I, 'tis so, they have all confessed it. Says he, do you know any of their Names? Yes, says I, I have heard their Names. What are their Names, says he? Why, says I, Col. Rumsey, and Mr. West, and one Walcot and others that are in the Proclamation; (I can't tell whether Walcot was in Hold) says he, 'tis impossible such a thing can be; says he, there are in all Countries People that wish ill to the Government, and says he, I believe there are some here; but says he, for any Man of Honour, Interest, or Estate to go about it, is wholly impossible. Says I, my Lord, so it is, and I believe it. Says I, my Lord, do you know any of these People? No, says he, none of them, only one day, says he, passing thro' the Exchange, a Man saluted me, with a Blemish upon his Eye, and he embraced me, and wish'd me all Happiness: says he, I could not call to mind who this Man was; but afterwards I recollected myself that I met him at my Lord Shaftesbury's, and heard afterwards, and concluded his Name to be ----, his at whose House the King was to be assassinated.

Mr. Att. Gen. Rumbold?

Mr. Howard. Ay, Rumbold. My Lord, may I ask if my Lord Howard be here?

L. C. J. He is there behind you.

Mr. Howard. Then he will hear me. My Lord, says I, what does your Lordship think of this Business? Says he, I am in a Maze. says I, if you will be ruled by me, you have a good Opportunity to address to the King, and all the discontented Lords, as they are called; and to shew your Detestation and Abhorrence of this thing; for, says I, this will be a good means to reconcile all things. Says he, You have put one of the best Notions in my Head that ever was put. Says I, You are a very good Penman, draw up the first Address (and I believe I was the first that mentioned an Address, you have had many an one since, God send them good Success). Says he, I am sorry my Lord of Essex is out of Town, he should present it. But, says I, here is my Lord Russell, my Lord of Bedford, my Lord of Clare, all of you that are disaffected, and so accounted, go about this Business, and make the Nation happy, and King happy. Says he, Will you stay till I come back? Ay, says I, if you will come in any time; but he never came back while I was there. The next Day, I think, my Lord Russell was taken, and I came and found him at my Brother's House again (for there he was Day and Night); says he, Cousin, What News? Says I my Lord Russell is sent to the Tower. We are all undone then, says he. Pray, says he, go to my Lord Privy-Seal, and see if you can find I am to be taken up; says he, I doubt 'tis a Sham-Plot; if it was a true Plot, I should fear nothing; says I, What do you put me to go to my Lord Privy-Seal for? He is one of the King's Cabinet Council, do you think he will tell me? I won't go; but, says I, if you are not guilty, why would you have me to go to enquire? Why, says he, because I fear 'tis not a true Plot, but a Plot made upon us, and therefore, says he, there is no Man free. My Lord, I can say no more as to that time (and there is no Man that sits here, that wishes the King better than I do). The next thing I come to is this, I came the third Day, and he was mighty sad and melancholy, that was when Col. Sidney was taken; says I, Why are you melancholy, because Col. Sidney is taken? Says I, Col. Sidney was a Man talked of before, why were you not troubled for my Lord Russell, that is of your Blood? Says he, I have that particular Obligation from Col. Sidney, that no one Man had from another. I have one thing to say farther, I pray I may be rightly understood in what I have said.

L. C. J. What, would you have us undertake for all the People that hear you? I think you have spoken very materially, and I will observe it by and by to the Jury.

Col. Sidney. Pray call Dr. Burnet.

Mr. Just. Walcot. What do you ask Dr. Burnet?

Col. Sidney. I have only to ask Dr. Burnet, whether after the News of this pretended Plot, my Lord Howard came to him, and what he said to him.

Dr. Burnet. My Lord, the Day after this Plot brake out, my Lord Howard came to see me, and upon some Discourse of the Plot, with Hands and Eyes lifted up to Heaven, he protested he knew nothing of any Plot, and believed nothing of it, and said, that he looked upon it as a ridiculous thing.

My Lord Paget was sent for at the Prisoner's Request, being in the Hall.

Col. Sidney. My Lord, I desire Joseph Ducas may be called. [Who appeared, being a Frenchman.]

Col. Sidney. I desire to know whether he was not in my House when my Lord Howard came thither, a little after I was made a Prisoner, and what he said upon it?

Ducas. Yes, my Lord, my Lord Howard came the Day after Colonel Sidney was taken, and he asked me, where was the Colonel Sidney? And I said, he was taken by an Order of the King, and he said, Oh Lord!

VOL. III

What is that for? I said, They have taken Papers; he said, are some Papers left? Yes. Have they taken something more? No. Well, you must take all the Things out of the House, and carry them to some you can trust: I dare trust no body, says he; I will lend my Coach and Coachman said I, if the Colonel Sidney will save his Goods; he save them, if not, 'tis no matter. A little after the Lord Howard came in the House of Col. Sidney about eleven o' Clock at Night, When he was in, I told them, What is this? They talk of a Plot to kill the King and the Duke, and I told him, they spake of one general Insurrection; and I told him more, that I understood that Col. Sidney was sent into Scotland: When my Lord Howard understood that, he said God knows, I know nothing of this, and I am sure if the Colonel Sidney was concerned in the matter, he would tell me something, but I know nothing. Well, my Lord, I told him, I believe you are not safe in this House, there is more Danger here than in another Place. Says he, I have been a Prisoner, and I had rather do any thing in the World than be a Prisoner again.

Then my Lord Paget came into the Court.

Col Sidney. Pray, my Lord, be pleased to tell the Court, if my Lord Howard has said any thing to you concerning this late pretended Plot, or my being any Party in it.

Lord Paget. My Lord, I was subpoena'd to come hither, and did not know upon what Account; I am oblig'd to say, my Lord Howard was with me presently after the breaking out of this Plot, and before his appearing in that Part which he now acts, he came to me; and I told him, That I was glad to see him abroad, and that he was not concerned in this Disorder. He said, he had Joy from several concerning it, and he took it as an Injury to him, for that it looked as if he were Guilty. He said, he knew nothing of himself, nor any Body else. And tho' he was free in Discourse, and free to go into any Company indifferently; yet he said, he had not seen any Body that could say any thing of him, or give him occasion to say any thing of any Body else.

Col. Sidney. Mr. Edward Howard.

Mr. Ed. Howard. Mr. Sidney, What have you to say to me?

Col. Sidney. My Lord, I desire you would ask Mr. Ed. Howard the same Thing, what Discourse he had with my Lord Howard about this Plot?

L. C. J. Mr. Howard, Mr. Sidney desires you to tell what Discourse you had with my Lord Howard about this Plot.

Mr. Edward Howard. My Lord, I have been for some time very intimate with my Lord, not only upon the Account of our Alliance, but upon a strict Intimacy and Correspondence of Friendship, and I think I was as much his as he could expect from that Alliance. I did move him during this time, to serve the King upon the most honourable Account I could, but that proved ineffectual: I pass that, and come to the Business here. As soon as the Plot brake out, my Lord having a great Intimacy with me, expressed a great Detestation and Surprizing in himself to hear of it, wherein my Lord Howard assured me under very great Asseverations, that he could neither accuse himself, nor any Man living. He told me moreover, that there were certain Persons of Quality, whom he was very much concerned for, that they should be so much reflected upon or troubled, and he condoled very much their Condition, both before and after they were taken. My Lord, I believe in my Conscience he did this without any mental Reservation, or Equivocation, for he had no Reason to do it with me. I add moreover, if I have any Sense of my Lord's Disposition, I think if he had known any such thing, he would not have stood his being taken, or made his Application to the King in this manner, I am afraid not so suitable to his Quality.

L. C. J. No Reflections upon any Body.

Mr. Howard. My Lord, I reflect upon no Body. I understand where I am, and have a Respect for the Place; but since your Lordship has given me this Occasion, I must needs say, that that Reproof that was accidentally given me at the Trial of my Lord Russell, by reason of a weak Memory, made me omit some Particulars I will speak now, which are these, and I think they are material: My Lord, upon the Discourse of this Plot, did further assure me, that it was certainly a Sham, even to his Knowledge: How, my Lord, says I, do you mean a Sham? Why, says he, such an one, Cousin, as is too black for any Minister of publick Employment to have devised; but, says he, it was forged by People in the dark, such as Jesuits and Papists; and, says he, this is my Conscience. Says I, my Lord, if you are sure of this Thing, then pray, my Lord, do that honourable Thing that becomes your Quality, that is, give the King Satisfaction as becomes you; pray make an Address under your Hand to the King, whereby you express your Detestation and Abhorrence of this Thing. Says he, I thank you for your Counsel: To what Minister, says he, shall I apply myself? I pitch'd upon my Lord Halifax, and I told him of my Lord's Desire, and I remember my Lord Howard named the Duke of Mounmouth, my Lord of Bedford, the Earl of Clare, and he said he was sure they would do it; that he was sure of their Innocence, and would be glad of the Occasion: And I went to my Lord Halifax, and told him that my Lord was willing to set it under his Hand, his Detestation of this Plot, and that there was no such thing to his Knowledge. My Lord Halifax very worthily received me; says he, I will introduce it; but my Lord Russell being taken, this was laid aside, and my Lord gave this Reason. For, says he, there will be so many People taken, they will be hinder'd. I must needs add from my Conscience, and from my Heart, before God and Man, that if my Lord had spoken before the King, sitting upon his Throne, abating for the Solemnity of the Presence, I could not have more believed him, from that Assurance he had in me. And I am sure from what I have said, if I had the Honour to be of this Gentleman's Jury I would not believe him.

L. C. J. That must not be suffered.

Mr. Att. Gen. You ought to be bound to your good Behaviour for that.

L. C. J. The Jury are bound by their Oaths to go according to their Evidence, they are not to go by Men's Conjectures.

Mr. Howard. May I go, my Lord?

Mr. Att. Gen. My Lord Howard desires he may stay, we shall make use of him.

Col. Sidney. My Lord, I spake of a Mortgage that I had of my Lord Howard, I don't know whether it is needful to be proved; but it is so.

Lord Howard. I confess it.

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Col.



Col. Sidney. Then, my Lord, here is the other Point; he is under the Fear, that he dare not but say what he thinks will conduce towards the gaining his Pardon; and that he hath expressed, that he could not have his Pardon, but he must first do this Drudgery of Swearing. I need not say, that his Son should say, That he was sorry his Father could not get his Pardon unless he did swear against some others.

Col. Sidney. Call Mr. Blake. [*Who appeared.*] My Lord, I desire he may be asked, Whether my Lord Howard did not tell him that he could not get his Pardon yet, and he could ascribe it to nothing, but that the Drudgery of Swearing must be over first.

Then my Lord Chief Justice asked the Question.

Mr. Blake. My Lord, I am very sorry I should be called to give a public Account of a private Conversation, how it comes about I don't know. My Lord sent for me about six Weeks ago, to come and see him. I went, and we talked of News; I told him, I heard no body had their Pardon, but he that first discovered the Plot; he told me, no; but he had his Warrant for it: And, says he, I have their Word and Honour for it; but says he, I will do nothing in it till I have farther Order; and says he, I hear nothing of it, and I can ascribe it to no other Reason, but I must not have my Pardon till the Drudgery of Swearing is over. These Words my Lord said, I believe my Lord won't deny it.

Then Col. Sidney called Mr. Hunt and Burroughs, but they did not appear.

Col. Sidney. 'Tis a hard Case they don't appear. One of them was to prove that my Lord Howard said he could not have his Pardon till he had done some other Jobs.

L. C. J. I can't help it; If you had come for Assistance from the Court, I would willingly have done what I could.

Then Col. Sidney mentioned the Duke of Buckingham, but he was informed he was not subpoena'd.

Col. Sidney. Call Grace Tracy and Elizabeth Penwick. [*Who appear'd.*] I ask you only, what my Lord Howard said to you at my House concerning the Plot, and my being in it?

Tracy. Sir, he said, that he knew nothing of a Plot he protested, and he was sure Col. Sidney knew nothing of it. And he said, if you knew anything of it, he must needs know of it, for he knew as much of your Concerns as any one in the World.

Col. Sidney. Did he take God to Witness upon it?

Tracy. Yes.

Col. Sidney. Did he desire my Plate at my House?

Tracy. I can't tell that, he said the Goods might be sent to his House.

Col. Sidney. Penwick, What did my Lord Howard say in your Hearing concerning the pretended Plot, or my Plate carrying away?

Penwick. When he came, he asked for your Honour, and they said your Honour was taken away by a Man to the Tower for the Plot, and then he took God to Witness he knew nothing of it, and believed your Honour did not neither. He said, he was in the Tower two Years ago, and your Honour, he believed, saved his Life.

Col. Sidney. Did he desire the Plate?

Penwick. Yes, and said it should be sent to his House to be secured. He said it was only Malice.

Mr. Wharton stood up.

Mr. Wharton. 'Tis only this I have to say, That if your Lordship pleases to shew me any of these Sheets of Paper, I will undertake to imitate them in a little Time, that you shan't know which is which. 'Tis the easiest Hand that ever I saw in my Life.

Mr. Att. Gen. You did not write these, Mr. Wharton?

Mr. Wharton. No; but I will do this in a very little time, if you please.

L. C. J. Have you any more Witnesses?

Col. Sidney. No, my Lord.

L. C. J. Then apply yourself to the Jury.

Col. Sidney. Then this is that I have to say. Here is a huge Complication of Crimes laid to my Charge: I did not know at first under what Statute they were, now I find 'tis the Statute of 25 Edw. 3. This Statute hath two Branches; one relating to War, the other to the Person of the King. That relating to the Person of the King, makes the conspiring, imagining and compassing his Death, criminal. That concerning War is not, unless it be levied. Now, my Lord, I cannot imagine to which of these they refer my Crime, and I did desire your Lordship to explain it. For to say that a Man did meet to conspire the King's Death, and he that gives you the Account of the Business does not speak one Word of it, seems extravagant; for Conspiracies have ever their Denomination from that Point to which they tend; as a Conspiracy to make false Coin infers Instruments and the like. A Conspiracy to take away a Woman, to kill or rob, are all directed to that End. So conspiring to kill the King, must immediately aim at killing the King. The King hath two Capacities, Natural and Politick, that which is the Politick can't be within the Statute, in that Sense he never dies, and 'tis absurd to say it should be a Fault to kill the King that can't die: So then it must be the natural Sense it must be understood in, which must be done by Sword, by Pistol, or any other way. Now if there be not one Word of this, then that is utterly at an End, tho' the Witnesses had been good. The next Point is concerning levying of War. Levying of War is made Treason there, so it be proved by Overt-Act; but an Overt-Act of that never was, or can be pretended here. If the War be not levied, 'tis not within the Act, for conspiring to levy War is not in the Act. My Lord, there is no Man thinks that I would kill the King that knows me, I am not a Man to have such a Design, perhaps I may say I have saved his Life once. So that it must be by Implication, that is, it is first imagined that I intended to raise a War, and then 'tis imagined that War should tend to the Destruction of the King. Now I know that may follow, but that is not natural or necessary, and being not natural or necessary, it can't be so understood by the Law. That it is not, is plain; for many Wars have been made, and the Death of the King has not followed. David made War upon Saul, yet no body will say he fought his Death, he had him under his Power and did not kill him; David made War upon Ishbosheth, yet did not design his Death: And so in England and France Kings have been taken Prisoners, but they did not kill them. King Stephen was taken Prisoner, but they did not kill him.

So that 'tis two distinct Things, to make War and to endeavour to kill the King. Now as there is no manner of Pretence that I should endeavour to kill the King directly, so it can't be by Inference, because 'tis Treason under another Species: I confess I am not fit to argue these Points, I think I ought to have Counsel, but if you won't allow it me, I can't help it; but these Things are impossible to be jumbled up together. Now I say this, if I am not under the first Branch, if not directly, I can't be by Implication; tho' I did make War, I can't be said to conspire the Death of the King, because 'tis a distinct Species of Treason; and my Lord Coke says, 'tis the Overthrow of all Justice to confound *Membris dividenda*. Now if the making of War can't be understood to be a conspiring the Death of the King, then I am not guilty of this Indictment; but here, my Lord, is neither conspiring the Death of the King, nor making War, nor conspiring to make War. Besides, I say, 'tis not the best Man's Evidence here would be good in this Case, because the Law requires two. The next thing is the Business of Aaron Smith, which my Lord tells so imperfectly, and so merely conjectural, that there is nothing in it but his Rhetorick in setting it out. He tells you of a Letter sent with him, but he does not tell you by whom writ, what was in it, or whether it was delivered or no; so that I think we may lay that aside as the other, as Things nothing in them at all. Then says Mr. Attorney, These Scotch Gentlemen are come to Town, I profess I never heard the Names of one of them till he named them to me in the Tower. I have not sent myself, nor writ a Letter into Scotland never since the Year 59, nor do I know one Man in Scotland to whom I can write, or from whom I ever received one. I returned into England in the Year 77, and since that time have not writ nor received a Letter from Scotland. Then some Gentlemen came hither, What is that to me? I never saw one of the Campbells in my Life, nor Monro; if any one can prove I have had any Communication with them, I will be glad to suffer. Then here are Papers, if any thing is to be made of them, you must produce the whole, for 'tis impossible to make any thing of a part of them. You ask me, what other Passage I would have read, I don't know a Passage in them, I can't tell whether it be good or bad. But if there are any Papers found, 'tis a great doubt whether they were found in my Study or no, or whether they be not counterfeit; but tho' that be admitted, that they were found in my House, the Hand is such, that it shews they have been writ very many Years. Then that which seems to be an Account of the Sections and Chapters, that is but a Scrap, and what if any body had, my Lord, either in my own Hand or another's, found Papers that are not well justifiable, is this Treason? Does this imagine the Death of the King? Does this reach the Life of the King? If any Man can say I ever printed a Sheet in my Life, I will submit to any Punishment. Many others, my Lord, they write, and they write what comes into their Heads. I believe there is a Brother of mine here has forty Quires of Paper written by my Father, and never one Sheet of them was published; but he writ his own Mind to see what he could think of it another time, and blot it out again, may be. And myself, I believe, have burned more Papers of my own writing than a Horse can carry. So that for these Papers I can't answer for them. There is nothing in it, and what Concatenation can this have with the other Design that is in itself nothing, with my Lord's select Council selected by no body to pursue the Design of my Lord Shaftesbury? And this Council that he pretends to be set up for so great a Business, was to be adjudged with so much *finesse* so as to bring Things together, What was this *finesse* to do? (taking it for granted, which I don't) This was nothing (if he was a credible Witness) but a few Men talking at large of what might be or not be, what was like to fall out without any manner of Intention, or doing any thing; they did not so much as enquire, whether there were Men in the Country, Arms, or Ammunition. A War to be made by five or six Men, not knowing one another, not trusting one another. What said Dr. Cox in his Evidence at my Lord Russell's Trial, of my Lord Russell's trusting my Lord Howard? He might say the same of some others. So that, my Lord, I say, these Papers have no manner of Coherence, no Dependence upon any such Design. You must go upon Conjecture upon Conjecture; and after all, you find nothing but only Papers, never perfect, only Scraps, written many Years ago, and that could not be calculated for the raising of the People. Now, pray what Imagination can be more vain than that? And what Man can be safe, if the King's Counsel may make such (whimsical I won't say, but) groundless Constructions? Mr. Attorney says, the Plot was broken to the Scots, (God knows we were neither broken nor joined) and that the Campbells came to Town about that Time I was taken; and in the mean time my Lord Howard, the great Contriver of all this Plot, who was most active, and advised the Business that consisted of so much *finesse*, he goes there and agrees of nothing, and then goes into Essex upon great important Business, greater than the War of England and Scotland, to what Purpose? To look after a little pimping Manor, and what then? Why then it must be laid aside, and he must be idle five Weeks at the Bath, and there is no enquiring after it. Now, I desire your Lordship to consider, whether there be a Possibility for any Men, that have the Sense of Porters and Grooms, to do such Things as he would put upon us. I would only say this; If Mr. Attorney be in the right, there was a Combination with the Scots, and then this Paper was writ; for those that say I did it, say I was doing it then; and by the Notes, there is Work enough for four or five Years, to make out what is mentioned in those Scraps of Paper, and this must be to kill the King. And I say this, my Lord, that under Favour, for all constructive Treasons you are to make none, but to go according to plain Proof, and that these constructive Treasons belong only to Parliament, and by the immediate Proviso in that Act. Now, my Lord, I leave it to your Lordship, to see whether there is in this any thing that you can say is an Overt-Act of Treason mentioned in 25 Edw. 3. If it be not plainly under one of the two Branches, that I have endeavoured to kill the King, or levied War, then 'tis matter of Construction, and that belongs to no Court but the Parliament. Then, my Lord, this hath been adjudged already in Throgmorton's Case. There are twenty Judgments of Parliament, the Act of 13 Eliz. that says—I should have somebody to speak for me, my Lord.

L. C. J. We are of another Opinion.

Mr. Just.



Mr. Just. *Withins*. If you acknowledge the Matter of Fact, you say well.

Col. *Sidney*. I say there are several Judgments of Parliament, that do shew whatever is constructive Treason does not belong to any private Court. That of *Mary*, 1 *Edw.* 6. 1 *Eliz.* 5 *Eliz.* 18. another 13 *Car.* shews this. Now, my Lord, I say that the Business concerning the Papers, 'tis only a Similitude of Hands, which is just nothing. In my Lady *Carr's* Case, it was resolved to extend to no criminal Cause; if not to any, then not to the greatest; the most capital. So that I have only this to say, that I think 'tis impossible for the Jury to find this Matter; for the first Point you proved by my Lord *Howard*, that I think is no body, and the last concerning the Papers, is only Imagination from the Similitude of Hands. If I had published it, I must have answered for it; or if the Thing had been whole and mine, I must have answered for it; but for these Scraps never shewed any body, that I think does not at all concern me. And I say, if the Jury should find it (which is impossible they can) I desire to have the Law referred unto me.

Mr. Sol. Gen. My Lord, and you Gentlemen of the Jury, the Evidence hath been long; but I will endeavour to repeat it as faithfully as I can. The Crime the Prisoner stands accused for, is compassing and imagining the Death of the King. That which we go about to prove, that compassing and imagining by, is by his meeting, and consulting how to raise Arms against the King, and by plain Matter in writing under his own Hand, where he does affirm, it is lawful to take away and destroy the King. Gentlemen, I will begin with the first Part of it, the Meeting and Consultation to raise Arms against the King. The Prisoner, Gentlemen, hath endeavoured to avoid the whole Force of this Evidence, by saying, that this in Point of Law can't affect him, if it were all proved; for this does not amount to a Proof of his compassing and imagining the Death of the King, and he is very long in interpreting the Act of Parliament to you of 25 *Edw.* 3. and dividing of it into several Members or Branches of Treason; and does insist upon it, that tho' this should be an Offence within one Branch of that Statute, yet that is not a Proof of the other, which is the Branch he is proceeding upon, that is the first Clause against the compassing and imagining the Death of the King. And, says he, conspiring to levy War is not so much as one Branch of that Statute, but it must be War actually levied. This is a Matter he is wholly mistaken in, in Point of Law. It hath been adjudged over and over again, That an Act which is in one Branch of that Statute, may be an Overt-Act to prove a Man guilty of another Branch of it. A levying War is an Overt-Act to prove a Man guilty of conspiring the Death of the King. And this was adjudged in the Case of Sir *Henry Vane*, so is meeting and consulting to raise Arms; and Reason does plainly speak it to be so; for they that conspire to raise War against the King, can't be presumed to stop any where, till they have dethroned or murdered the King. Gentlemen, I won't be long in citing Authorities, it hath been settled lately by all the Judges of England, in the Case of my Lord *Ruffel*, who hath suffer'd for this Conspiracy. Therefore that Point of Law will be very plain against the Prisoner. He hath mentioned some other Things, as that there must be two Witnesses to every particular Fact, and one Witness to one Fact, and another to another, is not sufficient; it hath been very often objected, and as often over-ruled: It was over-ruled solemnly in the Case of my Lord *Stafford*. Therefore if we have one Witness to one Overt-Act, and another to another, they will be two Witnesses in Law to convict this Prisoner. In the first Part of our Evidence, we give you an Account of the general Design of an Insurrection that was to have been, that this was contrived first, when my Lord *Shaftesbury* was in England, that after my Lord *Shaftesbury* was gone, the Business did not fall, but they thought fit to revive it again, and that they might carry it on the more steadily, they did contrive a Council among themselves of Six, whereof the Prisoner at the Bar was one. They were the Duke of *Monmouth*, my Lord of *Effex*, my Lord *Howard*, my Lord *Ruffel*, the Prisoner at the Bar, and Mr. *Hambden*. This Council they contrived to manage this Affair, and to carry on that Design, that seemed to fall by the Death of my Lord of *Shaftesbury*, and they met; this we give you an Account of, first by Witnesses, that gave you an Account in general of it. And tho' they were not privy to it yet they heard of this Council, and that Colonel *Sidney* was to be one of this Council. This, Gentlemen, if it had stood alone by itself, had been nothing to affect the Prisoner at all. But this will shew you, that it was discoursed among them that were in this Conspiracy. Then my Lord *Howard* gives you an Account, that first the Duke of *Monmouth*, and he and Colonel *Sidney* met, and it was agreed to be necessary to have a Council that should consist of six or seven, and they were to carry it on. That the Duke of *Monmouth* undertook to dispose my Lord *Ruffel* to it, and Colonel *Sidney* to dispose the Earl of *Effex*, and Mr. *Hambden*; that these Gentlemen did meet accordingly, and the Substance of their Discourse was, taking notice how the Design had fallen upon the Death of my Lord *Shaftesbury*, that it was fit to carry it on before Men's Inclinations were cool, for they found they were ready to it, and had great Reason to believe it, because this being a Business communicated to so many, yet for all that it was kept very secret, and no body had made any mention of it, which they looked upon as a certain Argument that Men were ready to engage in it. This encouraged them to go on in this Conspiracy. Then when the Six met at Mr. *Hambden's* House, they debated concerning the Place of Rising, and the Time; the Time they conceived must be suddenly, before Men's Minds were cool, for now they thought they were ready and very much disposed to it; and for Place they had in Debate, whether they should rise first in the Town, or in the Country, or both together. And for the Persons, they thought it absolutely necessary for them to have the united Councils of Scotland to join with them, and therefore they did refer this Matter to be better considered of another time, and they met afterwards at my Lord *Ruffel's* House in February, and there they had Discourse to the same Purpose. But there they began to consider with themselves, being they were to destroy this Government, what they should set up in the Room of it, to what Purpose they engaged. For they did very wisely consider, if this be only to serve a Turn, and to make one Man great, this will be a great Hinderance in their Affair, therefore they

thought it was necessary to engage upon a publick Account, and to resolve all into the Authority of Parliament, which surely they either thought to force the King to call, or otherwise that the People might call a Parliament, if the King refused, and so they to choose their own Heads. But still they were upon this Point, that it was necessary for their Friends in Scotland to have their Councils united with them, and in order to that, it was necessary to contrive some Way to send a Messenger into Scotland, to bring some Men here to treat and consult about it, and Colonel *Sidney* is the Man that does engage to send this Messenger, and he had a Man very fit for his Turn, that is, *Aaron Smith*, whom he could confide in, and him he undertook to send into Scotland. This Messenger was to fetch my Lord *Melvin*, the two *Campbell's*, and Sir *John Cockram*; Colonel *Sidney* as he engaged to do this, so afterwards he did shew to my Lord *Howard* Money, which he affirmed was for that Business; he says it was of a Sum about sixty Guineas, and he believes he gave it him, for that Colonel *Sidney* told him, *Aaron Smith*, was gone into Scotland; that the Pretence was not barefaced to invite them over, to consult of a Rebellion, but to consult about the Business of Carolina, being a Plantation for the persecuted Brethren, as they pretended in Scotland. Gentlemen, these Scotchmen that were thus sent for over, they came accordingly, that is, the two *Campbell's*, and Sir *John Cockram*, and the Discourse with Sir *Andrew Foster* was according to this Cant that was agreed on beforehand, concerning a Plantation in Carolina. This was that that was pretended for their coming hither; but the true Errand was, the Business of the Insurrection intended, Gentlemen, that they came upon such a Design, is evident from the Circumstances; they came about the Time the Business brake out, and in that Time suspiciously changing their Lodging, they were taken making their Escape, and this at a Time before it was probable to be known abroad that these Men were named as part of the Conspirators. These things do very much verify the Evidence my Lord *Howard* hath given, and there is nothing has been said, does at all invalidate it. The sending of *Aaron Smith* into Scotland, and his going, and the coming of these Men, and their endeavouring to make their Escape, are mighty concurrent Evidences with the whole Evidence my Lord *Howard* has given. Now, what Objections are made against this Evidence? Truly none at all. Here are Persons of great Quality have given their Testimony, and they do not impeach my Lord *Howard* in the least; but some do extremely confirm the Truth of my Lord *Howard*. My Lord *Anglesey* gives you an Account of a Discourse at my Lord of *Bedford's*, that my Lord *Howard* came in, and that my Lord *Howard* should there comfort my Lord of *Bedford*, and enlarge in the Commendations of his Son, and say he was confident he knew nothing of the Design, and he must be innocent. Gentlemen, This is the Nature of the most part of the Evidence. My Lord of *Clare*, his Evidence is much the like, that is, his denying that he knew of any Plot. Now here is my Lord *Howard* under a Guilt of High-Treason; for he was one of those Conspirators not yet discovered, nor no Evidence of any Discourse leading to any thing that should give Occasion to him to protest his Innocency: And says he, I know nothing of the Plot. You would have wondered if he should have been talking in all Places his Knowledge, and declaring himself: His denying of it under the Guilt, when he was not accused, is nothing to his Confession when he comes to be apprehended and taken for it. Here Mr. *Philip Howard* says, he had several Discourses with him about this Business, upon the breaking out of the Plot, and that he advised him to make an Address, and that this was a Thing that would be very acceptable, and very much for their Vindication; and my Lord *Howard* (he says) thanked him for his very good Advice, and said, he would follow it: And presently after, when my Lord *Ruffel* was apprehended, Mr. *Howard* tells him the News, that my Lord *Ruffel* was apprehended; this was sudden to him. And what says he? We are all undone. When my Lord *Ruffel* that was one of this Council, that was a secret Council, and could not be traced but by some of themselves, when He is apprehended, then he falls out into this Expression, *We are all undone*. This is an Argument my Lord *Howard* had Guilt upon him. For, why were they all undone, that my Lord *Ruffel* was apprehended, any more than upon the apprehending the rest? Yes, because my Lord was one of the Six, and now 'twas come to the knowing of that Part of the Conspiracy. It was traced to the Council of Six, which in all likelihood would break the Neck of the Design. Now though he put it off afterwards, saying, *I believe it a Sham Plot*, yet this was but a trivial Put-off. And then, when Colonel *Sidney* is taken, the same Witnesses Mr. *Howard* tells you, my Lord was very sad and melancholy; for then he had greater Reason to lie under an Apprehension of being detected. Therefore, Gentlemen, this will rather confirm the Truth of the Evidence, than any way impeach it. Then (for I would repeat it all, tho' I think it had no great Weight in it) Dr. *Burnet* says, that after the Plot, my Lord *Howard* pretended he knew of no Plot. This is no more than was testified by the other Lords before; and all it imports, is, that my Lord did not discover himself to Dr. *Burnet*. But I would fain know, if my Lord had told Dr. *Burnet*, had it not argued that he had great Confidence in him, that he thought him a Man fit to be intrusted with such a Secret? And unless the Doctor desires to be thought such a Man, himself must own 'tis no Objection, that my Lord *Howard* did not tell him. *Ducas's* Testimony is no more neither, that he protested he was innocent, and believed Colonel *Sidney* was innocent, and this was before my Lord *Howard* discovered any thing of this Plot. Then Colonel *Sidney* objects, This is by Malice, my Lord *Howard* owes him Money, and seeks to pay his Debts by taking away his Life; and in further Prosecution of this Malice, would have seized upon his Goods. But the Evidence does not receive such Construction, for my Lord *Howard* only offered Colonel *Sidney* the Civility of his House to protect his Plate and Goods. Now, Gentlemen, there were two other Witnesses, my Lord *Paget* and Mr. *Edward Howard*; but they say no more than the rest of them, that he did protest his Innocency; and Mr. *Howard* says, he advised him to make an Address to the King. This, Gentlemen, I repeat, not that it is material, but for no other Reason, than because Colonel *Sidney* had produced it; and so we are to think, he intended to make some use of it; but I can't



I can't see any Inference to be drawn from it. There is one Witness more, and that is Mr. Blake, to the Credit of my Lord Howard, who comes here, and says, that when he discoursed about a Pardon, my Lord should say, That he had a Warrant for his Pardon, but that he had not yet pass'd it, and could not yet; and he apprehended the Reason was, because the Drudgery of Swearing was not over. But this is but what my Lord Howard had conjectured: First, It does not appear, that there is any Promise of Pardon at all to my Lord Howard, on any Terms imposed on him. In the next place, Whatever Expectation he has of a Pardon, he can't reasonably hope for it without making a clear Discovery of all he knows: For to stifle the Evidence he has given, is not a way to deserve a Pardon of his Prince. Therefore, Gentlemen, whatever Expressions were used, tho' he called it the Drudgery of Swearing, however unwilling he is to come to it, and tho' he gives it very many hard Names, and might think it very harsh to come and own himself to be one of the Conspirators, it might be irksome, and very irksome; yet none of them tell you, that my Lord Howard should say, that what he had said was not true. Now he has come and given his Evidence, and you have heard all these Objections against it, and not one of them touch it in the least.

I come in the next place to the other Part of the Evidence, the Papers found in Colonel Sidney's House. And in the first place he objects, They can't affect him; for, says he, there is no Proof they were found in my House, no Proof they were written by me; for Comparison of Hands, that is nothing; and if they were proved to be mine, 'tis nothing at all to the purpose; they are an Answer to a Polemical Discourse wherewith he entertained himself privately in his Study. Why, you have observed, I know, that Sir Philip Lloyd in the first place swears, that by Warrant from the Secretary he searched his House, and he found the Papers lying upon Colonel Sidney's Table in his Study, when he came in there; and there is no Ground nor Colour for you to suspect otherwise than that they were there, and he found them there. For the Surmise of the Prisoner at the Bar, that they might be laid there, 'tis so foreign and without Ground, that by and by you will think there is nothing at all in it. In the next place, we prove Col. Sidney's Hand, and that by as much Proof as the Thing is capable of; such a Proof as in all Cases hath been allowed; and that is, for Men to come that know and are acquainted with the Hand-writing, and swear they know his Hand-writing, and they believe this to be his Hand. You have heard from Mr. Sheppard, a Man that used to transact Business for him, pay Money for him; and Mr. Cook and Mr. Cary, Men of known Credit in the City of London, that have had the like Dealings with Col. Sidney, and they swear this is his Hand-writing, as they verily believe. So that, Gentlemen, this Proof to you of Col. Sidney's Hand-writing does verify Sir Philip Lloyd, that these Papers must be found there, if Col. Sidney writ them; and then this being found that they were writ by him, the next Thing will be, How far this will be an Evidence to prove his Compassing and Imagining the Death of the King. Compassing and Imagining the Death of the King is the Act of the Mind, and is Treason whilst it remains secret in the Heart, tho' no such Treason can be punish'd, because there is no way to prove it; but when once there is an Overt-Act, that is, any thing that does manifest and declare such Intention, then the Law takes hold of it, and punishes it as High-Treason.

Now after this Evidence, I think no Man will doubt, whether it was in the Heart of the Prisoner at the Bar to destroy the King. But first he objects, that this is a Part of a Book, and unless you take the whole, nothing can be made of it: As it is in wresting of Texts of Scripture, says he, you may as well say, that David says, there is no God, because David hath said, *The fool hath said in his heart, there is no God.* But, Gentlemen, the Application won't hold; for you see a long Discourse hath been read to you, a continued Thread of Argument; 'tis not one Proposition, but an whole Series of Argument: These are the Positions, 'That the King derives all his Power from the People; That 'tis originally in the People, and that the Measure of Subjection must be adjudged by the Parliament; and if the King does fall from doing his Duty, he must expect the People will exact it.' And this he has laid down as no way prejudicial to him; for, says he, the King may refuse the Crown, if he does not like it upon these Terms. But, says he, if he does accept it, he must expect the Performance will be exacted, or Revenge taken by those he hath betray'd. Then next, he sets up an Objection, and then argues against it: Ay, but shall the People be Judge in their own Cause? And thus he answers it, It must be so; for is not the King a Judge in his own Cause? How can any Man else be tried, or convicted of any Offence, if the King may not be Judge in his own Cause? For to adjudge by a Man's self or by his Deputy, is the same Thing; and so a Crime against the King can't be punished. And then he takes notice of it as a very absurd Position, 'That the King shall judge in his own Cause, and not the People.' That would be to say, 'The Servant entertained by the Master shall judge the Master, but the Master shall not judge the Servant. Gentlemen, after this sort of Argument he comes to this settled Position, 'We may therefore, says he, change or take away Kings; (without breaking any Yoke, or that is made a Yoke;) the Injury is therefore in imposing the Yoke, and there can be none at all in 'breaking of it.' But he goes on in his Book, and that is by way of Answer to an Objection, That if there be no Injury, yet there may be Inconvenience, if the headless Multitude should shake off the Yoke. But, says he, I would fain know how the Multitude comes to be headless; and there he gives you many Instances in Story, and from foreign Nations he comes home to the English, and tells you how all Rebellions in later Ages have been headed: and tells you the Parliament is the Head, or the Nobility and Gentry that compose it; and when the King fails in his Duty, the People may call it. The Multitude therefore is never headless, but they either find or create an Head, so that here is a plain and avowed Principle of Rebellion established upon the strongest Reason he has to back it. Gentlemen, This with the other Evidence that has been given, will be sufficient to prove his compassing the Death of the King. You see the Affirmations he makes; when Kings do break their Trust they may be called to Account by the People. This is the Doctrine he broaches and argues for: He says in his Book, in another Part, that the Calling and Dissolving of Parliaments is not in the King's Power. Gentlemen, you

all know how many Parliaments the King hath Called and Dissolved; if it be not in his Power, he hath done that that was not in his Power, and so contrary to his Trust. Gentlemen, at the Entrance into this Conspiracy, they were under an Apprehension that their Liberties were invaded, as you heard in the Evidence from my Lord Howard, that they were just making the Insurrection upon that tumultuous Opposition of electing of Sheriffs in London. They enter into a Consultation to raise Arms against the King; and it is proved by my Lord Howard, that the Prisoner at the Bar was one. Gentlemen, Words spoken upon a Supposition will be High-Treason, as was held in King James's Time, in the Case of Collins in Rall's Reports, *The King being excommunicate may be deposed and murdered*, without affirming he was excommunicated; and this was enough to convict him of High-Treason. Now according to that Case, to say the King having broken his Trust may be deposed by his People, would be High-Treason; but here he does as good as affirm the King had broke his Trust. When every one sees the King hath dissolved Parliaments; this reduces it to an Affirmation. And tho' this Book be not brought to that Council to be perused, and there debated, yet it will be another, and more than two Witnesses against the Prisoner: For I would ask any Man, suppose a Man was in a Room, and there were two Men, and he talks with both apart, and he comes to one, and endeavours to persuade him that it is lawful to rise in Arms against the King, if so be he break his Trust; and he should go to another Man; and tell him the King hath broken his Trust, and we must seek some way to redress ourselves, and persuade the People to rise; these two Witnesses do so tack this Treason together, that they will be two Witnesses to prove him Guilty of High-Treason. And you have heard one Witness prove it positively to you, That he consulted to rise in Arms against the King, and here is his own Book says, it is lawful for a Man to rise in Arms against the King, if he break his Trust, and in effect he hath said, the King hath broken his Trust: Therefore this will be a sufficient Demonstration what the Imagination of the Heart of this Man was, that it was nothing but the Destruction of the King and the Government, and indeed of all Governments. There can be no such Thing as Government if the People shall be Judge in the Case: For what so uncertain as the heady and giddy Multitude? Gentlemen, I think this will be a sufficient Evidence of his consulting the Death of the King. You have here the Prisoner at the Bar that is very deep in it. Indeed some Men may by Passion be transported into such an Offence, and tho' the Offence be never the less, whatever the Motives are, yet in some it is less dangerous; for those that venture upon Passion to raise Commotions and Rebellion, are not always so much upon their Guard, but that they may make some false Steps to entrap themselves. But this Gentleman proceeds upon a surer Foundation, it is his Reason, it is his Principle, it is the Guide of all his Actions, it is that by which he leads and directs the ready Course of his Life. A Man convinced of these Principles, and that walks accordingly, what won't he do to accomplish his Designs? How wary will he be in all his Actions? Still reasoning with himself, which Way to bring it most securely about. Gentlemen, This is the more dangerous Conspiracy in this Man, by how much the more it is rooted in him; and how deep it is, you hear, when a Man shall write as his Principle, that it is lawful for to depose Kings, they breaking their Trust, and that the Revolt of the whole Nation cannot be called Rebellion. It will be a very sad Case when People act this according to their Consciences, and do all this for the Good of the People, as they would have it thought; but this is the Principle of this Man. Gentlemen, we think we have plainly made it out to you, and proved it sufficiently, that it was the Imagination of his Heart to destroy the King, and made sufficient Proof of High-Treason.

Col. Sidney. Give me leave, my Lord, to say a very few Words. I desire Mr. Solicitor would not think it his Duty to take away Men's Lives any how: First, We have had a long Story—

L. C. J. Nay, Mr. Sidney, we must not have vying and revying, I asked you before what you had to say; the Course of Evidence is, after the King's Counsel have concluded, we never admit the Prisoner to say any thing.

Col. Sidney. My Lord, it was a wise Man said, There never could be too much Delay in the Life of a Man: I know the King's Counsel may conclude, if they please. Mr. Solicitor, I would not have him think that it is enough by one way or another to bring a Man to Death: My Lord, this Matter of Sir Henry Vane is utterly misrepresented.

L. C. J. I must tell you, Gentlemen of the Jury, that what the Prisoner says, that is not proved, and what the King's Counsel have said, of which there is no Proof to make it out, must not be taken into any Consideration.

Col. Sidney. Then, my Lord, here is a Place or two in old Hale's [turning over my Lord Hale's Book] for the Overt-Act of one Treason, not being an Overt-Act of another, your Lordship knows Coke and Hale were both against it. [He reads.] Compassing by bare Words is not an Overt-Act, conspiring to levy War is no Overt-Act.

Mr. Sol. Gen. I desire but one Word more for my own sake as well as the Prisoner's, and that is, that if I have said any thing that is not Law, or misrepeated, or misapplied the Evidence which hath been given, I do make it my humble Request to your Lordship to rectify those Mistakes, as well in Point of Fact as Point of Law; for God forbid the Prisoner should suffer by any Mistake.

L. C. J. Gentlemen, the Evidence has been long, and it is a Cause of great Concernment, and it is far from the Thoughts of the King, or from the Thoughts, or Desire of any of his Judges here to be instrumental to take away the Life of any Man, that by Law his Life ought not to be taken away. For I had rather many guilty Men should escape, than one innocent Man suffer. The Question is, Whether upon all the Evidence you have heard against the Prisoner, and the Evidence on his Behalf, there is Evidence sufficient to convict the Prisoner of the High-Treason he stands charged with. And as you must not be moved by the Denial of the Prisoner further than as it is backed with Proof; so you are not to be inveigled by any Insinuations made against the Prisoner at the Bar, further or otherwise than as the Proof is made out to you. But it is usual, and it is a Duty incumbent on the King's Counsel, to urge against all such Criminals, whatsoever they observe in the Evidence against them, and like-



wife to endeavour to give Answers to the Objections that are made on their Behalf. And, therefore, since we have been kept so long in this Cause, it won't be amiss for me (and my Brothers, as they shall think fit,) to help your Memory in the Fact, and discharge that Duty that is incumbent upon the Court as to the Points of Law. This Indictment is for High-Treason, and is grounded upon the Statute of 25 *Edw. 3.* By which Statute, the Compassing and Imagining the Death of the King, and declaring the same by an Overt-Act is made High-Treason. The Reason of that Law was, because at Common-Law there was great Doubt what was Treason; wherefore to reduce that high Crime to a Certainty was that Law made, that those that were guilty might know what to expect. And there are several Acts of Parliament made between the Time of *Edward 3.* and that of *1 M.* but by that Statute all Treasons that are not enumerated by After-Acts of Parliament remain as they were declared by that Statute of 25 *Edw. 3.* And so are Challenges and other Matters, insisted upon by the Prisoner, left as they were at the Time of that Act: I am also to tell you that in point of Law, it is not only the Opinion of us here, but the Opinion of them that sat before us, and the Opinion of all the Judges of *England*, and within the Memory of many of you, that tho' there be two Witnesses required to prove a Man guilty of High-Treason, yet it is not necessary there should be two Witnesses to the same Thing at one Time. But if two Witnesses prove two several Facts, that have a Tendency to the same Treason, they are two Witnesses sufficient to convict any Man of High-Treason. In the Case of my Lord *Stafford* in Parliament, all the Judges assenting, it is notoriously known, that one Witness to a Conspiracy in *England*, and another to a Conspiracy in *France*, were held two Witnesses sufficient to convict him of High-Treason. In the next Place, I am to tell you, that tho' some Judges have been of Opinion that Words of themselves were not an Overt-Act: but my Lord *Hales*, nor my Lord *Coke*, nor any other of the Sages of the Law, ever questioned but that a Letter would be an Overt-Act, sufficient to prove a Man guilty of High-Treason; for *scribere est agere*. Mr. *Sidney* says, the King is a politick Person; but you must destroy him in his Natural Capacity, or it is not Treason; but I must tell you, if any Man compass to imprison the King, it is High-Treason; so was the Case of my Lord *Cobham*. And my Lord *Coke*, when he says, If a Man do attempt to make the King do any thing by Force and Compulsion, otherwise than he ought to do, that it is High-Treason within that Act of 25 *Eliz. 3.* But if it were an Indictment only for the levying of War, there must be an actual War levied; but this is an Indictment for Compassing the Death of the King; and the other Treason, mentioned in that Act of Parliament for the levying War, may be given in Evidence to prove the Conspiracy of the King's Death: For 'tis rightly told you by the King's Counsel, that the Imagination of a Man's Heart is not to be discerned; but if I declare such my Imagination by an Overt-Act, which Overt-Act does naturally evince, that the King must be deposed, destroy'd, imprison'd, or the like, it will be sufficient Evidence of Treason within that Act. In the next Place, having told you what the Law is; for, Gentlemen, 'tis our Duty upon our Oaths, to declare the Law to you, and you are bound to receive our Declaration of the Law, and upon this Declaration, to inquire whether there be a Fact, sufficiently proved, to find the Prisoner guilty of the High-Treason of which he stands indicted: And for that I must tell you, whatever happens to be hear-say from others, it is not to be applied immediately to the Prisoner; but however those Matters that are remote at first may serve for this Purpose, to prove there was generally a conspiracy to destroy the King and Government: And for that Matter, you all remember it was the constant Rule and Method observed about the Popish Plot, first to produce the Evidence of the Plot in general: This was done in that famous Case of my Lord *Stafford* in Parliament. Gentlemen, I am also to tell you, this alone does not at all affect the Prisoner at the Bar, but is made use of as a Circumstance to support the Credibility of the Witnesses; and is thus far applicable to the Business before you, that 'tis plain, by Persons that don't touch the Prisoner at the Bar, (and I am sorry any Man makes a doubt of it at this time of day) that there was a Conspiracy to kill the King; for after so full a Proof in this Place, and in others, and the Execution and Confession of several of the Offenders, I am surprized to observe that the Prisoner at the Bar, and some others present, seem not to believe it.

But, Gentlemen, you hear the first Witness; I speak of *West*: He tells you he had the Honour to be acquainted with Mr. *Sidney*, and that he had Discourse with *Walcot*, a Person Convicted and Executed for this horrid Conspiracy. Why, says he, he told me at my Chamber, That they were not the only Persons concerned, but that there were other Persons of great Quality that had their Meetings for the carrying on the Business in other Places. And *Ferguson*, that was the Ring-leader in this Conspiracy, told him there was a Design of a general Insurrection; it was once laid down, but it is now taken up again. There are other Counsellors of great Importance; and he names among the rest, the Prisoner at the Bar. Mr. *West* goes a little further, and he tells you this: Says he, He did not only tell me so, but that there was a Design to conciliate a Correspondence with some Persons in *Scotland*, and they were to do it under the Cant of having Business in *Carolina*. There is Mr. *Keeling*, he tells you too, There was a Design for a general and public Insurrection; That he was present with the *Goodenoughs*, one and t'other, and that they had taken upon them to divide, and did divide the City into such and such Districts: And what was the Business? It was, that there might be a general Insurrection; might be an Insurrection, not only to Destroy the King and the Duke, but to Destroy all the King's Loyal Subjects; and in taking away their Lives, to take away the Life of Monarchy itself, and to subvert the Religion Established by Law. Then comes in Col. *Rumsey*, and he gives you an Account that he had heard of such things in Mr. *West's* Chamber; and tells you he had received such Intelligence. And all these give you an Account, that there was such a Design to kill the King: And this is the Substance of the general Evidence produced to prove the Conspiracy. Then to make this Matter come home to the Prisoner at the Bar, first my Lord *Howard* gives you an Account, and does directly swear, That about the middle or latter end of *January* last, he happened to meet with Colonel *Sidney*, the Pri-

soner at the Bar, and the Duke of *Monmouth* (they were the Persons first began to have Discourse about this Matter) and how they met with a Disappointment; the thing had slept a great while, and that it was fit it should be revived again; and that Persons of Quality were mentioned, who were to have an immediate Care in the carrying on of the Business, and that it should not be divulged to too many; accordingly there was my Lord *Ruffel*, my Lord of *Essex*, my Lord of *Salisbury*, and Mr. *Hambden* named. He tells you, the Prisoner at the Bar undertook for my Lord of *Essex*, and Mr. *Hambden*, and he tells you, the Duke of *Monmouth* undertook for my Lord *Ruffel*, and the rest; and that this was the Result of one Meeting: He goes yet further, That pursuant to this it was communicated to those Persons so to be engaged, and the Place and Time was appointed; the Place, Mr. *Hambden's* House; but is not so positive to the Time, but only to the Place and Persons. He says, all these Persons met, and he gives you an Account, That Mr. *Hambden* (because it was necessary for some Person to break silence) gave some short Account of the Design of their Meeting, and made some Reflexions upon the Mischief that attended the Government, and what Apprehensions many people had upon the late Choice of Sheriffs, and that there had been a Male-Administration of Publick Justice; That it was fit some means should be used to redress these Grievances. He can't tell you positively, what this Man, or that Man, said there; but says, that all did unanimously consent to what was then debated about an Insurrection; and in order to it, they discoursed about the Time when it should be, and that they thought fit it should be done suddenly, while Men's Minds were wound up to that height, as they then were; and as the first Witness tells you, There was a Consideration, whether it should be at one Place, or at several Places together: He says, then it was taken into Consideration, that this could not be carried on, but there must be Arms and Ammunition provided. The next Step is, about a necessary Concern, the Concern of Money, and therefore our Law calls Money, *The Sinews of War*. My Lord *Howard* tells you, That the Duke of *Monmouth* proposed 25 or 30,000*l.* That my Lord *Grey* was to advance 10,000*l.* out of his own Estate; but then they thought to make their Party more strong by the Assistance of a Discontented People in *Scotland*, my Lord of *Argyle*, and Sir *John Cockram*, and several other People there to join with them. That pursuant to this, they all after met at my Lord *Ruffel's*, and the same Debate is re-affumed, and among the rest, this particular thing of conciliating a Friendship with the *Scotch*; the *Campbells*, my Lord of *Argyle*, and my Lord *Melvin* were particularly mention'd. That Colonel *Sidney* took upon himself to find out a Messenger, but it was my Lord *Ruffel's* Part to write the Letter; One of the Messengers named to convey the same was *Aaron Smith*, he was known, says my Lord *Howard*, to some of us; and then we all agreed, that *Aaron Smith* was the most proper Man: Upon this they brake up that very Time. Afterwards comes my Lord *Howard* to Col. *Sidney* at some distance of time, and he comes to him, and shews him three score Guineas, and told him he was going into the City, and that they were to be given to *Aaron Smith*. He tells you after this, That he had some other Discourse about a Fortnight or three Weeks after, with Col. *Sidney*; and that Colonel *Sidney* did take notice, that he had sent him, and that he had an Account of him, as far as *Newcastle*. So that 'tis very plain, That it was not sudden and rash Thoughts, it is a little more than, according to the Language we meet with in some Pamphlets of late, more than Heats and Stirs. Gentlemen, Then I must tell you, here are Circumstances proved in pursuance of this Design, for Sir *Andrew Foster* informs you, how that Sir *John Cockram* and the *Campbells*, and one *Monro*, as I take it, came to town, and that he had Discourse with some of them about their Business of coming out of *Scotland*; and he says, they pretended it was about some Business of some Trade to *Carolina*, which does still corroborate the Evidence. He tells you likewise, that there being a Noise of Discovering the Plot, they began to hide; Sir *John Cockram* began to hide, and sculk from place to place; they come first with that Cant in their Mouths, about *Carolina*; the Messenger *Atterbury* tells you, When they came to take these Men, how they shuffled from place to place. So, Gentlemen, I must tell you, That if in case there be but one Witness to prove a direct Treason, and another Witness to a Circumstance that contributes to that Treason, that will make two Witnesses to prove the Treason: Because I would explain my Mind, Not long ago all the Judges of *England* were commanded to meet together, and one that is the Senior of the King's Counsel was pleased to put this Case: If I buy a Knife of *J. S.* to kill the King, and it be proved by one Witness I bought a Knife for this purpose, and another comes and proves, I bought such a Knife of *J. S.* they are two Witnesses sufficient to prove a Man guilty of High-Treason; and so it was held by all the Judges of *England* then present, in the Presence of all the King's Counsel. And therefore Mr. *Sidney* is mightily mistaken in the Law: For in case of any Treason (except the Treason at the Bar) or in Treason for Clipping and Coining, one Witness is sufficient at this Day. Now, Gentlemen, supposing all this should not be sufficient, here is a Libel, and it is a most Traiterous and Seditious Libel. If you believe, that that was Colonel *Sidney's* Book, writ by him, no Man can doubt but it is a sufficient Evidence, that he is guilty of Compassing and Imagining the Death of the King; and let us consider, what Proof can be greater, than what has been given of it. Mr. *Sheppard*, an intimate Acquaintance of his, that has seen him write, he looks upon the Hand, and says, He is extremely acquainted with the Hand, and says he, I believe in my Conscience, this Book is Colonel *Sidney's* Hand. Gentlemen, Do you expect Mr. *Sidney* would call a Witness to be by to see him write that Book?

In the next Place, you have two Tradefmen, *Coke* and *Cary*, and they tell you, one had seen him write once, the other had seen his Hand-writing, and they both believe it his Hand-writing; and they have good Reason, for they have paid several Sums of Money, upon Notes which they took, as well as this, to be his Hand-writing. Gentlemen, Besides that, give me leave to tell you, here is another thing, that makes it more plain. This very Book is found



in Col. Sidney's House, on the Table in his Study, where he used to write, by a Gentleman, against whom Colonel Sidney can't make the least Objection; and that there was that Fairness offered by the Gentleman, *Pray, Colonel, put your Seal upon it, that you may see, that no Injury be done you;* but Mr. Sidney would not do it. Therefore he seals them with his own Seal, and carries them to *Whitehall*, where they were broken open, and swears that those Papers were found in his Closet, whereof this was one. Another thing which I must take notice of to you in this Case, is, to mind you, how this Book contains all the Malice, and Revenge, and Treason, that Mankind can be guilty of: It fixes the sole Power in the Parliament and the People; so that he carries on the Design still, for their Debates at their Meetings were to that purpose. And such Doctrines as these suit with their Debates; for there, a general Insurrection was designed, and that was discoursed of in this Book, and encouraged: They must not give it an ill Name: It must not be called a Rebellion, it being the general Act of the People. The King, it says, is responsible to them, the King is but their Trustee; That he had betrayed his Trust, he had misgoverned, and now he is to give it up, that they may be all Kings themselves. Gentlemen, I must tell you, I think I ought more than ordinarily to press this upon you, because I know the Misfortune of the late unhappy Rebellion, and the bringing the late blessed King to the Scaffold was first begun by such kind of Principles: They cried, He had betrayed the Trust that was delegated to him from the People. Gentlemen, in the next Place, because he is afraid their Power alone won't do it, he endeavours to Poison Men's Judgments; and the way he makes use of, he colours it with Religion, and quotes Scripture for it too: and you know how far that went in the late Times; How we were for binding our King in Chains, and our Nobles in Fetters of Iron. Gentlemen, this is likewise made use of by him to stir up the People to Rebellion. Gentlemen, if in case the Prisoner did design the Deposing the King, the removing the King, and in order thereunto he be guilty of Conspiring to Levy War; or as to the Letter writ by my Lord *Ruffel*, if he was privy to it, these will be Evidences against him. So that 'tis not upon two, but 'tis upon greater Evidence than 22, if you believe this Book was writ by him. Next I must tell you, Gentlemen, upon, I think a less Testimony, an Indictment was preferred against the late Lord *Ruffel*, and he was thereupon Convicted and Executed; of which they have brought the Record. These are the Evidences for the King.

For the Prisoner, he hath made several Objections; As that there was no War levied: For that, Gentlemen, at the beginning of the Cause I told you what I took the Law to be, and I take it to be so very plainly. But, Gentlemen, as to the Credibility of my Lord *Howard*, he offers you several Circumstances. First, he offers you a Noble Lord, my Lord *Anglesey*, who says, that he attended my Lord of *Bedford*, upon the Misfortune of the Imprisonment of his Son; after he had done, my Lord *Howard* came to second that Part of a Christian's Office, which he had performed, and told him, he had a very good Son, and he knew no harm of him; and as to the Plot, he knew nothing of it. Another Noble Lord, my Lord *Clare*, tells you, That he had some Discourse with my Lord *Howard*, and he said, that if he were accused, he thought they would but tell Noses, and his Business was done. Then Mr. *Philip Howard*, he tells you, how he was not so intimate with him as others, but he often came to his Brother's; and that he should say, he knew nothing of a Plot, nor did he believe any; but at the same time, he said he believed there were a sham Plot; and then he pressed him about the Business of the Address; but that now my Lord of *Essex* was out of Town, and so it went off. Another Thing Mr. *Sidney* took notice of, says he, 'tis an Act of Revenge in my Lord *Howard*, for he owes him a Debt, that he does (besides by his Allegation) does not appear.

Col. *Sidney*. My Lord, he hath confessed it.

L. C. J. Admit it; yet in case Colonel *Sidney* should be Convicted of this Treason, the Debt accrues to the King, and he cannot be a Farthing the better for it. But how does it look like Revenge? I find my Lord *Howard*, when he speaks of Colonel *Sidney*, says, he was more beholden to him than any body, and was more sorry for him; so says my Lord *Clare*. Gentlemen, You have it likewise offered, that he came to Colonel *Sidney*'s House, and there he was desirous to have the Plate and Goods removed to his House, and that he would assist them with his Coach and Coachman to carry them thither; and did affirm, that he knew nothing of the Plot; and did not believe Colonel *Sidney* knew any thing: And this is likewise proved by a couple of Maid-Servants, as well as the *Frenchman*. You have likewise something to the same purpose said by my Lord *Paget*, and this is offered to take off the Credibility of my Lord *Howard*. Do you believe, because my Lord *Howard* did not tell them, I am in a Conspiracy to kill the King, therefore he knew nothing of it? He knew these Persons were Men of Honour and would not be concerned in any such thing. But do you think because a Man goes about and denies his being in a Plot, therefore he was not in it? Nay, it seems so far from being an Evidence of his Innocence, that it is an Evidence of his Guilt. What should provoke a Man to discourse after this manner, if he had not apprehensions of Guilt within himself? This is the Testimony offered against my Lord *Howard* in disparagement of his Evidence. Ay, but farther 'tis objected, he is in Expectation of a Pardon: And he did say, he thought he should not have the King's Pardon till such time as the Drudgery of swearing was over. Why, Gentlemen, I take notice, before this discourse happened, he swore the same thing at my Lord *Ruffel*'s Trial. And I must tell you, though it is the Duty of every Man to discover all Treasons; yet I tell you for a Man to come and swear himself over and over guilty, in the Face of a Court of Justice, may seem irksome and provoke a Man to give it such an Epithet. 'Tis therefore for his Credit, that he is an unwilling Witness: But, Gentlemen, consider, if these things should have been allowed to take away the Credibility of a Witness, what would have become of the Testimonies that have been given of late Days? What would become of the Evidence of all those that have been so profligate in their Lives? Would you have the King's Counsel to call none but Men that were not concerned in this Plot, to prove that they were Plot-

ting? Ay, but Gentlemen, it is further objected, This Hand looks like an old Hand, and it may not be the Prisoner's Hand, but be Counterfeited; and for that, there is a Gentleman, who tells you what a dextrous Man he is. He says, he believes he could Counterfeit any Hand in Half an Hour; 'tis an ugly temptation, but I hope he hath more Honour than to make use of that Art he so much glories in. But what time could there be for the Counterfeiting of this Book? Can you imagine that Sir *Philip Lloyd*, through the Bag Sealed up, did it? Or who else, can you imagine, should, or, does the Prisoner pretend, did write this Book? So that as on one Side, God forbid but we should be careful of Men's Lives, so on the other Side, God forbid, that Flourishes and Varnishes should come to endanger the Life of the King, and the Destruction of the Government. But, Gentlemen, We are not to anticipate you in point of Fact, I have, according to my Memory, recapitulated the Matters given in Evidence. It remains purely in you now, whether you do believe upon the whole Matter, that the Prisoner is guilty of the High-Treason where of he is Indicted.

Mr. Just. *Withins*. Gentlemen, 'Tis fit you should have our Opinions; in all the Points of Law we concur with my Lord Chief Justice: Says Colonel *Sidney*, here is a mighty Conspiracy, but there is nothing comes of it, who must we thank for that? None but the Almighty Providence: One of themselves was troubled in Conscience, and comes and discovers it; had not *Keeling* discovered it, God knows whether we might have been alive at this Day.

Then the Jury withdrew, and in about half an Hour's time returned, and brought the Prisoner in, Guilty.

And then the Lieutenant of the Tower took away his Prisoner.

Monday Nov. 26, 1683. *Algernon Sidney*, Esq; was brought up to the Bar of the Court of *King's-Bench*, to receive his Sentence.

L. C. J. Mr. Attorney, will you move any thing?

Mr. Att. Gen. My Lord, the Prisoner at the Bar is convicted of High-Treason, I demand Judgment against him.

Cl. of Cr. *Algernon Sidney*, Hold up thy Hand. [Which he did.] Thou hast been indicted of High-Treason, and thereupon arraigned, and thereunto pleaded not Guilty, and for thy Trial put thyself upon God and thy Country, which Country has found thee Guilty, what can't thou say for thyself, why Judgment of Death should not be given against thee, and Execution awarded according to Law?

Col. *Sidney*. My Lord, I humbly conceive, I have had no Trial; I was to be tried by my Country, I do not find my Country in the Jury that did try me, there were some of them that were not Freeholders, I think, my Lord, there is neither Law nor President of any Man that has been tried by a Jury, upon an Indictment laid in a County, that were not Freeholders. So I do humbly conceive, That I have had no Trial at all, and if I have had no Trial, there can be no Judgment.

L. C. J. Mr. *Sidney*, You had the Opinion of the Court in that Matter before: We were unanimous in it, for it was the Opinion of all the Judges of *England*, in the Case \* next preceeding your's, tho' that was a Case relating to Corporations, but they were of Opinion, That by the Statute of *Queen Mary*, the Trial of Treason was put as it was at Common Law, and that there was no such Challenge at Common Law.

Col. *Sidney*. Under favour, my Lord, I presume in such a Case as this, of Life, and for what I know concerns every Man in *England*, you will give me a Day and Counsel to argue it.

L. C. J. 'Tis not in the Power of the Court to do it.

Col. *Sidney*. My Lord, I desire the Indictment against me may be read.

L. C. J. To what purpose?

Col. *Sidney*. I have somewhat to say to it.

L. C. J. Well, read the Indictment.

Then the Clerk of the Crown read the Indictment.

Col. *Sidney*. Pray Sir, will you give me leave to see it, if it please you.

L. C. J. No, that we cannot do.

Col. *Sidney*. My Lord, there is one thing then that makes this absolutely void, it deprives the King of his Title, which is Treason by Law, *Defensor Fidei*. There is no such thing there, if I heard right.

L. C. J. In that you would deprive the King of his Life, that is in very full I think.

Col. *Sidney*. If no body would deprive the King no more than I, he would be in no danger. Under favour these are Things not to be over-ruled in Point of Life so easily.

L. C. J. Mr. *Sidney*, We very well understand our Duty, we don't need to be told by you what our Duty is, we tell you nothing but what is Law; and if you make Objections that are immaterial, we must over-rule them. Don't think that we over-rule in your Case, that we would not over-rule in all Men's Cases in your Condition. The Treason is sufficiently laid.

Col. *Sidney*. My Lord, I conceive this too, that those Words, that are said to be written in the Paper, that there is nothing of Treason in them: Besides, that there was nothing at all proved of them, only by similitude of hands, which upon the Case I alledge to your Lordship was not to be admitted in a Criminal Case. Now 'tis easy to call a thing *Proditorie*; but yet let the nature of the things be examined, I put myself upon it, that there is no Treason in it.

L. C. J. There is not a Line in the Book scarce but what is Treason.

Mr. Just. *Withins*. I believe you don't believe it Treason.

L. C. J. That is the worst part of your Case; When Men are riveted in Opinion, that Kings may be deposed, that they are accountable to their People, that a general Insurrection is no Rebellion, and justify it, 'tis high time, upon my Word, to call them to Account.

Col. *Sidney*. My Lord, the other Day I had a Book, wherein I had King *James's* Speech, upon which all that is there, is grounded in his own Speech to the Parliament in 1603, and there is nothing in these Papers, which is called a Book, though it never appeared, for if it were true, it was only Papers found in a private Man's Study, never shewed to any body; and Mr. Attorney takes this to bring it to a Crime,

\* Lord *Ruffel*'s Case. p. 718.



in order to some other Counsel, and this was to come out such a time, when the Insurrection brake out. My Lord, There is one Person I did not know where to find then, but every body knows where to find now, that is the Duke of Monmouth, if there had been any thing in Consultation, by this means to bring any thing about, he must have known of it, for it must be taken to be in Prosecution of those Designs of his: And if he will say there ever was any such thing, or knew any thing of it, I will acknowledge whatever you please.

L. C. J. That is over; you were Tried for this Fact: We must not send for the Duke of Monmouth.

Col. Sidney. I humbly think I ought, and desire to be heard upon it.

L. C. J. Upon what?

Col. Sidney. If you will call it a Trial—

L. C. J. I do. The Law calls it so.

Mr. Just. Withins. We must not hear such Discourses, after you have been Tried here, and the Jury have given their Verdict; as if you had not Justice done you.

Mr. Just. Holloway. I think it was a very fair Trial.

Col. Sidney. My Lord, I desire that you would hear my Reasons; why I should be brought to a new Trial.

L. C. J. That can't be.

Col. Sidney. Be the Trial what it will?

Cl. of Cr. Crier, make an O yes.

Col. Sidney. Can't I be heard, my Lord?

L. C. J. Yes, If you will speak that which is proper; 'tis a strange thing, You seem to appeal as if you had some great Hardship upon you. I am sure, I can as well appeal as you. I am sure you had all the Favour shewed you, that ever any Prisoner had. The Court heard you with Patience, when you spake what was proper; but if you begin to arraign the Justice of the Nation, it concerns the Justice of the Nation to prevent you: We are bound by our Consciences and our Oaths to see Right done to you; and though we are Judges upon Earth, we are accountable to the Judge of Heaven and Earth; and we act according to our Consciences, though we don't act according to your Opinion.

Col. Sidney. My Lord, I say, In the first place I was brought to Westminster by Habeas Corpus, the 7th of this Month, granted the Day before I was to be Arraigned, when yet no Bill was exhibited against me; and my Prosecutors could not know it would be found, unless they had a Correspondence with the Grand Jury, which under Favour ought not to have been had.

L. C. J. We know nothing of it: You had as good tell us of some body's Ghost, as you did at the Trial.

Col. Sidney. I told you of two infamous Persons that had acted my Lord Russell's Ghost.

L. C. J. Go on, if you have any thing else.

Col. Sidney. I prayed a Copy of the Indictment, making my Objections against it, and putting in a special Plea, which the Law, I humbly conceive, allowed me: The help of Counsel to frame it was denied.

L. C. J. For the Copy of the Indictment, it was denied in the Case you cited. This Favour shewed you to-day was denied at any time to Sir Henry Vane, that is, to have the Indictment read in Latin. Don't say on the other Side, we refused your Plea. I told you, have a care of putting it in. If the Plea was such as Mr. Attorney did demur to it: I told you, you were answerable for the Consequences of it.

Mr. Just. Withins. We told you, you might put it in, but you must put it in at your Peril.

Col. Sidney. My Lord, I would have put it in.

L. C. J. I did advertise you: If you put in a Plea, upon your Peril be it. I told you, We are bound by Law to give you that fair Advertisement of the great Danger you would fall under, if it were not a good Plea.

Col. Sidney. My Lord, my Plea was that could never hurt me.

L. C. J. We do not know that.

Col. Sidney. I desire, my Lord, this, that it may be considered, That, being brought here to my Trial, I did desire a Copy of my Indictment, upon the Statute of 46 Edw. 3. which does allow it to all Men in all Cases.

L. C. J. I tell you the Law is otherwise, and told you so then, and tell you so now.

Col. Sidney. Your Lordship did not tell me, That was not a Law.

L. C. J. Unless there be a Law particular for Col. Sidney. If you have any more to say—

Col. Sidney. I am probably informed, and if your Lordship will give me time, shall be able to prove it, That the Jury was not summoned, as it ought to be; My Lord, if this Jury was not summoned by the Bailiff, according to the ordinary way, but they were agreed upon by the Under-Sheriffs, Graham and Burton, I desire to know whether that be a good Jury.

L. C. J. We can take notice of nothing, but what is upon the Record: Here is a Return by the Sheriff; if there had been any indirect means used with the Sheriff, or any else, you should have mentioned it before they were sworn.

Col. Sidney. Is there any Thing in the World more irregular than that?

L. C. J. I know nothing of it. That time is past.

Col. Sidney. Now, my Lord, all Men are admitted on the Jury.

L. C. J. Why, You did not like Gentlemen, and now you don't like those that you had. In plain English, if any Jury had found you Guilty it had been the same thing. It had been a good Summons, if they had acquitted you.

Col. Sidney. When the Jury thus composed, was sworn, four Witnesses, of whom three were under the Terror of Death for Treasons, were produced against me. And they confessed themselves guilty of Crimes of which I had no Knowledge, and told Stories by hear-say. And your Lordship did promise, in summing up the Evidence, that the Jury should be informed what did reach me, and what not, and I don't remember that was done.

L. C. J. I did it particularly, I think I was as careful of it as possibly I could be.

Col. Sidney. My Lord Howard being the only Witness, that said any thing against me, Papers, which were said to be found in my House, were produced as another Witness, and no other Testimony given concerning

them, but that the Hand was like unto mine. No Man can say, I read them, or shewed them to any Man. None knew when they were written; The Ink shewed they had been done many, and perhaps 20 or 30 Years. Yea, some Passages were read out of them, without examining what went before and after; when I desired the whole might be read, it was refused, unless I specified the Passage, which I could not do, knowing not one Word in them. When I alledged, that in Criminal Cases Similitude of Hands could not be taken for Evidence, proposed my Points of Law concerning Constructive Treason, &c. And I did conceive that no Court under the Parliament could be Judges of it, and did desire the Statute, which did so enact it, might be read, it could not be obtained: And I cited many Judgments in Parliament.

L. C. J. Mr. Sidney, If you arraign the Justice of the Nation so, as tho' we had denied you the Methods of Justice, I must tell you, you do what does not become you, for we denied you nothing that ought to have been granted. If we had granted you less, I think we had done more our Duty. What Points of Law do you mean?

Col. Sidney. That of Constructive Treason, my Lord.

L. C. J. We do not go upon Constructive Treason, 'tis plain Treason within 25 Edw. 3.

Col. Sidney. Is Writing an Act?

L. C. J. Yes, 'tis agere.

#### Proclamation made for Silence.

Mr. Bamfield. Sir, I pray you to hear me one word as *Amicus Curie*; I humbly suppose that your Lordship will not give Judgment if there be a material Defect in the Indictment, as the Clerk did read it, he left out *Defensor fidei*, which is part of the Style of his Majesty.

L. C. J. We have heard of it already, we thank you for your Friendship, and are satisfied. Mr. Sidney, there remains nothing for the Court, but to discharge their Duty in pronouncing that Judgment the Law requires to be pronounced against all Persons Convicted of High-Treason; and I must tell you, that though you seem to arraign the Justice of the Court, and the Proceeding—

Col. Sidney. I must appeal to God and the World, I am not heard.

L. C. J. Appeal to whom you will. I could wish with all my Heart, instead of Appealing to the World, as tho' you had received something extreme hard in your Case, that you would appeal to the Great God of Heaven, and consider the Guilt you have contracted by the great Offence you have committed. I wish with all my Heart, you would consider your Condition, but if your own Ingenuity will not provoke you, nothing I can say will prevail with you to do it; if the King's General Pardon, in which you had so great a share of the King's Mercy, will not, I could wish, that, as a Gentleman and as a Christian, you would consider under what particular Obligations you lie to that Gracious King, that hath done so much for you. I should have thought it would have wrought in you such a Temper of Mind, as to have turned the rest of your Life into a generous Acknowledgment of his Bounty and Mercy, and not into a State of constant Combining and Writing, not only to destroy Him, but to subvert the Government; and I am sorry to see you so earnest in the Justification of the Book, in which there is scarce a Line, but what contains the rankest Treason, such as Deposing the King: It not only encourages, but justifies all Rebellion: Mr. Sidney, you are a Gentleman of Quality, and need no Counsel from me: If I could give you any, my Charity to your Immortal Soul would provoke me to it. I pray God season this Affliction to you: There remains nothing with the Court, but to pronounce that Judgment that is expected, and the Law requires, and therefore the Judgment of the Court is,

*That you be carried hence to the Place from whence you came, and from thence you shall be drawn upon an Hurdle to the Place of Execution, where you shall be hanged by the Neck, and, being alive, cut down, your Privy-Members shall be cut off, and burned before your Face, your Head severed from your Body, and your Body divided into four Quarters, and they to be disposed at the Pleasure of the King. And the God of infinite Mercy have Mercy upon your Soul.*

Col. Sidney. Then, O God! O God! I beseech thee to sanctify these Sufferings unto me, and impute not my Blood to the Country, nor the City, thro' which I am to be drawn; Let no Inquisition be made for it, but if any, and the shedding of Blood that is innocent, must be revenged, Let the Weight of it fall only upon those, that maliciously persecute me for Righteousness sake.

L. C. J. I pray God work in you a Temper fit to go unto the other World, for I see you are not fit for this.

Col. Sidney. My Lord, feel my Pulse, [holding out his Hand] and see if I am disordered; I bless God, I never was in better Temper than I am now.

*Then the Lieutenant of the Tower carried back his Prisoner.*

The Prisoner afterwards presented a Petition to the King, which see in *State-Trials*. Vol. VIII. p. 453.

*The Execution of Algernon Sidney, Esq; on Friday December 7, 1683.*

ON the 7th of December (his Majesty having been pleased to remit \* all the Sentence but Beheading) he was brought to a Scaffold erected for that purpose on Tower-hill, where, having deliver'd the following Paper to the Sheriff, his Head was sever'd from his Body.

*Men, Brethren, and Fathers; Friends, Countrymen, and Strangers.*

It may be expected that I should now say some great Matters unto you; but the Rigour of the Season, and the Infirmities of my Age, increased by a close Imprisonment of above five Months, do not permit me.

Moreover, we live in an Age that maketh Truth pass for Treason: I dare not say any thing contrary unto it, and the Ears of those that are about me will probably be found too tender to hear it. My Trial and Condemnation do sufficiently evidence this.

*Wesl, Rumsey and Keeling*, who were brought to prove the Plot, said no more of me, than that they knew me not; and some others, equally unknown unto me, had used my Name, and that of some others, to give a little Reputation unto their Designs. The Lord Howard is too infamous by

\* This was because of his Family, he being Brother to the Earl of Leicester.



his Life, and the many Perjuries not to be denied, or rather sworn by himself, to deserve Mention; and being a single Witness would be of no Value, tho' he had been of unblemish'd Credit, or had not seen and confessed that the Crimes committed by him would be pardon'd only for committing more; and even the Pardon promised could not be obtain'd till the Drudgery of Swearing was over.

This being laid aside, the whole Matter is reduced to the Papers said to be found in my Closet by the King's Officers, without any other Proof of their being written by me, than what is taken from Suppositions upon the Similitude of an Hand that is easily counterfeited, and which hath been lately declared in the Lady Carr's Case to be no lawful Evidence in criminal Causes.

But if I had been seen to write them, the Matter would not be much alter'd. They plainly appear to relate unto a large Treatise written long since, in Answer to *Filmer's Book*, which, by all intelligent Men, is thought to be grounded upon wicked Principles, equally pernicious unto Magistrates and People.

If he might publish unto the World his Opinion, that all Men are born under a Necessity derived from the Laws of God and Nature, to submit unto an absolute Kingly Government, which could be restrained by no Law or Oath; and that he that hath the Power, whether he came unto it by Creation, Election, Inheritance, Usurpation, or any other way, had the Right; and none must oppose his Will, but the Persons and Estates of his Subjects must be indispensibly subject unto it; I know not why I might not have published my Opinion to the contrary, without the Breach of any Law I have yet known.

I might, as freely as he, publicly have declared my Thoughts, and the Reasons upon which they were grounded, and I am persuaded to believe, that God had left Nations unto the Liberty of setting up such Governments as best pleased themselves.

That Magistrates were set up for the good of Nations, not Nations for the Honour or Glory of Magistrates.

That the Right and Power of Magistrates in every Country, was that which the Laws of that Country made it to be.

That those Laws were to be observed, and the Oaths taken by them, having the Force of a Contract between Magistrates and People, could not be violated without Danger of dissolving the whole Fabric.

That Usurpation could give no Right, and the most dangerous of all Enemies unto Kings were they, who, raising their Power to an exorbitant Height, allowed unto Usurpers all the Rights belonging unto it.

That such Usurpations being seldom compass'd without the Slaughter of the reigning Person, or Family, the worst of all Villanies was thereby rewarded with the most glorious Privileges.

That if such Doctrines were received, they would stir up Men to the Destruction of Princes with more Violence, than all the Passions that have hitherto rag'd in the Hearts of the most unruly.

That none could be safe, if such a Reward were propos'd unto any that could destroy them.

That few would be so gentle as to spare even the best, if by their Destruction a wild Usurper could become God's Anointed; and by the most execrable Wickedness invest himself with that divine Character.

This is the Scope of the whole Treatise; the Writer gives such Reasons as at present did occur unto him, to prove it. This seems to agree with the Doctrines of the most revered Authors of all Times, Nations and Religions. The best and wisest of Kings have ever acknowledged it. The present King of France hath declared, that Kings have that happy want of Power, that they can do nothing contrary to the Laws of their Country, and grounds his Quarrel with the King of Spain, Anno 1667, upon that Principle. King James, in his Speech to the Parliament, An. 1603, doth in the highest degree assert it: the Scripture seems to declare it. If never-

theless the Writer was mistaken, he might have been refuted by Law, Reason, and Scripture; and no Man, for such Matters, was ever otherwise punished, than by being made to see his Error; and it hath not (as I think) been ever known that they had been referr'd to the Judgment of a Jury, composed of Men utterly unable to comprehend them.

But there was little of this in my Case; the Extravagance of my Prosecutors goes higher: The above-mention'd Treatise was never finish'd, nor could be in many Years, and most probably would never have been. So much as is of it was written long since, never reviewed nor shewn unto any Man; and the fiftieth part of it was produced, and not the tenth of that offered to be read. That which was never known unto those who are said to have conspired with me, was said to be intended to stir up the People in Prosecution of the Designs of those Conspirators.

When nothing of particular Application unto Time, Place, or Person, could be found in it (as hath ever been done by those who endeavour'd to raise Insurrections) all was supplied by *Innuendo's*.

Whatsoever is said of the Expulsion of *Tarquin*; the insurrection against *Nero*; the Slaughter of *Caligula*, or *Domitian*; the Translation of the Crown of France from *Merovius's* Race unto *Pepin*; and from his Descendants unto *Hugh Capet*, and the like, applied by *Innuendo* unto the King.

They have not considered, that if such Acts of State be not good, there is not a King in the World that has any Title to the Crown he bears; nor can have any, unless he could deduce his Pedigree from the eldest Son of *Noah*, and shew that the Succession had still continued in the eldest of the eldest Line, and been so deduced to him.

Every one may see what Advantage this would be to all the Kings of the World, and whether, that failing, it were not better for them to acknowledge they had received their Crowns by the Consent of willing Nations; or to have no better Title unto them than Usurpation and Violence, which, by the same ways, may be taken from them.

But I was not long since told that I must die, or the Plot must die.

Left the Means of destroying the best Protestants in England should fail, the Bench must be filled with such as had been Blemishes to the Bar.

None but such as these would have advis'd with the King's Counsel of the Means of bringing a Man to Death, suffer'd a Jury to be pack'd by the King's Solicitors and the under Sheriff, admit of Jurymen who were not Freeholders, receive such Evidence as is above-mention'd, refuse a Copy of an Indictment, or to suffer the Statute of 46 *Edw. III.* to be read, that doth expressly enact it should in no Case be denied unto any Man, upon any Occasion whatsoever, over-rule the most important Points of Law without hearing. And whereas the Statute 25 *Edw. III.* upon which they said I should be tried, doth reserve unto the Parliament all Constructions to be made in Points of Treason, they could assume unto themselves not only a Power to make Constructions, but such Constructions as neither agree with Law, Reason, or common Sense.

By these Means I am brought to this Place. The Lord forgive these Practices, and avert the Evils that threaten the Nation from them. The Lord sanctify these my Sufferings unto me; and though I fall as a Sacrifice unto Idols, suffer not Idolatry to be established in this Land. Bless thy People and save them. Defend thy own Cause and defend those that defend it. Stir up such as are faint, direct those that are willing, confirm those that waver, give Wisdom and Integrity unto All. Order all Things so as may most redound unto thine own Glory. Grant that I may die glorifying thee for all thy Mercies, and that at the last thou hast permitted me to be singled out as a Witness of thy Truth; and even by the Confession of my Opposers, for that *Old Cause* in which I was from my Youth engag'd, and for which thou hast often and wonderfully declared thyself.

His Attainder was reversed in Parliament, the first of *Will. and Mary*. See *State Trials*, Vol. VIII. p. 547. 472.

### CXXIII. The Trial of JOHN HAMPDEN\*, Esq; at the King's-Bench for an High Misdemeanour, Feb. 6, 1683. Hil. 36 Car. II.

**J**ohn Hampden, Esq; being brought up by Writ of Habeas Corpus, from the Tower of London on the 28th of November, and there being an Indictment preferred against him for Misdemeanour, His Majesty's Attorney-General prayed, that he might be Arraigned upon it, which was done in this Manner.

*Cl. of Cr.* John Hampden, You stand here Indicted by the Name of John Hampden, late of the Parish of St. Giles in the Fields, in the County of Middlesex, Gent. for that you being a pernicious and seditious Man, and a Person of a wicked Mind, and of an impious, unquiet, and turbulent Disposition, and contriving, practising, and falsely, unlawfully, unjustly, maliciously, turbulently, and seditiously intending the Peace of our Sovereign Lord King Charles that now is, and the common Tranquility of this Kingdom of England to disquiet, molest, and disturb, and, as much as in you lay, Sedition within this Kingdom of England to incite, stir up, and procure, and the Government of our said Lord the King in this Kingdom of England into Danger to bring: And that you the said John Hampden, your most impious wicked, and seditious Intentions aforesaid to fulfil and perfect, and bring to effect, the last Day of June, in the Five and thirtieth Year of the Reign of our said Sovereign Lord the King that now is; and divers other Days and Times as well before as after, with Force, and Arms, &c. At the Parish of St. Giles in the Fields, in the County of Middlesex, unlawfully, unjustly, maliciously, and seditiously did assemble yourself, meet, consult, conspire, and confederate with divers evil-disposed Subjects of our said Lord the King to the Jurors unknown, and with the said Persons did treat concerning your said most wicked and seditious Com-passings, Imaginations, and Purposes aforesaid, to be executed, fulfilled, and brought to effect; and further that you the said John Hampden, your most wicked, impious, and seditious Contrivances, Practices and Intentions aforesaid to fulfil, perfect, and reduce to effect, then and there, viz. the last Day of June in the 35th Year aforesaid, and divers other Days and Times, as well before as after, at the Parish aforesaid, in the County aforesaid, with Force and Arms, &c. falsely, unlawfully, unjustly, maliciously, and seditiously did consult, consent, conspire and con-

federate of an Insurrection within this Kingdom of England to be made, and of procuring and providing Arms and armed Men to be prepared in divers Places within this Kingdom of England your some most wicked, impious and seditious Intentions and Com-passings aforesaid to fulfil and perfect: And that you the said John Hampden, your most wicked, impious, and seditious Intentions aforesaid to fulfil and perfect, and bring to effect afterwards, viz. the last Day of June, in the 35th Year aforesaid, at the Parish aforesaid, in the County aforesaid, with Force and Arms, &c. falsely, unlawfully, unjustly, wickedly, maliciously, and seditiously did consult, agree, and consent that a certain Person to the Jurors aforesaid unknown, should be sent into Scotland to invite and incite divers evil-disposed Subjects of our said Lord the King, of his Kingdom of Scotland, to come into this Kingdom of England to advise and consult with you the said John Hampden, and others the aforesaid evil-disposed Subjects of our said Lord the King in this Kingdom of England, concerning Aid and Assistance to be expected and supplied out of the said Kingdom of Scotland, your said most wicked, impious, and seditious Intentions and Com-passings aforesaid to fulfil, effect, and promote, in manifest Contempt of the Laws of this Kingdom of England, to the evil and most pernicious Example of all others in the like Case offending, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

*Cl. of Cr.* How say'st thou, Art thou Guilty of this High Misdemeanour whereof thou standest indicted, and hast been now arraigned, or not Guilty?

*Mr. Hampden.* Not Guilty.

Upon which Plea Issue was joined between His Majesty's Attorney-General, on behalf of the King and Defendant, and Bail was then taken for the Defendant's Appearance the next Term.

**H**illary Term 35 and 36 Car. 2d Reg. In the Beginning of the Term, Sir Thomas Jenner, Knight, His Majesty's Serjeant at Law, and Recorder of the City of London, moved for a Trial at the Bar, in the Case

\* Burnet's History of his Own Times, Vol. I. p. 576.



between the King and Mr. Hampden, which was by the Court appointed to be on Wednesday the 6th of February in the same Term, when the Court proceeded to the Trial as follows.

Cl. of Cr. Call the Defendant John Hampden.

Mr. Williams. He appears.

Cl. of Cr. Gardes, votres Challenges. Call Sir Charles Gerard.

Crier. You shall well and truly try the Issue between our Sovereign Lord the King and John Hampden, Gent. and a true Verdict give according to your Evidence. So help you God.

Sir Charles Gerard, Jur'

Cl. of Cr.

Roger Jennings, Esq; Jur'

Henry Hodges, Esq; Jur'

Joshua Galliard, Esq;

Mr. Williams. We challenge him for the Defendant.

L. C. J. What is your Cause of Challenge?

Sir George Jeffries. Mr. Williams. If your Lordship please to let him go through the Pannel, we will shew Cause if there be not enough left without him.

L. C. J. No, shew your Cause now, it being against the King.

Mr. Williams. He has an Employment under the King, he has an Office in the Forest, and that we say is our Cause of Challenge.

L. C. J. What then if he have?—Mr. Williams. My Lord, we suppose then he is not an indifferent Person to try this Cause.

L. C. J. Ay, let me hear that now proved and defended by any Gentleman of the long Robe, that that is a good Cause of Challenge. Shew me what Law there is for it.

Mr. Williams. To be of the King's Robe, or Pay, or Salary, is an Exception in any Case wherein the King is concerned.

L. C. J. Shew me any Law for that if you can, Mr. Williams, I know you are a Lawyer.

Mr. Wallop. It is the Opinion of my Lord Coke in his Institutes, that it is a good Cause of Challenge.

L. C. J. But there is the Opinion of all the Judges in Henry the Sixth's Time against it.

Mr. Wallop. It is, my Lord, fol. 156.

L. C. J. But I can cite you three or four Books, and you have them all together in Roll's Abridgment, Title Challenge, where he sets down four Books one after another, that it is no Cause of Challenge, even to be the King's Tenant, and there is a great deal of Reason for it. For if that were a good Cause of Challenge, mark the Consequence, then all Persons that hold Lands in England, hold them mediately or immediately of the King, and so the King could have no Freeholders to be Jurymen in his Cause.

Mr. Williams. This is a more special Cause of Challenge than that.

L. C. J. What can be greater than that of being the King's Tenant?

Sir Robert Sawyer. Mr. Att. Gen. Especially when all the Land of England was held of the Crown, as originally it was.

Mr. Trevor. My Lord, in 2d Rolls 646. Tit. Trials, There is the express Opinion of my Lord Rolls, that to be of the Livery, or a menial Servant of the Crown, is a good Cause of Challenge.

L. C. J. And look you but in the first Case in the first Part of the Abridgment, Title Challenges, where he mentions three or four Books to the same Purpose, and 'tis quite otherwise.

Mr. Williams. My Lord, in that of first Rolls, he only cites some Books, but the other is his own Opinion.

L. C. J. Well, make out your Fact if you have a mind to it; but it is well known, that neither Mr. Serjeant Rolls, nor my Lord Coke, when he delivered that Opinion, are to be reckoned such Authorities in Crown matters.

Mr. Williams. We will ask him, my Lord, if you please, I suppose he will not deny it.

L. C. J. No, make out your Fact if you will have any Benefit by it, 'tis only a Challenge to the Favour which ought not to be in the King's Case. I am very glad that we are now to debate this Matter with Men of the Robe, because we have had a strange sort of Notions and Reflections spread abroad of late, as tho' the Judges now-a-days gave strange sort of Opinions, and as tho' Persons that had been Blemishes at the Bar, were preferred to do strange Things when they came upon the Bench; but truly I wonder to hear that it should be a Doubt, when at the same Time that which we gave as our Opinion about one particular Challenge, that is as to Freeholders, it was the Judgment of all the Judges, that that was no Challenge, and all the Counsel that were concerned in that Case know it was the Opinion of all the Judges. But now if we meet with Lawyers, I shall be glad to have the Matter fairly argued and debated, and pray shew me what Law or Reason is for it.

Mr. Wallop. Certainly, my Lord, there is a great Difference betwixt the general Allegiance of all Men, and so of a general Tenure, and the Dependence of any particular Person who is a menial Servant and receives Wages of the King.

L. C. J. I would desire to know of you, Mr. Wallop, which is the greater Challenge, to say such a one is a Tenant, or such a one is immediate Servant to J. S.

Mr. Wallop. There is a great Difference, my Lord, I think, between an immediate Tenant, and the general Tenure of all Subjects.

L. C. J. But certainly the Law is thus, if he were an immediate or a mediate Tenant to any but the King, if his Lord were Party to the Suit, it would be a good Challenge, but the being Tenant to the King is no good Challenge in the King's Case.

Mr. Williams. My Lord, I take it, the Act of Parliament that takes away the Court of Wards and Liveries hath altered the Law as to that Matter of Tenure; for now we hold in Socage, and that other Tenure is destroyed that was between the King and his Subjects.

L. C. J. But pray how comes it to be a Challenge now that was not one before? Does that Act of Parliament make it a good Cause of Challenge? If it does, shew it. I tell you the old Books are against it.

Mr. Williams. I speak, my Lord, to the Tenure, that that is nothing at all now to be objected, because all is now in Socage.

L. C. J. I would not have Mr. Attorney insist upon a Jurymen, but yet withal I would not have it gone away with as Law, that it is a good Cause of Challenge.

Vol. III.

Mr. Wallop. My Lord, we finding in some Cases that are in our Books, that it is held to be a good Cause of Challenge, lay it before the Court.

Mr. Att. Gen. How many hundred Errors do you find in my Lord Coke, notwithstanding all his Learning?

L. C. J. I say, if I was Mr. Attorney, I would not contest for any particular Man to be a Jurymen, I speak that as my Advice, but I would not have it taken for Law, nor would I have it broached abroad, that tho' the Judges now were of one Opinion, yet the Law truly was of another.

Mr. Jones. If all that receive Salary, or Wages from the King, are not to be Jurymen in the King's Causes, then all the Deputy Lieutenants and Militia Officers, which generally are the most substantially Freeholders, are excluded from being Jurymen.

Mr. Just. Withins. Who will say so, Mr. Jones? No Lawyer in England surely will say so.

Mr. Williams. Offices where there is no Profit, will not be the same Exception.

Mr. Att. Gen. But he is no menial Servant of the King's.

Mr. Williams. What is he then?—Mr. Wallop. We hear that he is Keeper of one of the King's Forests, and has a Fee for it.

Mr. Williams. Well, we will ask him upon a voyer dire.

Mr. Att. Gen. My Lord, the Fact is quite otherwise, and I desire they may make it out.

L. C. J. Truly, I think 'tis not tanti to insist upon any particular Man, but I find we are in an Age that is so full of Cavils, that if we act but according to the Precedents that went before us, we are thought to act as Originals, and to make new Laws, when we only follow the Rules that we have received from our Predecessors. And I say there was no such Challenge at Common Law, that ever I read of in any of our Books, nor is it any Challenge by the best Authorities extant.

Mr. Jones. I desire them to shew me any such Precedent, that any Man was challenged by one that was tried at the Suit of the King, for a Challenge to the Favour, but we must do unprecedented Things, or else there will be no satisfying of some Men.

Mr. Att. Gen. I would fain know, what one Opinion in a straggling Book is against the Current of all our Law?

Mr. Williams. Which do you call a straggling Book, Mr. Attorney? My Lord Coke's Institutes, or my Lord Roll's Abridgement?

L. C. J. I say the better Opinion of the Books is on the other Side, and the greater Number too.

Mr. Att. Gen. First of all, I do know of my own Knowledge, he is no menial Servant.

L. C. J. Mr. Attorney, I do debate it for Learning sake, truly I know not the Man, nor whether he be the King's Servant, or not, but I speak against allowing the Challenge, that if he be set aside, it may not be taken as a Precedent, and so pass for Law that the King's Servants can't be Jurymen. I would have you quit the Man by Consent, but not as a Force-pur, as tho' the Law were so, for the Law, I think, is otherwise.

Mr. Att. Gen. He is none, my Lord, they mistake.

L. C. J. Nay, I know nothing of the Man, I tell you only what I think.

Mr. Wallop. He receives Wages, or a Fee from the King for his Office.

Mr. Just. Withins. I would never, for my part, while I live, nor never did, while I was a Practiser, stand upon any particular Jurymen.

Mr. Att. Gen. He may be a Jurymen by Law sure.

L. C. J. There is no doubt of it, Mr. Attorney.

Mr. Att. Gen. My Lord, if your Lordships have given your Opinion, I desire he may stand by.

L. C. J. Well, Mr. Attorney waves him, let him stand by.

Mr. Att. Gen. But for no Reason that has been offered.

L. C. J. No, no, I don't hear any thing of Reason offered for it.

Cl. of Cr. Mr. Galliard, you may go down.

Thomas Harriot, Esq; Jur'

John Sharp, Esq; Jur'

Thomas Earsby, Esq; Jur'

Richard Shoreditch.

William Avery, Esq; Jur'

Mr. Williams. We challenge him for the Defendant.

L. C. J. What is your Cause of Challenge?

Mr. Williams. There is the same Exception to him.

L. C. J. If Mr. Attorney will consent, with all my Heart.

Mr. Att. Gen. No, we humour'd you in one, we won't humour you any more.

Mr. Williams. Nay, here is something more clear for us, he is a Serjeant at Arms attending his Majesty.

Mr. Just. Withins. You know our Opinions already, Mr. Williams, unless Mr. Attorney consent, we can't do it.

Mr. Williams. We only acquaint Mr. Attorney with it, we must submit to your Rule, he is certainly Serjeant at Arms, he came in the Place of Dereham that let my Lord Grey escape.

Mr. Att. Gen. Pray prove it, I don't know it for my Share.

Mr. Williams. Will you ask him the Question?

Mr. Att. Gen. Pray prove it. Are we to gratify your Client? Pray let him better instruct his Counsel.

L. C. J. If Mr. Attorney consent not, then he must be sworn.

Mr. Att. Gen. If there be enough without him that do appear, let him stand by.

Cl. of Cr. Stand down, Mr. Shoreditch.

Charles Good, Esq; Jur'

Mr. Att. Gen. That it may appear how fair Things were carried, they would not strike out one of these Men when they came before the Prothonotary, as they might have done.

Mr. Just. Withins. Truly that was not well done, to trouble the Court when you might make your Exceptions there.

Mr. Williams. We did not know it then, now we do, we offer it to the Court.

Cl. of Cr.

Samuel Rouse, Esq; Jur'

Nebemiah Arnold, Esq; Jur'

Hugh Squire, Esq; Jur'

John Bifeild, Esq; Jur'

Then the Jury were number'd, and the Twelve sworn were these.

JURY.

Sir Charles Gerard, Bar.

Thomas Earsby, Esq;

Samuel Rouse, Esq;

Roger Jennings, Esq;

William Avery, Esq;

Hugh Squire, Esq;

Henry Hodges, Esq;

John Sharp, Esq;

Neb. Arnold, Esq;

Thomas Harriott, Esq;

Charles Good, Esq;

John Bifeild, Esq;

5 N

Cl. of Cr.



*Cl. of Cr.* Gentlemen of the Jury, You that are sworn, hearken to your Charge. The Defendant *John Hampden* stands indicted by the Name of *John Hampden*, of the Parish of *St. Giles in the Fields*, in the County of *Middlesex*, Gent. (*Prout in the Indictment, mutatis mutandis*)—To this Indictment he has pleaded not Guilty, and for his Trial puts himself upon the Country, and the King's Attorney General likewise, which Country you are; your Charge is to enquire whether the Defendant be guilty of the great Misdemeanour whereof he stands indicted, or not guilty; if you find him guilty, you are to say so; and if you find him not guilty, you are to say so, and no more; and hear your Evidence.

*Then Proclamation was made for Evidence in usual Form.*

*Mr. Holloway.* May it please your Lordship, and Gentlemen, you that are sworn, I am of Counsel for the King upon this Indictment. Gentlemen, the Indictment sets forth, that the Defendant being a seditious, malicious, evil-disposed Person, and seditiously and maliciously intending to disturb the Peace of the Kingdom, the last Day of *June*, in the 35th Year of his now Majesty's Reign, and divers other Days and Times, at the Parish of *St. Giles in the Fields*, in your County, did unlawfully assemble, and confederate himself with divers evil-disposed Persons, Subjects of our Lord the King, and then and there, with those other Persons did falsely, maliciously, and seditiously consult and conspire to make an Insurrection in the Kingdom of *England*, and to provide Arms and armed Men in divers Places of the said Kingdom. And the better to compleat his evil Intentions, the said last Day of *June*, did consult and agree to send certain Persons, to the Jurors unknown, into *Scotland*, to invite several evil-disposed Persons there to join in this Conspiracy. This is the Substance of the Charge, and to this he says, he is not guilty; if we prove him so, we do not question but you will find it.

*Mr. Att. Gen.* May it please your Lordship, and you Gentlemen of this Jury, *Mr. Hampden* stands indicted of an high Misdemeanour, for conspiring, with several others, to raise Rebellion within the Kingdom, and to crave the Assistance of the Brotherhood of *Scotland*. Upon the Face of the Indictment, Gentlemen, it appears to be a very high Crime, and the Matter of this indeed has been formerly in Examination in other Trials, and yet the Party, you may observe, do not acquiesce in those Trials, but think the Persons accused lay under very great Hardships, and that to a very great Degree, as not having the Advantage of Counsel, nor to have their Witnesses examined upon Oath; and therefore, Gentlemen, the King is pleased to go less in this Case than in the others, That this Gentleman, who is now before the Court, may clear his Innocence, if he has any Witnesses to do it. And if there be any Advantage that the having of Counsel can contribute to his Cause he has that allowed him too.

The Course of our Evidence, Gentlemen, will be this.

We shall prove to you that *Mr. Hampden*, with five other Persons, (I shall name them) the Duke of *Monmouth*, my Lord *Russel*, *Mr. Sidney*, my Lord of *Effex*, and my Lord *Howard*, they met several times, (the Particulars we shall give you an Account of) one was at *Mr. Hampden's* House, another was at my Lord *Russel's*, where they did contrive together, and took upon them to be a Juncto, or a Council of Six, collected out of the wisest Men of the Kingdom, to consider how they might better the Affairs of the Nation, and how they might make a Stir: For they thought there was no way possible otherwise of doing it, but by their joint Councils to carry on a Rising. And that they might do it the better, they resolved to crave the Assistance of *Scotland*. Gentlemen, we shall give you an Account of their Consults and Debates, and shall shew you, that at length they came to a Resolution, that the Rising was to be carried on jointly in *London*, and the several Parts of the Kingdom, in several Countries at once. Then they came to think, and consider whether it were not best to send into *Scotland*, to draw them in too. And thereupon it was agreed by this Juncto, that they would send thither, and the Management of it was committed to *Mr. Sidney*, to send some fit Person into *Scotland*, to treat with the Male-Contents there; and the better to carry on this joint Design, some of them were to come up to *London*. And they were to have a Pretence to treat about going to *Carolina*, and the purchasing some Shares in the Plantation there, of which my Lord *Shaftesbury* was a chief Governour. We shall prove to you, Gentlemen, besides all that I have opened, that the Person to whom that Trust was committed, *Mr. Sidney*, according to the Duty that he had taken upon him, does employ one *Aaron Smith*, which all that know him, do know him to be a fit Engine for such Counsellors, and a fit Instrument for such a Conspiracy. We shall prove he actually was in *Scotland*, and that he went into *Scotland* upon this Errand. And then we shall prove that those Gentlemen that were sent to, and were the Persons named in their Consults to be treated with, came here soon after to Town, and as soon as ever this Plot was discovered, they fled and absconded themselves. Gentlemen, if we shall prove all this Matter to you, I think it will be without any Question clear, that this Gentleman is notoriously guilty of this High Misdemeanour. And indeed, if you observe it, one of the Persons has given Judgment against himself, the Earl of *Effex*. But the Party have been so diligent and officious as to sling that upon the Government; but that Matter we shall have before the Court in Judgment to-morrow. For two of the others they have received the Judgment of the Law; for two more of them the King has been pleased to take them into his Mercy; the one is my Lord *Howard*, who is summon'd to appear here to day; the other is the Duke of *Monmouth*, who has confessed all this Matter, and has taken his Pardon, and we have summon'd him also to be here this Day; that the World, if they will have their Eyes opened (I mean the discontented World) may see there is nothing sought, but the Peace and Quieting of the Kingdom.

Gentlemen, if we prove all this Matter to you, I shall be glad to hear the Defence of the Counsel, and the Defence made by Witnesses upon Oath.

*Mr. Synch.* *Mr. Sol. Gen.* My Lord, we will call our Witnesses, and first we begin with the Duke of *Monmouth*.

*Mr. Att. Gen.* Call *James Duke of Monmouth*.

*Crier.* *James Duke of Monmouth*.

*Mr. Att. Gen.* Call him again.

*Crier.* *James Duke of Monmouth*.

*L. C. J.* Was he served with a Subpoena?

*Mr. Att. Gen.* My Lord, we will prove we have served him in all Pla-

ces where he was like to be met with; that we left Subpoena's with his Servants, who promised to deliver them to him.

*L. C. J.* Prove it.

*Mr. Att. Gen.* Where is *Mr. Atterbury*? Swear him. [*Which was done.*] Pray will you give the Court an Account, whether you did serve the Duke of *Monmouth* with any Subpoena? In what Places you were to serve him, and who you left it with?

*Mr. Atterbury.* My Lord, on *Friday* last was *Seven-night*, I was commanded by *Mr. Attorney-General*, to carry a Subpoena to serve upon the Duke of *Monmouth*, and to go to his House at *Moor-Park*, where it was generally discoursed he was. I did go and take a Subpoena from *Mr. Burton*, by *Mr. Attorney's* Order, and went to the Duke's House at *Moor-Park*. When I came there, the outward Gate was locked, and I went to an House where the Keys are kept, and having got the Keys, I went down to the House, and I saw there one of his Servants fothering of Cattle; and coming up to him, I asked him if the Duke of *Monmouth* was in the House. He told me, he could not well tell, whether he was or not, but he thought he was gone to *London*, for he saw the Calash, and five or six Horsemen with it, and they said in the House, that it was the Duke that was gone to *London*. I asked if there were any Servants that were nearer to his Grace in the House, that I might speak with; they said, Yes, there was the House-keeper or Steward, one *Mr. Rawkins*, that attended upon the Duke. I desired to speak with him, and he came out to me; I asked him if the Duke was there? He seemed to be unwilling to give me an Answer. I asked him the second Time; but he did not say he was, or he was not. I told him then, I had a Subpoena, which I brought with me by *Mr. Attorney-General's* Order, to serve upon his Grace, which was to require him to attend here this Day, to testify his Knowledge, in a Case between the King and *Mr. Hampden*. He told me, Sir, said he, give me your Subpoena, and I will take care the Duke shall have it. He took it of me, and I came back to *London* presently. As soon as I came to Town, I had a second Subpoena given me to serve upon his Grace, with which I went to the Duke's House at the *Cockpit*. When I came there, I spake with the Porter, I think his Name is *Johnson* (but the Porter he is, and I remember him a Servant there many Years). I asked him, if the Duke were there? He told me he did not lodge there. I told him I had a Subpoena to serve upon his Grace to appear as this Day, the same as I said at *Moor-Park*. Says he, *Mr. Atterbury*, I will take care the Duke have it to Night, or to-morrow Morning early.

*L. C. J.* When was this?

*Mr. Atterbury.* It was of the same Day, *Friday* was *seven-night* last. I was told afterwards by one that I met with, that the Duke did lodge at *Mr. Row's* House, who is a Servant to the Duke, one of his Gentlemen. He lives in the *Pall-Mall*, 'tis either his House or his Lodging, but they call it his House. I had a third Subpoena given me to the same Effect. And when I came there, I asked for the Duke, and a Woman came to the Door, *Mrs. Manley* (I think they call her), she seemed to make little Answer to what I said. Said I, Pray will you give this Subpoena to the Duke, or to *Mr. Row* to give it the Duke. She took it of me, and said, she would give it *Mr. Row* certainly to give to the Duke. And Yesterday, or the Day before, I met *Mr. Row* at *Whitehall*, and says he to me, *Mr. Atterbury*, you brought a Subpoena to my House a little while ago. Yes, Sir, said I, I did, had you it? Yes I had the Subpoena, says he. Then says I, I hope you gave the Duke it? To that he made me no Answer, but nodded his Head, and smiled, and went away.

*L. C. J.* Now call his Grace again.

*Crier.* *James Duke of Monmouth*.

*Mr. Att. Gen.* Call *William Lord Howard*. [*Who was in the Court.*] Pray swear my Lord *Howard*. [*Which was done.*]

*Mr. Att. Gen.* My Lord *Howard*, Pray will you be pleased to give the Court and the Jury an Account what you know of any Meeting by the Gentleman that is now accused, and the Duke of *Monmouth*, my Lord *Russel*, yourself and others, and when; Tell what you know.

*Lord Howard.* My Lord, in *January* last was *Twelve-month*, about the midst of *January* I was called out by Colonel *Sidney*, being then in my Lodgings in *Southampton-Street*, and carried by him to *Mr. Hampden's* House, I do not know what they call the Street, but the same Side of the Way with the fine House that is in *Bloomsbury*.

*Mr. Jones.* By my Lord *Montague's* House that now is, you mean?

*Lord Howard.* Yes, of the same side of the way. When I came there, there was my Lord *Russel*, and the Duke of *Monmouth*, Colonel *Sidney* and I went together, *Mr. Hampden* was then in the Room where they were. Afterwards came in my Lord of *Effex*, this made up Six. When they were there, we fell into Discourses.

*Mr. Att. Gen.* Pray, my Lord, before you come to tell the particular Discourses, give an Account how, and upon what Grounds you came to have this Juncto of Six?

*L. C. J.* If you please, my Lord, Pray give an Account of the Preliminary Passages.

*Lord Howard.* My Lord, after the Disappointment given to an Undertaking that was begun by my Lord *Shaftesbury*, which was in *October* or *November* before, in *November* he died. After that, truly I cannot say, but that Colonel *Sidney* and myself might be, and were the two first that did give the Rise to it. For being in Discourse, we said it was absolutely necessary that there should be some Council erected to give some Steadiness to the Motions.

*L. C. J.* My Lord, I would not willingly interrupt you. But you seem to speak of a Disappointment given to an Undertaking by my Lord *Shaftesbury*. Pray what was that Undertaking?—*Lord Howard.* Your Lordship has heard of that before, and know it very well.

*L. C. J.* Though we know it, the Jury do not. They have not heard it judicially at least.

*Lord Howard.* Because it has been in the printed Books, every body suppose knows it.

*L. C. J.* But that they cannot judicially take notice of.

*Lord Howard.* That is something a long History, my Lord.

*L. C. J.* Though it be, we must hear it.

*Mr. Att. Gen.* Pray make it as short as you can, my Lord.



Lord Howard. So much as I can give account of is this. It was about the Day after Michael's Day that I came to my own House, having been before in Essex, and that I think was Saturday. The Monday following Captain Walcot came to me, and dined with me, and after Dinner told me, my Lord of Shaftesbury had left his House, and had betaken himself to a private Lodging, and had hid himself from the rest of his Friends; but had a great Kindness for me, (which Kindness truly I wish he had spared) and desired to see me. I took time to consider of it; but I bid him go back to my Lord Shaftesbury, and tell him, if he had any thing of an extraordinary Nature to acquaint me with, I would come and assist him all I could. He came the next Day again, and shewed me to my Lord Shaftesbury's Lodging: He lodged then at one Watson's House, a Citizen, I know not what Street they call it; but it was in a little Street down by Woodstreet. And when I came to him, I found my Lord Shaftesbury very much differing from what he used to be, which was more cautious; and presently he fell to tell me, that he was forced to withdraw himself from his own House, for fear of being attacked again by Sham-Charges and Plots; and false Evidence, as he had before: For now he said, He saw they had the Possession of all Juries, by having those Sheriffs which were imposed upon the City, as he said, and he could not think his own Life or any Man's Life safe; for to be accused was sufficient to bring his Life into very great Danger, and for that Reason he had withdrawn himself to that private Retirement; and being there he was resolved to make some speedy Push, for recovering of the Liberties of England; that there was Preparation made in the City of several Thousands of Men, that were all in readiness to rise, and that for his Part, he was resolved to be set on Horseback; for get on Horseback he could not; and that there were great numbers that were ready, when he did but hold up his Finger, to be drawn together at any time: That divers had been drawn out of the Country to join with them by insensible Parties of Horse, I think he named about Fourscore or an Hundred. Which since I found were to be headed by Colonel Rumsey, upon the Day of making and declaring the Sheriffs; but finding there was nothing done, he withdrew himself and his Man thither; but there was such a general Preparation in the City, that if some Lords did not unhandlily desert them they should be in readiness for Action quickly: I asked him who he meant? He told me, the Duke of Monmouth and my Lord Russell had very unhandlily deserted him; for they had promised and undertaken to be in readiness with Men out of several Countries in which they had an Interest, he named Somersetshire, Devonshire, and Cheshire, I think, and that my Lord Grey should be disposed of into Essex to do the same there, and if they had held on this Resolution, it had been such a sure Game, that it could not have failed: But says he, they are started, and say they cannot be in a readiness to do it. My Lord, I very much wonder that those Persons you named should engage in any Design, and fail of performing what they promised! Says he, I'll assure you 'tis so. And so he proceeded to speak several sharp Things of the Duke of Monmouth, upon the account of his Ambition, that he thought to have all under his Command: Which was a secret lurking Ambition in him, that he said, he always suspected the Duke to be guilty of. And now he found his Suspicions true. That unless he might command all, he would do nothing. But for his part, since he found the Matter so, he was resolved to go on alone, rather than fail in his Design. Said I, my Lord, I should be very forward to concur with you in any thing; but I wonder your Lordship should step into an Action of such Danger; thus divided from those that are most likely to assist you in it. I cannot help it, said he, I have left my House, and must go on. My Lord, said I, pray give me leave to go to the Duke of Monmouth, and expostulate the Matter with him, and I will come and give you an Account again. Says he, 'tis to no purpose, I dare say. Said I, my Lord, pray let me go and try, for I would not have you divided, but I will promise you this, I will not tell him I came from you, but as from myself discourse it with the Duke. Well, said he, if you will you may. This was upon Tuesday, I think the 3d of October, the 3d or 4th. So I went to the Duke of Monmouth the next Day, which was Wednesday, and finding him not at home at his House in Scho, and being told he was at Moor-Park, I took an occasion to go to Moor-Park, and I came there a little after Dinner, and took him aside, and told him all this that I now have spoken about my Lord Shaftesbury. Says he, I think the Man is mad, what does he mean? We did undertake to do this, 'tis true; but not by that time he speaks of, and things are not ready, I know not what his own Fears make him do, but he does act so preposterously that he will undo us all. Said I, my Lord, all that I shall desire is, that there may be an Interview betwixt you, and discourse the thing with one another, or else it may be a thing of very fatal Consequence for him to step into an Action of this Danger and Concern while you are thus divided. With all my Heart, says the Duke, I would have nothing more, I desire to speak with him. This made me recoil back again to my Lord of Shaftesbury the next Day, and I told him all this, and desired he would give a Meeting; says he, I see they are false then to say they did not engage; they were engaged, and that against this time too, the Confirmation and Swearing of the Sheriffs; and now for me to meet with them, I know I shall run out into Passion and Anger, and therefore 'tis better omitted. Said I, my Lord, I must positively insist upon it. I must have an interview between you, for 'tis a Madness for you to go on thus divided in so great a Business. I could not prevail, he would not; but he told me if I would I might go to them from him, and let them know I had been with him; (for before I pretended to have it from a third Hand, and not from my Lord himself,) and if they would be in a readiness with what they promised from the Country, he would ask nothing from the City, he would take that Place upon himself, if they would perform their Engagement for other Parts; but he resolved to go on. So I went to the Duke of Monmouth again, and told him, what he said. That I could not by any means get him to an Interview. Says the Duke, he is a strange Man, I know not what to do with him, we will all be in a readiness as soon as we can; but it is impossible to do it so soon. I went to my Lord of Shaftesbury again on the Saturday, and did then positively engage him that he would give a Meeting to me, and the Duke of Monmouth, and some others: And we appointed Time and Place; he appointed to come out in a Parson's Habit, and a black Periwig to his own House, which he thought the safest Place, because he would not discover

his Lodging to any of them, for fear it should come to be known. With these Instructions I came to the Duke of Monmouth to prepare about it, and proffered him to be ready the next Day at Evening with my Lord Russell to go to him. All this while I had not spoken to my Lord Russell, but only to the Duke of Monmouth. And the next Day when I came from Church to my own House, there met me a Message from Colonel Rumsey, who I understood by my Servants had been there, and left his Name, with this Message, that he came to tell me, the Gentleman that was to meet could not meet. This was so confused a Matter, that I was impatient till I knew the meaning of it. I took my Coach and went directly to the Duke of Monmouth's again, and he told me, Colonel Rumsey had been with him, and told him, my Lord of Shaftesbury was apprehensive there were a great many Tories about his House, and he feared being discovered, and therefore had removed his Lodging, and so could not meet; but we should hear from him in two or three Days. So that was the last time that I saw my Lord of Shaftesbury, or indeed, in a direct Line, did hear from him; collaterally by Walcot I did afterwards hear; but by this means we were at a loss. After this the Duke of Monmouth did tell me (for he did not own to me that he saw him, but indeed swore to me that he did not see him; but I find since he did.) That he would do what he could to prevent an untimely, dangerous Undertaking. But after this it seems they had a Meeting at Mr. Sheppard's House, where my Lord Shaftesbury sent a Message to him and my Lord Russell; but the Duke of Monmouth only told me, that my Lord Russell had met with him, and seen him; but he never owned that he had met him himself or seen him. About four or five Days after, Captain Walcot came to me, and told me, such a Day was set for the Rising. Upon which being startled, I had nothing to do, but recoil back to the Duke of Monmouth, and endeavour to stop any rash Proceedings; and it was stopped as I thought, and so it continued for two or three Days, and at that time, which was in October, there was a Rumour up and down whispered, as if something would be attempted; but what it was we did not know, but thus it went on for two or three Days, and then it meeting with a Disappointment upon the Consultation at Mr. Sheppard's, my Lord Shaftesbury took up his Resolution to be gone, and went away to Holland; and died in Holland. This is the Substance of that Account which I can give of those former Transactions.

Mr. Att. Gen. Now give an Account of what was subsequent to this.

Lord Howard. This was in November. After this there being frequent Conferences between Colonel Sidney and me; for Colonel Sidney by the way knew nothing of all this, and I was cautioned by my Lord Shaftesbury, that I should not tell my Friend Sidney any thing of it; and asking him the reason why I should not, Says he, I can't well tell; but you will wonder when I tell you, that his own Friend Major Wildman has barred him and would not let him know it. The Gentleman is now dead; but I will assure you he did know nothing of this for a Month after; for he was gone into the Country; but after my Lord Shaftesbury was dead, I told him the History of all these Transactions, which he was before a Stranger to. After this, when I had acquainted him with what had been intended in London, and what Preparations had been made, and how what was intended had been suppressed, and in what Posture Affairs then stood; We then took up a Resolution to form a Council, that might for the time to come give such Directions as might regulate the Motions of this Affair. Thereupon we began to think of the Persons who they should be. He undertook to speak to my Lord of Essex, and Mr. Hampden, and I was to bring the Duke of Monmouth to a right Understanding with him in it. So I went to the Duke of Monmouth, and told him Colonel Sidney did present his Service to him, and would willingly wait on him, but that he thought it would do him hurt, because he was a Person of such Note, and thereupon so obnoxious that it might prejudice him to have him seen to come to him; and therefore if his Grace would please to appoint any third Place, he should be very glad to kiss his Hand. Says the Duke, I do not know any where truly to appoint. Why then, said I, I will tell you a Place: Let us then go to his House (having before prepared Colonel Sidney for it) and take him by Surprise and dine with him, and then there will be the less Suspicion; But, said I, you must not expect to be treated as the Duke of Monmouth, because he does not expect you; but take him as a Philosopher, and dine with him as he uses to dine at his own Table. Says the Duke of Monmouth, I care not for Entertainment; I will go with you: And there at that time did the Duke of Monmouth undertake to bring in my Lord Russell and my Lord of Salisbury. This was the only Discourse preparatory to it that ever I knew of. Within a Fortnight or three Weeks after, nay, I think it was less than Ten Days after, Colonel Sidney came to me, and told me, my Lord of Essex was very forward in it. The Duke of Monmouth would prepare my Lord Russell, and my Lord Salisbury; and he himself did not doubt, but Mr. Hampden was very willing to be in it too; and they had appointed a Meeting at Mr. Hampden's House, and he would carry me thither to the House; and this was the first Meeting that I knew of; and there we met all Six.

Mr. Att. Gen. About what time was that?

Lord Howard. It was about the middle of January; and truly I think I could reduce it to a certain Day or two by the Persons where I lodged.

Mr. Att. Gen. What was debated there?

Lord Howard. When we came there every one discoursed what he would. There was a Discourse of the Time and Places where to rise; but among other Things it was resolved as a Principal Point, that there should be a Preparation made for the Design, by a Treaty with those of Scotland, and an Understanding settled with Argyle, and a Messenger sent to my Lord Argyle, and others. And before this was done, we could not be ripe for any Resolution: But this must be speedily done.

L. C. J. Pray, my Lord, give me your Favour, I would not interrupt you; but to make Things clear as we go, I desire to ask you, when you came first to Mr. Hampden's House, who spake first, when you were all met together?

Lord Howard. Every body discoursed what they pleased.

L. C. J. But who gave an Account of the Reason of the Meeting? Will you please to recollect, and tell what you know, who began the Discourse?

Lord Howard. Something introductive to it was said by Mr. Hampden, we being at his House, as 'tis natural to conceive for any Gentleman at whose



whose House People are met, to say, Pray let us sit down and talk of our Business. Something leading and introductive was said by him.

L. C. J. Pray, my Lord, as near as you can remember, will you give an Account what was the thing he began to discourse of? Did he seem to take any Notice, or have any Knowledge of your Meeting, and other Things before?

Lord Howard. It was a general Hint and Intimation to us of the Ends of our Meeting, that we were there come to consult and advise one with another, how to put Things into a better Method and Posture than formerly: And he desired that we would sit down and discourse of these Things. My Lord, I would not charge myself with Particulars positively.

Mr. Att. Gen. Upon what Questions did you debate and consult, my Lord?

Lord Howard. Those were started severally. Some would speak of the Time when it should be, whether it were not convenient now, or when. Others offered something concerning the Places, whether it should be begun in the City or in the Country, or both together. Others took it into Consideration, what Persons were to be prepared in the several Countries to be assisting in it, that were probable to carry it on. And then some discoursed concerning the raising of Money, and then what Sum should be raised, and I think that was started by the Duke of Monmouth; but I am sure the Sum that he named was 20 or 30000 l. The last Thing that was talked of, but which was concluded to be the Thing principally to be taken care of, was the settling such a Concurrence and Correspondence with Scotland, that they might chime in at the same time, that so we might give as many Diversions both from home and abroad as could be at one and the same time.

Mr. Att. Gen. My Lord Howard, Did Mr. Hampden discourse of this Matter?

Lord Howard. I cannot speak to the Discourse of any one in particular; for I cannot say it was put to the Vote as we formerly express'd it, but it may be said we were all consenting and concurring.

L. C. J. Did any of you dissent from the Raising?

Lord Howard. No, no, my Lord.

Mr. Att. Gen. Did any of you oppose it at all?

Lord Howard. No, no, That was discoursed of as a thing resolved.

L. C. J. I ask you this Question, my Lord Howard, Was there any sort of Complaint made of the Government, that it was uneasy and that occasioned you to enter into these Debates?

Lord Howard. There was, I cannot say a Complaint, because there was no Person to complain to; but it was spoken of as a Matter of great Grievance, that such a Force and Violence should be put upon the City in their Election of Officers, and the tendency of that as to all Juries, tho' I cannot distinctly remember the particular things.

L. C. J. You say you were talking of a Messenger to be sent into Scotland to my Lord of Argyle, and others to chime in with you in this Matter, as you say, pray did you come to any resolution about that, and what did you resolve upon?

Lord Howard. That there should be one only at that time. And afterwards it was the matter of the Debate at the next Meeting, which was that Meeting at my Lord Russell's, which was about this time twelve-month, in February some time.

Mr. Att. Gen. How long after the first Meeting at Mr. Hampden's was that?—Lord Howard. My Lord, I think it was about a Fortnight.

Mr. Att. Gen. Who was there?

Lord Howard. The same Persons that met before. But then there was little spoken of but the Business of Scotland.

L. C. J. Was Mr. Hampden there at the second Meeting?

Lord Howard. He was there.

L. C. J. At my Lord Russell's you say it was?—Lord Howard. Yes.

Mr. Att. Gen. What Resolution did you come to then?

Lord Howard. Then we came to a Resolution that some body should be sent, and we began to discourse who was fit, and Colonel Sidney he propounded Aaron Smith, to some of the Company he was known, to others not; but those that did know him did approve of him as a fit Person.

Mr. Att. Gen. To whose Province was that committed of sending this Person into Scotland?—Lord Howard. Col. Sidney undertook it himself.

Mr. Att. Gen. Did the rest consent to it?

Lord Howard. Yes, No body did oppose it, but left it to him.

L. C. J. Did you name the Person then that was to go?

Lord Howard. He was not so named as to be with any solemnity approved or disproved; but it was left to Col. Sidney to manage it, and he naming Smith as a fit Person, (he told us that by the by not to put it to the Question for our Approbation) and some of us knew the Person, others did not. I was one that did know him, and did think him a very fit Man to send.

L. C. J. Pray, my Lord, who was the Person? Be pleased to tell the Jury so as they may know it.

Lord Howard Aaron Smith.

Mr. Just. Withins. Had you any discourse with Col. Sidney, my Lord, afterwards that he was sent?—Lord Howard. Yes, my Lord.

L. C. J. Pray give an account of that.

Lord Howard. About three or four Days after this Meeting at my Lord Russell's, I went to visit Col. Sidney at his House, and while I was there in the Room, he went to his Cabinet, and out of a Drawer where there were five or six hundred Pounds in Gold as I could guess, he took a good many Pieces, I do not know directly how many; but he took out so many as he said were threescore Guineas that he was going to carry to Aaron Smith; I went not in my own Coach, and therefore went away with him in his Coach, and he set me down at Southampton-Street at my own Lodging. I went no further, but he did, and he told me afterwards it was conveyed to him, and that he did go.

L. C. J. How long was that after your Meeting at my Lord Russell's, where you say you intrusted Col. Sidney to send one into Scotland?

Lord Howard. I think it may be less than a Week, four or five Days, that I saw him carry the Money. After this, he said, he had given him this Money, and was gone: And when he was dispatched, in a Week after I was making Inquiries after him, and Col. Sidney said, he had not heard of him since he went away; but about a Fortnight or three Weeks Col. Sidney said he had heard of him, that he was at Newcastle and staid

there; but he wondered he could hear no more of him. I then went into Essex, and when I came back from thence, he told me, he was come, but I had never seen him, not to this Day; indeed I had once appointed a Meeting with him at Mr. Wyll's Chamber; but something or other happened, we did not meet.

Mr. Att. Gen. We have done with my Lord Howard; if they will ask him any Questions, they may.

L. C. J. They know their time, when the King's Attorney has done with any Witness, then they may examine him if they please. If they will not, call your other Witnesses.

Mr. Att. Gen. Will you ask him any Questions?

Mr. Jones. No, no, by Advice they are to ask him nothing.

Mr. Att. Gen. We shall give your Lordship and the Jury an Account in the next place, that we have traced Aaron Smith into Scotland. And for that we shall call some Witnesses which indeed we did not produce before at any Trial, because we had not then discovered so much. We shall bring you the Person at whose House he lay at Newcastle, and the very Messenger that was sent with him to conduct him a By-way into Scotland. Call Sheriffe and Bell.

L. C. J. Look ye, Gentlemen, You that are at the Bar there, you must let the Jury stand by themselves. I see there are a great many others intermingled with them, and you, Gentlemen of the Jury, if any Whisperer talk to you, we expect that you should tell us who they are; for we will suffer no Remarks to be made but what are openly made to the Court, and the Jury, by the Counsel of both sides.

Mr. Att. Gen. Swear Sheriffe and Bell.

Mr. Williams. What is this Man's Name, Mr. Attorney? Friend, What is your Name?—Witness. My Name is Sheriffe.

Mr. Att. Gen. Pray give my Lord and the Jury an Account what you know of any Person that lay at your House some time since, and whether you have seen him since? My Lord, this Gentleman did not know Aaron Smith before, and therefore I desire Mr. Atterbury may be called and examined again. Mr. Atterbury, do you know Aaron Smith?

Mr. Atterbury. Yes, I know him very well.

Mr. Att. Gen. Had this Gentleman a View of Aaron Smith?

Mr. Atterbury. Yes, he had. He was brought where Aaron Smith was, and this other Person was by before him too, and I was by when they had a View of him.

Mr. Att. Gen. Now, pray give an Account what you know of the Man you saw.

Mr. Sol. Gen. Where is Aaron Smith?

Mr. Atterbury. He is in the King's-Bench Prison, and he was brought by Habeas Corpus to Whitehall before the King, where these two Persons were brought likewise, and there this Man, Sheriffe, did own that Aaron Smith was the Man that was at his House; and the other Bell, owned that he travelled towards Scotland with him, and that he was hired to shew him the Way into Scotland.

Mr. Att. Gen. Did Aaron Smith say any thing?

Mr. Atterbury. He would not answer any thing at all, nor say a Word.

Mr. Att. Gen. Pray give an Account, Mr. Sheriffe, who it was that lay at your House, and when it was, and what he said was his Business, and by what Name he went.

Mr. Sheriffe. Indeed his Business I did not know; but he was at our House about the middle of February, it was thereabouts.

L. C. J. When was it? What February?

Mr. Sheriffe. The last February.

Mr. Att. Gen. You say he was at your House last February, pray tell the Court where that is?—Mr. Sheriffe. At Newcastle.

Mr. Att. Gen. Do you keep any Inn there?—Mr. Sheriffe. Yes.

Mr. Att. Gen. What Sign?

Mr. Sheriffe. The Sign of the Black-Spread-Eagle.

Mr. Att. Gen. And what did he do there?

Mr. Sheriffe. He staid there one Night and went away, and returned again in twelve Days or thereabouts, and came to my House again.

Mr. Att. Gen. Whither did he go from you?

Mr. Sheriffe. He went Southward as I suppose, I know no farther.

Mr. Att. Gen. But when he first came to your House, which way went he? Mr. Sheriffe. He went Northward towards Scotland, as he himself said, and desired to have one to shew him the way: And I sent for this Man, and when he came to him he hired him to go with him, and I was by.

L. C. J. When he first came to your House about the middle of February was twelve-month, whither was he bound then, Northward or Southward?

Mr. Sheriffe. He was going to Scotland, that is Northward.

L. C. J. And you say, after he came back again, and lay another Night at your House.

Mr. Sheriffe. Yes, ten or twelve Days after he did.

L. C. J. And which way went he then?

Mr. Sheriffe. Then he came Southwards towards London.

L. C. J. Did you take exact Notice of the Man?

Mr. Sheriffe. Yes, I saw him before his Majesty and the Council.

L. C. J. And upon your Oath, that same Man you saw there was the same Man that lodged at your House in February was twelve-month?

Mr. Sheriffe. Yes, it is.

Mr. Att. Gen. What Name did he go by at your House?—Mr. Sheriffe. He went under the Name of Mr. Clerk, but what his Surname was I can't tell.

L. C. J. Had he a Servant with him?—Mr. Sheriffe. He had a Man with him that staid at our House during the Time of his going Northward.

Mr. Att. Gen. What did he call his Name?

Mr. Sheriffe. William Langston.

Mr. Att. Gen. Did he desire you to furnish him with a Guide?

Mr. Sheriffe. He told me his Servant did not know the Way, and his Horse was a little lamish, and desired me to get a Guide for him. For after he had dined at our House, it happened to be a rainy Day, and he could not go farther that Night, and therefore desired me to get him a Man that knew that Country, and I sent for this same Man, and he hired him; and he went along with him next Morning, My Lord.

Mr. Att. Gen. Whither was he to go?—Mr. Sheriffe. Truly I did not know; but he told me he did not know the Way into Scotland, and I directed him to a Gentleman's House at Fadbrough in the way.

L. C. J.



L. C. J. Is that the Road to Scotland?  
 Mr. Sheriff. Yes, the High Road to one Part of Scotland.  
 L. C. J. Did he tell you to what Part of Scotland he was to go?  
 Mr. Sheriff. He named the West of Scotland, I think he named Douglas, but I do not know what Place he certainly designed for.  
 Mr. Att. Gen. Then where is Bell?—Bell. Here.  
 Mr. Att. Gen. Had you a view of this Man they call Aaron Smith?  
 Bell. Yes, I had.  
 Mr. Att. Gen. Give an Account, whether you saw him in the North, and when, and where?  
 Bell. This Man, Mr. Sheriff, sent for me. I live at Newcastle, and there I keep Hackney-Horses to serve any Gentlemen, or be a Guide to them as there is occasion; and Mr. Sheriff sent for me, and when I came, he told me the Gentleman wanted a Guide into Scotland. We immediately agreed, it was upon Thursday Night before that we call Easter-Eve.  
 L. C. J. When was it, say you?  
 Bell. It was, the Thursday before Easter-Eve, so they call it with us, that is, Shrove-Tuesday.  
 L. C. J. Ay, they call it so in those Places, because 'tis the Even of the Fast of Ash-Wednesday, the Beginning of Lent—Well, go on.  
 Bell. We went away on Friday the next Morning on our Journey towards Jadbrough, and the second Day, which was Saturday, in the Afternoon, my Horse tired, whereupon he left me with my Horse, and took the Man's Man of the House where he left me, to guide him, for my Horse would not ride up with him, being tired, and he resolving to go on, and he bid me follow him on the Sunday Morning to Jadbrough Town, which I did, and we staid there all Sunday. And on Monday Morning I saw him take Horse, and another Man that was his Guide, and away they went, as I think, he said towards Douglas he was going. And he paid me, and I returned again from him to Newcastle, and left him.  
 L. C. J. Pray, how far was this? you say you went with him to Jadbrough, how far distant is that from Newcastle?  
 Bell. To Jadbrough, my Lord?—L. C. J. Yes.  
 Bell. 'Tis forty Miles, my Lord.  
 L. C. J. How near Scotland is it?  
 Bell. 'Tis within some six Miles of the English border.  
 L. C. J. Did you see him at any time after that?  
 Bell. I saw him at his coming back again, being at Sheriff's House, his Wife asked me, if I would go up and see the Gentleman that I went with towards Scotland: So I went up, and he made me eat and drink at the Table with him.  
 Mr. Att. Gen. What name did he go by?  
 Bell. He went by the Name of Clerk.  
 Mr. Att. Gen. Was there any Servant with him?  
 Bell. There was a Man that came with him as a Servant there, and was all that time at Newcastle, that he was gone towards Scotland, 'till he came back again.  
 L. C. J. Mr. Attorney, Did this Man see Smith at the time the other saw him?—Bell. Yes, I did.  
 L. C. J. And is that the Man that went by the Name of Clerk at Newcastle, and that you went with towards Scotland?—Bell. Yes, it is.  
 Mr. Atterbury. And when they charged him with it, Aaron Smith did not deny it.  
 Mr. Att. Gen. Did you go any By-road to get into Scotland?  
 Bell. No, 'tis the Road Gentlemen usually go to Jadbrough, and so on; because 'tis something the nearer Way to that Part of Scotland, as we judge it to be, therefore Gentlemen use it.  
 Mr. Att. Gen. Is it an high open Road?  
 Bell. Yes, 'tis the high open Way to that Part of the Country.  
 Mr. Att. Gen. My Lord Howard, Pray, were the Names of any of the Scotchmen mentioned at your Meeting that were to be sent for?  
 Lord Howard. Yes; there was my Lord Melvin, Sir John Cockram, and one Campbell.  
 Mr. Att. Gen. Now, my Lord, we will give you an Account, That as Smith went into Scotland, so these Persons soon after came into England.  
 Jurymen. My Lord, we desire that my Lord Howard would name those Scotchmen that were to come.  
 Lord Howard. There was my Lord Melvin, Sir John Cockram, and one Campbell, one that was of my Lord Argyle's Name and Family; and there was another Name, but I can't remember what that Name was.  
 Mr. Att. Gen. We shall give you an Account, my Lord, that they came immediately after this to Town; and at the breaking out of the Plot they absconded.  
 L. C. J. Mr. Attorney, Has my Lord Howard his Pardon?  
 Mr. Att. Gen. Yes, my Lord, he has.  
 L. C. J. Then your Lordship may be cover'd.  
 Lord Howard. I can't tell but they may ask me some Questions.  
 Mr. Att. Gen. Then you may be uncover'd when they ask them, in the mean time your Lordship may be covered. Swear Sir Andrew Foster.  
 [Which was done.] Pray, Sir, will you tell my Lord and the Jury what you know about the Campbells, and Sir John Cockram's being in Town. Or any other Scotchman that you know of?  
 Sir Andrew Foster. My Lord, I did see those Gentlemen in the Beginning of last Summer. Sir John Cockram, and Mr. Monroe and Campbell the Son, I did see, but the Father I did not, but I do know he was in Town, tho' I saw him not.  
 Mr. Att. Gen. How do you know it?  
 Sir Andrew Foster. I had Messages from them.  
 L. C. J. Sir Andrew, you say, you saw Sir John Cockram and Monroe?  
 Sir Andrew Foster. Yes.  
 L. C. J. Did you see any body else?  
 Sir Andrew Foster. I saw Sir George Campbell the Son.  
 Mr. Att. Gen. What became of them upon the Discovery of the Plot?  
 Sir Andrew Foster. Sir John Cockram did abscond, and Mr. Monroe was taken into Custody.  
 Mr. Att. Gen. What became of the others?  
 Sir Andrew Foster. The Campbells were both in Custody.  
 Mr. Att. Gen. Did you see any Commission they had?  
 Sir Andrew Foster. I did see a Commission that Sir John Cockram had.  
 Mr. Att. Gen. What was it for?

Sir Andrew Foster. To make a Purchase of some Plantations beyond Sea, I think it was Carolina.

L. C. J. Ay, where my Lord Shaftesbury had an Interest.

Sir Andrew Foster. It was some of the West-Indies.

Lord Howard. I did omit that Passage, my Lord—

Mr. Att. Gen. Pray, was it discoursed then, what should be the Blind for these Gentlemen that were notorious Dissenters, that they should come to Town from Scotland about?

Lord Howard. It was to carry on a Plantation in Carolina. The Scotch Gentlemen were personally known to my Lord Russel only; and my Lord Russel was to write the Letter to them, and, I suppose, did.

Mr. Att. Gen. Mr. Atterbury, What do you know of these Scotchmen coming to Town; and what became of them afterwards?

Mr. Atterbury. My Lord, about the Beginning of July, 4th, 5th or 6th, or thereabouts, I had some Information, That there were some Scotch Gentlemen that had been shifting up and down, and at that Time were about Black-Friars, lodged there secretly. I immediately went with the King's Proclamation, and some Warrants that I had to apprehend some Traitors that were fled: And when I came, I found that Mr. Common Serjeant having notice of them, had beat up their Quarters, and they were endeavouring to escape by Water; but there they were caught. There was Sir Hugh Campbell, and Bayley, and Sir George Campbell, and some others, I know not the Names of them all; truly I can't tell whether Monroe was not another, but Sir Hugh Campbell I had in my Custody, and Bayley was immediately committed to the Gatehouse; and the rest of the Gentlemen I afterwards took in a cunning Hole by Moor-Fields, in a back House. And when I came there, I found them lying on the Bed in the Middle of the Day; and had them Prisoners in my Custody two or three Months; and then they were all sent out of my Hands into Scotland, Prisoners. Six of them there were, my Lord, that I saw.

Mr. Att. Gen. We have done, my Lord, only we desire that a Word of Record may be read.

Mr. Williams. What Record is it, Sir?

Mr. Att. Gen. Of Colonel Sidney's Attainder.

Mr. Williams. My Lord, we shall desire your Judgment, whether that Record ought to be read against Mr. Hampden; I perceive by Mr. Attorney, that is a Record of the Conviction of Mr. Sidney, which ought not to be given in Evidence against Mr. Hampden upon this Indictment.

Mr. Att. Gen. We make use of it to shew how upon former Trials upon this Evidence, Verdicts have gone.

Mr. Williams. We are in your Judgment, my Lord, if by Law it may be given in Evidence against Mr. Hampden, who is neither Party nor privy to it, nor indicted for the same Offence.

Mr. Att. Gen. Let it alone then.

L. C. J. Well, Mr. Attorney does not press it. What say you to it, Gentlemen, for the Defendant?

Mr. Williams. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel for Mr. Hampden the Defendant, upon this Indictment here before you. This Indictment is a severe Indictment: It is a very high Crime of which my Client is accused. How far the Evidence tends to reach it, you have heard; and I shall, with the Patience of the Court, particularly observe it to you. But I shall first speak to the Indictment itself: It says, that Mr. Hampden being a Person of a turbulent Disposition, and seditiously intending to disturb and disquiet the King's Peace, and to stir Sedition, and to bring the Government into Danger, did conspire, &c. As to this Matter, Gentlemen, there is no manner of Proof of what the Indictment charges, as to the Disposition of the Person accused; nor that he had any other Design, than what my Lord Howard hath now sworn. Then it says further, that Mr. Hampden did consult and conspire with divers Persons to execute these Purposes; and particularly for the making and raising an Insurrection in the Kingdom. This is laid as the particular Fact; And for this purpose he did further conspire with several Persons to provide Arms and armed Men: And for their fulfilling of this, he did further consult with several Persons, that some Persons should be sent into Scotland to stir up the King's Subjects in Scotland, to a Concurrence and Conjunction with some People in England, about this his evil Design. How far this Indictment is proved upon the Defendant, Gentlemen, is the Question before you. He has pleaded Not Guilty, and hopes to satisfy you he is not. Gentlemen, as to what Evidence has been given you so far as 'tis Positive and Affirmative, I mean the Testimony of my Lord Howard; in that Part, it is impossible for us that are of Counsel for the Defendant directly to contradict him with Proof, or to give a direct positive Proof in answer to it; I say, 'tis impossible for us to contradict him, who gives such a positive Evidence of Fact. By the Evidence of my Lord Howard he tells us, there were six Persons in this Council, as he is pleased to call them. By this Evidence, three of the six are dead, my Lord Russel, Col. Sidney, and the Earl of Essex; He himself is the Fourth, the Defendants the Fifth, who cannot give Evidence for himself; and the Duke of Monmouth, who is the Sixth, being away, there is not any Person in being, that should contradict my Lord Howard's Affirmative in this Part of his Evidence but the Duke of Monmouth, whom we cannot have her, since it appears by the Evidence, Mr. Attorney-General could not prevail to have him at this Trial; therefore Proof of that Nature cannot be reasonably expected from my Client to acquit himself by a positive Contradiction of what my Lord Howard has sworn. Then, in this Case we must, as in all Cases where a Person does swear directly against a Defendant, endeavour to satisfy and persuade your Lordship and the Jury, upon Circumstances arising out of this Fact, and further Circumstances attending the Fact, and by probable Arguments and reasonable Inductions out of the Evidence, that this Gentleman, the Defendant, is not guilty of what he is charged with.

In the first Place, we shall observe upon the Testimony of my Lord Howard, that as to some Things he is very positive and particular: He has an incomparable Memory, and speaks particularly to Persons, particularly to Places, particularly to Times. But, Gentlemen, as to that which is the principal Part of his Evidence, and which most affects the Defendant, and wherein it concerns us to contradict or disprove him, he is wanting as to that Circumstance of Time. He that is so exact in his Memory as to other Circumstances, is not positive, nor any thing like positive, as to the Times of the Meeting. For they would imagine, that the first Meeting the Defendant was concerned in, was at his own House. He describes



the House and the Place very exactly, but as for the Time, he only says it was about the middle of January: He carries other Things in his Memory positively, and whether it might not be expected in a Case so remarkable as this, and which so nearly and highly concerned himself, that he should be as particular in the Time, as he is in other Things, you may intentionally judge. His Lordship sometimes is very particular as to Time: He tells you in his Relation about my Lord Shaftesbury, that his going to him was on the Saturday after Michaelmas-Day; and then he pursues it to the second and third of October. He is positive to many several Days; upon which I would observe, that he being particular to a Day, as to other Things, may well be expected to be ready (if it be true) to be as particular as to the Time of this Meeting. But therein he is to seek; he is doubtful as to that. And you must give us leave, Gentlemen, to make this Observation, that since he will not be particular to that Time, we do apprehend that he gives himself a little Loose; that we may not meet with him to contradict him in that Circumstance. For if he should be positive therein, as he is in the other Matters that concern not the Defendant, we might perhaps by clear pregnant Circumstances contradict, if not disprove his Lordship, that it is not probable (if possible) it should be true what he affirms. But, Gentlemen, we must answer it as well as we can; and since he is so cautious, we must meet him by Arguments in another way. Another Thing we should observe upon my Lord's Evidence, is this, that my Lord, tho' he be particular as to many Facts and Things relating to my Lord Shaftesbury, where he names other particular Persons, I think Col. Rumsey and Walcot, and names the particular Discourses particularly instancing in them, between him and my Lord of Shaftesbury, between him and Walcot, and between him and other Persons; yet he has not made use of any one Circumstance of Fact in this Case of the Defendant's now before you, that does justify what he hath said, save only that of Aaron Smith; not any one Circumstance of Fact. So that there is no more than the bare Saying of what my Lord Howard is pleased to deliver, no more than his Oath, nay, no more than his Observation and Inference of much of what passed in the Company of several Persons, without any concurring Circumstances in Fact to justify or confirm his Testimony. It might have been an easy Matter, if all that my Lord Howard says was true, that there was such a Meeting at Mr. Hampden's House by such and such Persons, to prove that such Persons, or some of them met there. But that there should be no Person to prove, that these Gentlemen, or any one of them, were there; nor any other Fact or Circumstance in the World, to go along with my Lord Howard to justify his Affirmation, is very wonderful, and may well make it doubtful that it should not be true. And the rather, Gentlemen, (if it be true, as my Lord Howard would have it) because there was a second Meeting of all these Persons at my Lord Russell's, which was so publick and open a Place, and yet no Man to concur or go along with my Lord Howard in any one thing; no particular Fact assigned to justify his Testimony as to this Meeting, is strange, if it be true.

So then, Gentlemen, there is no more than what my Lord Howard has sworn, without any one Circumstance to back it, to prove the Defendant guilty. My Lord, taking this upon the main of my Lord Howard's Evidence, it will be pretty hard too, upon the Nature of the Fact, that he is pleased to prove against this Gentleman, to make an Answer to it. And truly, I think it hard for you to believe it. Gentlemen, he would imagine, that there should be Men raised, Men armed, a Discourse of Money, and this done as he would have it, about the middle of January; and yet nothing at all done, though there appears no manner of Discovery of this very Contrivance, till about July. Neither is there any thing done in order to the raising of Men, the arming of Men, or the levying of Money all this while. So that there is no one Fact of any kind whatsoever, that goes along with what my Lord Howard has said.

My Lord, and Gentlemen, another Thing we would desire to observe, is this, and here we shall begin with what we have to say, as to our own Arguments and Circumstances, that we have to take off from the Testimony of my Lord Howard in this Case: In the first Place, it appears by the Evidence of my Lord Howard, that he was very deep in a Conspiracy against the Government, and to make a Disturbance in the Kingdom, long before this that he now speaks of against the Defendant, that is plain enough, for he tells you, that my Lord Shaftesbury and He, at Michaelmas, were contriving of Projects to overturn the Government, and raise a Rebellion. It appears plainly by his Evidence, that my Lord Shaftesbury, when he left his House, was resolved upon it, and my Lord Howard was very solicitous to carry on the same Design; nay, he was so active in it, that he tells you, that he did create Messages between my Lord of Shaftesbury, and the Duke of Monmouth, and would needs go by a false Insinuation of his own, to draw in the Duke of Monmouth, by telling his Grace, his Information he had from Walcot, and not saying he came from my Lord Shaftesbury, with whom he says he had been discoursing; but he would put it under some sort of Disguise, the better to prevail. So that it appears my Lord was very criminal, and guilty, in this Case. Why then, Gentlemen, my Lord being so highly criminal, and there being a Discovery of this Conspiracy by Keeling and Rumsey, and West, having made a more manifest Discovery, and this happening in July; Then it was high Time my Lord Howard might conceive for him to secure himself, and save one, he being thus Guilty, as he declares: It is but reasonable to conjecture, he then began to place his Security in a Pardon; and that there were no other Means to save his Life, and that the way to it, must be by some farther Discovery of a Conspiracy against his Majesty and the Government: And having since obtained a Pardon, it is agreeable, that whatsoever my Lord Howard has done in this Case, he has done for his own sake, to purchase his own Pardon for a Treason he was so deep in, and to out-do all the Witnesses that went before him, by fresh Testimony against the Defendant and others: This might incline him to go an Inch or two, or more, beyond the Discovery of Keeling, West, and Rumsey; to have but said the same Thing that was proved by three or four Witnesses before him, might not perhaps have availed him: May not the indifferent believe it in this Case, to be the Interest and Security of my Lord Howard, by these Means to merit his Pardon? May it not be believable, that what he hath said, he hath said only for his own sake, and that he has, by exposing this Gentleman, and the Blood of others, procured himself a Pardon?

L. C. J. What do you mean by that, Mr. Williams?

Mr. Williams. By being a Witness against the Defendant and others, he has procured his own Pardon.

L. C. J. That is a little harsh Expression.

Mr. Williams. My Lord, I explain myself thus.

L. C. J. 'Tis an harsh Word and too roundly expressed; you had need to explain yourself; 'tis a little too rank, as though the King's Pardon were to be procured by Blood.

Mr. Williams. My Lord, I intend nothing of harshness or amiss, but to speak according to my Instructions; and to make the best Observations I can, out of the Evidence of my Client: I will express myself as well as I can, that my Lord Howard being a Witness against Men in a Case of this high Nature; and there being other Witnesses before, and besides himself to the Discovery of the late Conspiracy against the Government, it concerned him to give an honest Evidence in the Case, or else he could not have any Expectation of his Pardon: For if he had done no more than what others had done before him, when there were three Witnesses besides, and they had got the Start in the Discovery, his Discovery had been in vain; and therefore he was concerned perhaps to strain, that he might make such a Discovery as might answer his End; and this will arise naturally, I suppose, out of what has happened in this Case: For it seems, though it was something long before he got his Pardon, now he has it. My Lord, another Thing is this, How far my Lord Howard will be credited in this Matter, we shall leave his Credit to you, Gentlemen, upon what we shall prove. For we shall make it out by Persons of great Honour, and Persons of great Integrity, that upon Discourse concerning this Conspiracy, my Lord Howard did declare, that he knew of no Persons that were guilty of having any Hand in it; he declared it upon his Honour, he declared it upon his Religion, and he used all the Affirmations that were possible for a Man to offer to make himself believed.

My Lord, it may be objected, as it has been sometimes, that that was to out-face the Conspiracy, and so stop the Prosecution of what he knew himself to be guilty of. But however, thus far we may make use of it for the Defendant, that if my Lord Howard would in the Face of Heaven, pawn his Honour, his Trust, his Conscience, and his Religion, to assert that which was not true, and under all those Vows and Engagements affirm an Untruth; a Man that would deal so, and speak an Untruth with that Solemnity, I think, is not a Person of the same Credit, as a Person of certain known Truth and Veracity. For if a Man will say one Thing one Time, and that with solemn Vows and Affirmations, and swear another Thing quite the contrary another Time, he does not stand so fair for Credit, I think, as he that always maintains, and avows the Truth. So far we may make use of it very safely, I think, as to my Lord's Credit.

My Lord, another Matter that we have to urge, is, that since the Trial of my Lord Russell, and since the Trial of Colonel Sidney, my Lord Howard has in Discourse owned, that my Lord Russell died innocent. If that be true, it will have a great Weight sure with you, Gentlemen, to discredit my Lord's Testimony: For then he hath contradicted what he hath sworn. For if my Lord swore, that my Lord Russell was Guilty, as all the World knows he did; and afterwards Soberly, and Publickly, shall have said he died Innocent; he has contradicted his own Evidence, and his own Oath; and sure is not to be believed as to what he swears now against the Defendant. My Lord, it did not rest there; but since the Trial of Colonel Sidney, it will be proved by Witnesses; that my Lord Howard did declare that Colonel Sidney had had Measure. This will be proved by Witnesses; and 'tis rather to be presumed, he meant hard Measure as to his own Testimony, which he was best knowing of, than of any thing else as to his Trial. Now, how this Person of great Honour can solve this, and how it can stand with his Oath, and his Honour; I will leave it to you, Gentlemen, to judge of it. My Lord, I have another Matter to say, that with me seems to have very great Weight: My Lord Howard, upon some Occasions has said, being in Discourse with a very great Intimate of his, and the Man being speaking of the World to come, speaking of Eternity, speaking of the Immortality of the Soul, speaking of the Rewards and Punishments of another Life; my Lord Howard should say to him, *How long wilt thou persist in this Folly? How long wilt thou be so foolishly prevailed upon, as to believe the World was ever made, or will ever have an End?* My Lord, if a Person be of that Opinion, (and a Man's Judgment in such Things will discover itself in his Words) how far the Testimony of a Man of that Persuasion shall influence a Jury when he stands single, when there is no fact to justify him, in Point of probable Circumstance, will be easily observable, and I must leave it to the Gentlemen of the Jury to consider.

My Lord, we have another Saying of my Lord Howard's, which we shall give you an Account of in the Proofs, and that was in relation to his Pardon. Being free in Discourse, as my Lord is a Man very liberal that way, and his Friend enquiring whether he had his Pardon: No, says he, *no I cannot have it, till the Drudgery of Swearing be over.* Truly 'tis a very odd Thing, that a Man should call that Drudgery, that is his Duty. To testify the Truth, is as much the Duty of every honest Man, as any thing else. Men have died for the Truth, and we look upon those as Martyrs, and the best of Martyrs that die for the Truth. Now, that this noble Lord, or that any Man should call this a Drudgery, which is so manifest a Duty, by giving a true Testimony to preserve the King's Life, and support the Government against the Contrivance and Conspiracies of evil Men, is but an odd Insinuation, and truly I think is rather to be taken in this Sense, as to my Lord, that he did strain a little to make his Discovery the more profitable to him; and so did say more (so far I may safely go) than any one else did say. And, my Lord, This is that that I would observe upon the first part of the Evidence.

As for that Part that concerns Aaron Smith, the Evidence given by Sheriff and Bell, I submit that to your Lordship, how far that can any way affect Mr. Hampden the Defendant. It is introduced to fortify the Testimony of my Lord Howard, and it is introduced by himself thus: That at their Meeting at Mr. Hampden's House, there was a Discourse of some Assistance to be had from Scotland; but says he, at the second Meeting at my Lord Russell's, then it came to a further Discourse, and Colonel Sidney did undertake to name a Person to send thither; and a Person was named; he does not say Mr. Hampden was concerned in it, or that Mr. Hampden named the Man, or any thing particular as to Mr. Hampden, more than that he was in the Company. Mr. Hampden had no Hand in the Undertaking, or sending him into Scotland; that was altogether the Part of Mr. Sidney, save this,



this, that he says my Lord *Ruffel* writ the Letter that was to go by him. It does not appear Mr. *Hampden* was at all concerned in it, but only was there.

*L. C. J.* And consented to it. *Mr. Williams.* I would not strain any thing, my Lord, further than the Evidence is.

*L. C. J.* Nor do not misrepresent it. *Mr. Williams.* I design not any such Thing, my Lord, as to misrepresent it.

*L. C. J.* But you do though, for he swears it, every one of them consented. *Mr. Williams.* By Silence it must be then. For he does not say, that he said any thing.

He swears only Colonel *Sidney* undertook to manage it, to send a Person, and my Lord *Ruffel* to write the Letter.

*L. C. J.* And all the rest consented to it. *Mr. Williams.* What is meant by Consent, when nothing was said, I must leave to the Jury.

I must agree, the Lord *Howard* did swear, that my Client was in their Company, but how far he did, or did not consent, does not at all appear, and how far this will charge my Client, I must leave to you, Gentlemen.

But the Proof, as to this Matter, stands thus; that *Aaron Smith* was at *Newcastle* in *February* last, that he went publicly. Now, my Lord *Howard* says, that he went to agitate a Confederacy between the Malecontents of *Scotland*, and those in *England*.

Now it is strange, that a Man that was to agitate such a Concern, should go publicly with a Servant to *Newcastle*, so publicly as to be known again; and of his own accord tell them he was going to such a Place in *Scotland*.

And be it so in Fact, will any Man apply this to any thing was done before? (as my Lord *Howard* says about a Consultation to join in Rebellion.) Will any man think, that he should talk at that kind of Rate, if that were his Employment, and tell whether he were going? But I rely upon this, in Point of Evidence.

'Tis not proved yet, that *Aaron Smith* was in *Scotland*. That he came within six Miles of the Borders of *Scotland*, is proved; but it is not proved he was in *Scotland*, or did agitate any Conspiracy there; or did any thing more than go within six Miles of the Borders of *Scotland*.

But then they would press it further, and they say, that there were some *Scottish* Gentlemen, that in the Summer came here into *England*, and that they hid themselves when the Plot was discovered.

It does not appear my Client had any Conversation with these *Scottish* Gentlemen, or any of them, or was ever in their Company. 'Tis a very remote Inference to bring any thing of this to affect my Client in this high Charge.

My Lord, we shall add one Thing more to disprove that Part of the Indictment, that lays the Imputation of Turbulency and Sedition to the Charge of Mr. *Hampden*; and which also will shew the Improbability of his being concerned in any thing of this Nature.

We shall prove him to be a Person of a sober Conversation, of a retired Life, and studious Disposition; and as an Evidence for the Defendant, we shall prove, that he in *October* 1680, left *England* for his Health's sake, and went into *France* for the Recovery of his Health.

He continued there till about *Michaelmas* was Twelve-month, then he returned. 'Tis true, he continued in *England* from *Michaelmas* to the Time they speak of; but we shall make it plain, that in *February*, my Client, and my Lord *Montague* had adjusted Matters between themselves, to go the Beginning of Summer again into *France*, there to continue and abide some Time for their Healths.

Here is a strange kind of Imagination, that this Contrivance between my Lord *Howard* and my Lord *Shaftesbury*, that was going on before this Time, and that was disappointed, and my Lord *Shaftesbury* went away, and afterwards died in *Holland*, was taken up by my Client, and those other Persons, when my Client, as we shall prove, never intended to stay in *England*.

My Lord, he was a Parliament-man in both the last Parliaments, but appeared in neither of them, being all the while in *France* for the Recovery of his Health. We shall prove him to be one studiously inclined, that he lived a retired Life, and kept very little or no Company; and you will hear from Persons of very great Honour and Quality, that he is, as to his Person, and as to his Opinion; and then we shall submit it to you, Gentlemen of the Jury, whether you can believe him guilty of this he is charged with, which is your Issue. You are to try, whether he be Guilty, or Not Guilty, of the Crime charged in the Indictment.

*Mr. Wallop.* My Lord, and Gentlemen of the Jury, I desire to make one Observation before we call our Witnesses.

*L. C. J.* Pray do not take up our Time altogether in Speeches, but go on to your Evidence.

*Mr. Wallop.* I desire to observe but one Thing, my Lord.

*L. C. J.* Make your Observations at last, but spend not our Time in Speeches. I know you will expect to be heard at last, and so you shall, whatever you will say.

*Mr. Williams.* Call the Earl of *Anglesey*, the Lord of *Clare*, and Lord *Paget*, Mr. *Ducas*. [Who appearing was sworn.] Now we have him here we must begin with him, my Lord.

Mr. *Ducas*, pray what did you hear my Lord *Howard* say at any time concerning this Conspiracy, and who were concerned in it, and who were not?

*Mr. Ducas.* My Lord *Howard* came once to the House of Colonel *Sidney*, I believe it was about eight Days after the Imprisonment of Colonel *Sidney*; and when he was in the House, I asked him, What is the Matter, my Lord? He did answer me, he was told there was a Plot against the King and the Duke, and one general Infurrection to be made, and that Colonel *Sidney* sent a Man into *Scotland*, to which thing my Lord *Howard* swore, laying his Hand on his Breast, saying, God knows all Things, and God knows I know nothing of that; and I am sure if Colonel *Sidney* had known any thing, he would tell me; and I said, what is the Matter, my Lord? Are you afraid? And he made Answer to me, No honest Man is safe in his own House, I pray you lend me a Bed to lie in. And he asked me about the Goods of Colonel *Sidney*, because of the Plot and such Things, and he desired to have them removed to his House; and he said, rather than go to the Tower he would do any thing.

*Mr. Williams.* Speak again to the Jury that did not hear you, what said my Lord *Howard* to you?

*Mr. Ducas.* He said, rather than to be a Prisoner again he would do any thing.

*Mr. Williams.* Who to be a Prisoner again?—*Mr. Ducas.* My Lord *Howard*.

*Mr. Att. Gen.* What Things were spoken of?

*Mr. Ducas.* He said he would do any thing.

*Mr. Williams.* Were you speaking of the Conspiracy? Of the Plot?

*Mr. Ducas.* He spoke of the Plot, and said he knew nothing of it.

*Mr. Williams.* What did he say, Sir?

*Mr. Ducas.* He said to me and swore, he knew nothing of it, and called God to witness.

*Mr. Williams.* Pray, did he then say he would do any thing rather than go to the Tower, when you were talking of the Plot and Conspiracy?

*Mr. Ducas.* Yes, he would do any thing rather than be a Prisoner again.

*Mr. Att. Gen.* Pray, what did he say?

*Mr. Ducas.* He raised up his Hands on high, and said, he knew nothing of the Plot, or of the Infurrection, or that Colonel *Sidney* had sent any Man into *Scotland*.

*Mr. Williams.* When was this?

*Mr. Ducas.* I believe it was 8 or 9 Days after the Imprisonment of Colonel *Sidney*.

*Mr. Att. Gen.* What Day of the Month, and what Month was it?

*Mr. Ducas.* He was Imprisoned about the End of *June*.

*Lord Howard.* My Lord, it would be necessary that I should make an Answer to this; and I know not whether I should make a particular Answer to every one; for here is a whole Set of Witnesses, I see.

*L. C. J.* No, let them alone. You must not interrupt them, they must go on with their Evidence; and when it is a fit Time for you to answer them, the Counsel for the King will call you.

*Mr. Williams.* Pray swear Mr. *Howard*. [Which was done.] Pray, Sir, will you please to acquaint my Lord and the Jury what you know of what my Lord *Howard* has said of the Plot, and who were concerned in it?

*Mr. Howard.* My Lord, what I have said is in the Paper of Mr. *Sidney's* Trial, and truly I can say no more than what I said there.

*Mr. Williams.* Pray speak out, Sir, and tell it again to this Jury.

*Mr. Howard.* I was told I spoke it very loud then.

*L. C. J.* Pray, Sir, speak as you please, we don't direct you in what Key you shall speak; speak in what Key you will.

*Mr. Howard.* Then if you will have me speak it, I will speak it as loud again. My Lord, is Mr. *Hampden* here?

*L. C. J.* Yes, there he is.

*Mr. Howard.* In the first Place I do not know Mr. *Hampden*, My Lord, I cannot promise to speak the very Words that I spoke the last time: I cannot make them so fit as one Tally fits another.

*Mr. Att. Gen.* Consider, Sir, you were not Sworn then, you are Sworn now, that is the Difference, and therefore pray consider of it.

*Mr. Howard.* My Lord, As near as I can, I will repeat the same Words again, I had little Acquaintance with my Lord *Howard*; but meeting him often at my Brother's House (and being he was extraordinary pleasant Company, I must needs say that he was so, and a Man of great Wit) and I coming from *Whitehall*, he asked me what News of the Plot? I told him there were some People that were in the Proclamation, or would be, and I named their Names. Says he, I know none of them except *Rumbold*, I think; and by chance I met him passing through the *Old-Exchange*, and he saluted me very kindly. After this my Lord *Ruffel* was taken, and when my Lord *Howard* heard that, says he, then we are all undone. And I very much fear it is a Sham Plot, since they have seized upon my Lord, and I doubt he is a lost Man. After that, I think, as near as I can remember—The next Thing was this—If you look upon the Book, you will see what I said there.

*L. C. J.* We are not to look upon the Book, Man. You must give your Evidence yourself. Mr. *Howard*, I hope you do not Swear by Book? Let the Truth come out in God's Name, whatever it be.

*Mr. Williams.* Ay, my Lord, we desire to have Truth come out.

*L. C. J.* Ay, whether it be of the one Side, or the other, God forbid but Truth should be spoken. Mr. *Howard*, go on.

*Mr. Howard.* Then, my Lord, Colonel *Sidney* was taken, and, says my Lord, I am extremely troubled for Colonel *Sidney*, for he is my very good Friend; said I, why are not you concerned for my Lord *Ruffel*? He is of your Blood, says he, he is a Man without Exceptions. There is no Man of such Honour as he; but I am concerned for Colonel *Sidney*, as that particular Man that has obliged me above all the World, but I never heard my Lord *Howard* name Mr. *Hampden* in all my Life.

*Lord Howard.* I'll give you Reason for it, my Lord, if you please, why I said so.

*L. C. J.* My Lord, this is Evidence for the Defendant. If the King's Counsel will call you afterwards to make Answer to any of these things, then is your time to speak. We will not let them interrupt you when you come to speak, nor must you interrupt them now. We are bound to hear both Sides, and so by the Grace of God we will do.

*Lord Howard.* My Lord, I desire both he and his Brother may stay in Court, for I have something to say to them.

*Mr. Williams.* Pray, what did you hear my Lord *Howard* say concerning the Plot?

*Mr. Howard.* He did deny it positively, and said, they acted nothing but what was Legal, and he said it 500 times over.

*Mr. Williams.* Did he deny it?—*Mr. Howard.* Yes, he did.

*L. C. J.* But when he said they acted nothing but legally, what did he mean? Was this Plot legal?

*Mr. Howard.* I had former Discourses with my Lord *Howard* at other times, and I asked him, My Lord, what tends all this to? Your going up into the City and making these Meetings? Says he, we intended nothing but what is legal. There is not one Man in the Company, that I know of, intends any thing else.

*Mr. Williams.* What was my Lord's Opinion of the Plot in *June* or *July*, or *August*?

*Mr. Howard.* He said he knew nothing of it, nor could he believe there was any such thing. When those Persons were named that were to kill the King, Lord bless me, said he, can there be such a thing in Nature? That any Men should be so wicked. But that there is one Man of Honour or Estate, or Conscience, that ever had any such Thought, it can never enter into my Head, I can never believe it.

*Mr. Williams.* When was this?

*Mr. Howard.* When *Rumbold* and those other People were put into the Proclamation.

*Mr. Att. Gen.* Mr. *Howard*, Then I will ask you your Opinion, whether in your Judgment, every Man that was in the Plot could not have said so much?

Mr.



Mr. Howard. I suppose every Man in the Plot would have defended himself as well as he could, but I cannot tell what way.

Mr. Thompson. Sir, Did he barely affirm it, or with Affirmations and Imprecations?

Mr. Howard. My Lord was not put upon his Oath before me.

Mr. Att. Gen. Mr. Howard, Don't you believe a great many that were concerned in this Plot would deny it?

Mr. Howard. I am to give my Opinion only for myself, not for other People.

L. C. J. Have you done with him?—Mr. Williams. Yes, my Lord.

L. C. J. Then go over, Sir.

Mr. Howard. My Lord, I am troubled with Fumes, and cannot well endure a Crowd, therefore I desire I may have leave to be gone.

L. C. J. You may go if you please.

Mr. Williams. Call Mr. Edward Howard. [But he did not appear.] Then swear my Lord of Clare and my Lord Paget. [Which was done.]

L. C. J. Well, What do you ask my Lord of Clare?

Mr. Williams. My Lord of Clare, Will your Lordship please to acquaint the Court and the Jury, what you heard my Lord Howard say concerning the late Conspiracy?

Earl of Clare. My Lord, Some Indisposition I have had of late, together with the great Rigour of the Season, has confined me to my House these six Weeks, so that I should not come here but upon this Summons of a Subpoena, which I thought I ought not to refuse. I suppose I need not repeat much of what was said at Col. Sidney's Trial.

L. C. J. My Lord, You must give what Evidence you have to give now.

Mr. Williams. My Lord, The Gentlemen of this Jury have not heard it, therefore you must say it all over again to them.

Earl of Clare. Sometime after Mr. Sidney was taken, my Lord Howard came to see me, and complaining of the Times, said, That all things were very sad and dangerous, and if ever he was questioned again, he would not Plead, but desire them only to count Noses, for the quickest Dispatch he thought was best: I replied, sure his Lordship was in jest. He said, No, he was in earnest, for he was confident if he came to Trial, they would have his Life, let him appear never so innocent. I said, I hoped not so, it was only his Lordship's Fear, and because of that, I thought it might be presumed he would venture much, rather than be tried. And discoursing of the late Preamble of Armagh's Prophecy; he said, for his part, he thought the Persecution was already begun, and he did believe it would be very sharp, but withal, he hoped it would be but short; and then he began to wish himself beyond Sea till the Troubles were over; and in compliance with his Lordship I did wish so too. But as to Sidney, He did with great Affirmations very much assert his Innocency. He said, he thought he was not guilty of any of the things laid to his Charge; and spoke with large Encomiums in his Praise, as he had Obligation to do, and seemed to bemoan his Misfortunes; which I said I had then reason to believe he was real in, for I believe never any Man was more engaged to another than he to Colonel Sidney. I told him there was a Discourse of some Writings of Mr. Sidney's that were taken; he said he was confident they would make nothing of any Writing of his; I told him, I supposed he meant, legally they could not do it. This was the most he said; as to Mr. Hampden, he mentioned nothing that I know of.

Mr. Williams. Did he seem to declare any Opinion about the Plot or Conspiracy in general, that there was any such thing or not?

Earl of Clare. I do not remember it.

Mr. Att. Gen. My Lord of Clare, Did you never hear my Lord Howard before this complain of the Government, that it was amiss, and was to be rectified?

Earl of Clare. Yes, he often did complain. Every body knows my Lord's way of Discourse.

Lord Howard. Pray, will you ask him, if my Lord of Clare used to fall out with me upon those Discourses.

Earl of Clare. My Lord was always good Company.

Mr. Att. Gen. You mean à propos, my Lord.

Earl of Clare. I understand what you mean by à propos, you are a learned Man, I know.

Mr. Sol. Gen. My Lord of Clare, if I apprehend your Lordship aright, my Lord Howard was discoursing of the Preamble of Armagh's Prophecy, and said he thought the Persecution was already begun, and would be sharp, though he hoped it would be short, and he wished himself beyond Sea till the Troubles were over, and your Lordship wished yourself so too?

Earl of Clare. No; I said in compliance with his Lordship, since he wished himself beyond Sea till the Troubles were over, I wished he were there too.

L. C. J. But I perceive all these Discourses concerning the Government are reckoned but Jest and Matter of Laughter, but 'tis a very rank way of jesting, I assure you.

Mr. Williams. My Lord, We call our Witnesses seriously, they are the King's Counsel that jest.

Mr. Att. Gen. Was this before my Lord Howard was taken?

Earl of Clare. Yes, but after Mr. Sidney was taken.

L. C. J. Well, who do you call next?

Mr. Williams. My Lord Paget, Pray what have you heard my Lord Howard say concerning the Plot, and when?

Lord Paget. My Lord sits there, and I believe he may remember it was about the 7th of July, the Saturday before my Lord went into the Country, to the best of my Memory, which was, I take it, the 9th of July: upon Saturday the 7th at Night my Lord came to see me; I told him I was glad to see him Abroad, and not concerned in the Disorders that were then so general; my Lord told me he had been wished Joy by several, and he took it ill, because it looked as if he were guilty. 'Tis true, my Lord was a Man of great Finesse and Readiness in Discourse, and came easily into all Company; my Lord said that was true, but he had so carefully behaved himself, but he was sure they could not touch him with any thing, nor did he know any thing of any body else that he could charge them withal.

Mr. Williams. When was this my Lord?

Lord Paget. This was the 7th of July.

Mr. Att. Gen. Pray, good my Lord, Why did you joy my Lord Howard? Had you any Reason to mistrust my Lord?

Lord Paget. No other Reason than because I knew he was a Man of great Freedom in Discourse, and might be concerned upon that Account.

Mr. Att. Gen. And he would frequently discourse against the Government I suppose?

Lord Paget. No, I never heard my Lord discourse against the Government in my Life.

Mr. Williams. Swear Dr. Burnet. [Which was done.] Pray will you, Doctor, acquaint the Court, what you have heard my Lord Howard say concerning the late Plot, and when?

Dr. Burnet. My Lord Howard came to see me the Day after the Discovery of the Plot broke out, Thursday I think it was, on Wednesday it began to be talked of. The thing was little understood then, but in general a Plot was discovered, and my Lord, with a great many Protestations, lifting up his Hands and Eyes to Heaven, protested he knew of none, and believed there was none, and spake of the whole thing as a Contrivance.

Mr. Williams. This was the Day after the Discovery broke out?

Dr. Burnet. Yes, the Day after that I first heard of it.

Mr. Williams. Had you any other Discourse with my Lord about it?

Dr. Burnet. I had not seen my Lord before of some Months. And then he spake a great deal to me. He told me he had been in Essex, and after that he went to the Bath, and went so early and came away before the Company came, because he would avoid all Danger. And he expressed great Apprehensions of Fear of Sham-Plots, and spake of False Witnesses and former Designs of that Nature. The Truth of it was, one had possessed me with a Belief of the Thing, it being then but a secret, but he strove to dispossess me of that Belief, and his whole Discourse ran upon that for an whole Hour, and expressed, as I said, great Fear of some Sham-Contrivance, and spake much of False Witnesses, wishing that he were beyond Sea.

L. C. J. What, he spake as if there were like to be great Heats and Stirs, I suppose?

Dr. Burnet. No, the Talk was about the Discovery, which he said he believed was a Contrivance.

Mr. Williams. Did my Lord Howard use to come to you sometimes?

Dr. Burnet. Yes, he used to come frequently to see me.

Mr. Att. Gen. Dr. Burnet, Pray let me ask you one Question; you speak of solemn Declarations and Protestations made by my Lord Howard, what gave the occasion to such a Solemnity?

Dr. Burnet. I will tell you the occasion truly, tho' it was never asked me before. It was thus: I being possessed with the Belief of the thing by one that assured me it was true, and would soon appear to be so, I argued upon that Belief to convince my Lord Howard, that it was true; and he argued a great deal to dispossess me of that Belief. And I said, if there be any such thing, I pray God forgive them that are concerned, but certainly it is one of the monstrouslest ill things that ever was done; for hereby they have done all that could be done to ruin the Protestant Religion. He was smoking a Pipe of Tobacco, and he laid down his Pipe, and lifted up his Hands and Eyes to Heaven, and protested to me, he neither knew of any such thing, nor believed it, but it was all a Contrivance.

Mr. Att. Gen. By his Discourse, you possibly might understand what he meant; did he mean being privy to the Murder of the King, or the Raising of Rebellion?

Dr. Burnet. There was not a Word then of the Assassination, but it was all of the Plot in general.

Mr. Sol. Gen. Did he make no distinction?

Dr. Burnet. We talked of nothing but Plot in general, For the Particulars were not then known. It was only about the general Notion of a Plot.

Mr. Att. Gen. Pray, What was the reason you had to believe it?

Dr. Burnet. There was a Gentleman from Whitehall that came to see me, and he did assure me it was true, as being one that had it from a Privy Counsellor. This was on the Wednesday, when the Council sat long about it; and nothing of Particulars was then let out, but only a Discourse in general of such a thing, and he said it would be found to be a certain Truth.

Mr. Att. Gen. But, Doctor, did not you a little wonder at the Carriage of my Lord Howard? That a Man that was not accused, that you heard of, should make such solemn Protestations?

Dr. Burnet. My Lord, he said just in this manner as I have told you, when I said, Pray God forgive them, if any have been concerned in such a thing; he laid down his Pipe, and lifted up his Hands and Eyes. Whether he thought I suspected him, or no, I can't tell, he best knows his own Thoughts.

Mr. Att. Gen. Did he say a Word of Mr. Hampden?

Dr. Burnet. No, there was not any particular Person named.

Mr. Recorder. Doctor, he would not make you his Confessor.

Dr. Burnet. His whole Hour's Discourse was to dispossess me of the Opinion and Belief I had entertained of the Plot.

Mr. Just. Holloway. This was about July, you say?

Dr. Burnet. I cannot remember the very Day of the Month, I believe it was the latter end of June, but I am sure it was before any body was committed, that we heard of.

Mr. Recorder. Dr. Burnet, you say you did believe there was a Plot then?

Dr. Burnet. Yes, I did so, and he labour'd to dispossess me of that Belief.

Mr. Recorder. Pray do you believe it now?

Mr. Williams. What a Question is that, Mr. Serjeant?

Dr. Burnet. I make no Doubt of it, Sir, as to the Assassination.

Mr. Att. Gen. My Lord Newport, Why do you lift up your Hands? You don't do well; for it is a very proper Question.

L. C. J. Well, call your next Witness, Gentlemen.

Mr. Thompson. Swear Mr. Gisborne. [Which was done.]

Mr. Williams. Pray, Sir, will you acquaint the Court and the Jury, what you have heard my Lord Howard say about the late Conspiracy?

Mr. Gisborne. My Lord only said he knew nothing of the Plot; that is all I can say.

Mr. Williams. When was this?

Mr. Gisborne. The Saturday before he was taken into Custody; then it was that your Honour did say so, my Lord.

Mr. Att. Gen. Ay, and a too more, I believe, would say so, that might be concerned in it for all that.

Mr. Williams. Swear Mr. Blake. [Which was done.] Pray acquaint my Lord and the Jury, what Discourse you had with my Lord Howard about his Pardon, and what he said to you?

Mr. Blake.



Mr. Blake. My Lord, about the Month of *October* last my Lord Howard sent me to know how I did, and desired me to come and make him a Visit. The next Day I went and waited upon my Lord at his Lodgings at *Whitehall*, and after the Compliments passed, my Lord began a Discourse of the Plot, and I told him, That I heard none of the Witnesses had their Pardons, but only *Keeling*, the first Discoverer. My Lord told me no, but he had a Warrant for his Pardon, and with that he pluck'd it out and shew'd it me, and I read it. And then I told him I thought it was of no Avail, without he had his Pardon actually under his Seal; he said no, but he had their Word and Honour: But, said he, when I first received the Warrant, they said I should not meddle in it till I heard from them again, which I have not yet; and I ascribe it to no other Reason but only this, That I must not have it till the Drudgery of Swearing is over.

Mr. Williams. When was this?

Mr. Blake. In *October* last some time. So I then took my Leave of my Lord, and my Lord desir'd me to come and see him at Night about six o'clock in the Evening, for he had a great many come to him, but then he should be at Leisure, and had many Things to say to me.

Mr. Att. Gen. At that Time did my Lord express himself as discontented, and that it was irksome to him to be brought as a Witness?

Mr. Blake. He only said those Words that I have told you, and looked up and turned up his Eyes towards Heaven when he said so.

Mr. Williams. Pray, where is Mr. Benjamin Mercer? Swear him.

[Who was sworn.]

L. C. J. What do you ask him?

Mr. Williams. We bring him to prove that my Lord *Anglesey* was served with a *Subpoena*, but is so ill of the Gout he can't come.

L. C. J. If that be all, there is no Question of it, but that he was subpoena'd.

Mr. Williams. If your Lordship please, we will prove in what Condition my Lord *Anglesey* is, and then we hope your Lordship will give us Leave to prove what my Lord has said concerning my Lord *Howard*'s Discourses with him.

L. C. J. No certainly, Mr. Williams, and I am sure you ask it not as expecting it should be granted.

Mr. Williams. I lay it before your Lordship and the Court.

L. C. J. Ay, You lay it before us, but you are a Lawyer, do you yourself think fit it should be done?

Mr. Williams. My Lord, I must submit it to you.

L. C. J. Come, Will you consent that what the Duke of *Monmouth* has said, shall be given in Evidence, and then I presume the King's Counsel will consent to your Request?

Mr. Williams. I consent? Here is my Client, my Lord, in Court, I can consent to nothing.

L. C. J. But if so be there be Leave given on one Side to tell what another Person has said, why should it not be consented to on the other Side, that it be proved what a third Person that is absent has said for them?

Mr. Recorder. Ay, Will you consent that we prove what the Duke of *Monmouth* has said?

Mr. Williams. We don't know what the Duke of *Monmouth* has said.

L. C. J. But you do know 'tis not Evidence, nor fit to be granted what you ask.

Mr. Jones. You know that 'tis not for your Purpose what he has said.

Mr. Williams. My Lord, We must go according to our Instructions.

L. C. J. But you know the Law, why should you offer any such thing? Your offering it will make the *Lay gens* that know not the Law think that the Court puts Hardships upon People, in denying things which you that understand the Law know can't be granted.

Mr. Williams. I do not press it, my Lord, but leave it with you.

L. C. J. Why do you spend our time in urging things that are nothing to the purpose, and cannot be allowed?

Mr. Williams. Now, my Lord, We will go on to another Part of our Defence, and that is, to call Witnesses to the Reputation of Mr. *Hampden*, and his Behaviour, to satisfy you, that he cannot be such a Person as the Indictment says, and as he must be if it be true what this Gentleman, my Lord *Howard*, has sworn.

Mr. Thompson. We will first examine my Lord *Paget*. [Who stood up.]

Mr. Williams. My Lord, We ask you to that Question. Have you known this Gentleman Mr. *Hampden*, and what sort of a Man is he?

Lord *Paget*. I have good reason to know him. I have known him a great while, and have always believed him an honest and a prudent Man, a Man of Honour, and Virtue, and Integrity, my Lord; and I have had no Reason to have other Opinion of him. I know he has been always, ever since he came abroad into the World, a Man that hath loved his Study, and Books, and a contemplative Life. And therefore I should not be apt to believe, That he could apply himself to a Thing so contrary to his own Nature, and to that Way that he delighted in, and had always hitherto applied himself unto, I mean to engage in a Design of so much Malice and Wickedness.

Mr. Williams. My Lord, You have had a long Conversation with the Knowledge of Mr. *Hampden*, you say. What say you as to his Disposition; because this Indictment says he is a Person of a turbulent, factious, seditious Spirit?

Lord *Paget*. I have always known him a quiet peaceable Man, not meddling in Business, very friendly, free from all Turbulency, not of much Acquaintance, nor desirous to make much.

Mr. Att. Gen. Pray, my Lord *Paget*, upon the same Oath you have taken, have you not at any Time heard him express Dissatisfaction as to the Male-administration of the Government?

Lord *Paget*. No, Never to me in the least.

Mr. Att. Gen. Not at the Time of the last *Westminster* Parliament?

Lord *Paget*. No, I never heard him then, nor at any Time else.

Mr. Williams. Mr. *Hampden* was then in *France*, and not in that Parliament, though he was a Member. Where is Mr. *Pelham*?

L. C. J. Here he is. He sits down here. [Pointing to the Table.] What would you ask him?

[He was sworn.]

Mr. Williams. Sir, will you please to acquaint the Court, what Acquaintance you have had with Mr. *Hampden*, and how long? And what you know of him?

L. C. J. You hear the Question, Sir, how long have you been acquainted with Mr. *Hampden*?

VOL. III.

Mr. *Pelham*. I have been acquainted with Mr. *Hampden* about five or six Years living near him, and all that I could observe from him was, that he was a Man much addicted to his Studies, kept much at home, and I never observed that he had much Acquaintance; but as to the Business before you, I know nothing of it, nor ever heard him speak any thing relating to it.

Mr. Williams. As to his Spirit and Disposition, is he a turbulent Man?

Mr. *Pelham*. No, I never found him any thing like it. We never talked together of Matters of that Nature.

Mr. Att. Gen. Were you ever in his Company at any time when he discoursed about Government?

Mr. *Pelham*. No, I was never with him at any time when he discoursed of any such thing.

Mr. Williams. Sir *Henry Hobart*.

Mr. Att. Gen. My Lord, we oppose his being a Witness. He is one of his Bail.

Mr. Williams. That was upon the *Habeas Corpus* Act, not upon this Indictment.

Mr. Att. Gen. If he be Bail for the Defendant, my Lord, he cannot be a Witness.

Mr. Williams. I appeal to the Rule of Court, whether he was not Bail upon the *Habeas Corpus* Act only?

Mr. Att. Gen. Appeal where you will, the Bail cannot be a Witness.

Mr. Williams. We moved for an *Habeas Corpus* the Beginning of last Term upon the late Act for *Habeas Corpus*'s. And then at the last Day of the Term upon *Habeas Corpus* he was brought up thither, and was bailed upon that Writ.

Mr. Att. Gen. Are not you one of the Bail, Sir *Henry Hobart*?

Sir *Hen. Hobart*. I was one of his Bail, I think it was for his Appearance.

L. C. J. If he be one of his Bail that he shall appear in this Court the first Day of this Term; and so from Day to Day, till he shall be discharged, and remains under that Recognizance, then in any Case against him he cannot be a Witness for him.

Mr. Att. Gen. But they mistake the Matter; he was then charged with this Indictment: He then pleaded to it, and was bailed to answer the Indictment; and surely in that Case he can never be a Witness.

L. C. J. That is certainly very true; and you know the Law so well; Mr. Williams, that I wonder you will insist of it; in every ordinary Case, it is every Day's Practice to deny the Bail to be Witnesses.

Mr. Att. Gen. Here is the Person principal, will they render him in Custody?

L. C. J. Ay, what say you, will you render him in Custody? Then we will discharge the Bail.

Mr. Williams. My Lord, I will tell you what we will do.

L. C. J. Tell me what you will do! Answer my Question, Will you render him in Custody?

Mr. Will. We will change the Bail, my Lord, and find some other sufficient Person to stand in Sir *Henry Hobart*'s Place, rather than lose our Witnesses.

L. C. J. With all my Heart.

Mr. Williams. Here is Mr. *Ashurst*, my Lord, a Gentleman of very good Value.

L. C. J. But you must render him first, and change the whole Bail. They must enter into new Recognizances.

Mr. Williams. I can't tell whether we can do that so very well, because the others, I am afraid, are not all here. He is a mighty material Witness, I am sure.

Mr. Att. Gen. My Lord, Mr. Williams says he is a material Witness, let him be sworn, I am so fair, I'll consent to it: Let us hear what he can say. [Which was done.]

Mr. Williams. We thank you, Mr. Attorney. I'm afraid you won't live long, you are so good-natur'd.

L. C. J. But you are like to live for your Good-nature, Mr. Williams.

Mr. Thompson. Sir *Henry Hobart*, How long have you been acquainted with this Gentleman, Mr. *Hampden*?

Sir *H. Hobart*. I have known him any time these ten Years.

Mr. Williams. How has he been, Sir, as to his Disposition and Spirit? Did you ever find him to be of a turbulent Temper?

Sir *H. Hobart*. Very far from it always.

Mr. Williams. Have you had any intimate Conversation with him?

Sir *H. Hobart*. I have known him all along, I say, these ten Years, but of late I have had more Converse with him some few Years in Travel.

Mr. Williams. Had you much Conversation, Sir?

Sir *H. Hobart*. I was with him continually at *Paris*, and abroad.

Mr. Williams. What say you as to his Loyalty and Principles? Was he a factious, seditious Person?

Sir *H. Hobart*. Sir, he always expressed a great Esteem for the Government, and great Respect and Duty to the King.

Mr. Will. Pray, Sir, when went Mr. *Hampden* abroad to go into *France*?

Sir *H. Hobart*. He went into *France* for his Health about *November*, (80.) I think it was.

Mr. Williams. How long did he continue abroad, Sir *Henry*?

Sir *H. Hobart*. I found him in *Paris* the *May* after.

Mr. Williams. How long did you tarry there, Sir, yourself?

Sir *H. Hobart*. I went from *Paris* in *June*, and came back again to *Paris* about *October* or *November*, the same Year, and I found him in *France* still.

Mr. Williams. And when do you take it he returned into *England*?

Sir *H. Hobart*. I was with him till he came over, which was about *September* (82.) I think.

Mr. Thompson. What do you know, Sir, of his Intentions to go again beyond Sea?

Sir *H. Hobart*. When, Sir, do you mean?

Mr. Thompson. Since that time he came over, you say in *September* (82.)

Sir *H. Hobart*. He told me of it often, I think it was about *March*, more particularly once at his own House.

Mr. Thompson. What *March*, Sir?—Sir *H. Hobart*. *March* (83).

Mr. Thompson. That is last *March*.

Sir *H. Hobart*. Yes, last *March*, he talked of it several times, particularly once I went about some Business of my own, and then he discoursed a great deal of his going over with my Lord *Mountague* that now is; for he told me his Health was not yet established, for he came over out of an hot Country in *Autumn*, and had been all the Winter in this colder Country, and the Air he found had impaired his Health again. And it was not



not only what he told me, but I had a Letter from a Friend of mine in France, to whom I had sent to desire him to come over; but he writ me Word, no; Mr. Hampden was coming over again, and he would not come back again yet.

Mr. Att. Gen. Did he tell you when he intended to go over, Sir Henry?

Sir H. Hobart. As soon as Mr. Mountague, my Lord Mountague that now is, could get ready, who was to carry his Lady over with him.

Mr. Williams. Sir, do you know of any Preparation made by Mr. Hampden for it?

Sir H. Hobart. He had resolved to take his Lady with him, because Mr. Mountague's Lady went, and so I believe did prepare accordingly.

Mr. Att. Gen. Did Mr. Mountague go over?

Sir H. Hobart. He did not go then, but since he is gone.

Mr. Att. Gen. Were you in France then at this Time?

Sir H. Hobart. This was in England, at his own House.

Mr. Williams. Pray, Sir, what is his Disposition?

Sir H. Hobart. He was always inclined to a studious Life, and kept very little Company.

Mr. Att. Gen. Was this in March, 83?

Sir H. Hobart. Yes, he came over in September before. I always observed him to be of a retired Temper.

Mr. Att. Gen. You say in 1680 he went into France, and (82) he came over again?—Sir H. Hobart. Yes.

Mr. Att. Gen. Pray, Sir Henry, since you conversed so much with him, have you heard him since the last Parliament at Westminster, or at any time have you been by when he hath discoursed his Opinion about Government?

Sir H. Hobart. Truly, Sir, I don't take myself to be capable of discoursing with him about any such Matters.

Mr. Att. Gen. Have you heard him at any time complain of the Maledministration of the Government?—Sir H. Hobart. No, Sir.

Mr. Att. Gen. Have you never heard any such Thing from him?

Sir H. Hobart. No, never.

Mr. Williams. Swear Dr. Lupee—My Lord, we must desire an Interpreter, for the Doctor speaks French only.

L. C. J. Swear an Interpreter.

Mr. Williams. Dr. Burnet, or if he be gone, call Sir Henry Hobart again. We must beg the Favour of you, Sir Henry, to be an interpreter, you understand the French Tongue very well.

Sir H. Hobart. I will do it with all my Heart, Sir, as well as I can.

L. C. J. Swear him.

Then the Doctor was sworn, and the Oath repeated to him by Sir Henry Hobart in French.

Crier. You shall well and truly interpret between the Court and the Witness, and the Witness and the Court, according to the best of your Skill and Knowledge: So help you God.

Mr. Thompson. Sir Henry, will you please to repeat what Questions we shall ask, and what Answers he makes?

Sir H. Hobart. Yes, Sir, as well as I can, I will.

Mr. Williams. Pray, Sir, ask the Doctor this Question, If he be acquainted with Mr. Hampden?

Sir H. Hobart. Yes, he says very well. He lived near two Years with him.

Mr. Thompson. How long is it since?

Sir H. Hobart. Four Years since, he says.

Mr. Williams. Pray, in that time, What was his Disposition? Was he a seditious and turbulent Man? Or was he a studious retired Man, or what?

Sir H. Hobart. He says the two Years he lived with Mr. Hampden, he kept him Company in his Studies, and all that time he found he had no other Inclinations but for Study and Knowledge, and his Inclinations were very virtuous. He always observed in his Discourse a great Submission and Respect that he had for the Laws of his Nation, and his Prince, and to that Degree he was a faithful Subject to the King; that once he told him, in discoursing with him of the late Popish Plot, that he was ready to sacrifice his Life and Fortune for the King's Service.

Mr. Thompson. Ask him what Discourse he had with him of the Plot since it brake out.

L. C. J. Will that be any Evidence do you think, Mr. Thompson? Will Mr. Hampden's Declaration be any Evidence, he being a Person accused? Do you think he would tell the Doctor, or any body else that he was guilty, when he was like to be questioned? That would have been a wife Business indeed. You say he was a very studious Man, and a learned Man, truly if he had done that, he had bestowed his Time in Learning to very good Purpose.

Mr. Williams. My Lord, That that we would ask him is this: This Person, the Doctor, being discoursing with Mr. Hampden upon the Discovery of the late Conspiracy, and of the dangerousness of the time, he would have advised Mr. Hampden to have gone; no, he said, he would not, for he was an innocent Man, and would not stir.

L. C. J. Well, ask him what you will, but his Declaration of his own Innocence cannot be taken for Evidence.

Sir H. Hobart. He says, since this Plot was discovered, he was going one Day to visit Mr. Hampden, and going through Long-Acre, he met a French Minister, a Savoyard Minister—But, my Lord, he speaks so fast and goes on with so much at a time, that I cannot remember it all.

Mr. Williams. Well, what said that Minister to him?

Sir H. Hobart. He says this Minister asked him if Mr. Hampden was not concerned in the Plot, and upon that he went and told him what the Minister had said to him—He says, he told Mr. Hampden, that the Duke of Monmouth, and my Lord Grey were hid—He says, upon that Mr. Hampden said to him, I will never fly, nor conceal myself, for my Conscience reproaches me in nothing.

L. C. J. Ask him why does he think the French Minister, the Savoyard, as he calls him, should ask whether Mr. Hampden were in the Plot?

Sir H. Hobart. He says, Mr. Hampden said he would rather die innocent than fly with the imputation of Guilt upon him.

L. C. J. But ask him the Question I put, why should that Savoyard Parion say so? What reason had he to think Mr. Hampden was in the Plot?

Sir H. Hobart. He says the Minister did ask him, but he can't tell what Reason he had to think so.

Mr. Att. Gen. Pray, Sir Henry, ask him this Question; how long ago it was since he left him?—Sir H. Hobart. Four Years, he says.

Mr. At. Gen. Where was it, in England or France?

Sir H. Hobart. Whilst he lived in Bloomsbury, he says.

Mr. Williams. Call Dr. Needham and Monsieur Justell. [Who appeared.] And Monsieur Justell was sworn. Pray Sir H. Hobart, will you ask Monsieur Justell, who speaks French too, if he know any thing of Mr. Hampden's Resolution to travel with Mr. Mountague into France?

Sir H. Hobart. He says, Yes. He did tell him he was going into France, and he offered to carry some Books for him along with him.

Mr. Williams. What Company was he to go in, and what time?

Sir H. Hobart. He says, Sir, he can't be exact to the Month when Mr. Hampden spake of going over, but he says, it was a great while before this Plot came to be discovered.

Mr. Williams. Was it some Months before?

Sir H. Hobart. It was a Month before it was known, he says.

Mr. Williams. In what Company was he to go?

Sir H. Hobart. He said he was to go with Mr. Mountague.

Mr. Conyers. Pray, Sir, will you ask him, was he employ'd to get any French Servants to be with him?—Sir H. Hobart. Yes, he says.

L. C. J. Ay, but what was the Question? For there is such a Crowd of People before the Counsel, that the Court cannot hear Mr. Conyers's Question.

Mr. Conyers. My Lord, I asked him, whether he was employed to get any French Servants to be with Mr. Hampden.

Sir H. Hobart. Yes, he says.

L. C. J. Well there is Dr. Needham, what do you ask him?

Then Doctor Needham was sworn.

Mr. Williams. We call Dr. Needham for this Purpose, my Lord, to prove that these Gentlemen that are accused, Mr. Hampden, and my Lord of Essex, and the others, had very little Esteem, and mean Opinion of my Lord Howard. And how one, they so little esteemed, should be let into so great a Secret, will be very strange to imagine. Dr. Needham, Pray, what can you say of any of these Gentlemen's Opinions of my Lord Howard? What Opinion had my Lord of Essex of him?

L. C. J. Is my Lord of Essex now before us? What is that to this Case, Mr. Williams? Let my Lord of Essex have what Opinion he would of him; how does that concern the Defendant?

Mr. Williams. I tell you why I offer it, my Lord—

L. C. J. But pray, offer what is Evidence, and keep to the Business before you.

Mr. Williams. Falsus in uno, falsus in omnibus. If we can prove that what he hath said of my Lord of Essex is false, he is not to be believed against the Defendant.

Mr. Att. Gen. Ay, but upon the Evidence of my Lord Howard, all the rest were convicted.

Mr. Williams. I offer it only upon what is here to Day before you. He says, my Client, and my Lord of Essex were confederate with him upon such a Design. Now if my Lord of Essex was not there, then he is false in that, and that he was not, we offer this as Evidence—

L. C. J. But 'tis not a proper Evidence in this Case.

Mr. Williams. 'Tis a sort of Evidence—

L. C. J. Ay, 'tis a sort of Evidence, but 'tis not to be allowed. If you will prove Mr. Hampden's Opinion, you may, but you must not for him bring Proof of what my Lord of Essex, a third Person, thought of my Lord Howard.

Mr. Williams. I only offer it thus—

L. C. J. Offer what is Evidence, Man! You are a Practiser, and know what is Evidence, but you have offered two or three things to Day, that I know you do at the same time know is not Evidence, and I speak it that it may not be thought we deny you, or your Client any thing that is according to the course of Law. You that know the Law, know 'tis so as we say. Mr. Attorney has gratified you in waving three or four Things already, but nothing will satisfy, unless we break the course of other Trials.

Mr. Williams. My Lord, What I take not to be Evidence I do not offer, and where the Court over-rules me, I have not insisted upon it.

L. C. J. No?

Mr. Williams. No, my Lord.

L. C. J. But you would have insisted upon it, if Mr. Attorney would not have been so easy as to consent, and the Court would have let you. Pray keep to the Business, and the Methods of Law; you know the Law very well.

Mr. Williams. My Lord, I humbly apprehend this may be Evidence, and I lay it before you. My Lord Howard has proved that my Lord of Essex and Five more, of which Mr. Hampden was one, met and consulted about such Matters. We may, I hope, be admitted to prove, That my Lord of Essex was not there; for if we can take off his positive Proof, as to any one of the Circumstances, we take off from the Truth of the Fact. If all the Persons were not there; then my Lord Howard is mistaken in that, and accordingly must not be believed in the rest; therefore, my Lord, I press it no otherwise: He hath proved these six Persons were there. I offer this as some Evidence, That it is unlikely it should be so, because my Lord of Essex had so little Opinion of my Lord Howard, that he would never consult with him about any matter.

L. C. J. Then certainly my Lord Howard is to be believed, to all Intents and Purposes, for here is a Record of the Conviction of my Lord Russell, and of Colonel Sidney, and all upon the Testimony of this Gentleman, my Lord Howard; and is not that more to support his Credit, than a flying Report of a third Person's Opinion of him. And yet after all we say, 'tis no Evidence against Mr. Hampden, and has been waved by Mr. Attorney.

Mr. Williams. Then I will not press it, my Lord.

Mr. Just. With. It is no Evidence, certainly, Mr. Williams.

L. C. J. It seems my Lord Essex had such an Opinion of my Lord Howard's Evidence, That he thought fit to cut his own Throat, rather than abide the Trial.

Mr. Williams. Call Mr. Murray.

L. C. J. Suppose my Lord of Essex had said, That he was out of the Plot, and Mr. Hampden, was in, would that have been good Evidence against Mr. Hampden, do you think? Pray mind what is the Business before you?

Mr. Williams. Swear Mr. Murray.

L. C. J. Well, what do you ask this Man?

Mr.



Mr. Williams. My Lord, we call him as to what I opened of my Lord Howard's Opinion of the World to come, and Rewards and Punishments there.

L. C. J. Mr. Williams, Pray take notice of this: Private Discourses that People can't come to make Answer unto, because they can't imagine to have them objected, are a very odd sort of Evidence.

Mr. Williams. Therefore I opened it warily and tenderly; my Lord, the Witnesses will tell you the Story better than I.

L. C. J. I cannot tell what Mr. Williams has said, or I have said in heat of Talk or Vanity. God knows how often all of us have taken the great Name of God in vain: Or have said more than becomes us, and talked of Things we should not do.

Mr. Att. Gen. My Lord, how can my Lord Howard be prepared to give any Answer to this?

L. Howard. My Lord, this presses hard upon my Reputation, my Lord. I profess before God I do not know this Fellow, I never saw him in my Life before as I know: But a Company of impudent Fellows take the liberty of saying what they please.

L. C. J. To rake into the whole course of a Man's Life is very hard.

L. Howard. I would fain have these Fellows dare to say this any where else of me.

Mr. Williams. Well, my Lord, we will wave it.

L. C. J. They do not think it a fit Thing to press it.

L. Howard. But, my Lord, it concerns me in my Reputation; who is this Rascal they bring here? God's Life, who is he?

L. C. J. We must be tender of Men's Reputation, and not let every Thing come as Evidence when 'tis not fit to be Evidence, to put Slurs and Scandals upon Men that they can't be prepared to wipe off. Is he convicted of any Crime? If he is, you say something, shew the Record of it.

Mr. Just. Withins. Mr. Williams. You know the Case adjudged lately in this Court, a Person was indicted of Forgery, we would not let them give Evidence of any other Forgeries, but that for which he was indicted, because we would not suffer any raking into Men's Course of Life, to pick up Evidence that they can't be prepared to answer to.

Mr. Williams. We have that Respect for my Lord's Honour too, as not to press it, only we had it in our Briefs, and we must go according to our Instructions.

L. Howard. I desire to know who that Rascal is? What is he? Where does he live? I will make him an Example.

L. C. J. Pray compose yourself, my Lord, there is nothing of this pressed.

L. Howard. To say I am an Atheist, my Lord? What can be a greater Reflection?

L. C. J. He has not told us any such thing as yet. And we will take care that nothing shall be offered but what is fitting.

L. Howard. I vow to God, my Lord, I do not know the Man.

L. C. J. My Lord, do you think that every thing that a Man speaks at the Bar for his Client, and his Fee, is therefore to be believed, because he said it? No, the Jury are to take nothing here for Evidence to guide them of what the Counsel say, but what is approved. They are to judge *secundum allegata & probata*, that is their Duty.

L. Howard. Does that Fellow look like a Man of that Figure, that I should say any thing, or have any Conversation with him?

L. C. J. My Lord, I don't know what he is. Go on, Gentlemen.

Mr. Williams. My Lord, we have done with our Evidence. If Mr. Attorney will leave it here, we will.

Mr. Att. Gen. My Lord, we won't mistrust the Evidence, nor the Court, Mr. Hampden. My Lord, I desire to speak a Word myself, if you please.

L. C. J. Ay, in God's Name. You, or your Counsel, I will hear all you will say, and as long as you will speak, provided you speak within the Bounds of Decency.

Mr. Williams. My Lord, I think it best to leave it to the Court: We hope we make it clear that our Client is innocent.

L. C. J. Would to God you were innocent, that is the worst Wish I wish you, but we will either hear him or you speak, speak as long as you will.

Mr. Wallop. My Lord, I desire to make but one Observation.

L. C. J. Ay, in God's Name make what Observations you will, Mr. Wallop, I hindered you from making your Observations at first, because I knew it would be desired after the Evidence was over.

Mr. Att. Gen. Then my Lord, I expect to be heard too. If Mr. Hampden makes a Speech, I will reply, or if his Counsel do it, I expect the last Word, for I will have neither the Party, nor the Counsel to speak after I have summ'd up the Evidence for the King. Mr. Hampden, and his Counsel are all one.

Mr. Wallop. I have but one short Observation to make.

L. C. J. Go on then, Mr. Wallop, and say what you will.

Mr. Just. Withins. I think 'tis very fit you should do it of both Sides; 'tis a Cause of great Concernment.

Mr. Williams. My Lord, we will leave it here, I think.

L. C. J. Take your own Course, do not say we hinder you of saying what you will for your Client.

Mr. Att. Gen. Let them do what they will.

L. C. J. I'll sit still, make Speeches every one of you as long as you will.

Mr. Just. Walcot. 'Tis fit they should speak what they can for the Advantage of their Client.

Mr. Williams. My Lord, we leave it to the Court.

L. C. J. Gentlemen of the Jury, the Evidence has been something long, and the Counsel both for the King, and for Mr. Hampden, against whom this Indictment has already been found by the Grand Jury, having left it to the Court to sum up all, I shall do it as well as I can: And the Question before you, Gentlemen, is, Whether the Defendant be guilty of the Offence charged in the Indictment, or not Guilty, and there having been so long an Evidence on the one Side, and on the other, it will be fit for me, according to the best of my Remembrance, to help your Memories, by recollecting what has been said on both sides, which I shall do as near as I can, and if my Brethren will please to supply any thing that shall be omitted by me, nay, if the Counsel for the King, or for the Prisoner, will put us in mind of any thing that has been spoken, and proved either against, or for the Party indicted, in God's Name let them have Li-

berty to speak it: For it is fit the Question should be left before you with all Fairness; and according to the best of my Observation and Memory, thus it stands.

The first thing, Gentlemen, that is considerable to you, is, that there is such an Indictment, as has been already opened unto you, that is preferred against Mr. Hampden, that does set forth, that Mr. Hampden is a seditious Person, and a Man, according to the Language of the Indictment (which were Words of Course and Form in an Indictment of this Nature) of an evil Disposition, designing to disturb and distract the Government, and that he, with several other Persons, did conspire to bring in Troubles, and Perplexities upon the Government; and in order to that, that there were some Meetings between him and several other Persons, and that there was a Design to conciliate some Persons of another Nation to go along with them in their Design, particularly some in the Kingdom of Scotland. This is the Purport in the Indictment, to which the Defendant has pleaded Not Guilty.

Gentlemen, the Evidence for the King has been of this Sort, They did at the beginning, which yet I must tell you by the way, is not any thing of Evidence, but the King's Counsel would make some Overtures to press on their Side, as the Defendant, and those that are of Counsel for Mr. Hampden, have made some little Hints to press on their Side, that some Witnesses the one and the others would have had here, were *subpœna'd*, but could not be here. It seems by the Proof, here was a Meeting, as it was between Six several Persons, and they name them, the Duke of Monmouth was one, the Lord Howard another, the Lord Russell a third, the Earl of Essex a fourth, Algernon Sidney a fifth, and Mr. Hampden the sixth. As for my Lord of Essex he is gone to his long Home, my Lord Russell and Mr. Sidney have received Sentence, and been executed. So there remains three surviving, and say they that are for the King: We produce my Lord Howard, and we have taken care to summon the Duke of Monmouth, by leaving *Subpœna's* where it could be thought he was to be met with, with Promises of his Servants to deliver them to him in order to have the Duke to be a Witness for the King this Day. I presume the meaning is, they would infer from that, that they would give an Account of the Fairness of this Proceeding, though it has been a Matter that has obtained a sort of Belief in the World, as though the Duke of Monmouth had denied that there was any such thing as this Confederacy and Conspiracy: And that has given People occasion to be of very different Opinions and Persuasions about the Matter; but, say they, to shew we are not afraid to have the Truth come out, we have done as much as in us lay to get this Person hither: Therefore we have left *Subpœna's* at his Houses, at his Lodging with his Servants, and they have promised to take care they should be delivered to him, and he is not come. Against this, on the other Side, say they for the Defendant, we have taken all the care we could to bring my Lord Anglesey, who was to have been a Witness for the Advantage of the Person indicted; but my Lord Anglesey is at present afflicted with a Fit of the Gout, and for that very Reason we can't have him here. And so they shew, that they have been very zealous to get Witnesses on their Side to vindicate their Reputation, but they did not meet with that Effect that they desired. These two Things, Gentlemen, are Matters that are used both against him one way, and for him another.

But now to come home to the Evidence upon which this Matter is to turn, and here you are to consider, that whatsoever has been said or offered by the King's Counsel on the one Side, or the Counsel for the Defendant on the other Side, (I call him so, for 'tis but a Trepass tho' a great one) You must not take into your Consideration at all any further than as their Allegations are supported by the Testimony that has been given: And whatsoever the Witnesses have said either for or against him, and out of that Testimony as near as I can remember I will give you the Objections, and their Answers, with the Observations that have been made, or do naturally arise out of the Facts in Proof.

My Lord Howard, in the first Place, gives an Account of this Matter, and, Gentlemen, the Times will be wonderful material, and therefore I beg you would take a Pen and Ink, and mark these material Circumstances as you go. For in all Matters of Fact positively proved, which also have their Credit supported by Circumstances which do accompany them, the Testimonies given of such Facts are to be valued according as those Circumstances keep touch with, and humour, as I may so say, the Fact that they are to evidence the Truth of.

My Lord Howard does therefore in the first place acquaint you, that about Michaelmas there was a Discourse between him and my Lord of Shaftesbury, and that was concerning a Rising intended to be had, and he tells you how that my Lord Shaftesbury was fully resolved upon it; That Things at length came to that pass, that he was forced, to go from his own House, as he said, being disappointed by the Duke of Monmouth and others who had promised to join with him, and was retired to the House of one Watson in or near Woodstreet. But he understanding where he was, my Lord Howard went to him, (I think, he says, my Lord Shaftesbury sent to him) when he came my Lord Shaftesbury told him, that although there had been such a Disappointment by those Persons he named, yet that did not take off his Edge, but he was resolved to go on himself, nay, tho' his Body was infirm, yet he would be set on Horseback, tho' he was lifted up, to appear in the Head of a Party that he had prepared, and were ready when he would call them. And he began then to reflect upon the Disappointment of the Duke of Monmouth, and as tho' the Duke of Monmouth had only a Prospect to advance himself, and had only an eye upon his own particular Interest. That he so managed matters, as if he design'd to have the sole Disposition of all Things whatsoever, and began to be uneasy with the Duke of Monmouth. My Lord Howard did endeavour to have prevailed with my Lord of Shaftesbury for a Reconciliation between the Duke of Monmouth and him, it being a matter that required so much Safety and Security, and did desire him that he would have some Intercourse with the Duke of Monmouth, in order to conciliate a Friendship between them, that they might go hand in hand. You find he was under some Difficulties about this matter, he was not able to bring the Thing about; for after he had spake with the Duke of Monmouth, and prevailed with him, my Lord of Shaftesbury was peevish, and



talked at a Distance, and when he had appointed a Meeting one Time, it was prevented; my Lord Shaftesbury went away into Holland, and there died in Holland. This is the Substance of what my Lord Howard says as to that Matter.

But, Gentlemen, this is material, and I'll tell you why I think it material; because the Counsel for the Defendant have made it an Objection particularly to my Lord Howard's Testimony, That my Lord Howard is particular as to the Day after Michaelmas-Day, but he is not so particular when he comes to speak of other Times upon which the true Question before you depends. For now he speaks more generally as to the Meetings at the Defendant's, and my Lord Russell's, that they were about the Middle of January and the Beginning of February, and is not particular as to the Day. I speak of this because that has been made use of as an Objection against my Lord Howard's Testimony. And I will tell you as near as I can, all the Objections that have been made against this Testimony after such Time as I have settled it, and laid before you what the whole of it amounts to.

Then comes my Lord Howard and says, that meeting with the Duke of Monmouth some time after this they began to talk together, and they thought that tho' the Business had failed in the Managery of my Lord of Shaftesbury, yet it was fit there should be a reassuming of the Business again; but in order to settle matters that things may not go inconsiderately on, it was thought fit that they should resolve themselves into a certain Number that were confident one of another, in order to steer and transact these matters the better among themselves. And they must be Persons fit to be trusted, and for whom there should be an Undertaking among them for their Faithfulness and Integrity; for all Persons are not fit to be trusted, but only such as they agreed upon. The Duke of Monmouth he undertook for my Lord of Essex and my Lord Russell, those were the Persons for whom he would engage, as likewise for my Lord Salisbury. And then they began to talk of some more, particularly of Mr. Sidney, but he was a Cynical Man, and a Philosopher, and they were first to come to him, and to treat with him in another manner than the rest. He was not to appear as the Duke of Monmouth, but to take him in his Retirement and Privacies, and then they might be the better able to break the matter to him. And he says accordingly there was a Time designed on purpose; and at that same Time the Duke of Monmouth and my Lord Howard did go and attack Mr. Sidney; they found him on a private Day, and dined with him; and upon that Dinner the whole Matter was broke up, and put into some Method; then was the whole Design contrived as to the Persons that were to be engaged in this Matter; and he says, they agreed upon Six. The Duke of Monmouth undertook for my Lord of Essex, and my Lord Russell and Colonel Sidney undertook for Mr. Hampden. He speaks of my Lord of Salisbury; but my Lord of Salisbury was never there among them, and so I put him out of the Case, I quit him from being of their Number, because there were but Six in all, my Lord of Essex, and my Lord Russell, who were undertaken for by the Duke of Monmouth, Mr. Hampden undertaken for by Mr. Sidney, and my Lord Howard; for by that time Mr. Hampden was come into the Matter upon Colonel Sidney's Undertaking.

Now we are got, Gentlemen, by these Steps till we come about the middle of January; but, says my Lord Howard, I cannot positively say, it was this Day, or that Day of the Month; but being about the middle of January, I conjecture it was about the 14th, but he is not positive to the Day. He says, accordingly they went to Mr. Hampden's House, which was the Place first design'd for them to meet in. He says, there accordingly they did all Six meet; and that it being Mr. Hampden's House, they thought it most proper for him who was Master of the House, who usually bids his Guests welcome, to break Silence, and to impart the Business of the Design they met about. He says, accordingly Mr. Hampden, after the first Compliments of Entertainment, did give an Account of the Business they were come about, and that it was in order to have a Raising. This, he says, was proposed by Mr. Hampden. He tells you, then they fell into Debate about the Time when, concerning Men, and Arms, and Money; and likewise concerning the Places. He tells you the Places wherein the Raising was design'd to be, were Devonshire, Cheshire, Somersetshire, and other Places, that is, as to the Circumstance of the Place. Then he tells you concerning the Time; it was debated, Whether it should be all at one Time, or at several Times; whether they should only begin here, and the Country fall in, or all at once: That likewise they had in Consideration the Business of Money, and that his Grace the Duke of Monmouth did speak of 30 or 35 Thousand Pounds, or some such Sum at that Time. But then, as was natural for Men of Deliberation and Consideration to consult about, they took into Debate that they might not go headlong, to endeavour to conciliate another Party to chime in, as he says, along with them, in the Business they were going about; and accordingly it was thought fit and proposed, That there should be an Endeavour to conciliate a Friendship with some Persons in Scotland, to fall in with them; and then he tells you who the Persons were that were named: Some of the Names he remembers, and others he has forgot; he speaks particularly of the Campbells, Sir John Cockram, and my Lord Melvin: And he says, other Persons were mentioned, but he can't remember their Names; and my Lord Russell knew some of these Persons, and the Duke of Monmouth knew some others of them, because of his near Relation to the Earl of Argyle, the Person that you know was professed for Treason in the Kingdom of Scotland. He says, that so far the Debate of this matter went, that they thought fit a Messenger should be provided, a trusty Man to be sent into Scotland to treat with these Gentlemen about this matter; and my Lord Russell I think he says, undertook to write a Letter to be carried by this Messenger to these Scotch Gentlemen.

He says, pursuant to this Consultation at Mr. Hampden's, a Fortnight after, or thereabouts, which brings it up to the Beginning of February, then was the Meeting at my Lord Russell's House, and there they debated these matters over again, and the whole Managery of sending a Messenger into Scotland was left to the Discretion of Colonel Sidney, and he undertook that Work, that was his Post that he was to manage; and he does say, that he does very well remember, that Aaron Smith was the Person proposed then; and tho' he was unknown to some of the Com-

pany, yet he was well known to others; and by reason of that Knowledge that others had of him, they looked upon him as a Person very fit, and every way qualified for it.

So that, Gentlemen, here is proved a Consultation in order to the Raising of Men to infest the Government; a Discourse concerning Money and Arms for this End, and the Places where, and the Time when; and of conciliating a Friendship with some discontented Persons in Scotland, to join, and chime in with these Conspirators in England.

And then there is yet another Circumstance very remarkable, because tho' my Lord spoke it not at the same Time that he delivered his Testimony; yet upon the Question asked, he gives you a plain Account of it; and it has a plain Dependence upon what went before. Said they among themselves, 'Tis proper for us, as near as we can, to shut the Door against any Exceptions about these Men's coming to treat with us; but how shall we get them hither without Suspicion? We must have some Shams, or Cant or other, to be a Pretence for these People to come into England; and that was agreed to be about some Plantation in Carolina.

This, he says, was the Result of that Meeting; and that when the Meeting was broke up, about three or four Days afterwards (mind the Circumstance of Time, Gentlemen, for 'tis very material), Col. Sidney and he met together, they went to Col. Sidney's House, and there he saw him take Money out of a Till, where there were several Hundreds of Guineas, or Pieces of Gold; and as he believes, he says, he took three-score Guineas, or some such Sum; and told him it was to give to Aaron Smith in order to his Journey into Scotland: That he went out with him in his Coach, but Mr. Sidney set him down by the way, and he himself went into London, telling him, he went to that purpose, to give Aaron Smith the Money. Some time after, about a Week, or a Fortnight, or ten Days after that, he says, he met with Mr. Sidney again; and he says, Mr. Sidney gave him an Account, that he had heard Aaron Smith had been at Newcastle, but he had not heard of him since that Time, and that is another Circumstance in Point of Time, Gentlemen; so that you have here a positive Oath made by my Lord Howard, that Mr. Hampden was privy, and consenting to all these Debates, as to the Raising of Men, and the Levying of Money, and about the conciliating a Friendship with these Men of Scotland, and about sending a Messenger into Scotland to that Purpose. And if my Lord Howard do swear true, no Man living can doubt but that Mr. Hampden is guilty of this Indictment. The first Meeting was at his House, and there he did take notice of what had been formerly done, and proposed the Things, breaking the Silence, and entering into the Debate; which shews that he had been discoursing about it before, and had it in his Thoughts before, or else he could not have propounded it as the End of their Meeting.

Now this, Gentlemen, here is a positive Fact; and as Mr. Williams says true, no Man living can give any Answer to a positive Fact, but by some other Things that may be Circumstances to oppose that Fact. Now he says, there are no Circumstances that have been proved, that will give any Credibility to what has been deposed, besides the positive Oath of my Lord Howard. So that, says he, your Fact, tho' it be positively sworn, is not supported by any Circumstances of the Fact, that may give Credibility to it. And he objects, very materially; for if it be not supported by credible Circumstances, then indeed it would be less material; yet I cannot say, it would not be at all material; it is material, and you are to determine, whether you have sufficient Evidence given you, to induce you to believe, that my Lord Howard is at this Time guilty of wilful and malicious Perjury, for it is Perjury, and that in the highest Degree, if it be not true that he says; and God deliver all Mankind from being guilty of any such Thing. I leave that to your Consciences, Gentlemen, who are the Judges of it.

But, says the King's Counsel, Here are Circumstances that do support our Fact, and the Credibility of it. For, first, here is the Circumstance of Aaron Smith, who was sent into Scotland by Mr. Sidney in pursuance of this Design, and this Circumstance my Lord Howard does subjoin to what he has positively affirmed against the Defendant. And this Circumstance is a thing that may be helped by other Proof; and what is this Circumstance? Say they, that Aaron Smith was sent into Scotland; and in order to prove that, they have called one Sheriffe, who is a Man that keeps an Inn at the Post-house in Newcastle, from whence Col. Sidney told my Lord Howard he had notice of his Arrival at Newcastle, but had heard no more of him after that. And this Sheriffe swears directly, I saw that Man they call Aaron Smith, when he was shewn to me before the King and the Council; and Mr. Atterbury swears he shew'd Aaron Smith to him, and then Sheriffe swears, that man you shew'd to me was the Man I saw at my House at Newcastle, that chimes in with the Circumstance of Fact that Mr. Sidney heard from him at Newcastle. And then there is the Circumstance of Time when he saw him there; says he, I saw him the Friday before Shrove-Tuesday, which they in the North call Easter's Even. He came to my House on Thursday Night, and went away the next Day, Friday; and he went with his Guide, the other Man, Northward, in order to his Journey into Scotland, as he himself said. Says he, I remember the Time very particularly, it was the Friday before Shrove-Tuesday last, this February was Twelve-month; and he went yet further, says he, I did not only see him when he went away, but when he came back again, for he left his Man at my House all the Time, and he tells you what his Name was; for he says, Smith went under the disguised Name of one Clerk, and he did then talk of going to the Western Parts of Scotland, he named Douglas as he thinks, tho' he is not positive in that, but he is in the Person, that was the Man. And, says he, I sent for this Person, the other Fellow Bell, and he was the Guide he had along with him. And upon Bell's Examination, What says he? Says he, I remember that Man came thither at that Time to the other Man's House: I take it upon my Oath that is the Man, and he went by the Name of Clerk, he hired me to be his Guide; I went out with him on Friday Morning, and I went along with him all that Day; but upon Saturday, which was the next Day, going Northward with him, my Horse tired, and failed me: Thereupon I was forced to be left behind, but I overtook him on Sunday Night following; I overtook him at such a Place, and saw him within six Miles of the Borders of Scotland. I take it upon my Oath, this is the Man that was there under the Name of Clerk; and at his returning back again I took notice of him, I went up to him, I drank



I drank with him, and we had Discourse of our Journey. He told me at first, he was to go to the West of Scotland, and so he went Northward. After that, which was about ten or twelve Days, he came back again, and so went Southward towards London. This he doth swear directly to be at that Time.

Now, Gentlemen, the Time is wonderful material in that Case, because that very Time twelvemonth that they talk of, is the Beginning of February. If you look upon your old *Almanack* of the last Year (I happen'd to have one in my Pocket, and look'd upon it, when the Men gave their Testimony) and there you will find, that the *Monday* before *Shrove-Tuesday*, when he says, he left him within six Miles of the Borders of Scotland, falls out to be the 19th of February; I will look upon it again, lest I should mistake; 'tis just so, and that humours the Time that my Lord Howard speaks of, which was about the Middle of February; a few Days after that, he says the Money was given by Mr. Sidney; and then for the Time for Aaron Smith to get to Newcastle, there is a fit space of Time, for it falls out that the *Thursday* that he arrived at Newcastle, is the 15th Day of February, and so it falls in well with my Lord Howard's Testimony, and so the *Monday* that he parted with him at the Borders of Scotland was the 19th, which also just humours the Time that he speaks of. So that here is a Circumstance of Fact to confirm his Testimony, both as to the sending the Messenger, and the Circumstance of Time. That he is the same Man is proved by these two Witnesses, who agree in this, that he was there about such a Time; and it does likewise humour that other Circumstance of Place, that Mr. Sidney said he had heard from him from Newcastle, but not since; and then there is the other Circumstance which backs and confirms all, There was not only a sending for these Persons, but there is Notice taken that these *Campbells*, who were to be assisting in this Matter, were to come about the Sham, and under the Disguise of purchasing Plantations in Carolina. About the Beginning of June they came to Town, the two *Campbells*, Sir John Cockram, and Mr. Monroe. Sir Andrew Foster he tells you he met with some of the Men, and they told him, they came about the Business of Carolina; and so the Cant of Carolina is made good in this Circumstance that way; but when the Plot brake out, these Men sculk, one flies one way, another another; some were taken as they were escaping away by Water; others of them were taken upon the bed at Noon-day in *Moorfields*: Had the Business they came over into England about been a fair, and a lawful, and honest Business, why should they hide themselves? Why should any Man sneak and sculk, and be ashamed to own an honest and lawful Business? But this does humour and touch the Thing exactly, as to that Circumstance, that Carolina was only a Cant for to disguise their coming over. These are the only two Circumstances that seem to be pretty strong for them, to prove and support the Credibility of what their Witness has sworn.

For, Gentlemen, what a wonderful sort of Expectation would it be, That we shall never convict a Man of High-Treason, unless you can bring a Man to be a Witness that is not concern'd? For then all these Persons must have been acquitted, for they intrusted none, it seems, but these Six; they took care they would keep it amongst themselves. Do you think they called their Servants to be Witnesses of what they were about? That is a vain and idle Imagination. In the *Papish Plot*, what Witnesses of it had you there? Were they Strangers to the Plot? No, you cannot expect any Witnesses but such as the Nature of the Case will bear.

This is the Meaning of the Evidence that has been given for the King, and it carries a great Weight in it. But they have made an Objection, which indeed is not remote, but may concern the question very much. Say they, if we prove my Lord of Essex was not there, or such a one was not there, would it not discredit the Evidence of my Lord Howard? Yes, certainly, it would wholly discredit it, and he were not to be believed at all; nay, which is yet nearer to the Question, if Mr. Hampden, that had notice all along of the Times fixed wherein this Transaction was, to wit, about the Middle of January, and Beginning of February. For because they talk of the Prints, Mr. Hampden had from them sufficient Notice and Intimation of the Time. If Mr. Hampden, that hath had all this Notice, could have proved before you, that he was in France, or any other Place at that Time, that had been wonderful material. But all the Circumstances that are any way significant to support the Credit of this Matter are very well proved; and so the Testimony of my Lord Howard is, by these concurrent Circumstances of Fact, sufficiently supported.

Now, Gentlemen, I must tell you, This being the Substance of the Evidence for the King; I will now, as near as I can, give you an Account of the Evidence for the Defendant; it was opened by Mr. Williams very ingeniously for the Advantage of his Client, as every Man is bound to say what he can for his Client. He made a great many Objections against my Lord Howard; so if he could but shake the Testimony of my Lord Howard, then he might easily bring off his Client; and if you, upon any thing that has been offered, either in Evidence, or by way of Observation fairly made from the Evidence, do believe my Lord Howard has forsworn himself, you must find Mr. Hampden, the Defendant, Not Guilty; but if you believe he has not forsworn himself, you must find him Guilty. So all our Matter is reduced into a very narrow Compass; and therefore I must repeat it again what I said at the Beginning, if my Memory do not serve me to recollect all right, the Counsel for the Defendant shall have free Liberty to inform the Court of what has been omitted.

First, says Mr. Williams, My Lord Howard was a Man very deep in a Conspiracy with my Lord Shaftesbury, by his own Acknowledgment, endeavouring to conciliate a Friendship between the Duke of Monmouth and my Lord Shaftesbury: and so he had a great Hand in the Plot; and what he might do on purpose to get himself out of danger from that Plot, and procure his Pardon, is not known.

It is a very strange Thing, that it should be an Objection before he had his Pardon, that he did it for Fear, and to get his Pardon; and when he has it, now the Objection is, because he has his Pardon; and he got it, say they, by this Means. It seems, whether he had his Pardon or no, it must be an Objection against him: Before he had it, he was under the Fear of not obtaining it till the Drudgery of Swearing was over; but now he has his Pardon, What now? Why he does it on purpose to accuse other People. Why, he says no more now than what he has said before he

was pardoned; and if after he is pardoned, when he is under no Dread or Fear because of his Guilt, he says the same Things that he did when he might be in Fear. How can that be an Objection to him? He cannot be thought he does it to save his own Life; for that is as safe now by his Pardon, as it can any way be; and 'tis, and must be a great Satisfaction to his Mind, and will be so to any other reasonable Man's Mind: And is a plain Answer to the Objection of his Fear, (for 'tis a captious Age we live in, that will make some specious objection or other, tho' it be not of any great Weight.) But how can it be thought a Man would come and swear too much, or too far, for fear he should not save himself; or, as they call it, swear himself into a Pardon, when he has his Pardon? It might be an Objection before; but as long as he is under no such Terrors now, but stands right, both by the Laws of God and Man to be heard as a Witness, I think it would be hard for any one to come, and say, *This Man would forswear himself*. What should provoke him to come and forswear himself, when he is under no Danger as to his own Particular? There might be an Umbrage, I say, of an Objection before he had his Pardon, tho' it was, indeed, no Objection before; not a rational weighty one, to set aside his Testimony. But no body knows which way in the World to satisfy the Minds of some sort of People.

In the next Place, Gentlemen, says Mr. Williams, You are not positive as to the Time; you say, it was about the Middle of January, or the Beginning of February, and that is too general and wide; but you remember particularly to a Day the Business between you and my Lord of Shaftesbury, That that was the Day after Michaelmas-Day: How can you be so particular as to the one, and not as particular as to the other?

Why, I will undertake that Mr. Williams, when he made the Objection, must needs think of the Answer that would be given to it. It is notoriously known, that the Pressures these Gentlemen thought they lay under, were what my Lord of Shaftesbury said, *Now they have got the Juries into their own Power, and no Man is safe; they will find me or any man Guilty, as they please*; Why, how came they to get Juries into their own Hands, but by having the Sheriffs as they would have them? Now the Sheriffs that are to return Juries are, as all Men know that know any thing, sworn the Day before Michaelmas-Day; therefore he might very well, and had good reason to remember that Day; when such a notorious Thing happens to fall out at such a notorious Time, 'tis easier for a Man to remember that Time, than to speak to the particular Time of an Action, done about the Middle of a Month, where there is not such a notorious Circumstance. Why, I can tell you very well where I was upon the Day before Michaelmas-Day; upon that Day, and the Day after; for that very Reason, because it was a notorious Day about the Swearing of Sheriffs in London. But if you ask me, where I was the Middle of January, or the Middle of February, I cannot so well remember that. But there is Credit to be given to a Man that speaks to a notorious Circumstance, and thereby proves the Probability of what he says, though he should not be so particular in a Thing that admits not of such a notorious Circumstance.

Gentlemen, I make the Objections as they are stated on the one Side, and on the other Side; and the Answers that naturally flow to prove the Matters before you one way or other; and you are to judge, you are to weigh them; and which has the greater Credit with you, you are to take notice of.

He does say, in the next Place, Here was a Discourse of arms and armed Men, and a great Sum of Money spoken of, but there breaks out nothing of this Matter till July following; but this Debate was in January and February before. For that Matter, the Answer that is given, and it seems to be a plain one, is, That they were to conciliate a Correspondence with People that were Abroad, and that they could not go on till they had effected that, and till these People came to join with them, which could not be without some Time. And you hear the *Cockrams* and the *Campbells* came not to the Town till June or July; so that it was not probable it should break out till then, because it was to be agitated upon their coming here. And so that Objection is answered, they did not apprehend any such Necessity for present engaging in it. For my Lord Howard, because he thought it would be a Work of Time to settle the Correspondence, and get these People to Town, went down to his Country-House in Essex, and from thence to Bath, for he did apprehend some considerable Time must be spent ere these People could come; and therefore he thought it convenient to take his Retirement in the mean time.

Ay, but 'tis strange, says Mr. Williams, and he makes that another Objection; he would have my Lord Howard to draw in this Accusation of Mr. Hampden, to procure his Pardon, by going further than the other Discoverers had gone. It seems, say they, Mr. Hampden was not thought of at first; but because West and Keeling had discovered a Plot, my Lord Howard to secure himself, must go a Step further than they, and (as the Defendant's Counsel would have it) than the Truth; and that is the Stress of the Objection. But the Weight of the Proof is quite different; for all Men know, in the Plot there were several Parts. There was the Business of Keeling and West, and that was the Assassination of the King and the Duke; but the Duke of Monmouth, my Lord Howard, and those other Gentlemen, were for the Business of the Raising, tho' that might be in order to that other Purpose; but they kept not Company with those that were engaged in that Part of the Design. They were the Underlings, the Scoundrel Plotters, that were concerned in the Assassination. But these Gentlemen looked upon themselves to be Privy-Counsellors, not to be the Executioners; they were to be only Advisers, what was to be done after the other Business was over; and their Consultations were for raising of Men for an Insurrection, not the Business of the Assassination of the King, that was not their Province. Can it be an Objection against my Lord Howard, because he gives a Testimony West and Keeling could not give? Could they go further than the killing of the King, which was their Business: If any Man should have asked my Lord Howard about that Matter, he would have made Answer, it was not for that Purpose that we met together at Mr. Hampden's, and my Lord Russell's; no, that was upon a particular Business, and to a particular End and Purpose.

Then he says too, that though my Lord Howard comes here upon his Oath, and declares these several Matters that he hath deposed; yet he has



given a different Account of things elsewhere, and he has called several Witnesses to that purpose. To whom my Lord Howard several times upon his Honour, upon his Word, with Eyes lifted up, and Hands elevated to Heaven, and many extraordinary Protestations, declared, that he knew nothing of the Plot; and say they, if a Man will at onetime pawn his Honour, and his Reputation for the Truth of a Thing, and after that, will come again to swear against all that Matter, that is an Argument that does sink the Credit and Reputation of that Witness; and thereupon they call you several Witnesses, some whereof are Persons of great Honour and Quality. I think they begin first with *Ducas*, Servant to Colonel *Sidney*, and he tells you, after his Master was taken, my Lord Howard came thither, and desired he might lie there; and desired the Use of some Plate and Goods of Colonel *Sidney's*; and then asked, what was become of his Master? And when *Ducas* told him what he heard of the Plot, that something was talked of about the Assassination of the King and the Duke, my Lord Howard lifted up his Eyes and his Hands to Heaven, and declared he knew nothing of it, but he believed Colonel *Sidney* was a very honest Man, and knew nothing at all of any such Matter; and as for himself, rather than he would be taken or confined again, he would do any thing. This was the Evidence they gave as to him. Then they come with Mr. Howard their second Witness; for I would take them in order as they were produced, and he gives you an Account, that he met with my Lord Howard, and my Lord Howard told him, he knew nothing at all of any Plot, and did believe that Colonel *Sidney* was innocent, and he did believe likewise that my Lord *Ruffel* was innocent, and for his Part he knew nothing of any such thing as a Plot; but he says, when he began to talk to him, why did he make such a Bustle, and go so often into the City and concern himself about the making of Sheriffs? He answered, I do nothing but what is in a legal way; and he justified all that was done to be only in a legal way.

When once People come to believe, that the raising of Tumults, and making Seditions, Stirs and Noises, is a legal way to obtain their Ends, as we know it is the Tenet and Principle of great many People, what will they not do under that Pretence, that all they do is according to Law? They think it is lawful by the Religion they profess, to resist and oppose the Government, and the *Old Cause* is a good Cause to this Day in some Men's Opinion, and they can die in it, and thank God for being concerned in it. And there are some People that say, the raising of Arms by the King's Authority against his Person is lawful by the Religion they profess, and they call themselves *Protestants* (how justly you may imagine); and if Men will make Insurrections to difficult the Government, it is Rebellion, and no Man can justify it, let him pretend Conscience, or what he will, 'tis rank Treason, it is not saying I am thus persuaded in my Conscience, that will excuse the Man; if I steer myself by the Dictates of a good and regular Conscience, it can never be thought that I shall commit Treason, but it is the effect of evil Principles.

Was it not under the Shape of Religion, that that blessed Martyr King *Charles I.* of ever blessed Memory, came to the Block: Nay, and I have heard of some Men in the late Times that were engaged on that Side, who finding that the King did prevail at the beginning of the War, because he had Gentlemen of Quality and Spirit to appear for him, were at a loss to know which way in the World they should put a Spirit in the common People to oppose the King; and some among them bid them to be sure to put Religion to be but the Pretence, and that would make them run headlong to what they would have them. Whose Opinion that was, is not strange to any that know any thing of the History of those Times. So that when once People take it to be the Principle of their Religion to oppose and resist all that are not of their Persuasion, and for Religion sake to resist Authority, then they think all is lawful they can do to preserve their Religion as long as they are wound up to that Opinion.

The next Witness, Gentlemen, is my Lord of *Clare*, and he gives you an Account of his Discourse with my Lord Howard. And by the way I must observe, what I am very sorry for with all my Heart, to hear, that among Gentlemen of Quality and Honour, Discourses of the Government, and the Male-Administration of it, as they think, should be only Matter of Jest fit for their Recreation, and Laughter, only merry Table-talk, as though Government, so sacred a Thing, were as mean as any trivial Concern whatsoever. I am sorry to hear and see, that Persons of great Honour and Quality should esteem it so. And I must be pardoned if I take notice of it: For Matters of Government, and yielding Obedience to Superiors, is a Matter of Religion, 'tis a serious Matter, and every Man ought to make Conscience of it; to talk of Government with Reverence, as well as pay Duty and Obedience to it. And when I find it made a Jest, I must be permitted to say that is not so well done, and whoever it is that makes it so, ought very much to be blamed.

My Lord of *Clare* comes and testifies, that my Lord Howard told him, he did not believe my Lord *Ruffel* was guilty of what he was accused of, much less did he believe it of Colonel *Sidney*, and when he began to talk about Writings found in *Sidney's* Closet, he said, there can be nothing of his Writings found, that can do him or any Man else any hurt. This is the Substance of what that Noble Lord has said.

Then there is my Lord *Paget*, and he likewise gives you an Account, that he had some Discourse with my Lord Howard about the Plot; and he told him too, that he did not believe any thing of this Plot, or that my Lord *Ruffel* and others accused had any Hand in it. But I would observe this one thing upon my Lord *Paget's* Testimony, that still my Lord Howard was wished Joy by every body, and I am glad to see your Heels at liberty, and the like. So that there was some Jealousy of his being concerned; something or other there was in it. Says my Lord Howard, I look upon myself as affronted, that any body should talk so of me. He was concerned that they should suspect him. But something there was at the bottom. Says my Lord *Paget*, I am glad to hear you are out of it. For he began to imagine there must be some Fire for all this Smoke. That, Gentlemen, was the Discourse he had with him. But he says, that with my Lord *Paget* there were Discourses of his going beyond Sea, but he did not go.

Then comes Dr. *Burnet*, and he tells you, that there were Protestations made to him, and he has got the same Words as the *Frenchman* had,

that he did it with lifted up Eyes and Hands, he professed solemnly he was altogether a Stranger to any such Thing. The Doctor says, he had heard there was a Plot, and was persuaded of the Truth of it, but he was a little shaken by what my Lord Howard said to him. But now he is sufficiently satisfied there is a Plot, and I am glad he is, for I think it scarce does remain a Doubt, with any Men that have any Value for the Religion and Government we live under. And I know not how they could be better satisfied, than by the Evidence that has been given of it, a main Part of which was given by my Lord Howard. All this before my Lord Howard was taken.

Then comes in one Mr. *Gisborne*, and he tells you the same Story, that a great while ago my Lord Howard told him he knew nothing of the Plot.

The next to him is Mr. *Blake*, and he tells you, that after such a time as the Plot was discovered, and after my Lord *Ruffel* was tried, and after my Lord Howard had given Evidence at the *Old-Baily*, he shewed him the Warrant for his Pardon, and *Blake* telling him that was not sufficient without an actual Pardon; he replied, I think in my Conscience I shall not have a Pardon till the Drudgery of Swearing is over. But is that any Argument? Here is a Man under the Drudgery of Swearing; therefore he did not know any such thing as he swears. It carries thus much along with it, that it was uneasy to him, and there is a kind of a force put upon him to swear, as they say, in order to his Pardon.

But now, Gentlemen, that will admit of this Answer, and a plain one certainly it is, When a Man comes over and over again to tell the World such a Story, and gives such an Account of himself, it must a little grate upon him, though it be his Duty to tell the Truth, and though, as Mr. *Williams* says, he is the best Martyr that is a Martyr for Truth; even so say I on the other Side, he is the best Penitent that is a Penitent for Truth, and he is the best Witness that is a Witness for Truth's sake, and he gives the best Testimony of his Repentance, that by his Testimony declares the Truth, though it be harsh and uneasy to him; for if I have any Ingenuity, and have lived in good Credit in the World, it must be a drudgery and irksome thing to call myself a Traitor so often in a Court of Justice. It is true he might have given it a more moderate Term, and yet withal upon these Circumstances, he might have reason to call it in some sense a Drudgery. But now, Gentlemen, as he did swear it, before he had his Pardon from time to time upon all Occasions when he was called as a Witness: So now the Pardon is come, which they would have to be the Reason of the continuance of his Drudgery, he swears the same thing. He has his Pardon under the King's Seal, and tho' it might be thought they would keep him within the compass of his Tether till he had done his Evidence; now he has got that he desired, he swears the same Thing. And now his Pardon does not at all influence his Testimony, he is not under any fear, but is as free as any Subject the King has, and now he is upon his Oath, he gives you the Account you have had, and he did say all the same Things, before such time as Colonel *Sidney*, and my Lord *Ruffel* were tried, that he says now.

Then, Gentlemen, you have in the next Place Witnesses called, several of them to give you an Account of the Conversation and Disposition of Mr. *Hampden*; for says Mr. *Williams*, for a Man to be guilty of a Crime of this nature, there must be some kind of evil Disposition to it, and so Mr. *Williams* would argue and make this Inference. You see he is not a Man of a turbulent, seditious and fractious Spirit and Temper, he is a studious Person, very retired, that has been beyond Sea much, and came not Home till such a Time. And if there were Interlocutions between my Lord Howard and my Lord *Shaftesbury* it was before he came into England, and so he was not concerned in them. He says, That *March* last he was to go again, he had a mind to return again to France for his Health; and what reason have we to imagine he should concern himself in the Plot, when he was so studious a Man, lived so retired a Life, and intended to go Abroad so suddenly? And for this you have my Lord *Paget*, Mr. *Peham*, Sir *Henry Hobart*, Dr. *Lupet*, Monsieur *Jussel*, and one *Murray*.

Mr. *Williams*. *Murray*, my Lord, we did not examine.

L. C. J. 'Tis true, I beg your Pardon. Well then, these others tell you, they have been Persons very intimately conversant with him, they never knew he concerned himself with any thing about Government, but was of a quiet, peaceable Demeanour, and was so far from that which the Indictment talks of Turbulency and Sedition, that they never had any Discourse with him about any such Thing at all, save what Dr. *Lupet* says, who it seems lived with him about two Years, and kept him Company in his Studies; and that once having some discourse about the *Popish* Plot, He said he would venture his Life, and any thing he had to preserve the King and Government against this Plot, he did very well, and if he had since declared, he would have ventured his Life to have secured the King and Government against this Plot, I should have been glad to find him of that Mind, I pray God you may find him to be so. But from the Evidence, even of that *Frenchman*, it seems there was some Jealousy in the World, and that he lay under hard Censures as well as other People. For speaking of the Plot, the Advice given him was this: My Lord *Grey* is gone, and the Duke of *Monmouth* is gone, why won't you go? Why should that Advice be given, if there were no Suspicion of his being concerned? That he said, I will not go, and so they would make his staying here to be an Instance and Proof of his Innocence; Why, Gentlemen, if that should be so, then there was the same Innocency in my Lord *Ruffel*, and Colonel *Sidney*, and all of them: For all the Council of Six, every one of them stay'd, except the Duke of *Monmouth*, and he indeed did abscond. And the same Evidence that made the Duke of *Monmouth* fly, and my Lord *Essex* cut his own Throat, convicted my Lord *Ruffel* and Colonel *Sidney*, and is now brought against the Defendant, and has from time to time been given against the rest. We know no reason that they had to stay more than *West* or *Rumsey* had to stay and be taken, and yet that is not used by them as an Argument of their Innocency.

These are the Evidences that have been given on the Defendant's Part; and I tell you as I go along what Answers were given to it on the Part of the King. As to what is spoken of his Intention to go again into France, if he designed to go, why did he not go before



before all this Mischief broke out? He came here at *Michaelmas*, and I may say he came, it may be at an unlucky time, when the City and its Neighbourhood was in a Distemper, and some Men were blown with Fears and Jealousies. These might animate him, and inspirit him as they did other People, and put them into a Ferment; but you find him attending in Town constantly here 'till the Matter was discovered, whatsoever his Intentions were, 'tis much he did not put them into Action, 'tis strange he did not go all this while, it had been much for his Advantage that he had never come out of *France*, or that he had returned thither much sooner.

Against all this that has been urged for the Defendant about my Lord *Howard*, I will tell you what is the Answer to it; and truly first I say, I am apt to believe my Lord *Howard* did tell these Gentlemen what they here testify; but was it ever thought, that any Man that was guilty of High Treason would presently proclaim his own Guilt? Is it reasonable to imagine, my Lord *Howard* would tell Dr. *Burnet* I am in a Plot, and Colonel *Sidney* is in a Plot, and Mr. *Hampden* is in a Plot, and make it his common Talk? Nay, it is so far from being an Argument of his Innocency, that more naturally it may be turned upon them as an Argument of his Guilt. For if a Man had not been concerned in the Business at all, but were an honest Man, and free from Suspicion, what need I talk or concern myself to proclaim my own Innocency, not being accused? Why must I tell Colonel *Sidney's* Footman, this Man, the other Man, that I know nothing of the Plot, and neither I nor any other Man I am sure is concerned in it? But that shews there was a Dread and Apprehension upon him of something that he was conscious of, and that lying within must have some Vent, and this Over-caution is an Intimation that there was something more than ordinary in the Matter. We take notice of it as a great Evidence against a Man that is accused for an Highway-man, if he comes to such an Ale-house or Inn, and bids the People take notice I am here at such a Time of the Day, and that is a Circumstance of Time that will serve to answer a Proof, it may be, that may be brought against him of a Robbery done at such a Time; but we always look upon that Industry of their's, as a Piece of Artifice designed to patch up a Testimony to evade a Proof. So that the Argument will turn the other way; and 'tis more for the Advantage of these worthy Gentlemen, that it should be turned the other way, for otherwise they would be thought to be Persons ill affected to the Government; that is, Dr. *Burnet*, my Lord *Paget*, my Lord *Clare*, and the rest. And if they have a Mind to be thought otherwise, they must let the Argument run that way as I say, and in Charity we ought to believe the best of all Mankind, 'till we find otherwise by them. We say then in Charity, we suppose he thought it not fit to intrust you with his Confessions; for you are all loyal Men, I know 'tis the best Answer that can be given, and that which they ought to value themselves upon for their own Credit and Reputation, and not to make it an Argument against my Lord *Howard*, or against the Credibility of his Testimony in the Matter.

I don't know, truly, Gentlemen, that I have omitted any one Thing that is material, on the one Side or on the other, of which there hath been any Proof; but I must only repeat to you this, Here is a Matter of great Concern and Consequence, a Matter wherein the Peace of the Government and the Kingdom is concerned in a very high degree; a Matter, that if there were another Witness as positive against the Defendant as my Lord *Howard*, would amount to no less than High-Treason. But as there is but one Witness, backed with these Circumstances to corroborate his Testimony, 'tis but only a Trespass; but I tell you it treads very nigh upon High-Treason, and the Tendency of it was to bring us all into Confusion; and what would be the Consequence of that, but to lay us open to the same Mischief that we were under in the Times of the late Rebellion? For tho' Men pretend never so fair, and veil it under the Names of the *Security of the Government and the Protestant Religion*; yet they would have done well to have tarried 'till they had a legal Authority to call them to consult of these high Matters that they pretend to secure; that had been well. What had these Gentlemen to do to take upon themselves this Power without Authority?

Gentlemen, you have heard the Evidence, and you see what it is. And I must say, the late Evidences you have had concerning another Business of this Nature, I wish that might be said to preserve and support the Credit of some Persons upon whose Testimonies Lives have been taken away, as as has been said, and is evident for the Advantage of my Lord *Howard*. I do not find that he has been guilty of Perjury, as being concerned in taking Oaths one way, and then giving Evidence another. I mean, first taking Oaths of Secrecy, and then revealing; not but that notwithstanding all this, they may be believed, and God forbid but they should be believed according to Truth. But I say, if Objections of this Nature are to prevail, we must never expect any great Crime to be punished, because we must stay 'till Persons that are Strangers to the Guilt of the Fact come to give Evidence of it, which is impossible to be done.

Therefore, Gentlemen, I must resolve it all into one Head; You have the Case of a Gentleman of Quality on the one Side, and the Peace and Preservation of the Government on the other Side. You hear what is proved against him, the Evidence given on this behalf, the Objections that have been made by the Counsel, which all of them, as near as I can remember, I have repeated to you, and I ask your Pardon and their's if I have omitted anything, and I desire to be minded of it. You hear the Answers that have been given. And because the Counsel were unwilling to give the Court trouble, or themselves to make long Speeches and Observations, therefore I have been necessitated to do it as well as I can.

Upon the whole matter, my Lord *Howard* has thus positively sworn the Matter of Fact charged in the Indictment against the Defendant; he has been supported by the Witnesses that confirm the Circumstances of *Smith's* going into *Scotland*, the *Scotchmen's* being here in *June*, and the *Sham* and *Cent of Carolina*. All which you have heard, and I make no Question observed, and is not contradicted by any thing I hear that carries any Probability of an Answer. Therefore, Gentlemen, I leave it to you, whether upon this Evidence you will take it upon your Consciences and Oaths, that my Lord *Howard* is guilty of wilful and corrupt Perjury, then you must find the Defendant not Guilty; but if you think he has proved the Matter fully, and his Testimony is supported by those four Witnesses,

*Atterbury*, Sir *Andrew Foster*, *Sheriffe*, and *Bell*, then, Gentlemen, you must find the Defendant Guilty.

*Juryman*. My Lord, we desire to ask one Question. At the Meeting at Mr. *Hampden's* House, I think my Lord *Howard* says they went to Dinner.

Mr. *Just. Holloway*. No, it was at Col. *Sidney's* they went to Dinner.

L. C. J. I know not whether you have taken notice of it, but I have, it was at Col. *Sidney's* they dined, not at Mr. *Hampden's*.

Then the Jury withdrew from the Bar, and within half an Hour the Jury returned, and being called over answered to their Names, and gave in their Verdict thus.

Cl. of Cr. Are you all agreed of your Verdict?

Omnes. Yes.

Cl. of Cr. Who shall say for you?

Omnes. Foreman.

Cl. of Cr. How say you? Is the Defendant Guilty of the Trespass and Misdemeanour whereof he is impeached, or Not Guilty?

Foreman. Guilty.

Which Verdict being Recorded, the Court rose.

Martis 12. Februarii, An. 1683. B. R.

L. C. J. Mr. Attorney, Have you any thing to move?

Mr. Att. Gen. I pray your Judgment against Mr. *Hampden*, my Lord, who was convicted the other Day of a great Misdemeanour.

L. C. J. Let Mr. *Hampden* come into the Court then. [Which he did.

Mr. Att. Gen. My Lord, I need not aggravate the Heinousness of the Offence; for it appears both by the Information, and upon the Evidence to be beyond all Aggravation, wherefore I shall only pray your Judgment for the King, that you would please to set a good Fine upon him, and that he find Sutesies for his good Behaviour during his Life.

Mr. Williams. May it please your Lordship, I am of Counsel for Mr. *Hampden*.

L. C. J. Are the Rules out in this Cause?

Mr. Williams. Yes, my Lord, they are out.

L. C. J. Well then, what say you for Mr. *Hampden*?

Mr. Williams. Mr. *Hampden* does attend here according to the Condition of his Recognizance, and since Mr. Attorney hath prayed your Judgment, I shall not stir any thing as to the Indictment or the Verdict, but all I have to say for him is this, Mr. *Hampden* is but Heir apparent, his Father is alive; and so tho' he has the Prospect of a good Estate, yet he has but little at present in Possession; your Lordship knows what *Magna Charta* says, that there should be a *Salvo Contentamento* in all Fines, and how far that may be an Ingredient into your Lordship's Judgment, I leave to your Consideration.

L. C. J. For that matter, I cannot tell what Estate his is, I have no Knowledge of him, nor of his Estate, whether it be great or small; but Mr. Williams knows very well that the Crime, in conscience as well as Law, in case it had been proved by two Witnesses, would not only have wrought a Forfeiture of all his Estate, but a Forfeiture of his Life too, and all his Reputation, would have bastardized his Children, would have attainted and corrupted his Blood. So that there is no sort of Imagination but that the Crime was high enough of Conscience; and certainly deserves, if we can impose it adequate to its Desert, a very great Punishment. Mr. *Hampden* nor his Counsel can't deny but that they had a fair and a full Hearing, they had the Liberty to say and prove all that they could, and you cannot but say, Mr. Attorney was very fair in making several Concessions that he might very lawfully and rightfully have insisted upon. So that there can be no Exception of that kind. I am sorry that Mr. *Hampden*, a Gentleman of good Quality as he is by Birth, tho' he be a Person I never saw before he came here the last Day of the last Term upon his *Habeas Corpus*, that I know of. I say, I am sorry one of his Quality and Education, a studious Person, as it seems, by his own natural Inclination, and a learned Man, should be so unhappily engaged in a Design of this horribly evil Nature. But on the one Side as well as we must take care of the Subject, so on the other we must take care of the Government. Here was a Design of destroying the King, and subverting the Government, and bringing all into Confusion. Of this Design the Defendant is convicted, and we must take care to proportion the Punishment, and according to our Consciences and Oaths, and as we ought to have regard to the Offender, so also we are to have regard to the Government that he has offended.

Mr. Just. Withins. Mr. Williams, it was Amercements that were spoken of there in *Magna Charta*.

L. C. J. Ay, it was never meant of Fines for great Offences.

Then the Judges consulted together.

Mr. Just. Withins. Mr. *Hampden*, you know you are convicted of a very great Offence, as great an Offence as can be I think committed, unless it were High-Treason. For the Matter of it would have made you Guilty, if there had been two Witnesses. It was for conspiring to levy War against his Majesty, and for conspiring to raise an Insurrection and Rebellion within the Kingdom, a Conspiracy, of which some other Persons being lawfully convicted, they have suffered Death for it. You are a Person of an extraordinary good Family, and I am sorry one of your Family, that has flourished so long, and through so many Generations in great Honour and Reputation, and great Prosperity under the Monarchy of *England*, should come to conspire to deprive that King of his Government, whose Ancestors have protected and defended your Family, and to spoil that Monarchy that has been the Fountain of so much Prosperity and Honour to it. I am sorry it comes to my turn to pronounce the Sentence of the Court upon you, Mr. *Hampden*. I have not any personal Knowledge of you, but I have heard of you, and heard heretofore very well of you. You have had a good Education, and the Report of a learned and ingenious Person, which makes me yet wonder the more that you should engage in such a horrid Design as this was. Indeed, Mr. *Hampden*, I am satisfied no Fine can be too great, if any can be great enough for such an Offence. We cannot take Cognizance what your Estate is, 'tis reported there is a great Estate in your Family, it has been always represented to be so.

Mr. *Hampden*. I have nothing but for Life, and that is but little neither.

Mr. Just. Withins. I know not what it is truly, Sir. But it was always reported to me to be a very great Estate; but whatsoever it is, we are to look after the proportioning the Punishment as near as we can to the Offence.

My



My Lord, and the Court have considered of the Matter, and they think fit to give this Judgment upon you.

*They set the Fine of Forty Thousand Pounds upon you, to be paid to the King, and you must be committed till you pay it.*

*L. C. J.* And that you find Sureties for your good Behaviour during your Life.

*Mr. Att. Gen.* I pray he may be committed for his Fine.

*L. C. J.* Let it be so. *Mr. Hampden*, if you will apply yourself to the King, you may, and there perhaps you may find Mercy; we must, according to the Duty of our Places and Oaths, give such Judgment as the Law requires.

*Mr. Just. Withins.* Ay, in God's Name. You are in the King's Hands, and he may do what he pleases in it.

*L. C. J.* If a Crime of this Nature should have a little Punishment, it might encourage Offenders, and if we were to judge according to some Verdicts that have been given here for less Offences, where Gentlemen have

given very much greater Damages than this Fine amounts to, this would be thought a moderate Fine. I am sorry any Man should bring himself into these Circumstances: The King, as he is the Fountain of Justice, so he is also of Mercy, and you and all the rest of his Subjects have Cause to bless God that you live under a Monarch that is very merciful. No doubt if you give an Account of your Contrition and Sorrow for your great Offence, and decently apply yourself to the King, he will think of shewing Mercy to you; but Justice is our Work that are Judges; and according to the Methods of Justice we think we cannot inflict less than we have done.

*Mr. Williams.* My Lord, I pray his Bail may be discharged.

*L. C. J.* Ay, his Bail is discharged, he being committed.

*Mr. Williams.* And for the High-Treason, he is discharged by the *Habeas Corpus Act*.

*L. C. J.* Yes, he is so, for there is no Prosecution.

Then *Mr. Hampden* was carried by the Marshal away Prisoner.

**CXXIV. *The Trial of Laurence Braddon\* and Hugh Speke at the King's-Bench for a Misdemeanour, in suborning Witnesses to prove the Earl of Essex† was murdered by his Keepers, Feb. 7, 1683. Hill. 36 Car. II.***

THE Defendants, who had pleaded *Not Guilty* to an Information filed last Term, were now brought to Trial.

*Cl. of Cr.* Crier, Call the Defendants, *Laurence Braddon*, and *Hugh Speke*.

*Crier.* *Laurence Braddon* and *Hugh Speke*, come forth, or else this Inquest shall be taken by your Default.

*Mr. Wallop.* They appear.

*Cl. of Cr.* *Gardez votrez Challenges.* Swear *Sir Hugh Middleton*. [Which was done.] And there being no Challenges, the twelve Gentlemen sworn to try this Cause, were these.

*Sir Hugh Middleton,*  
*Thomas Harriott,*  
*Thomas Earlsby,*  
*Joshua Galliard,*  
*Richard Shoreditch,*  
*Charles Good,*

Jur' *Samuel Rouse,*  
*Hugh Squire,*  
*Nehemiah Arnold,*  
*John Bisfield,*  
*William Waite,* and  
*James Supple.*

Who being counted, Proclamation was made in usual Form for Information.

*Cl. of Cr.* Gentlemen, you of the Jury hearken to the Record. His Majesty's Attorney-General in this Court has exhibited an Information against the Defendants by the Names of *Laurence Braddon* of the *Middle-Temple*, Gentleman, and *Hugh Speke* of *Lincoln's-Inn*, Gentleman.

And the Information sets forth,

That whereas *Arthur* Earl of *Essex*, the 12th of *July*, in the 35th Year of the Reign of our Sovereign Lord *Charles II.* by the Grace of God, of *England, Scotland, France and Ireland*, King, Defender of the Faith, &c. was committed to the Prison of our Lord the King, in the *Tower of London*, for certain High-Treasons by him supposed to be committed. And the said *Arthur* Earl of *Essex* being a Prisoner in the *Tower of London* aforesaid, for the High-Treason aforesaid, the 13th Day of *July*, in the aforesaid 35th Year of the Reign of our said Sovereign Lord the King, that now is; not having the Fear of God before his Eyes, but being moved and seduced by the Instigation of the Devil at the *Tower of London* aforesaid, in the County of *Middlesex* aforesaid, himself feloniously, and as a Felon of himself, did kill and murder, as by an Inquisition taken at the *Tower of London* aforesaid, in the County of *Middlesex* aforesaid, the 14th Day of *July*, in the Year aforesaid, before *Edward Fernham*, Esq. then Coroner of our Lord the King, of the Liberty of the *Tower of London* aforesaid, upon the view of the Body of the said *Arthur* Earl of *Essex*; and now in this Court remaining of Record more plainly does appear. They the said *Laurence Braddon* and *Hugh Speke* not being ignorant of the Premises, but contriving, and maliciously and seditiously intending the Government of our said Lord the King of this Kingdom of *England*, into Hatred, Disgrace and Contempt to bring the 15th Day of *August*, in the aforesaid 35th Year of the Reign of our said Sovereign Lord the King that now is, and divers other Days and Times as well before as after, at the Parish of *St. Clement Danes*, in the County of *Middlesex*, with Force and Arms, &c. falsely, unlawfully, maliciously and seditiously did conspire, and endeavour to make the Subjects of our said Lord the King of this Kingdom of *England*, to believe that the Inquisition aforesaid was unduly taken, and that the said *Arthur* Earl of *Essex*, by certain Persons unknown, in whose Custody he was, was killed and murdered. And to perfect and bring to effect their malicious and seditious Contrivances aforesaid; they the said *Laurence Braddon* and *Hugh Speke* at the Parish of *St. Clement Danes* in the County of *Middlesex* aforesaid, the 15th Day of *August*, in the 35th Year aforesaid, falsely, unlawfully, unjustly, maliciously and seditiously did conspire to procure certain false Witnesses to prove, that the said *Arthur* Earl of *Essex*, was not a Felon of himself, but that the said Earl of *Essex*, by the said Persons unknown was killed and murdered: And to persuade other Subjects of our said Lord the King to believe this to be true, they, the said *Laurence Braddon* and *Hugh Speke*, falsely, maliciously, and seditiously, then and there in Writing did declare, and cause to be declared, the said *Laurence Braddon* to be a Person that would prosecute the Murder of the said Earl of *Essex*; to the great Scandal and Contempt of the Government of our Lord the King of this Kingdom of *England*, to the evil Example of all other in the like Case offending, and against the Peace of our Sovereign Lord the King, his Crown and Dignity. To this Information the Defendants have severally pleaded *Not Guilty*, and for their Trial have put themselves upon the Country, and His Majesty's Attorney-General likewise, which Country you are: Your Charge is to enquire, whether the Defendants, or either of them, are Guilty of this great Misdemeanour whereof they are impeached, or *Not Guilty*? If you find them, or either of them Guilty, you are to say so; if you find them or either

of them *Not Guilty*, you are to say so, and no more, and hear your Evidence.

Then Proclamation was made for Evidence.

*Mr. Dolb.* May it please your Lordship, and you Gentlemen that are sworn: This is an Information preferred by *Mr. Attorney-General*, against the Defendants *Laurence Braddon* and *Hugh Speke*, and the Information does set forth, that whereas *Arthur* late Earl of *Essex*, the 12th of *July* last, was committed to the *Tower of London* for certain Treasons supposed to have been by him done: And the said Earl being so committed Prisoner to the *Tower* for Treason, not having the Fear of God before his Eyes, feloniously and as a Felon did kill and murder himself, as by an Inquisition taken before the Coroner of the *Tower* Liberty may more fully appear; yet the Defendants *Laurence Braddon* and *Hugh Speke* not being ignorant of the Premises, but designing to bring the Government into Hatred and Contempt, the 15th Day of *August* last, in the Parish of *St. Clement Danes* in this County, with Force and Arms, falsely, unlawfully, maliciously and seditiously did conspire together to make the King's Subjects believe, that the Inquisition aforesaid was unduly taken, and that the said Earl of *Essex* did not murder himself, but was by certain Persons unknown, in whose Custody he was, murdered. And it further sets forth, that these Defendants, *Laurence Braddon* and *Hugh Speke*, designed to disturb and disquiet the Minds of the King's Subjects, and to spread false Reports, did conspire to procure certain false Witnesses to prove that the said Earl of *Essex* was not a Felon of himself, but was by some Persons unknown killed and murdered: And to persuade other Subjects of our Sovereign Lord the King to believe the said Report, they did falsely, maliciously, unlawfully and seditiously cause to be declared in Writing, that the said *Laurence Braddon* was the Person that did prosecute the said Earl's Murder. And this was to the great Scandal of the Government, to the evil Example of all Persons in like Case offending, and against the Peace of the King, his Crown and Dignity. To this the Defendants have pleaded *Not Guilty*; if we prove it upon them, we make no question you will find it.

*Mr. Att. Gen.* May it please your Lordship, and you Gentlemen of the Jury, *Mr. Speke* and *Mr. Braddon*, these two Gentlemen, are accused of as High Conspiracy as ever has or could well happen in our Days, of throwing the Murder of a Person that killed himself upon the Government. And I must acquaint you, their Design was of an higher nature than barely that; for this Gentleman, my Lord of *Essex*, was committed to the *Tower* for the late Plot, and being so committed, when he had killed himself there, that was more than a thousand Witnesses to open the Eyes of the People, and confirm the Belief of the Conspiracy: And one would have thought, after that there had been an end of the Design, that these Protestant Gentlemen, as they call themselves, were carrying on; when the Earl of *Essex*, a Person of that Quality and Worth, should go to murder himself upon the sense of what he was Guilty of. So that the Design, Gentlemen, was to stifle the Plot, and at the same time they must throw this ill thing that the Earl had committed upon himself, upon the Government: That, Gentlemen, was the main Disgrace, in order to stifle that great Evidence of the Plot. And *Mr. Braddon* must of his own Head, not being put on by any of the Friends of the Earl of *Essex*, who were all very sensible the Earl had done this Fact, committed this Murder upon himself; but I say, he out of a true Principle to manage the Protestant Cause, as they call it, but indeed it was the Plot, he becomes the Prosecutor of this Business, and you will find him by the Proofs in the Case, a Man of many like Projects. For you will find him value himself upon these Titles, that he is the Prosecutor of the Earl of *Essex*'s Murder, and the Inventor of the Protestants Flails, an Instrument, I suppose Gentlemen you have all heard of.

Now, Gentlemen, To make this appear to the World, Letters are sent into all parts of *England* of this Bruit and Report. He himself goes about to find Evidence: for it was so great a Truth, and there was such a plain Proof that the Earl of *Essex* had killed himself, that he must labour it to get Evidence. And he goes about it accordingly, and at length he meets with a little Child of twelve Years of Age, and he prepares for him, all with his own Hand-writing, a Disposition, which is a feigned Story all of it, and in every part of it will appear to be false, and there he mightily solicites this young Boy to sign it. He comes to his Father's House, carries him in a Coach, forces him away, and forces him to sign this Paper that he had thus prepared for him, all of his own Invention and Writing; and with the like Confidence as he appears here, (for so he does appear with very great Confidence, as you may observe) he attests it himself. And, Gentlemen, we shall shew you, that here up and down the Town he makes it his common Discourse what he was in hand with, and makes his boast of himself to be the Prosecutor of the Earl of *Essex*'s

\* *Burnet's history of his Own Times*, Vol. I. p. 569.

† *Ibid* 552, 553.



Murder, and he had as good a Confederate as himself, Mr. Speke, and he having an Interest in the Country, whither the News must be sent all abroad, and Mr. Braddon must go to pick up Evidence, I know not where a great way off, of a Murder committed in the Tower. We shall prove to you, he had Letters Missive and Recommendatory from Mr. Speke to a Gentleman with whom Mr. Braddon was to advise; for they looked upon it to be as dangerous an Enterprize almost as the Plot itself, as indeed it was; therefore they must be wary, and Mr. Braddon is advised to go by a wrong Name; so this Mr. Speke and Braddon were to carry on and make up this Tragi-Comedy, for I can call it nothing else, for the Ridiculousness as well as the Dangerfulness of the Design. The Report was to be, that this Murder of the Earl of Essex was committed by the Officers that attended my Lord, and to fall out in time when His Majesty was in the Tower, as if the King himself had a hand in it. We shall trace it in all Parts of it by several Witnesses, and hope you will make them an Example, first by finding them Guilty, and the Court afterwards by a severe Punishment for such a villainous Practice, to scandalize the Government with the Murder of a noble Peer. We shall begin with shewing you the Inquisition, or rather first with the Conviction of the Earl of Essex for High-Treason, because it is said in the Record by way of Inducement. Call Mr. Reynolds. [Who was sworn.] Have you the Warrant of Commitment of my Lord of Essex?

Mr. Reynolds. Yes.

Mr. Att. Gen. Shew it the Court. Let the Clerk read it.

Mr. Reynolds. This is the Commitment that was delivered the Lieutenant of the Tower, together with my Lord of Essex.

Cl. of Cr. This is directed to Thomas Check, Esq; Lieutenant of His Majesty's Tower of London. Subscribed Leolin Jenkins, and dated—

Sir Leolin Jenkins Knight, of His Majesty's most Honourable Privy-Council, and Principal Secretary of State.

THESE are in His Majesty's Name to will and require you to receive into your Custody the Person of Arthur Earl of Essex here- sent you, being committed for High-Treason, in Compassing the Death of the King (whom God preserve), and Conspiring to Levy War against His Majesty. And him the said Earl of Essex to keep in safe Custody, until he shall be delivered by due Course of Law. And for so doing this shall be your Warrant. Given under my Hand and Seal at Whitehall, the 10th Day of July, 1683.

To Thomas Check, Esquire,  
Lieutenant of His Majesty's  
Tower of London.

L. Jenkins.

Mr. Att. Gen. My Lord, we will then read the Inquisition, that the Earl, being thus in the Tower, killed himself.

Mr. Sol. Gen. Shew the Inquisition. Where is Mr. Finch.

Mr. Farnham. Here I am. The Inquisition is returned here, and is upon Record.

Cl. of Cr. Here it is, Number 11. [He reads.]

London ff. An Inquisition indented, taken at the Tower of London aforesaid, in the County of Middlesex, the 14th Day of July, in the Year of the Reign of our Sovereign Lord Charles II. by the Grace of God of England, Scotland, France and Ireland, King, Defender of the Faith, &c. the 35th, before Edward Farnham, Esq; Coroner of our said Lord the King, of the Liberty of the Tower of London, aforesaid, upon View of the Body of Arthur Earl of Essex, then and there lying dead; by the Oaths of Samuel Colwall, Esq; William Fisher, Thomas Godsel, Esq; Thomas Hunt, Nathaniel Mountney, Esq; Thomas Potter, William How, Robert Burgoine, Eleazer Wickins, Thomas Hogshest, Henry Cripps, Richard Rudder, William Knipes, John Hudson, John Kettlebeter, Lancelot Coleson, Morgan Cowarn, Thomas Bryan, William Thackston, Richard Cliffe, Zebediah Pritchard, William Baford and Theophilus Carter, good and lawful Men of the Liberty of the Tower of London aforesaid, who being charged and sworn to enquire for our said Lord the King, when, by what means, and how, the said Arthur Earl of Essex came to his Death, upon their Oaths do say, that the said Arthur Earl of Essex, the 13th Day of July, in the Thirty fifth Year of the Reign of our said Sovereign Lord the King aforesaid, at the Tower of London aforesaid, in the County of Middlesex aforesaid, about the Hour of nine in the Forenoon of the same Day, not having the Fear of God before his Eyes, but being seduced and moved by the Instigation of the Devil of his Malice aforethought, at the Tower of London aforesaid, in the County aforesaid, then and there being alone in his Chamber, with a Razor of the Value of One Shilling, voluntarily and feloniously did cut his Throat, giving unto himself one mortal Wound, cut from one Jugular to the other, and by the Aspera Arteria, and the Windpipe, to the Vertebres of the Neck, both the Jugulars being thoroughly divided, of which said mortal Wound the said Arthur Earl of Essex instantly died; and so the Jurors aforesaid, say upon their Oaths, that the said Arthur Earl of Essex, in Manner and Form aforesaid, then and there, voluntarily and feloniously, as a Felon of himself, did kill and murder himself, against the Peace of our Sovereign Lord the King, his Crown and Dignity. In Witness whereof, as well I the Coroner aforesaid, as the Jurors aforesaid, to this Inquisition, have interchangeably put our Seals, the Day and Year aforesaid.

Mr. Att. Gen. Call Mr. Evans and Mr. Edwards. After this, my Lord, we shall shew you, that Mr. Braddon went about the Town, and declared the Earl was murdered, and he was the Prosecutor. There is Mr. Evans, swear him. [Which was done.]

Pray will you give an Account to my Lord and the Jury, what you know of Mr. Braddon's going about and declaring he was the Prosecutor of my Lord of Essex's Murder?

Mr. Evans. My Lord, all that I know of this Matter, is this. About the 17th of July last—

L. C. J. When is the Inquisition?

Sir George Cl. of Cr. It is the 14th of July.

Jefferies. L. C. J. Well, go on.

Mr. Evans. The 17th of July last I was at the Custom-house Key Shipping off some Lead, and the Person that brought me the Warrant, I told him I could not execute it without one of the Commissioners Officers; and I bid him go to Mr. Edwards, who was the next Officer adjoining to the Key, and he went to his House, and told him I was at the Water-side,

VOL. III.

and had a Warrant, which I desired him to be present while I executed it; Mr. Braddon it seems was then present in the Place with Mr. Edwards when this was told him, and hearing my Name, Mr. Braddon came down with Mr. Edwards, and found me then at Smith's Coffee-house, and Mr. Edwards told me Mr. Braddon had been with him examining his Son, in relation to a Matter of a Razor that was thrown out of my Lord of Essex's Window; and I presently replied, I desired they would not speak of any such Matter to me, for I had seen the Coroner's Inquisition upon Oath, where it was declared, the Thing was so and so, and two Persons had sworn what seemed to be contrary to this; and therefore I desired they would forbear any such Discourse to me.

L. C. J. Who they?

Mr. Evans. Braddon and he were together.

L. C. J. Who he? Man.

Mr. Evans. Mr. Edwards. And withal I made my Application to Mr. Braddon, and I desired him he would not meddle with such a Matter, for I thought it might be prejudicial to him and Mr. Edwards too. Mr. Braddon made me no Answer, but went directly out of the Room.

L. C. J. What do you mean by so and so, and a Razor thrown out of a Window? We do not understand your so and so.

Mr. Evans. Relating to a Matter of a Razor.

L. C. J. Pr'ythee, we don't know what that Matter of a Razor is?

Mr. Evans. A Razor that was said to be thrown out of my Lord of Essex's Window.

L. C. J. Tell us what the Story was, Man.

Mr. Evans. Mr. Edwards told me, that Mr. Braddon was with him to examine his Son, relating to a Matter of throwing a Razor out of my Lord of Essex's Window: This is that he said, to the best of my Remembrance.

Mr. Sol. Gen. Was Braddon present there?

Mr. Evans. Yes, Mr. Braddon and Mr. Edwards were both present.

L. C. J. Well, What was the Discourse between you? Tell us plainly.

Mr. Evans. Says Mr. Edwards to me, Mr. Braddon has been to examine my Son about such a Matter, so I desired he would not discourse any thing of that Matter to me, and I told him, I advise you not to proceed; for I told him, it would be prejudicial both to him and Mr. Edwards too.

L. C. J. What is meant by this Matter? He examined my Son about a Matter, and I desired him he would not discourse of this Matter; What is all that Matter?

Mr. Just. Holloway. What did you apprehend by it?

Mr. Evans. I apprehend that Mr. Braddon had been to examine Mr. Edwards's Son about such a Matter.

L. C. J. What Matter, Man?

Mr. Evans. His dispersing of any such Report.

L. C. J. What Report?

Mr. Evans. A Report of throwing a Razor out of my Lord of Essex's Window.

L. C. J. Here is a Razor thrown out of a Window, and a Matter of I know not what.

Mr. Just. Withins. Suppose a Man should throw a Razor out of a Window, what signifies that?

L. C. J. Where heard he of that Matter?

Mr. Evans. This is all I heard, my Lord, I am upon my Oath.

L. C. J. But I wish thou wouldst let us know what it is thou didst hear?

Mr. Jones. Was there no Talk of a bloody Razor?

Mr. Evans. No, not a Word of it.

L. C. J. How came you to be frightened then, and to be unwilling to hear of that Matter, and to tell him, you thought it might be prejudicial to him and Mr. Edwards?

Mr. Evans. I told him I had seen the Coroner's Inquest, where it was proved, that the Razor lay in such a Place; therefore I desired they would not speak to me of any such Matter, and I desired Mr. Braddon not to proceed in it, for you may do yourself and Mr. Edwards too some Prejudice.

Mr. Att. Gen. Look you, Mr. Evans, what did you understand by the throwing the Razor out of the Window, and giving him Caution not to proceed? The Razor might be found there, what was the Meaning of it?

Mr. Evans. May it please your Lordship, there was a Report at the Custom-house that very Morning the Earl of Essex cut his Throat, that there was a Razor thrown out of the Window.

Mr. Jones. You did advise Braddon, you say, not to proceed in it?

Mr. Evans. Yes.

Mr. Jones. How came you to advise him so?

Mr. Evans. Because it might be prejudicial to him and Mr. Edwards too.

Mr. Att. Gen. Was there no Talk between Mr. Edwards, Mr. Braddon and you, that Mr. Braddon would be a Prosecutor of the Murder of the Earl of Essex, upon your Oath?

Mr. Evans. Not one Word or Syllable. For Mr. Braddon spake not one Word, good or bad: I gave an Account to Secretary Jenkins of every Word that passed.

Mr. Att. Gen. Did not you advise him not to prosecute the Business?

Mr. Evans. I did advise him not to disperse such a Report.

L. C. J. What Report?

Mr. Evans. Of a Razor being thrown out of my Lord of Essex's Window.

Mr. Att. Gen. Why, suppose there had been a Razor thrown out of the Window, What then?

Mr. Evans. Then it was contrary to the Information and Evidence given before the Coroner.

L. C. J. Why so? Why might it not be thrown out after it was found in the Place where the Inquisition says? Thou art a wonderful cautious Man; Where is the Danger of the Report of a Razor being thrown out of a Window? There must be something more in it, if we could but get it out of him.

Mr. Evans. Will your Lordship be pleased to hear me?

L. C. J. Ay, I do hear thee, but I do not understand thee.

Mr. Evans. May it please your Lordship, I will read the Words verbatim that I gave to the Secretary.

L. C. J. Why, I believe you can read, and I make no doubt you can write too, or you are not fit to be a Custom-house Officer.

Mr. Evans. I put in this Paper to the Secretary, and will repeat what I said then, as near as I can, upon my Oath.

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L. C. J.



L. C. J. I care not a Farthing what you delivered to the Secretary; tell us what thou hast to say plainly?

Mr. Evans. May it please your Lordship, I will read it what it is.

Mr. Sol. Gen. You may look upon your Paper to refresh your Memory, but you must not read it here.

Mr. Evans. If it please you, I will tell you the Reason and Occasion I had to go to the Secretary.

L. C. J. I know not what Occasion thou hadst to go to the Secretary, nor do I care what thou didst when thou camest there, it may be thou madest three Legs, it may be never a one; what is that to us? What canst thou say to the Matter here before us?

Mr. Evans. That is all I can say, my Lord, It was an Accident that they came into my Company. And to tell you the Manner and the Occasion, That Person that brought me the Warrant, saying to Mr. Edwards that I was below, Mr. Braddon hearing my Name named, comes down with Mr. Edwards, for he had told Mr. Edwards I was related to him, and they both came to the Coffee-House, and there they began to discourse about this Matter.

Mr. Just. Withins. Who began to discourse?

Mr. Evans. Mr. Edwards.

L. C. J. Well, what was it he said to thee?

Mr. Evans. Mr. Edwards began thus: Says he, Mr. Evans, this Gentleman has been at my House to examine my Son concerning a Report that is spread abroad concerning a Razor that was thrown out of the Window of the Earl of Essex's Lodgings that Morning he cut his Throat. I hearing of that, said I, Gentlemen, I have read the Coroner's Inquest that is in print, and it is otherwise declared there: And therefore let there be no Discourse of any such Matter, for I believe no such Thing. And, said I to that Gentleman, Mr. Braddon, pray forbear meddling in any such Thing, for Mr. Edwards is a poor Man, and has divers Children, he may be ruined, and you likewise may be ruined yourself, if you proceed any farther in it.

Mr. Att. Gen. We shall interpret this Matter by our other Witnesses.

L. C. J. Ay, so you had need, for there is nothing to be made of this Fellow's Evidence.

Mr. North. Pray, by the Oath you have taken, when you gave that Advice, did Mr. Braddon make you no Answer?

Mr. Evans. No, none at all.

Mr. Braddon. [Lifting up his Hands in an unusual manner.]

Mr. Evans. Pray, will you answer one Thing?

L. C. J. Pray, Sir, let us have no Elevation of Hands. Your Confidence does not so well become you in a Court of Justice, this is not a Cause wherein you need use so much Confidence.

Mr. Braddon. Sir, pray answer, did not I—

L. C. J. What is it you would ask him?

Mr. Braddon. My Lord, I desire he may be asked, whether I, with a Brother of his, did not come to his Country-House, on the Monday immediately after my Lord of Essex's Death, and whether at his Table there was not a Report then of a Razor being seen to be thrown out of my Lord of Essex's Window?

L. C. J. Pray ask by your Counsel, they are most proper to ask Questions for you. Tell them what you would have asked, and don't make long Stories yourself.

Mr. Wallop. Were you not in Company with Mr. Braddon, the Monday after my Lord of Essex's Death?

Mr. Freke. What was the Report, Sir, at your Table, upon the Monday next after my Lord of Essex's Death?

Mr. Evans. My Lord, if your Lordship please—

L. C. J. Pray, Sir, make a short and plain Answer to what Questions are asked you, and let us have none of your Circumlocutions, and your Discourses of the Matter; but let us understand what you say.

Mr. Evans. I will, my Lord.

L. C. J. What is your Question?

Mr. Braddon. Whether I was not upon the Monday after the Earl of Essex's Death at his Table, where there was a Discourse of a Report that a Razor was thrown out of the Window, before Murder was cried out, and concerning a Boy which went to take it up?

L. C. J. What a Story is here! Pray ask him a fair and short Question, if he can remember what was said at his House? We are got quite to the Custom-house and the Coffee-house again, and I know not where.

Mr. Freke. What Discourse was there at your Table, Sir, the immediate Monday after the Earl of Essex's Death, concerning a Razor thrown out of a Window?

Mr. Evans. My Lord, this, to the best of my Remembrance, is what I have to say, and remember of the thing, that a Gentleman being with him—

L. C. J. Who?—Mr. Evans. Mr. Braddon.

Mr. Wallop. Where was this?—Mr. Evans. In the Country.

Mr. Wallop. Where, in what Country?—Mr. Evans. In Essex.

Mr. Wallop. What was the Place's Name?

Mr. Evans. At Wansted, my Lord; and being there, and he plucking out a Paper.

L. C. J. He, who?

Mr. Evans. A Brother of mine, that that Gentleman came down with to see me.

L. C. J. What is his Name?

Mr. Evans. His Name is Mr. William Hatfell.

L. C. J. With whom did he come?

Mr. Evans. With this Person.

L. C. J. With this Person, who is this Person?—Mr. Evans. Mr. Braddon.

L. C. J. Why can't thou not name him, without this wire-drawing? Thou art a most exact Custom-house Officer, I'll warrant thee, thou can't not make a plain Answer to a plain Question.

Mr. Evans. My Lord, I beg your Pardon, I do not know the Methods of the Court.

L. C. J. Pry thee, I care not for thy Methods, nor thy Matter; but deal plainly with us.

Mr. Evans. My Brother, Mr. Hatfell, came down along with Mr. Braddon to my House at Wansted in Essex, on the Monday after my Lord of Essex's Death, and coming down, my Brother, Mr. Hatfell, pulled out the Coroner's Inquest upon Oath that was printed, and shewing of it to me,

I read it; and as soon as ever I had read it, said I, Mr. Edwards, that was at the Custom-house, that very Morning when the Earl of Essex's Throat was cut, did declare to me upon the Custom-house Key, That his Son did declare that the Razor was thrown out of the Window, which seems to contradict this Paper, that says, it was found lying by him.

Mr. Freke. Was this before Mr. Braddon was with Mr. Edwards?

Mr. Evans. I can't tell that.

Mr. Freke. Was it before Mr. Braddon and Mr. Edwards came to you to the Coffee-house?—Mr. Evans. Yes, I believe it was.

Mr. Att. Gen. You say Mr. Braddon came with Mr. Hatfell to your House at Wansted?—Mr. Evans. Yes.

Mr. Att. Gen. Who was the Person that told you this Story?

Mr. Evans. He brought down the printed Paper with him, and upon plucking out that Paper, and reading of it, the Story was told.

Mr. Att. Gen. Pray, who was the Person that told him it was so reported at the Custom-house?

Mr. Evans. I made that Answer myself, immediately upon reading the Paper; for I observed what the Coroner's Inquest had returned, and upon that I made this Observation, That it seemed to contradict what was declared at the Custom-house that Morning my Lord of Essex cut his Throat.

Mr. Att. Gen. Pray, who declared there that the Razor was thrown out of the Window?

Mr. Evans. It was Mr. Edwards told me.

L. C. J. Why consider with yourself now, You say first of all Edwards and Braddon came to me to the Coffee-house.

Mr. Evans. That was at another Day.

L. C. J. I am sure you swore so at first.

Mr. Evans. With your Lordship's Favour—

L. C. J. And with your Favour too, Sir. Pray will you hear me? I have heard you a great while I am sure to no Purpose. But consider with yourself, and pray be pleased to reconcile what you say now with what you said at first, if you can. You say first of all Edwards and Braddon came to me to the Custom-house, and found me out at the Coffee-house, and that Edwards should say, Somebody had been with his Son, in order to examine him about a Razor that was thrown out of my Lord of Essex's Window, and that you immediately cried out, Have a care of that, for that contradicts the Inquisition that I have seen in Print, which declares as though the Razor was found in the Room. And after that you say, it was that you saw the Inquisition when Hatfell came down from Braddon, and you told him of the Report at the Custom-house. How came you, if you had not seen the Inquisition till then, to give out such Words at the Custom-house? Have a care of meddling with that, because it contradicts the Inquisition?

Mr. Evans. My Lord, this was several Days before that.

Mr. Att. Gen. Yes, my Lord, this Discourse at Wansted was before that at the Custom-house.

Mr. Wallop. This that he now speaks of is an Answer to Mr. Braddon's Question, which was about a Discourse that has passed before this other at the Custom-house. This that he speaks of, the Discourse at a Coffee-House, was afterward, but indeed he first spake of it; but these were two distinct Matters at several Times. This last of the Custom-house was, when he had made the Examination of the Boy, as that Witness says.

L. C. J. Therefore I think it was fit to explain it, for it looked very inconsistent before, what thou saidst at first, and what thou say'st now; but if thou tellest me thy Essex-matter was before thy Coffee-house matter it is well, otherwise the Matter, I assure you, looked very ill.

Mr. Evans. This is the Truth, my Lord, and I can tell no more.

Mr. Att. Gen. Take the Times, my Lord, and you will see he does speak very notably. The 13th of July my Lord of Essex murder'd himself, the 14th of July the Inquisition was taken before the Coroner; pray, what was the Day that Hatfell and this Gentleman came down to you to Essex?

Mr. Evans. I can't tell that, Sir, truly; but it was before this Matter of the Examination of the Boy.

L. C. J. But pray let me ask you one Question, if your Matter about the Inquisition in the Country was before the Matter of your cautious Discourse at the Custom-house, how came you to tell them, I heard this Report of a Razor thrown out of the Window that Morning the Earl of Essex cut his own Throat?

Mr. Evans. Mr. Edwards reported this same Thing that very same Morning to me and several others at the Custom-house Key.

L. C. J. Why did you not tell us this before?

Mr. Evans. I beg your Pardon, my Lord, I do not understand the Methods of the Court.

Mr. Wallop. Mr. Hatfell gave the Occasion by pulling out the Inquisition.

L. C. J. Pray, Sir, make your Observations anon, let the King's Counsel go on with their Evidence.

Mr. Att. Gen. What Discourse had Mr. Braddon with you then at that Time, when Hatfell came down with him to your House you say, and pulling out the Inquisition you read it, and made Answer, you heard at the Custom-house Key such a Report that very Morning the Earl murder'd himself?

Mr. Evans. Mr. Braddon was walking up and down the Room, I did not speak it to him, but I spake it to Mr. Hatfell; but I believe Braddon over-heard and took notice of it.

Mr. Just. Withins. Did he concern himself about it?

Mr. Evans. No, not much, I did not hear him say any thing, but he walked up and down the Room.

L. C. J. Now after all this Discourse of the Matter, for aught I can understand, the Matter is but this: He says, Edwards before the Meetings either at his House in Essex, or at the Coffee-house by the Custom-house, reported to him; as though the Earl of Essex had not murdered himself, but somebody else had done it for him. And this was reported at the Custom-house that Morning the Earl of Essex cut his own Throat, and he hearing this Report at the Custom-house at that Time, afterwards comes Braddon and Hatfell to his House into Essex, and after Hatfell had shew'd him the Paper of the Inquisition in Print, he said, I heard some Discourse from Mr. Edwards at the Custom-house of a quite other Nature; and then he says, Braddon and Edwards came to the Coffee-house, and there it was he desired them not to talk of that Matter; for, said he, that contradicts the Inquisition I saw before. This is the Substance of what he said.

Mr.



Mr. Att. Gen. And hereby it does appear, that Braddon, and Evans and Edwards, and Hatfell, are all of a Gang.

L. C. J. Have you the Information he gave in to the Secretary, Mr. Attorney-General, that that was given before the Council?

Mr. Att. Gen. Yes, 'tis much the same with what he hath said now.

Mr. Evans. Yes, my Lord; 'tis verbatim as I have declared now.

Mr. Att. Gen. Only this other part of Hatfell and the Meeting in Essex was spoken of since, that was not declared before.

Mr. Evans. No, my Lord, that I did not speak of, because I was not examined about it.

Mr. Att. Gen. That was part of the Secret.

Mr. Evans. No, it was common Discourse with me. And I did not think any thing of it; what Mr. Edwards said at the Custom-house, was spoken to a great many others as well as me, and the People seemed to be surprized with an account of the thing at the first News of my Lord of Essex's Death. And if I had thought it material, I could have brought a great many that were by then; but Mr. Edwards is here brought himself, I suppose he will not deny it.

Mr. Sol. Gen. Look you, Sir, you say that very Morning my Lord of Essex killed himself, Mr. Edwards discoursed, and made this Report to you at the Custom-house, pray tell what the Discourse was; what he said to you; and then tell us what time of Day it was?

Mr. Evans. To the best of my Remembrance it was about Eleven o'Clock; there were several Persons standing together, among the rest Captain Goodland, and some of the Searchers, and Mr. Edwards was there; and said he, I am informed from Home, That my Boy has been at Home, and given an Account to my Wife, that being in the Tower, he saw a Hand throw a Razor out of a Window, and he named my Lord of Essex's Window; and this Mr. Edwards did not only tell me, but to a whole Coffee-house of People, this Matter of Fact.

Mr. Just. Holloway. Did not Mr. Edwards tell you, That somebody had been examining his Boy about that Report?

Mr. Evans. That was the second time, when Mr. Braddon and Mr. Edwards came together.

Mr. Just. Holloway. Who was it had been examining his Boy did he say?

Mr. Evans. Mr. Braddon, he said, had been to examine his Son.

Mr. Just. Holloway. That was after the Discourse at Essex, that Braddon came to examine his Son concerning the Razor.

Mr. Wallop. Yes, it was after the Discourse at Essex, where Hatfell plucking out the Paper, Evans told Mr. Braddon first of this Razor.

L. C. J. Well, make your Defence by and by, Mr. Wallop: Do not make your Remarks now.

Mr. Att. Gen. Come, Mr. Edwards. Crier swear him [Which was done.]

L. C. Gen. What do you ask him, Mr. Attorney?

Mr. Att. Gen. Mr. Edwards, Pray, will you give the Court an Account of this Business; for I don't know whether you heard what that Gentleman that went out last said, he says, you raised this Story, Pray give an Account what you know of it?

Mr. Sol. Gen. Pray tell what you know of Mr. Braddon's coming to your Son, and what Discourse he or you had about the Murder of the Earl of Essex?

Mr. Edwards. The Report that Mr. Braddon came to enquire after, was with us some three Days before; it was in our Family three Days before, and upon the 17th of July—

L. C. J. What was the Report, Mr. Edwards, before Mr. Braddon came to you?

Mr. Edwards. The Report I have already declared before the Council.

L. C. J. But you must tell us too what it was.

Mr. Edwards. The Report of the Boy the 13th of July, about 10 o'Clock, as I was informed by my Family, and by the Boy afterwards by Word of Mouth, was this, He comes in about ten o'Clock, says he, I have been at the Tower (to one of his Sisters), and I have seen His Majesty and the Duke of York, and the Earl of Essex has cut his Throat, and I see an Hand throw a Razor out of the Window, and one came out of the House, a Maid, or a Woman in a White Hood and a Stuff Coat, and took it up, and went in again, and then I heard a Noise as of Murder cried out. This was the Boy's Report, and more than as his Report I cannot speak to it.

L. C. J. This was your Son, was it not?

Mr. Edwards. Yes, the younger of them. The two Boys were that Morning going to Merchant-Taylor's School together as they used to do, and by the way hearing the King was in the Tower, this younger Boy that was well acquainted with the Tower, gave his elder Brother the slip and went into the Tower, and rambled about from Place to Place.

Mr. Att. Gen. Did not you examine him?

Mr. Edwards. Ay, I did examine him.

Mr. Att. Gen. Did not you find that he denied it again?

Mr. Edwards. No, I did examine him, and I found no denial of any thing at all that he had reported, till Mr. Braddon came to make Enquiry. As soon as he came to make the Enquiry, and I understood what Mr. Braddon's Business was, I begged of him that he would not insist upon it by no means, I begged of him as if I had begged for my Life, but he was so zealous in the Business, that nothing would satisfy him. And after I had told Mr. Braddon that which I could not deny, which was the Boy's Report, I left him and went down to the Custom-house, and some of my Family discoursed the Boy at that rate, that he began to deny it, and in less than half an Hour's time recollected himself, and began to own it again; and so the Boy was off and on till the time he was before the Council; and to this Day he seems to stand in the Denial, whether he will do it now or no I can't tell.

Mr. Att. Gen. Did you acquaint Mr. Braddon, That you had found this Boy to be a lying Boy, and detected him in Lies several times?

Mr. Edwards. May it please you, Sir, I acquainted him with thus much: Said I, Mr. Braddon, As I have dealt ingenuously with you, to let you know what the Boy's Report was, so I must likewise tell you, that I cannot, nor will undertake to assert the truth of it; and presently upon that my Daughter told me, the Boy had many times excused his playing Truant by false Stories.

Mr. Att. Gen. Did you acquaint Mr. Braddon, that your Boy was a lying Boy at that time?

Mr. Edwards. I think I did not at that instant of time.

L. C. J. How old is this Boy you talk of?

Mr. Edwards. About 13 Years of Age, my Lord.

Mr. Att. Gen. What do you know of Mr. Braddon's forcing your Boy to sign any thing that he had prepared after this?

Mr. Sol. Gen. When you told him your Boy had deny'd it, what did he say? Was he pleased and satisfied?

Mr. Edwards. He was not told it by me, but some of my Family.

Mr. Sol. Gen. How did he behave himself?

Mr. Edwards. At the same time they told him he denied it, at the same time they told him he owned it again.

Mr. Sol. Gen. How did Mr. Braddon behave himself?

Mr. Edwards. Like a civil Gentleman. I saw nothing else by him, but that he was very zealous in the Business, that is the truth of it, nothing could persuade him to desist.

Mr. Just. Holloway. Pray did you ask Mr. Braddon, or did he tell you, what was the reason that he was so inquisitive about this Razor, and the Report of the Boy?

Mr. Edwards. As to that he told me, he would let me know the reason of it, which was out of Conscience.

Mr. Jones. Did not Mr. Braddon carry your Son before several Justices of Peace?

Mr. Edwards. Before none as I know of, not one truly to my Knowledge.

Mr. Att. Gen. Did you understand he had taken your Boy from your House in a Coach?

Mr. Edwards. Never till he carried him into his Majesty's Presence before the Council, and I knew not that till the Boy came Home.

Mr. Thompson. Mr. Attorney, Have you done with him? May I ask him a Question?

Mr. Att. Gen. Ay, ask him what you will.

Mr. Thompson. If I understand you right, Sir, this Report of the Boy's was that Morning that the Earl of Essex was murdered—

L. C. J. Was murdered, murdered himself, Man.

Mr. Thompson. My Lord, I mean the Day of his Death. Now I would ask you, Sir, when that was?

Mr. Edwards. The Boy's Report was this, Sir,—

Mr. Thompson. I ask you not what his Report was, but when? What Day it was?

Mr. Edwards. The 13th of July. That Day the Earl of Essex cut his Throat.

Mr. Thompson. How many Days after that was it when Mr. Braddon came to you?

Mr. Edwards. It was not till the 17th of July.

Mr. Thompson. Had you discoursed of the Report of your Boy at the Custom-house, or any where else, that same Day he came to you?

Mr. Edwards. I cannot say that.

Mr. Thompson. Had you discoursed it before Mr. Braddon spake to you, upon your Oath?—Mr. Edwards. Yes, I believe I had.

Mr. Sol. Gen. Had you discoursed it before your Boy told you?

Mr. Edwards. I should then indeed have been the Contriver of the Story.

Mr. Att. Gen. So it is like enough you were.

Mr. Sol. Gen. Had you discoursed it to any body before you went home to your own House, upon your Oath, Sir?

Mr. Edwards. Upon my Oath then I discoursed nothing of that Nature, not a Tittle of it, nor knew nothing of it, till I had it from my own Family.

Mr. Sol. Gen. Did you not discourse of it before you went home?

Mr. Edwards. No, when I came Home they told me of it.

L. C. J. I ask you again, Sir, Did not you tell it before you came Home? Mr. Edwards. About ten o'Clock, I having heard the News of the Earl of Essex's cutting his Throat, at the Custom-house, I stepped Home, being very near to my own House, and as soon as I came in at the Door, the Family began to give me an Account what News the Boy brought in.

L. C. J. That was the first time you heard of it?

Mr. Edwards. Yes, that was the first time I heard of it.

L. C. J. And did you not discourse of it till after that?

Mr. Edwards. No.

L. C. J. Call Mr. Evans, let him come in again.

Mr. Att. Gen. Let Mr. Evans come in again.

L. C. J. Mr. Evans, I would ask you this Question, There were three times that you say, I think, that you had Discourse with Edwards about the Matter, as you call it, once at Essex, and twice at the Custom-house?

Mr. Sol. Gen. No, not in Essex, it was Hatfell and Braddon, my Lord, that came to him there, Edwards was not there.

L. C. J. When you first had a Discourse with Edwards about this Matter, what was it that Edwards did say to you?

Mr. Evans. Being upon Custom-house Key, and Captain Goodland and several others standing upon the Key, that very Morning my Lord of Essex's Throat was cut, about eleven o'Clock Mr. Edwards came to us, being standing upon the Key, and told us, That he was informed his Boy had been at the Tower, and came Home and told his Mother, he saw a Hand throw a Razor out of a Window, and that he went to take it up, and a Maid or a Woman came and took it up, and went in again.

L. C. J. Evans, Did he tell you this as if he had been at Home?

Mr. Evans. No, I think it was that he had it from Home by some Hand or other.

Mr. Edwards. I was at Home.

Mr. Evans. My Lord, At two o'Clock in the Afternoon, when he came again to the Custom-House, he did tell us he had been at Home, and his Boy did tell him the same Story.

L. C. J. But when he had told you before he had dined, did he say, he had been at Home?

Mr. Edwards. My Family can testify I was at Home between ten and eleven o'Clock.

Mr. Evans. To the best of my remembrance he told me he heard so from Home.

L. C. J. Before he went Home, you say, he told you of this, and that was 10 o'Clock in the Morning, and about two o'Clock in the Afternoon, he said, he had been at Home, and it was true.

Mr. Evans.



Mr. Evans. Yes, my Lord.

Mr. Edwards. My Lord, I was at Home.

L. C. J. Mr. Edwards, Did you tell him so, or did you not?

Mr. Edwards. It is like I might say so about 10 o'Clock, but not before I had received the Report at Home.

Mr. Evans. I understood it so, my Lord, That he had heard from Home.

L. C. J. I ask you this upon your Oath, mind the Question, and answer me plainly, Did you speak to him, that you had such a Report from Home, or did you not?

Mr. Edwards. When I told it him, I had it from home, for I brought it from Home.

L. C. J. Nay, Did you tell him you had such a Report from Home at 10 o'Clock, or no?

Mr. Edwards. I told him that I had met with such a Report.

L. C. J. From whom?

Mr. Edwards. From my Family at Home, for the Boy came not to me to tell it.

L. C. J. Then did you see Mr. Evans about two o'Clock that afternoon?

Mr. Edwards. 'Tis probable I did.

L. C. J. Did you, or did you not?

Mr. Edwards. Yes, I believe I might, I beseech your Lordship give me leave to speak. Mr. Evans and I am conversant Forenoon and Afternoon every Day, we have business together.

Mr. Evans. We have Business, my Lord, about shipping of Goods.

Mr. Edwards. But, my Lord, if you please, I will tell you, that is the Occasion of our being together.

L. C. J. Answer me my Question, Did you, or did you not tell him so?

Mr. Edwards. I did not acquaint him with it before I had been at Home, and received it from my own Family.

L. C. J. Look you, Sir, Don't you go about to evade the Question, to trifle with the Court, you must answer me my Question directly, and upon your Oath, Did you tell him you had Notice from Home of such a Report, or no?

Mr. Edwards. I did not receive Notice from Home, but I brought it from Home.

L. C. J. Did you tell him you had it from Home.

Mr. Edwards. I told him I had it from my Family, who told me the Boy had made such a Report.

L. C. J. Did you tell him you had it from your Boy, or received Notice from Home about it?

Mr. Edwards. I did not tell him any thing before I had been at Home.

L. C. J. Well, then, answer me this Question. Did you tell him in the Afternoon at two o'Clock; Now I have been at Home and examined my Boy, and find it so as I told you?

Mr. Edwards. I examined my Boy at Dinner, and I found the Boy agreed with the Report of my Daughter, and confirmed it.

L. C. J. I ask you what you told Mr. Evans, not what your Boy or your Daughter told you?

Mr. Edwards. It is probable I might tell Mr. Evans the same Story after Dinner at two o'Clock, that I did before.

L. C. J. Now tell us the Passage again, Mr. Evans, as you heard it.

Mr. Evans. To the best of my remembrance, at two o'Clock in the Afternoon, Mr. Edwards came and told us, he had examined the Boy, and says he, the Boy has confirmed all that I told you.

L. C. J. But before that in the Morning what did he say?

Mr. Evans. I cannot say exactly the Time, but I think it was about ten o'Clock. There were four or five more besides myself standing at Custom-house Key, and Mr. Edwards came to us, and told us, says he, I am informed from Home, as I understood it, not that he had been at Home, but that he heard it from Home, that his Boy had been at the Tower, had seen an Hand throw a Razor out of a Window.

L. C. J. What said he at two of the Clock?

Mr. Evans. He said he had examined his Boy, and he said the same thing, that he told us he had heard in the Morning.

Mr. Att. Gen. My Lord, we are now but upon the Entrance of our Evidence, to shew upon what slender Grounds, how slight a Foundation there was for this Gentleman to undertake this Prosecution.

Mr. Sol. Gen. Mr. Edwards, Pray let me ask you a Question, Did Mr. Braddon tender any Paper to your Son to sign?

Mr. Edwards. I was informed he did do it afterwards, but I saw him not do any such Thing.

Mr. Sol. Gen. Did you never say that Mr. Braddon had tendered a Paper to your Son to sign?

Mr. Edwards. I do not believe I ever did say so, I do not remember any such Thing.

Mr. Sol. Gen. Pray recollect your Memory, and tell us whether you did, or did not?

Mr. Edwards. I thank God, Sir, that he has given me my Memory and my Understanding, I bless him for it.

Mr. Att. Gen. But it were well if thou hadst any Honesty too.

Mr. Edwards. And Honesty too, Sir: I have not lived these 39 Years at the Custom-house without Honesty. I never had my Honesty questioned to this Day. I am sure no body can tax me with Dishonesty.

Mr. Sol. Gen. Pray Mr. Edwards let your Anger alone for a while, and answer the Question that I shall ask you: Did your Son refuse to sign that Paper?

Mr. Edwards. He did sign it at last.

Mr. Sol. Gen. Did he refuse to sign it?

Mr. Edwards. I do not know whether he refused it or no.

Mr. Just. Withens. Did you hear that your Son refused it?

Mr. Edwards. I did hear that he had signed it.

Mr. Just. Withens. But did you hear that he refused to sign it?

Mr. Edwards. The Boy did not tell me he had refused to sign it. I did not hear him refuse it.

L. C. J. Thou dost prevaricate very strangely, I must tell thee that, notwithstanding thy Reputation of 39 Years of Honesty: Pristee, answer plainly, Did you hear at any time, that your Son had refused to sign it?

Mr. Edwards. No, my Lord, I did not, to the best of my remembrance.

L. C. J. That is a plain Answer, Man; but thou dost so shuffle up and down, one can't tell what to make of what thou sayest.

Mr. Thompson. Sir, I desire to ask you one Question, Whether ever Mr. Braddon and you had any former Acquaintance?

Mr. Sol. Gen. Pray, stay, Sir, and if you please, spare your Question a little, for we have not yet done with Mr. Edwards. Mr. Edwards, pray answer me, Did Mr. Braddon ever tell you, that he had other Informations to confirm this Report of your Son from others?

Mr. Edwards. Truly, I do not remember he said any such Thing.

Mr. Sol. Gen. Did you ever say he told you so? Consider of it, and remember your former Examination.

Mr. Edwards. 'Tis like since he may have said so, but not at his first coming.

Mr. Sol. Gen. At his first coming did your Son sign his Paper then?

Mr. Edwards. No, he did not, as I am informed, I saw it not.

Mr. Sol. Gen. But afterwards you say, Mr. Braddon did tell you, he had other Evidence to confirm it.

Mr. Edwards. It may be he might, I can't say it positively.

Mr. Att. Gen. You say he did not sign the Paper at his first coming?

Mr. Edwards. No, I am informed he did not.

Mr. Sol. Gen. How do you know he did sign it at last?

Mr. Edwards. My Wife and Daughters Information.

L. C. J. But how then can you say, That you never heard he did refuse it?

Mr. Edwards. My Lord, he did not tender a Paper to him to sign, till he had been two or three times there, as I have heard, it was not tender'd the first time he came.

L. C. J. I wonder how thou hast escaped 39 Years with such a Reputation.

Mr. Edwards. My Lord, I never was thought otherwise, nor I hope never gave any occasion for such a Thought.

L. C. J. I assure thee, I do not, nor can take thee for one.

Mr. Edwards. I hope I have done nothing to make your Lordship think the contrary.

L. C. J. Yes, thou hast. Thou didst nothing but shuffle up and down, thou art to consider thou art upon thy Oath, and must answer Questions plainly.

Mr. Edwards. My Lord, I do answer as truly as I can.

Mr. Att. Gen. Hark you then, Mr. Edwards, answer me.

L. C. J. Speak the Truth, and nothing but the Truth, that is all that is required of thee; no Court of Justice ought to be afraid to hear Truth. Let Truth come out of God's Name.

Mr. Att. Gen. Did Mr. Braddon ever tell you, That he had other Evidence besides your Son?

Mr. Edwards. I do not remember he said any such thing at his first coming.

L. C. J. How thou dost shuffle again. Answer plainly.

Mr. Att. Gen. I ask you, Whether ever he did say it?

Mr. Edwards. Yes, he did say so afterwards.

Mr. Sol. Gen. I must ask you one Question more, (for I see 'tis very difficult to get it out of you) Pray did he tell you that he had other Evidence besides your Son, before he signed the Paper, or after?

Mr. Edwards. It was before, as I take it. I speak to the best of my Knowledge, my Lord, I can say no more.

L. C. J. If thou hast a mind to continue the Reputation thou hast got, as thou sayest, the way is to answer Questions, and speak the Truth plainly, let it concern whom it will.

Mr. Edwards. I labour to do it, my Lord, to the best of my Understanding and Capacity.

L. C. J. I would not have thee say a Tittle more than the Truth, but let the Truth come out.

Mr. Freke. Now, Sir, I would ask you, if they have done with you, Did you ever know Mr. Braddon before the 17th of July? Or did you ever see him before?

Mr. Edwards. No, I never had any Knowledge of him, nor ever heard a Word of him.

Mr. Wallop. Mr. Edwards, the Question was asked of you, Whether Mr. Braddon did say, There was other Evidence besides your Son; Pray when was that?

Mr. Edwards. He did not at the first time, but afterwards he did.

Mr. Wallop. That was a good while after, he had been with the Boy first?

L. C. J. Make your Observations by and by, Mr. Wallop. This is not a Time for them.

Mr. Att. Gen. Then where is Edwards, the Boy?

[Who was brought forthwith into Court.]  
Mr. Edwards. I charge you in the Presence of Almighty God, speak Truth, Child.

Mr. Sol. Gen. And so should you too.

Mr. Edwards. Be sure to say nothing but the Truth.

L. C. J. And Child, turn about, and say, Father, be sure you say nothing but the Truth.

Mr. Att. Gen. My Lord, This is the Boy, he is very little and very young, will your Lordship have him sworn? What Age are you of?

William Edwards. I am 13, my Lord.

Mr. Att. Gen. Do you know what an Oath is?—William Edwards. No.

L. C. J. Suppose you should tell a Lye, do you know who is the Father of Liars?—William Edwards. Yes.

L. C. J. Who is it?—William Edwards. The Devil.

L. C. J. And if you should tell a Lye, do you know what will become of you?—William Edwards. Yes.

L. C. J. What if you should swear to a Lye? If you should call God to witness to a Lye, what would become of you then?

William Edwards. I should go to Hell-fire.

L. C. J. That is a terrible Thing. And therefore, Child, if you take an Oath, be sure you say nothing but what is Truth, for no Party, nor Side, nor any thing in the World; for that God, that you say will call you to an Account, and cast you into Hell-fire, if you tell a Lye, and witness to a Falshood, knows and sees all you do, therefore have a care, the Truth you must say, and nothing but the Truth.

Crier. Pull off your Glove, and hearken to your Oath.

[Then he was sworn.]  
Mr.



*Mr. Sol. Gen.* And now remember you call God to witness to the Truth of what you say.

*Mr. Att. Gen.* Young Man, look upon that Paper, is that your Hand?

*William Edwards.* Yes.

*Mr. Att. Gen.* Did you sign that? — *William Edwards.* Yes.

*Mr. Att. Gen.* Pristhee tell the Court, how thou camest to sign it?

*L. C. J.* Ay, Child, be not afraid. Tell the Truth, for if thou tellest the Truth, thou needest not be afraid, but if thou tellest a Lye, thou hast need to be afraid; let no body, whatever has been said to thee, affright thee from telling the Truth.

*Mr. Sol. Gen.* Don't be afraid of thy Father, or any body, but tell plainly what thou knowest, and speak only the Truth.

*Mr. Att. Gen.* How came you to sign that Paper?

*William Edwards.* Mr. Braddon bid me sign it when he had writ it.

*L. C. J.* Hark thee, Child, Did he take it from thee what he writ, or did he write it from himself? Come hither, Child, be not afraid, no body here will do thee any hurt.

Then the Boy was lifted up upon the Table before the Judges.

*L. C. J.* Look upon that Paper, didst thou put thy Name to that Paper, Child? — *William Edwards.* Yes.

*L. C. J.* Whose Hand-writing is that Paper, besides thy Name?

*William Edwards.* Mr. Braddon's.

*L. C. J.* Did he bring it ready written?

*William Edwards.* He writ in our Parlour.

*L. C. J.* How came he to write it?

*William Edwards.* He said it was for the Earl of Essex, to give to his Wife.

*L. C. J.* And what did he ask thee before he writ that?

*William Edwards.* He asked me, whether I saw any thing at the Tower; and so I told him, yes.

*L. C. J.* Ay, tell us what you told him, and be not afraid, Child, but tell the Truth. — *William Edwards.* I told him, I was in the Tower, and saw a Razor thrown out of a Window.

*L. C. J.* You told him so, and then what said he to you?

*William Edwards.* He bid me speak the Truth.

*L. C. J.* Was that all the Words you had?

*William Edwards.* I afterwards went with my Brother into the Tower, and I shewed my Brother the Place, and then afterwards Mr. Braddon writ this, and he said it was to give to the Countess of Essex.

*Mr. Just. Holloway.* Did he read it to you after he had writ it?

*William Edwards.* Yes.

*Mr. Just. Holloway.* And did he ask thee, whether it were true?

*William Edwards.* Yes.

*L. C. J.* And didst thou tell him it was true?

*William Edwards.* Yes.

*L. C. J.* And didst thou tell him all that was in that Paper was true?

*William Edwards.* Yes.

*L. C. J.* Did you tell him all that was writ in that Paper before he writ it down. — *William Edwards.* Yes.

*L. C. J.* Pristhee mind the Question, and speak Truth, Didst thou tell him all that was in that Paper before he writ it down?

*William Edwards.* Yes, I told him, and so he writ it down.

*Mr. Just. Holloway.* You heard it all read to you, you say?

*William Edwards.* Yes.

*L. C. J.* Then I ask you again, Did you tell him all that was in that Paper was read to you, before he writ it down?

*William Edwards.* Yes.

*L. C. J.* And after you had told him, he writ it down?

*William Edwards.* I told him as he writ it down.

*L. C. J.* And after such time as he had writ it down, did he read it to you? — *William Edwards.* Yes.

*L. C. J.* And then you put your Name to it?

*William Edwards.* Yes.

*Mr. Att. Gen.* I pray, my Lord, he may be asked this Question, Whether or no, when he first brought it in, the Boy did not deny to sign it?

*L. C. J.* Did he bring the Paper thither before thou signedst it?

*William Edwards.* It was upon the Table.

*L. C. J.* Didst not thou refuse to put thy Name to it?

*William Edwards.* Yes.

*L. C. J.* Why? — *William Edwards.* I was afraid.

*L. C. J.* Why?

*William Edwards.* For fear of coming into Danger.

*L. C. J.* Why, what Danger could there be? There was no Danger if it was Truth. — *William Edwards.* That was not the Truth.

*L. C. J.* Which was not the Truth? Was not the Paper that he had written Truth? — *William Edwards.* No.

*L. C. J.* How so, Child? Was not that thou toldest him the Truth?

*William Edwards.* No.

*L. C. J.* Tell the Truth now then.

*William Edwards.* So I do.

*Mr. Sol. Gen.* Then he offered it first to you, and bid you sign it, and you denied to put your Hand to it, because it was not true?

*William Edwards.* Yes.

*L. C. J.* And how long after did he offer it to you again?

*William Edwards.* A little while after.

*L. C. J.* But did you tell Mr. Braddon it was not true, when you refused to sign it? — *William Edwards.* No, I did not.

*L. C. J.* Why didst thou refuse to sign it then?

*William Edwards.* I was afraid, because it was not true.

*L. C. J.* Didst not thou tell Mr. Braddon it was not true?

*William Edwards.* I did not tell Mr. Braddon it was not true.

*L. C. J.* Why then wast thou afraid to sign it because it was not true at one time, and yet did sign it, though it was not true at another time?

*Mr. Sol. Gen.* Child, Didst thou give Mr. Braddon any Reason, why thou didst not sign it at that time? — *William Edwards.* No, Sir.

*Vol. III.*

*Mr. Sol. Gen.* How didst thou come to sign it? Did any body speak to thee between that first Time thou refusedst to sign it, and the second Time thou didst sign it?

*William Edwards.* He would fain have got my Aunt to have signed it.

*L. C. J.* Thou sayest, thou didst first refuse it, because it was not true?

*William Edwards.* Yes.

*L. C. J.* And then afterwards thou didst sign it?

*William Edwards.* Yes.

*L. C. J.* Then I ask thee, who persuaded thee to sign it after that time that thou still refusedst it?

*William Edwards.* My Mother was afraid to have me sign it.

*L. C. J.* Who persuaded you to sign it? — *William Edwards.* Mr. Braddon said there was no Harm in it, so I did it.

*L. C. J.* Did Mr. Braddon then persuade you to sign it?

*William Edwards.* He said there was no Harm in it, that was all.

*L. C. J.* Did you do it at his Desire? — *William Edwards.* Yes.

*L. C. J.* And you refused it at first when he desired it?

*William Edwards.* Yes.

*L. C. J.* What, because it was false? — *William Edwards.* Yes.

*L. C. J.* Why then wouldst thou sign it afterwards, if some body did not persuade thee to it?

*William Edwards.* He told me there was nothing of Harm in it.

*Mr. Att. Gen.* Hadst thou any Money offered thee by Mr. Braddon?

*William Edwards.* No.

*Mr. Att. Gen.* Hadst thou any Money promised thee?

*William Edwards.* No.

*Mr. Att. Gen.* Hadst thou any thing else offered or promised thee?

*William Edwards.* No, nothing at all.

*L. C. J.* You have heard what he has said, Gentlemen?

*Jury.* No, my Lord, we have not heard a Word.

*L. C. J.* Then I will tell you what he has said exactly. He says, that Mr. Braddon writ it from him; that he writ it in the Room while he was there; that after such time as he had writ it, Mr. Braddon read it to him: He says, that he had carried his Brother to shew him the Place where he assigned that the Razor was found in the Tower; he says, that after such time as the Writing was finished, Mr. Braddon offered it him to sign, and he refused to sign it, and I asked him the Reason why, and he says, because it was false; he says, some short time afterwards Mr. Braddon came to him again.

*William Edwards.* No, Sir, it was the same time.

*L. C. J.* Well, the same time Braddon was at him again, and told him there was no harm in it, and therefore desired him to sign it, and because he would not, he would have his Aunt to have signed it; and he says, that Braddon telling him there was no Harm in it, he did sign it.

*Mr. Sol. Gen.* But withal he says, that it is false.

*L. C. J.* Ay, he swears now 'tis all false.

*Mr. Freke.* Did you tell Mr. Braddon it was false?

*L. C. J.* No, he says he did not.

*Mr. Freke.* Did your Sister at all discourse with you after you had dictated to Mr. Braddon? Pray what Discourse had you with her after Mr. Braddon writ that Paper, before you refused to sign it?

*L. C. J.* Do not ask any leading Question, Sir, but propose a fair plain Question.

*Mr. Freke.* Did you discourse with your Sister at all, after Mr. Braddon had been at your House?

*William Edwards.* Yes, I had been at School, and when I came home, they said that a Gentleman that came from the Earl of Essex's Brother, had been to inquire of the Truth of the Report I had raised.

*Mr. Freke.* What did your Sister say to you?

*William Edwards.* That was all.

*Mr. Sol. Gen.* Did she name the Gentleman, and did you see him afterwards?

*William Edwards.* Yes.

*Mr. Sol. Gen.* Who was it?

*William Edwards.* That Gentleman, Mr. Braddon.

*Jury.* My Lord, We don't hear a Word he says.

*L. C. J.* He says, he had been at School, and when he came home, they told him a Gentleman came from the Earl's Brother, to inquire of the Truth of what he had reported: It was asked him who the Gentleman was, and he says, it was that Gentleman, Mr. Braddon.

*Mr. Thompson.* Before such time as Mr. Braddon came to you, what did you tell your Father about this Razor, and when?

*William Edwards.* Sir, I told him the King and Duke of York were at the Tower, and while I was there, I said, I saw a Hand cast out a bloody Razor, and a Maid come out and take it up, and go in again.

*Mr. Thompson.* Did you see any such thing as a bloody Razor cast out?

*William Edwards.* No.

*L. C. J.* What a Duff has such a trivial Report made in the World! Admit the boy had said any such thing, what an Age do we live in, that the Report of every Child shall blow us up after this rate? It would make a body tremble to think what sort of People we live among: To what an Heat does Zeal transport some People, beyond all Reason and Sobriety? If such a little Boy had said so, 'tis not an Half-penny matter, but presently all the Government is to be libelled for a Boy, which, whether he speaks true or false, is of no great Weight, and he swears 'tis all false.

*Mr. Sol. Gen.* My Lord, We shall next call Dr. Hawkins's Son of the Tower. Where is Thomas Hawkins?

*Mr. Att. Gen.* My Lord, Agreeable to what the Boy has now said, to shew you that what Mr. Braddon got him to sign was all false, here is the young Man that truanted with him the same Morning, that was with him all the Time, the whole Morning, that says, there was no such Thing, and he saw no such thing; and how could it enter into the Boy's Head such a malicious Lye, if it had not been dictated? Pray Mr. Hawkins, will you acquaint my Lord, and the Jury, whether you play'd Truant that Morning with this other Boy, and where you were?

*L. C. J.* Ay, tell the Truth in God's Name, young Man, be it one way or t'other, let the Truth come out.

*Hawkins.*

5 S



*Hawkins.* In the Morning, Sir, I met with him at the Tower, going round with the King, and we walked round the Tower as long as the King walked, and then the King going into the Constable's House, we and some more Boys were playing—

*L. C. J.* Pristhee speak out, as tho' thou wert at play at Chuck-Farthing.

*Hawkins.* After we had been at play, I went Home, and after I had been there a little while, News was brought to my Father that the Earl of Essex had killed himself. My Father went down, and I followed him, and after I had been there a little while, William Edwards came Home, and there we stood looking up at the Window an Hour or two at least, and after we had tarried there a great while, I went out of the Tower Gate a little after Eleven.

*Mr. Att. Gen.* Was there no Razor thrown out of the Window?

*Hawkins.* No, there was no Razor thrown out.

*L. C. J.* Didst not thou see a Razor thrown out of the Window? and a Maid come and take it up?

*Hawkins.* No, there was no such Thing.

*L. C. J.* Were you there before Edwards came?—*Hawkins.* Yes.

*L. C. J.* And you went out with him?—*Hawkins.* Yes.

*L. C. J.* Did you and Edwards go away together?—*Hawkins.* Yes.

*Mr. Thompson.* Did he tell you of any such Thing?—*Hawkins.* No.

*Mr. Sol. Gen.* What time of the Day was it that you went out of the Tower?—*Hawkins.* Almost Eleven o'Clock.

*Mr. Wallop.* The Boy does say, he did tell his Father and Mother, and all the Family of it. And 'tis plain by the Father, that it was known in the Family by Ten of the Clock.

*Mr. Sol. Gen.* Was this young Man with you, all the Time that you was there, Edwards?—*William Edwards.* Yes.

*Mr. Att. Gen.* Did not you tell your Father of this Story when you came from the Tower?—*William Edwards.* Yes.

*Mr. Att. Gen.* And that was the same time you came out of the Tower with Hawkins?

*William Edwards.* Yes.

*Mr. Att. Gen.* And you, Hawkins, was this young Man with you all the time you were at my Lord Essex's Window?

*Hawkins.* He came thither while I stood there.

*Mr. Att. Gen.* My Lord, this is but the beginning of our Evidence, your Lordship sees what a fine Case it is, and how all this Noise and Bustle has come to be made in the World. The Rumour did first arise in a Fanatick Family, and was propagated by that Party.

*Mr. Jones.* Ay, 'tis easily known whence it came.

*L. C. J.* Gentlemen, Pray will you go on with your Evidence, and make no Descants.

*Mr. Freke.* You, Hawkins, when you came from your Father's House, did you find that Boy in Tower?

*Hawkins.* Yes, Sir, a going round with the King.

*L. C. J.* That was before this Thing happened.

*Mr. Freke.* Were you with him all the while he was in the Tower?

*Hawkins.* Just before my Lord Essex cut his Throat I went Home.

*Mr. Freke.* Were you with him all the time or no? And how long were you with him?

*Hawkins.* I went with him round the Tower with the King. And after we were at play, and then I went Home, and then when I had been at Home a little time, the Rumour and Noise came, that the Earl of Essex had killed himself, so I went with my Father, and stood before the Window, and I tarried there a while before he came Home, and I stayed with him looking at the Window a great while, and we went out of the Tower together.

*Mr. Freke.* You little Boy, Edwards, was this Mr. Hawkins with you all the Time that you were in the Tower?

*William Edwards.* Yes, but only a little while that I was at the Mills.

*Mr. Att. Gen.* My Lord, we had not laid so much Weight upon Mr. Braddon for this Matter, but that he could not be quiet, but must inform the King of it, and this Matter was all examined before the King, the Boy was sent for, and before his Face the Boy declared it was a Lye. And after he knew this, and after the Boy had twice in the Presence of the King denied it, yet notwithstanding all this, then was the Project between him and Speke. We shall first prove the Examination of this Matter before the Council, and how he was acquainted with it. Pray call Mr. Blathwaite and Mr. Monstevens.

*Mr. Blathwaite was Sworn.*

*Mr. Att. Gen.* Pray Mr. Blathwaite will you give an Account whether you were present at the Council, when Mr. Braddon brought this Information, and how the Matter was Examined there, and what was done.

*Mr. Blathwaite.* My Lord, it was on the 20th of July, that Mr. Braddon came to Whitehall, he may remember I was there, for he could not but see me attending on the King. This little Boy was brought before his Majesty, and was asked what Information he had given Mr. Braddon? And whether the matter of the Information was true? The Boy said it was a Lye, and that upon his Faith it was not true. Mr. Braddon knew all this, for he was called in and informed of it; and I believe Mr. Braddon will remember, that he heard the Boy deny it. The whole Examination could not but shew that it was an Invention of his, as he said, it was to excuse himself for having play'd Truant that Day, and that because he was afraid to go Home he invented that Lye. After this Mr. Braddon, as it appears, did nevertheless pursue this Business.

*L. C. J.* Pray only tell what you know of your own Knowledge, both before and after.

*Mr. Blathwaite.* I know, my Lord, that Mr. Braddon (having been in the Country) came afterwards before the King, and was again Examined upon this matter, by which it appear'd, that he did continue in his Pursuit, though he was always informed of the Denial the Boy made, and that it was understood to be a Lye by the whole Family of the Edwards's, as well as from the Denial of the little Boy; for they did confess, that the Boy used to tell Lies, and one of the Sisters said he had denied it at first, but afterwards was brought to say it. And if I remember right, the Words of one

of the Sisters were, **BRADDON COMPELLED THE BOY TO SIGN IT.** Those are the Words in the Minutes that I took at the Examination; therefore I believe it was so, that the Boy had denied before to sign it. But this I only mention as what the Sister said.

*L. C. J.* Have you any more Questions to ask Mr. Blathwaite, Gentlemen? *Mr. North.* Because we will not trouble Mr. Blathwaite to call him again, pray produce the Letter.

*Mr. Att. Gen.* Pray, Sir, will you look upon that Letter, and tell the Court what you know of it, and whose Hand it is.

*Mr. Blathwaite.* My Lord, This is a Letter that was produced before the King, when Mr. Speke attended there. It was then put into my Hands; and I do well remember, and likewise I have written upon it, That Mr. Speke owned it to be his Letter.

*L. C. J.* Did he own it to be his Letter, Sir?

*Mr. Blathwaite.* Yes, he did own it to be his Letter.

*Mr. Att. Gen.* That is all we have to trouble you with at present, Sir. We will now call Mr. Monstevens.

[Who standing up by the Crier was sworn.]

And we call him to prove, That Mr. Braddon had Notice the Boy had disowned this Matter.

*Mr. Sol. Gen.* You hear the Question, Sir, pray acquaint my Lord and the Jury, what you know of this Boy's Examination before the Council, and this Gentleman's having Notice the Boy disowned the Thing.

*Mr. Monstevens.* My Lord, About 5 or 6 Days after my Lord of Essex had murdered himself in the Tower, I saw Mr. Braddon at the Secretary's Lodgings, my Lord Sunderland's Lodgings at Whitehall, with a young Woman, and a Boy about 12 or 13 Years old. The Boy was just now in Court, I saw him there. He came to me, and told me, he had earnest Business to speak with my Lord Sunderland, That he came from Sir Henry Capell, and he told me, he came with an Information that the Boy had given relating to the Earl of Essex's Death. (The Information I believe is in Court.) He gave me the Information, and I read it, and I remember there was something in the Information of a Razor thrown out of a Window, a bloody Razor thrown out of my Lord Essex's Window; and after I had read the Information, I told Mr. Braddon, I wonder Sir Henry Capell had not appeared himself in a Matter of that Moment, wherein the Reputation of his Family was so much concerned; and I took the liberty to tell him, That I believed if Sir Henry Capell had thought that to be true, that was contained in that Paper, he would doubtless have come to my Lord Sunderland himself. Thereupon he told me, That Sir Henry Capell had not been well, and did not stir abroad. Then I told Mr. Braddon again, as I very well remember, That I was confident he had been abroad lately, and had been to wait upon the King, since the Death of my Lord of Essex. Then, my Lord, he had little or nothing to say to that; but he said, what he did he was obliged to do in Conscience, and out of the Duty he owed to the Memory of my Lord of Essex. Upon that, my Lord Sunderland came by, and I went with him to my Lord Sunderland, and he gave him that Paper, as I suppose, which I read, and my Lord Sunderland took the Information, and afterwards Mr. Braddon was committed in Custody, and then the thing was brought before the King, and the Lords of the Council, which Mr. Blathwaite has given you an account of.

*Mr. Att. Gen.* My Lord, I pray that a Word of the Information may be read, we will first prove the Information taken by him, and then call Sir Henry Capell, who will prove that he never had any Order from him, as he said he had, but it was only his own busy Inclinations.

*Cl. of Cr.* This is subscribed, William Edwards.

*L. C. J.* Call the Boy in again.

*Mr. Braddon.* May I ask Mr. Monstevens a Question, my Lord?

*L. C. J.* Ay, ask him what you will.

*Mr. Braddon.* Sir, Did not I come to you the Thursday Evening, and waited at the Dutchess of Portsmouth's Lodgings, before I brought the Boy and the Girl to Whitehall?

*Mr. Monstevens.* No, I did not see you there.

*Mr. Braddon.* You are positive in that, Sir?

*Mr. Monstevens.* Yes, I will take my Oath again of it, if you will.

*Mr. Braddon.* Then I will prove I was, and that I saw you at Ten of the Clock that Morning.

*Mr. Monstevens.* I remember, my Lord, very well, That I was surprised to see him at the Lodgings at Whitehall. I never saw him, to the best of my Remembrance, but once in my Life.

*Mr. Braddon.* What time was it, pray, you first saw me?

*Mr. Monstevens.* It was in the Afternoon, as I remember.

*L. C. J.* Hark you, young Man, do you know my Lord Gerard?

*William Edwards.* Yes.

*L. C. J.* Which Lord Gerard do you know?

*William Edwards.* My Lord Brandon Gerard.

*L. C. J.* How came you to know him?

*William Edwards.* By sight I know him.

*L. C. J.* Do you know where he lodged in the Tower?

*William Edwards.* Yes.

*L. C. J.* Where?—*William Edwards.* At one Mr. Sam's.

*L. C. J.* Was you ever in his Lodging?—*William Edwards.* No.

*L. C. J.* Never at all?—*William Edwards.* No.

*L. C. J.* Did you ever tell any body you were in my Lord Brandon Gerard's Lodgings?

*William Edwards.* Never in my Life.

*L. C. J.* Did you never tell Braddon, that you went to see his Lodgings?

*William Edwards.* Into the House I never went.

*L. C. J.* Did you never tell Braddon, That you went to see my Lord Brandon Gerard's Lodgings? Never in your life?

*William Edwards.* No, Sir.

*L. C. J.* Now read it.

*Cl. of Cr.* [Reads.]—The Information of William Edwards, second Son to Thomas Edwards, of the Parish of All-hallows Barkin, London, taken the 18th Day of July, in the 35th Year of the Reign of our Sovereign Lord King Charles II. Anno 1683, says: That this Informant on Friday the 13th of this instant July, as he was going to School, with his Brother



ther Edward, he heard that His Majesty, and his Royal Highness the Duke of York, were going to the Tower. Whereupon this Informant left his Brother, and went to the Tower to see His Majesty, and His Royal Highness. And when this Informant had seen His Majesty and his Royal Highness, this Informant about nine of the Clock in the Morning of the same Day, went to see my Lord Brandon Gerard's Lodgings; and as this Informant was standing almost over against my Lord Gerard's Lodgings, between the Lord Gerard's and the late Lord of Essex's Lodgings, this Informant saw a Hand cast out a bloody Razor out of the said Earl of Essex's Lodgings. And this Informant was going to take up the said Razor, which he saw on the Ground to be bloody; but before this Informant came to the Razor, there came a Maid running out of Captain Hawley's House, where the said Lord of Essex lodged, and took up the said Razor, which she carried into the said Captain Hawley's House. And this Informant believes that it was the said Maid, who he first heard cry out Murder. And this Informant further saith, That he heard the said Maid say to some which were about the Door, after the Murder was cry'd, That she did bear the said Lord of Essex to groan three times that Morning. The Father, three Sisters, and Brother will swear, That the said William Edwards did declare the Substance of this Information to them on Friday the 13th Instant, and never in the least denied it till Tuesday after, when being chid and threatened by the eldest Sister, he did deny it; but soon after confessed it, and signed it in the Presence of five or six Witnesses.

Mr. Just. Withins. Thus you see, he persuaded him to tell a fine Story of going to see my Lord Brandon Gerard's Lodgings, but the Boy never told any such thing.

L. C. J. No, he never told him a Word of it, he Swears.

Mr. Att. Gen. My Lord, Your Lordship has heard from Mr. Monstevens, That this Gentleman, Mr. Braddon, made use of the Name of an honourable Person, Sir Henry Capell, and so at the Secretary's and at Edwards's House made use of the name of my Lady Essex. We shall now call Sir Henry Capell. [Who was sworn.] Sir Henry Capell, Will you please to give an account, whether ever you employed this Gentleman, Mr. Braddon, about any such Business as he has here undertaken?

Sir H. Capell. I hope you will give me as short a Dispatch as you can, Sir, for 'tis very uneasy for me to be here in this Crowd.

Mr. Sol. Gen. We give you some trouble, Sir Henry, but indeed 'tis not we, but this Gentleman, that has been pleased to use your Name, has necessitated it.

Mr. Att. Gen. We ask you a short Question, Whether you employed Mr. Braddon to go to Mr. Edwards's House, or to the Secretary's, or any where else to prosecute this matter of your Brother's Death?

Sir H. Capell. My Lord, I know very little of Mr. Braddon. He was to speak with me twice. The first time he took me in very great Disorder, both as to the Circumstance of Time and Place, which are so tender with me, that truly I cannot express, nor do I very well know what I did say, or what he said to me; but the second time he came to me, I do very well remember what I did say. And that which I did say the second time is the most material Thing I have to say in the matter. He came to me and spoke of such a Business as the Court is well apprized of already, (I hope you will pardon me if I do not repeat it,) I made Answer to him, Mr. Braddon, I am under great Grief and under a great Burden of Business in my private Family, whatsoever you have to say in the matter, I desire you would go to a Secretary of State and acquaint him with it. This is the most material thing that was said that I remember.

Mr. Att. Gen. But you never employed him to go about to prosecute any such thing?

Mr. Just. Withins. Sir Henry, Pray answer me, Did you desire him to go to Edwards's House and ask him any Questions about it?

Sir H. Capell. I know nothing of Edwards, nor his House at all.

Mr. Braddon. Sir Henry Capell, Will you please to let me ask you one Question? Do you not remember I came to Essex-House on the Monday Night, and that I came and told you of such a Report, and that I had not been with the Father of the Boy as yet, but if you would then send one with me I would go, and in his Presence examine the Boy, and you, Sir, promised me that you would; and whether you did not appoint me to tarry at such a Place, where you promised to send one to go along with me?

Sir H. Capell. My Lord, I have a gross Idea of that which he speaks of concerning his having one to meet him, and that I told him such an one should meet him, and the Person did desire to be excused, and I did excuse him, and so he did not go; upon which this Gentleman Mr. Braddon came to me the second time, which was after Dinner, and I directed him to go to a Secretary of State and acquaint him with what he had to say in the Business.

Mr. Braddon. Did not you promise, Sir, to send one to me to go with me, and desired me to meet at such a Place?

Sir H. Capell. I remember no more but what I have said.

Mr. Braddon. Upon the Oath you have taken, Sir Henry Capell, I desire you would recollect your Memory, whether you did not promise me in the Morning to meet at such a Place, and was not I twice with you that Day?

Sir H. Capell. Sir, I know no more.

Mr. Just. Withins. Do you think Sir Henry Capell would forswear himself, Mr. Braddon?

Mr. Braddon. My Lord, I only desire him to recollect his Memory.

Sir H. Capell. Only I do farther remember, he seemed to be very willing to go to the Secretary of State.

Mr. Att. Gen. And if he had acquiesced there he had done very well, and there had been no farther Trouble.

Mr. Jones. But that was not the Way he intended, that would not do his Work.

Mr. Sol. Gen. Pray, Mr. Blathwaite, do you give my Lord and the Jury an account whether this Information was ever carried before any Justice of Peace in order to have it sworn before him, and the Circumstance of it.

Mr. Blathwaite. My Lord, I do very well remember, when this Information was before the King, and was shew'd to Mr. Braddon, he there

confess'd, That he had gone about to find some Justice of Peace to take it upon Oath. He named Sir Robert Clayton, and Sir John Lawrence. And I do very well remember, and 'tis upon my Minutes, That he confess'd that Sir Robert Clayton, being asked by him to take the Information in private, alone without Company, being by Sir Robert Clayton refused to take it, unless he might take it more publicly, and Sir Robert Clayton refusing to take it alone, in private, he would not let him to take it at all, but went away with it. I remember this for Sir Robert Clayton, and it may be Mr. Braddon may remember the same of Sir John Lawrence; but I can't tell that.

Mr. Att. Gen. My Lord, now we are come to the 20th of July, when this Business was heard before his Majesty, and the Boy declared it was a Lye, and then he had full notice it was a Lye. But after this Mr. Speke and he consult together, and he must be sent as an Emissary into the Country to pick up Informations and Evidences, and with this, and some other Informations in his Pocket, to possess the People, that the Government had murdered my Lord of Essex. And he must be sent I know not how far, as if the farther he went from London the better Intelligence he was like to have of a thing done at the Tower. The Justice of Peace that took him was summoned, but is since dead. But we will call the Persons that were present when he was taken, where is Mr. Beech? [He was sworn.] Mr. Beech, Will you acquaint the Court and the Jury with the manner of apprehending this Gentleman, and what Papers were found about him?

Mr. Beech. My Lord, I was present when Mr. Braddon was apprehended in Wiltshire, and several Papers were found upon him, and upon Examination he was committed to the County Goal, and from thence removed by Habeas Corpus hither up to London. I have Copies of all the Papers that were taken about him, which I examined with the Originals. The one was the Copy of a Letter sent by one Speke to Sir Robert Atkins, and there were other Papers in the nature of Informations; another was a Letter to one Cumpten, Post-master at Frome. Mr. Braddon upon his Examination said, his Business was to inquire after the Murder of the Earl of Essex, and that one Mr. Burgis had sent him a Letter to this purpose, That it was reported at Frome that very Day the Earl of Essex cut his own Throat, that he had so done; the News of which could not so soon come down thither.

Mr. Att. Gen. Pray speak out, Sir, Tell us what his Business he said was, and as to the Letters he had about him, tell us what he said?

Mr. Beech. He told me, that he had a Letter from one Mr. Burgis of Marlborough, to go to one Cumpten at Frome, who is Post-master there, to inquire about a Report, that it was said was reported in Frome, the 13th Day of July, the same Day the Earl of Essex murdered himself, that he was murdered. Mr. Braddon had that Letter about him. I went afterwards to that Cumpten at Frome, he said, he never heard any thing of it; or that there was any Noise of the Earl of Essex's Murder, until the Sunday following, which was two or three Days after. From thence I went to my Lord Weymouth, a Person of Quality that lives near Frome, and acquainted his Lordship with it, and he then said that he had an Account on the Sunday of my Lord of Essex's Murder, and he believed that was one of the first Letters of it that was in the Country.

Mr. Sol. Gen. Are these the Papers you found about him, Sir?

Mr. Beech. I examined these Copies with the Originals, and they were true Copies.

Mr. Att. Gen. Well, put them in.

Mr. Beech. Truly, Mr. Braddon gave a very ill account of his Journey to those that did examine him.

Mr. Att. Gen. Pray look upon those Papers that are the Originals.

Mr. Beech. One Colonel Ains was the Justice of Peace, before whom Mr. Braddon was examined, and by whom he was committed, he is since dead, but I do believe this was the Original Letter that was taken about Mr. Braddon.

L. C. J. Do you believe that was the Original?

Mr. Beech. I do, I have a true Copy of it.

Mr. Att. Gen. Besides, We will prove it otherwise to be Mr. Speke's Hand. It was proved by Mr. Blathwaite that Mr. Speke upon his Examination did own it; What say you, Mr. Blathwaite?

Mr. Blathwaite. He did own it, and said in these Words, as I remember, he believed it to be his Hand.

Mr. Att. Gen. What, that Paper?

Mr. Blathwaite. Yes, and I have put my Hand upon it, that it was owned by him.

L. C. J. Read it.

Cl. of Cr. This is subscribed by Hugh Speke, and dated London, Lincoln's-Inn, August 15th, 1683, Wednesday Night Ten o'Clock, and directed; For the Ever Honoured Sir Robert Atkins, Knight of the Bath, at his House at Netherfwell near Stow on the Old in Gloucestershire.

Honoured Sir,

THE Bearer hereof is one Mr. Braddon, a very honest Gentleman, whose Father has at least Eight Hundred per Ann. in Cornwall; It seems it is his Fate to be the only Person that follows, and prosecutes the Murder of the Earl of Essex, and he has made a very considerable Discovery already of it, notwithstanding the hard Stream he rows against, as things stand and are carried on at present. But indeed I think it could never have fallen on so fit a Man, for he has been a very hard Student, and is a Person of a very good Reputation, Life and Conversation, and has a great deal of Prudence, and has as much Courage as any one living whatsoever. He went away on a sudden hence Post towards Marlborough to make some farther Discovery, and what he has discovered he will give you a full Account, and of all the Transactions hitherto about it. I lent him my man to go with him for fear he should come to any Mischief, for most here fear he will either be stabbed or knock'd on the head, if he do not take great care of himself; seeing he came into these Parts, I thought it not amiss to go and advise with you how he had best to proceed in it, and I did charge him not to let any body know who

he



he was, that it might not be known that he had been with you; for I would not for the World that you should come to any Prejudice in the least for your Kindness towards us. For we labour under many Difficulties as the Tide runs at present.

Pray call Mr. Braddon by the Name of Johnson when he is with you; I have given him the same Item. We hope we can bring on the Earl of Essex's Murder on the Stage, before they can any of those in the Tower to a Trial. He being in great haste, I have not time to write more, but to assure that Mr. Braddon is a Person of that Integrity and Courage that no body needs fear to trust him. I was very willing that he should take your Advice in this Case which is of so great a Moment, seeing he came within twenty or thirty Miles or thereabouts of your House. He will give you a full and clear Relation of every thing in that Affair, and how hard they have been upon him. Sir Henry Capell told him, that it was a thing too great for him, &c. All which Mr. Braddon (that you are to call Johnson whilst he is with you at your House) will give you a true Relation of. Mr. Braddon hath been at a great Trouble and Charge already about it; I know few that would have ventured to have undertaken this Affair besides himself, as Times go. I received yours this Day, with the great pains you took, and the Letter to the Lady Russell, which finding unsealed, I sealed, without looking into it, and carried it myself: She returns you ten thousand Thanks, and says, she knows not what Return to make you for your most extraordinary Kindness. I have not time to write any more at present, by reason that Mr. Braddon, alias Johnson, stays only for this my Letter.

I am, Sir, Your most obliged Friend and most humble Servant,  
Hugh Speke.

I am writing a Letter to send to you by the Carrier.

Mr. Att. Gen. This Gentleman brings in Mr. Speke to be the Author of all this Contrivance. But we shall prove to you, That at the same time this Letter was taken about him, this Gentleman had others that were likewise taken. These Examinations, which I desire may be likewise read.

Mr. —. My Lord, I came lately from Sir Robert Atkins, He is an utter Stranger to all this, he is now in the Country, and knows nothing of it.

L. C. J. If they will use his Name, I can't help it.

Mr. —. My Lord, I would not have any Reflexion upon him, for he knows nothing at all of this matter.

Mr. Sol. Gen. The Letter was never received by Sir Robert Atkins, but taken before it came to him.

Mr. Att. Gen. All the matter is, 'tis an unhappy thing to be thought well of by such sort of People.

L. C. J. I see nothing of Sir Robert Atkins in the Case, but only my Name is used, and notice is taken of the great Obligations some People have to him, for his great Kindness to his Friends.

Cl. of Cr. Here is an Information.

L. C. J. Was this found about him too?

Mr. Beech. Yes, I believe that is the very Paper, I have no Copy of that Paper, but I well remember the Contents of it.

Mr. Att. Gen. Did you sign it or mark it?

L. C. J. He may believe it to be without signing.

Mr. Beech. I presume Mr. Braddon will own it.

Cl. of Cr. the Information of Mrs. Edwards, Wife to Thomas Edwards, faith, 'That about 10 of the Clock in the Morning on Friday the 13th of this Instant July, this Informant's youngest Son William Edwards, aged about 13 Years, came trembling to this Informant, and in great Amazement and Horror told this Informant, that the Lord Essex had cut his Throat in the Tower, and further said, That he the said William Edwards in the Morning about nine of the Clock, did see a Hand cast out a Razor out of the said Lord of Essex's Lodging Window, which Razor he saw on the Ground to be bloody. And the said William Edwards was going to take up the said Razor, but before he came to it, there came a Maid running out of Captain Hawley's House, where the said Earl of Essex lodged, and took up the Razor, which she the said Maid forthwith carried into the said Captain Hawley's House, and soon after he the said William Edwards heard her, as he the said William Edwards did believe, cry out Murder. And this Informant further saith, That the Substance of which the said William Edwards hath sworn in this Information, he the said William Edwards on Friday last did declare to this Informant and her whole Family, several times attesting it to be true, and several times since."

Cl. of Cr. Here is the Information of William Edwards second Son of Thomas Edwards.

Mr. Att. Gen. That is the same with what was read already.

L. C. J. Ay, that is the Boy's Information.

Cl. of Cr. Here is another, 'tis dated August the 8th, 1683. The Information of Jane Lodeman, aged about 13 Years, did in the Presence of these, whose Names are here underwritten, declare as followeth, 'That the said Jane Lodeman was in the Tower on Friday Morning, the 13th of July last, and standing almost over-against the late Earl of Essex's Lodging Window, she saw a Hand cast out a Razor out of my Lord's Window, and immediately upon that she heard Shrieks, and that there was a Soldier by my Lord's Door, which cried out to those within the House, that somebody should come and take up a Razor which was thrown out of the Window, whereupon there came a Maid with a white Hood out of the House, but who took up the Razor she can't tell."

This is subscribed

John Borm, and  
William Smith.

Cl. of Cr. Here is another Paper August the 8th, 83. Mr. William Glasbrooke does declare, That one Jane Lodeman, aged about 13 Years, inhabiting in the same House where he the said William Glasbrooke lodged, did on Friday the 13th of July last past, between the Hours of 10 and 11 in the Morning, in the Presence and Hearing of him the said William Glasbrooke declare to her Aunt, 'That the Earl of Essex had cut his Throat, upon which her Aunt was very angry with her, whereupon she the said Girl did declare, that she was sure of it, for she saw him throw the Ra-

zor out of the Window, and that the Razor was bloody, and that she heard two Groans or Shrieks (which of the two Words she used, he the said William Glasbrooke is not certain); of this he the said William Glasbrooke is ready to make Oath.

This is subscribed

William Glasbrooke,  
Margaret Smith."

Mr. Att. Gen. He carried his Stuff about him, it seems, wherever he went. L. C. J. 'Tis Stuff indeed. Good God, what an Age do we live in!

Mr. Att. Gen. It is not taken upon Oath before any Magistrate, but cooked up to amuse the Country, as if they were formal Informations. Here is another Letter, Mr. Beech, was this Letter found about him?

Mr. Beech. Yes, this Letter was found about him.

Mr. Att. Gen. It is from one Burgis, a Man of the same Kidney.

Cl. of Cr. This is directed for Mr. Cumpen, at the Dolphin at Frome, and 'tis subscribed Jeremiah Burgis, and dated Marl. Oct. 21.

Mr. Cumpen,

MY kind Love to you. These are to desire you to call to mind, that I was in Frome the 6th of July, being Friday, where I heard the Report that the Earl of Essex had cut his own Throat; I would desire you to inquire into it, to know who first reported it, and give this Gentleman the truth of it. And in so doing you will oblige me, who am your Friend,

Jeremiah Burgis.

Mr. Beech. Under favour, my Lord, This Letter talks of a Report that was the 13th Day, the very Day the Earl of Essex murdered himself, I went directly to Frome and spake with this Cumpen, and he told me, he did not speak with Burgis nor see him, nor was there any such Report before the Sunday Morning. From thence I went to my Lord Weymouth's, as I told you.

Mr. Att. Gen. My Lord, We have gone through our Evidence for the present, to shew how this Man has endeavour'd to spread this Matter to the Scandal of the Government. We shall end here at present to see how he has improved his Confidence, by what Defence he will make to all this Proof. Afterwards, if there be Occasion, we shall give an Account of the Earl's Death, how he murdered himself. And for that we have a Cloud of Witnesses, though this Gentleman has taken upon him so much Confidence as to contest it.

L. C. J. That would be very fit, Mr. Attorney, because they have raised a Doubt in some People's Mind about it.

Mr. Att. Gen. I thought it best to reserve it till after I see what Defence he will make.

L. C. J. Take your time.

Mr. Wallop. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel for Mr. Braddon and Mr. Speke, the Defendants here. You see what the Issue is before you, Mr. Speke and Mr. Braddon, they are in the Information charged, That they did Conspire together to make the People believe, That whereas the Earl of Essex murdered himself, and so it was found by the Inquisition, yet they would have the People believe, that that Inquisition was taken unduly, and that they did Conspire to procure false Witnesses to make these Things out. Now, Gentlemen, the only Point that you are to enquire of, is this, Whether these two Gentlemen did maliciously, factiously, and seditiously set these Things on Foot. This Report that the Earl was murdered, or whether there were such Intimations offered to them accidentally and casually, without Officiousness, or any of their own seeking that might induce a good Man, or a wife Man to follow the Business upon such Information given. For our Parts that are for the Defendants, we say this for our Clients, we are not so much to make any Men guilty of this Murder, that is not our Business, but to prove our own Innocency and fair dealing in this matter. Now, Gentlemen, if these two Persons had no Inducement to lead them on to this, but did of their own heads, that is Criminal in them; but if they had that which might induce a wife and good Man, though they were much mistaken, yet they are not to be found Guilty of this Offence that is charged on them. I shall leave it, Gentlemen, to you, who I question not have observed the Evidence that has been given, and whose proper Work it is to make your Judgment upon it. But in our Defence, the Steps we go are these, and we desire you would please to observe them. First, we say, That the Report of this Murder was the Day before, two or three Days before, and that very Day, so many Miles distant from London, that hearing of such a Report, we might very easily be induced to make some Inquiry after it; and of this four Instances we shall give in the Course of our Evidence, that this was a great many Miles off London talked of at the Day, and immediately after the Day, before the News could reach those Places, after the Fact committed. Then we shall proceed to those Passages concerning the Boy, and produce Evidence to set forth the true State of that matter, That this Boy, as he says himself, did tell the Family this Story, that very Day that my Lord murdered himself, immediately upon his coming home. Now this Original Story is impossible to be contrived by Mr. Braddon, be it true or be it false. Then Mr. Braddon coming into Essex, to Mr. Evans's House at Wansted, there what was said by the Boy was spoken of. Then Mr. Braddon finding this Information of the Boy, which he had given merely of himself, and which contradicted the Inquisition, and put him upon this Inquiry. Now how far this Intimation has weight, and may be an Inducement to a good and a wife Man, as I say, that we must leave to you. But besides that, there is a Girl, a Stranger to the Boy, that at the same time, upon the matter, and to this same Effect and substance, delivered such an Evidence, as might very well serve to confirm us in our Inquiry, and this is the Course of our Evidence, in the Substance of it. And we shall apply ourselves to your Lordship and the Jury after the Evidence given, and make our Observations upon it, and submit it to you, Gentlemen.

Mr. Williams. Will your Lordship please to spare me one Word, that is an Objection that we would make from the Record itself. The Information that does recite, That the Earl of Essex was imprisoned in the Tower, and during his Imprisonment there cut his own Throat;



and became *Felo de se*. And that there was an Inquisition taken before such an one, before *Edward Farnham*, Coroner of the Liberty of the *Tow-er*: My Lord, I was not here when the Inquisition was read, if I had I should have made the Objection then, but this is that I say, if we can falsify that part of the Record, if there be a Mistake there, that is, if *Farnham* was not Coroner, then they fail in their Proof, and we must be found Not Guilty, for so it is in the Information.

L. C. J. It is said to be before him as Coroner of the Liberty.

Mr. Williams. Yes, my Lord, They recite that he is Coroner, and that the Inquisition was taken before him as Coroner, and Mr. Braddon knowing of it, did thus, and thus.

L. C. J. Why, Is he not Coroner?

Mr. Williams. My Lord, I desire the Inquisition may be looked into, I cannot go to contradict the Inquisition, but my Instructions only are that he is Deputy-Coroner, and if it be so they are mistaken in their Information.

Cl. of Cr. It is *Coram Edwardo Farnham Coronatore*.

Mr. Williams. Then we can't help it. But there are these Things that we say to it, One Part of the Information is, That we should go about to persuade the People, that this Inquisition was not duly taken; another Part is, That we did procure false Witnesses to prove it; now what Proof is offered as to the Matter of persuading the People, I must submit to you, whether it be such as comes up to the Charge in the Information. There is some kind of Proof, but what it is, you see. Then for the other Matter, which is the procuring of false Witnesses, that, under favour, I think I may affirm, That there is no Proof at all of, That Mr. Braddon or Mr. Speke did procure false Witnesses. Gentlemen, we shall endeavour to acquit ourselves of all, if we cannot of all, yet of Part, especially that Part which seems to be the most Criminal. And I must needs say, I have not heard any Proof of procuring false Witnesses, by either of the Defendants. Then there is a Third Thing charged, and indeed in the Evidence there is something that looks towards it, That he should go about by Papers, and otherwise to publish it, That he was a Person employed to prosecute the Murder of the Earl of *Essex*. Now as to this Matter, all I shall say for Mr. Braddon is this, If he have done something more, it may be by a Transport of Zeal, than became him, that must be submitted how far it is Criminal. If he did what did not become a mighty wife and discreet Man; yet if he did what became a rational Man of ordinary Capacity to do, if he had this Information, and so many other Informations, and he did search innocently a little into it, if he did not do it Seditiously and Factiously with an ill Mind, we hope there is no such great Harm done. And indeed, Gentlemen, his Mind is to be try'd in this matter. And 'tis an hard matter to try a Man's Mind, *quo animo*, a Man did such an Action; that he did it, there is some Sort of Evidence, but if he did it not out of an ill Principle, and with an evil Intention, then, under Favour, we take it he is Not Guilty of this Information. And we shall endeavour to make it out thus, This Gentleman hearing of this Report of the Boy, makes his Application first to Sir *Henry Capell*, who was a Person well known, to be nearly related to this unfortunate Lord, the Earl of *Essex*, and he tells him what Information he had received. Sir *Henry Capell* puts him into an excellent Course, and desires him to go and inform the Secretary of State, and he did so, and if he had gone only this way, all that he had done had been innocent. Then the matter is only this; He has gone a little out of the way, and has taken some Informations and Examinations in Writing: Why, though he has gone a Step or two awry, yet if it was with a Design to prepare the Matter the better for the Secretary, by laying these Papers before him, we hope there is no Crime; if we did it not Seditiously, but only with an Intention, That Mr. Secretary might receive a more clear and full Information; I hope the Jury will acquit us.

L. C. J. You say well. Come, prove your Matter.

Mr. Thompson. Call Mr. Fielder, and Mrs. Mewx, and Mr. Lewes. Lewes appeared.

Crier. Lay your Hand on the Book.

Lewes. My Lord, I desire my Charges may be paid, before I swear.

L. C. J. Pr'ythee, what have I to do with thy Charges? I won't make Bargains between you. If you have any Evidence to give, and will give it, do; if not, let it alone.

Lewes. My Lord, I shall not give any Evidence till I have my Charges.

L. C. J. Mr. Braddon, If you will have your Witnesses swear, you must pay them their Charges.

Mr. Braddon. My Lord, I am ready to pay it, I never refused it; but what shall I give him?

L. C. J. Nay, I am not to make Bargains between you, agree as you can.

Mr. Thompson. My Lord, we are willing to do what is reasonable. You, Lewes What do you demand?

Lewes. He can't give me less than Six Shillings a Day.

L. C. J. Why, where dost thou live?

Lewes. At *Marlborough*.

L. C. J. Why, canst thou earn Six Shillings a Day by thy own Labour at *Marlborough*?

Lewes. My Lord, I am at Forty Shillings or Three Pound a Week Charge with my Family and Servants.

L. C. J. What Trade art thou?

Lewes. A Stapler.

L. C. J. And does your Trade stand still while you are here in Town?

Lewes. Yes, to be sure it can't go well on.

L. C. J. Well, I say that for you, you value your Labour High enough, I know not what your Evidence may be; but, Mr. Braddon, you must pay your Witness, if you will have him.

Mr. Braddon. I will, my Lord, very readily. What will you have? I have paid you something already.

Lewes. Give me Twenty Shillings more then. You can't give me less.

Then Mr. Braddon paid him Twenty Shillings, and he was Sworn.

L. C. J. Well, what do you ask him, Mr. Thompson?

Mr. Thompson. We ask him, What Report he heard of the Earl of *Essex's* Death, and when?

VOL. III.

L. C. J. What is your Name, Friend?

Lewes. Lewes.

L. C. J. Well, what is it you say?

Lewes. My Lord, as I was riding up *Husband*, within three or four Miles of *Andover*—

Mr. Wallop. How many Miles is that off of *London*?

Lewes. Fifty-two.

Mr. Wallop. Well, go on.

Lewes. Between the Hours of Three and Five, but it is so long ago that I cannot exactly tell the certain time; a Man asked me what News I heard in the Country, I told him, I heard none. Says he, I hear the Earl of *Essex* has cut his Throat: It was upon a *Friday* in the Summer, I forget the Day of the Month, I can't tell what Month it was certainly.

Mr. Thompson. What Day of the Week was it?

Lewes. I remember it was upon a *Friday*.

Mr. Thompson. Can't you tell what Month it was?

Lewes. I can't tell what Month it was, it was in the Summer I know.

Mr. Braddon. My Lord, I desire to ask him a Question.

L. C. J. Do, if you will: Ask him what you will.

Mr. Braddon. Did not you go to *Marlborough* on the *Saturday*?

Lewes. I did go to *Marlborough* the next Day, which was *Saturday*.

Mr. Braddon. I desire to know of him, whether he did meet with the News of it there then?

Lewes. My Lord, as to that, when I came Home, my Neighbours asked me if I had heard any News? I told them, says I, I hear the Earl of *Essex* hath cut his Throat. Why when did you hear it, say they? I heard it Yesterday, said I. Said they, it was done but Yesterday, how could you hear it so soon? That is all I have to say, my Lord.

Mr. Williams. By the best Conjecture you can make, was it that very Day the Earl of *Essex* cut his Throat?

Lewes. I do not know that ever any such Man cut his Throat, but this I heard, and I tell you the Time as well as I can.

Mr. Williams. Then pray let us have our Money again.

L. C. J. Thou art well paid, I will say that for thee.

Mr. Williams. Where is Mr. Fielder? Swear him. [Which was done.] Pray, Sir, what did you hear, and when, of the Earl of *Essex's* Death?

Mr. Fielder. The *Wednesday* and the *Thursday* of the same Week that the Earl of *Essex* cut his Throat, it was reported in our Town of *Andover*, that he had so done. The Women, as they came in and out of the Town, talked of it to one another.

L. C. J. What was talked of that *Wednesday* and *Thursday*?

Mr. Fielder. That my Lord of *Essex* cut his Throat in the Tower.

Mr. Just. Withins. What, before he had cut his Throat?

Mr. Fielder. Yes.

Mr. Just. Withins. That is very strange indeed.

L. C. J. Lord, what a Story is here!

Mr. Williams. My Lord, if you please, I will tell you what Use we would make of it.

L. C. J. I know what Use you would make of it, the Use is just the same, as you make use of all sorts of ridiculous and shamming Stories, to set us together by the Ears, and rake into all the Dunghills that can be, to pick up Matter to put us into Confusion.

Mr. Williams. But, my Lord, if there was such a Report so long before—

L. C. J. Mr. Williams, you were here in Town at that time, I am sure.

Mr. Williams. My Lord, I heard it at Eleven o'Clock that Day, that is the soonest I heard it.

L. C. J. What an Age do we live in! What Stuff is here picked up, on purpose to kindle the Fire, and set us all into a Flame!

Mr. Att. Gen. What Day of the Month was it, Fielder, upon your Oath?

Mr. Fielder. I did not mind the Day of the Month, I can't tell that.

Mr. Sol. Gen. How do you know it was that Week?

Mr. Fielder. Because on the *Saturday* Night that Week, we had the certain News of it.

Mr. Sol. Gen. You say somebody told you then of it on *Saturday*?

Mr. Fielder. Yes, on *Saturday* we had certain News of it.

Mr. Sol. Gen. Who gave you the certain Intelligence?

Mr. Fielder. Some Clothiers.

Mr. Williams. Was *Gadbury* your Countryman?

L. C. J. Ay, pr'ythee ask him that, whether *Gadbury* told it him, or *Erra Pater*, if you will.

Mr. Att. Gen. From what Market-People was it reported?

Mr. Fielder. Some Women.

Mr. Att. Gen. It was only Women's Stories then?

Mr. Fielder. Yes, they talked of it among themselves.

Mr. Att. Gen. Was it the Forenoon or the Afternoon?

Mr. Fielder. The *Wednesday* and *Thursday* both, it was the common Talk of the Town all Day long.

Mr. Just. Withins. Name one that spake it to you.

Mr. Att. Gen. Ay, name one of any Credit, if you can.

Mr. Fielder. I cannot, it was the Women as they came in and out of my Shop, and as they went up and down the Town.

Mr. Wallop. My Lord, we leave it with your Lordship and the Jury. He swears he then heard such a Report.

Mr. Just. Withins. Do you believe this, Mr. Wallop, yourself? You are a Man of Ingenuity, I appeal to you.

Mr. Wallop. I believe that Mr. Braddon in his Prosecution of this Matter, went upon the ground of this Report, for he had heard the like Evidence was given in my Lord *Stafford's* Trial, about the News of Sir *Edmundbury Godfrey's* being killed, before it was known here what was become of him, and that perhaps misled him, if he be misled.

Mr. Just. Withins. Do you believe that this Man can speak Truth, when he says it was reported all about their Town, for two Days before it was done, and yet can't name one Person that spake it?

5 T

Mr. Fielder.



Mr. Fielder. I keep a publick Shop, and don't take notice of every one that comes in and out, to remember particularly.

Mr. Just. Withins. You heard it up and down the Town you say, surely you might remember somebody.

Mr. Wallop. He might hear it, and not take notice of one, but it was the common Fame at Andover.

Mr. Williams. Let it go as it will. Your Lordship and the Jury hear what he says—

L. C. J. But, under Favour, Mr. Williams, it ought not to pass so easily; 'tis a Contrivance to deceive the King's Subjects, and shews a Design to pick up Evidence to amuse the unwary, and fill their Heads with Fears and Jealousies of I known not what.

Mr. Wallop. My Lord, I would excuse my Client from Malice as well as ever I can, and therefore we produce these Witnesses, to shew what grounds he had for what he did.

Mr. Williams. We will next call some Women that live near the Tower, that might give him some occasion for his concerning himself in this Business, Jane Lodeman, and Margaret Smith. This Voice and Rumour in the Country, made him to go into the Country, but it shews he was no Contriver of the Report.

Mr. Att. Gen. I would fain know of Fielder, when he told Mr. Braddon of this?

Mr. Braddon. My Lord, I desire the Family of the Edwards may be called.

L. C. J. Name them, Who are they? How can we tell who your Witnesses are?

Mr. Braddon. Crier call them, Mrs. Edwards and her Daughter. Will your Lordship give me leave to make my own Defence?

L. C. J. Ay, if you will, but then! take notice your Counsel are discharged from making any Defence for you.

Mr. Braddon. May it please your Lordship, and you Gentlemen of the Jury, These were the Inducements following, that put me upon engaging in this Matter.—

Mr. Att. Gen. Call your Witnesses first, and then speak.

Mr. Braddon. Mr. Edwards, and Mrs. Edwards. [Who came into Court.

Mr. Just. Withins. Pray, Mr. Braddon, answer me this one Question. What was the Matter that encouraged you to proceed after you knew the Boy had denied it, and said it was all a Lye?

Mr. Braddon. I was bound to answer to an Information after I had been examined at the Council; I had not otherwise stirred in it again.

L. C. J. Well, What do you ask Edwards?

Mr. Braddon. What Day was the first Day I saw you, and had Discourse with you, and what was the Discourse I had with you?

Mr. Edwards. It was the Seventeenth of July.

Mr. Braddon. What did you tell me then that your Boy reported?

Mr. Edwards. I told you what I acquainted the Court withal before, that the Boy had brought Home such a Report.

Mr. Braddon. Had the Boy ever denied it before I saw you?

Mr. Edwards. That Day you came to speak with me about it, as I was informed by my Wife and my Daughter, the Boy did deny it.

Mr. Braddon. Was it before I came, or after I came that he denied it?

Mr. Edwards. It was after you came.

Mr. Braddon. What were the Inducements that made him to deny it.

L. C. J. He tells you himself, because it was false.

Mr. Braddon. I desire the elder Sister Sarah Edwards may be called.

Mr. Wallop. It is apparent the Boy did affirm it—

L. C. J. I thought Mr. Braddon would have made his Defence himself, Mr. Wallop, but you will be breaking in upon him with your Remarks. Make your Remarks by and by, this is a Time for Evidence.

Mr. Wallop. My Lord, I only say this, 'Tis apparent the Boy did first affirm it, and we shall shew how he came to deny it.

L. C. J. 'Tis not proper for you to make Remarks, when you are examining your Witnesses; but when you sum up, You may take what Notes you will, and reserve them 'till that time, but do not break in upon the Evidence.

Crier. Here is Sarah Edwards now.

[Who was sworn.

Mr. Att. Gen. This is not the Sister, this is the Mother of the Boy.

L. C. J. Well, what do you ask her?

Mr. Braddon. What Discourse had you with your Boy about Ten of the Clock that Friday Morning I met you?

Mrs. Edwards. I had no Discourse, but what my Child told me.

Mr. Braddon. What did your Child tell you?

Mrs. Edwards. I gave an Account to my Lord-Keeper, he had it in Writing, I gave him an Account in Writing.

Mr. Braddon. But you are now called upon your Oath, and are to speak the Truth, and must give an Account to his Lordship and the Jury upon your Oath, what it was the Boy told you?

Mrs. Edwards. What was it, Sir, he came and told me? Why, the Boy told me, Mother, says he, I have been at the Tower, and seen the King's Majesty, and his Hoyal Highness, and, says he, the Earl of Essex has cut his Throat; and Lord, Mother, says he, and wept. Lord, Child, said I, I am afraid you are going to make some Excuse to me, that I should not beat you, being you have play'd Truant; no, Mother, says he, I did not. He continued in this for a little while, and then afterwards did deny it.

Mr. Braddon. What did he deny?

Mrs. Edwards. What he had said to me.

Mr. Braddon. Did he deny that he had been at the Tower? Or that the Earl of Essex had cut his Throat?

Mrs. Edwards. No, he denied what he said he saw.

Mr. Braddon. What was that?

Mrs. Edwards. He said, He saw an Hand out of a Window, and a Razor fell down, and he went to take it up, and there came out a Woman, or a Maid, a short fat Woman came out, and took it up, and went in again.

Mr. Wallop. And he said this crying and weeping you say?

Mrs. Edwards. Yes, he did so.

Mr. Braddon. Did he deny it before such time as I had been there?

Mrs. Edwards. No, you was once at my House before, and spake to my Husband, and then you came the same Day again.

Mr. Braddon. Pray, what was the Discourse your eldest Daughter had with the Boy between the time of my first coming, and the time of my second coming?

L. C. J. 'Tis impossible for her to answer any such Question, what Discourse two other People had.

Mr. Att. Gen. Bring the Daughter herself, and let her tell.

L. C. J. Hark you, Mrs. Edwards, before you go. The Boy denied it, it seems, in two or three Days after he had given out such a Report?

Mrs. Edwards. Yes, my Lord he did.

L. C. J. How came he to deny it?

Mrs. Edwards. I will tell you how, When this Gentleman came and acquainted my Husband with his Business, it put us all into a great Damp; and my Husband said, Now both my Boys were gone to School, and says he, after the Gentleman was gone, to my Daughter Sarah, Don't you say any thing to your Brother when he comes in, but let him alone, and we will talk to him. So with that she was so grievously affrighted, and so amazed, that as soon as he came in, she said, prythee, Billy, deal truly, and don't you tell any Lye to save your Breech, for here has been a Gentleman to inquire something about what you said; why, Sister, says he, will any thing of Harm come? Truly, Child, says she, I don't know; and upon that he did deny it.

L. C. J. Did you tell Mr. Braddon he had denied it?

Mrs. Edwards. He was told he had denied it.

L. C. J. Did you tell Mr. Braddon, before the Paper was signed, that he did deny it?

Mrs. Edwards. Yes, my Lord, he knew that before the Paper was signed.

Mr. Braddon. Mrs. Edwards, Did not the Boy come to you, and cry out, he should be hang'd, and then did deny it?

Mrs. Edwards. Yes, that he did.

Mr. Braddon. From whence did he come, that he was in such a Fright?

Mrs. Edwards. I can't tell that, Sir.

Mr. Braddon. Did not your eldest Daughter chide him and threaten him?

Mrs. Edwards. Yes, she did bid him speak the Truth.

Mr. Att. Gen. And then he denied it?—Mrs. Edwards. Yes.

L. C. J. Ay, says she to him, Billy, do not, to save thy Breech, tell a Lye, but speak the Truth; why then, says he, the Truth of it is, there was no such Thing.

Mr. Braddon. My Lord, she says it was after his Sister had chid and threatened him.

Mr. Sol. Gen. You are a little too fierce upon the Woman, Mr. Braddon, you do not observe what she says.

L. C. J. Yes, he is wonderful zealous, flourishing his Hands—

Mr. Sol. Gen. She says, the Daughter did tell the Son that he must speak the Truth, and not tell a Lye to save his Breech, for there had been a Gentleman to inquire about it; Why, says the Boy, will there come any harm of it? I don't know, says his Sister; Why then, says he, I tell you the Truth, there was no such thing.

L. C. J. Ay, when she engaged him to tell the Truth, and not tell a Lye to save his Breech, then the Truth comes out.

Mr. Braddon. Pray call Sarah Edwards the Daughter. My Lord, they told me in the House that she had frightened him into a Denial.

L. C. J. Pray, good Sir, how came you to be a Justice of Peace, and to turn Examiner? You live in the Temple, or belong to the Temple, how come you to take Examinations here in London, but that some People are so very zealous and officious in Matters that concern them not, on purpose to raise a Dust?

Then Sarah Edwards the Younger was sworn.

Mr. Braddon. Did not your Brother deny what he had said by your means?

L. C. J. Pray, ask a fair Question.

Mr. Braddon. Mistress, Pray tell your Knowledge of what the Boy declared?

L. C. J. Ay, ay, Tell what you know, what your Brother said concerning his seeing a Razor, and his denying of it afterwards. Tell all from the Beginning to the End, and tell Truth in God's Name, and nothing but the Truth. We desire the Truth may come out, let it be of which Side it will.

Sarah Edwards. My Brother came home, and said he had been at the Tower, and that he had seen His Majesty and His Royal Highness, and the Earl of Essex had cut his Throat, and that he saw an Hand fling a Razor out of a Window, and that a Maid, or a Woman, came out and took it up, and went in again, and presently after he heard a Noise of Murder cried; so I knowing he was very apt to tell Lies, I did not believe it.

Mr. Braddon. Pray, Mistress, Did you prevail with him to deny it afterwards?

L. C. J. You are so wonderful full of Zeal and Heat in this Matter, you cannot let your own Witnesses tell their own Story, but you must interrupt them. You have been bred to the Law, and you have been before here present, I suppose, at many Trials, and what Pretence can you have to be more indulged in an extraordinary way of Proceeding than others? 'Tis not for the Integrity of your Conversation, I am sure, that you ought to have it, but only because you have more Impudence.

Mr. Braddon. My Lord, I have nothing of Confidence, but what is grounded upon Innocence.

L. C. J. I tell you, you are too confident, and pray know where you are, and behave yourself as you ought.

Mr. Braddon. My Lord, I hope I do no otherwise.

L. C. J. We must give such Liberty and Toleration because of the Extravagance of his Confidence, as to let him break in upon all Rules and Methods. When you behave yourself as you ought to do, the Court will indulge you, and give you all just Liberty; but don't expect for your Zeal sake, and the flinging of your Hands, to do what you list. Go on, Mistress.

Sarah



*Sarah Edwards.* So Sir, this Mr. Braddon came on Tuesday following, about one or two of the Clock, and asked for my Father, and coming, my Sister Mary went to the Door, and called my Father out to him. When my Father came to him, he told my Father he came from Sir Henry Capell, and the Countess of Essex, to know the Truth of my Brother's Report. So my Father told him the Boy had reported such a thing, but he would not assert the Truth of it, for he had been informed by us that the Boy was apt to tell Lies to excuse his playing Truant; so the Child was gone to School when Mr. Braddon came, and when he came home from School they went to the Child; said I, Billy, will you be sure to tell me the Truth of this Report; why Sister, said he, will any Harm come of it? Nay, said I, I do not know, for there has been a Gentleman to enquire about it. So then the Child denied it.

*L. C. J.* Did he know this before he made the Boy sign the Paper?

*Sarah Edwards.* Yes. This was on the Tuesday after Mr. Braddon had been first there. And I spake to him, said I, Billy, say nothing but the Truth, be sure, and don't tell a Lie to save your Breech. So, Sir, as soon as ever the Child denied it, Mr. Braddon came in again the same Day, and coming in found us, my Mother and all of us, daunted hearing the Boy deny it; but he asked the Child and bid him speak the Truth, and told him it was a dreadful thing to be Liar, and bid him read the 5th of the Acts, telling him he would find there two were struck dead for telling of a Lye, and several other such Expressions that I cannot remember. Upon Wednesday, about Noon, he comes again, and then my Brother did own it again, and he writ down what the Boy owned, and went away, saying he would go to Sir Henry Capell and the Countess of Essex. And on Thursday, he comes again and brings a Paper written over again, not the same he writ at our House, and then the Child set his Hand to it. The Child was something unwilling, so says he to him, It will be no harm to you, if any Danger does come of it, it will come to me and not to you.

*L. C. J.* The Child was unwilling to sign it you say, but by his Persuasion?

*Sarah Edwards.* Yes, Mr. Braddon told him it would be no Harm to him, all the Harm would come to himself.

*Mr. Braddon.* When the Child had owned to me what he first said, and upon your saying that he denied it, I asked him the reason why he denied it? pray will you tell what Answer he made to that Question. Pray tell the Truth, and nothing but the Truth.

*Sarah Edwards.* Upon my Word, Sir, I can't recollect that.

*Mr. Braddon.* Pray Mistress, what Answer did he make?

*Sarah Edwards.* I have told you what I know, to the best of my Remembrance.

*Mr. Braddon.* Did not you hear your Brother run to his Mother, and cry out, I shall be hanged?

*Sarah Edwards.* Yes.

*Mr. Braddon.* What was the reason of his crying out so?

*Sarah Edwards.* Why, the Child had that Fear and Dread upon his Spirits, knowing it was a Lye, I suppose, he told.

*Mr. Braddon.* What was the Reason of his Fear?

*L. C. J.* She tells you, It was the Falseness of the Story.

*Mr. Wallop.* Mistress, Did not you tell him, that his Father would be in danger of losing his Place?

*Sarah Edwards.* Yes, Sir, we did.

*Mr. Wallop.* Did you tell him, the King will hang your Father if you do not deny it?

*L. C. J.* Why have you a mind to have it believed that it was true, then, Mr. Wallop?

*Mr. Wallop.* My Lord, the Boy best knows that.

*L. C. J.* But do you believe that if it had been true, that the King would hang his Father, or turn him out of his Place if he did not deny it, as tho' the King would force People to deny the Truth?

*Mr. Wallop.* My Lord, I do not say nor believe any such thing.

*L. C. J.* But your Question seems to carry it so.

*Mr. Wallop.* My Lord, I ask the Question of her, whether she did not say so to him. I ask Questions according to my Instructions.

*L. C. J.* Nay, Mr. Wallop, be as angry as you will, you shan't hector the Court out of their Understandings. We see plainly enough whither that Question tends. You that are Gentlemen of the Robe, should carry yourselves with greater Respect to the Government, and while you do so, the Court will carry themselves as becomes them to you.

*Mr. Wallop.* I refer myself to all that hear me, if I attempted any such thing as to hector the Court.

*L. C. J.* Refer yourself to all that hear you, refer yourself to the Court; 'tis a Reflection upon the Government, I tell you your Question is, and you shan't do any such thing while I sit here, by the Grace of God, if I can help it.

*Mr. Wallop.* I am sorry for that, I never intended any such thing, my Lord.

*L. C. J.* Pray behave yourself as you ought, Mr. Wallop, you must not think to huff and swagger here.

*Mr. Just. Withins.* Mr. Braddon, You hear what the Reason was of his crying out so. She said he was afraid because he knew he had told a Lye.

*Mr. Wallop.* Pray, Mistress, who told him the Family would be ruined by it?

*Mr. Just. Withins.* Mr. Wallop, I asked this Gentlewoman, whether she did say it, and she said she could not tell.

*Sarah Edwards.* Indeed I cannot tell, my Lord.

*Mrs. Edwards.* She did indeed say so, my Lord.

*Mr. Wallop.* Pray let it go, my Lord, as it is, what was it she said? Did she speak about turning her Father out of his Place?

*Mrs. Edwards.* I cannot say that, but she said, when the Boy asked whether there would be any harm by it, she could not tell, but it may be her Father and Family might be ruined.

*L. C. J.* And is not this a Reflection upon the Government, to say the King would ruin any one if they did not tell a Lye?

*Mr. Wallop.* My Lord, for a false Report he might be ruined, but it seems upon this saying he did deny it.

*Mr. Just. Withins.* Was there a Word said of his being turned out of his Place?

*Mrs. Edwards.* I cannot say there was.

*L. C. J.* No, not a Word, but only Mr. Wallop is so impetuous in the worst of Causes.

*Mr. Wallop.* I am in the Judgment of the Court, whether I do any thing but what becomes an Advocate for his Client, according to my Instructions.

*L. C. J.* Yes, you are so, and shall know that you are under the Correction of the Court too.

*Mr. Wallop.* My Lord, I know where I am.

*L. C. J.* Ay, you know well enough, but you would do well to carry yourself as you should do.

*Mr. Wallop.* With humble Submission, my Lord, I appeal to all that hear me.

*L. C. J.* Appeal to whom you will, I know the Business of the Bar is to appeal to the Court.

*Mr. Just. Withins.* What is the Matter with Mr. Wallop, that makes him so earnest in this Cause?

*L. C. J.* There is such an Heat in this Cause, I wonder whence it should come, I am sure 'tis not from the Honesty of it.

*Mr. Braddon.* Young Mrs. Edwards, If I suffer any thing by reason of the falsity of your Testimony, it will return upon you.

*Sarah Edwards.* Sir, I do tell you all I know.

*Mr. Braddon.* Then I desire you to answer me this Question, Whether or no when the Boy did own what he first said, and I asked him the reason of his Denial whether the Falsity of the thing, or Fear caused him to deny it, did not he say it was Fear through your Discouragements and Threatenings?

*Sarah Edwards.* No, he did not say it, did he, Mother?

*L. C. J.* Why, we are got into a way of appealing and appealing, here is appealing to the People, and appealing to the Witnesses; pray keep to the Business, and within the Bounds of Decency. Before such time as the Boy denied it, did you desire him to speak Truth?

*Sarah Edwards.* Yes, I did.

*Mr. Thompson.* And when Mr. Braddon examined him, did he desire him to speak Truth?

*Sarah Edwards.* Yes, he did.

*L. C. J.* But he knew before he examined him that he had denied it, did not he?

*Sarah Edwards.* Yes, the second time before he came into the House.

*Mr. Braddon.* I desire the old Gentleman may be asked this Question.

*Mr. Thompson.* Call Mr. Edwards again.

*L. C. J.* The Spirit of the Client was got into the Counsel I think just now, and now 'tis got into the Client again. 'Tis an hard matter to lay it, I perceive.

*Mr. Wallop.* My Lord, I am here of Counsel for Mr. Braddon, and I only ask Questions as they are in my Breviate.

*L. C. J.* But, Sir, if you have any thing in your Breviate that reflects upon the Government, you ought not to vent it, nor shan't be permitted to vent it as long as I sit here.

*Mr. Wallop.* My Lord, with Submission, I hope I never did, nor never shall let any such thing come from me.

*L. C. J.* Nay, be as angry, or as pleased as you will, 'tis all one to me, you shall not have liberty to broach your seditious Tenets here.

*Mr. Braddon.* Mr. Edwards, Pray will you answer this Question? Did not your Son, when he was asked why he denied it, say that it was Fear and Discouragement, through his Sister's Threats, was the Cause? Pray speak the Truth.

*Mr. Edwards.* I cannot tell whether the Child did say so, something of that Nature he did say.

*Mr. Thompson.* Call Anne Burt.

*L. C. J.* We have got such strange kind of Notions, now-a-days, that forsooth Men think they may say any thing because they are Counsel. I tell you Mr. Wallop, your Questions did reflect upon the Government, as tho' the King had a mind to turn a Man out of his Employment, if he did not swear a Falsity. What can be a greater Reflection than that? But all the matter is, what has been done must be avouched and justified, though it be never so ill. But we plainly see through all. This was the Design from the beginning, the King and the Duke of York were in the Tower at that time, and it must be thought and believed that they had designed this Matter, and so then all People must be ruined in case they would not say the Earl murdered himself, tho' indeed others had done it.

*Mr. Wallop.* Mr. Edwards did not delight to have such a Report, as might create Trouble, first come out of his House.

*Mr. Braddon.* My Lord, As to the making such an Inference, or any Reflection as your Lordship mentions, I am as far from it as any body here.

*L. C. J.* We must give a wonderful deal of Countenance to such barbarous and horrid Practices, and I warrant you must suffer, the Government to be reflected upon at the will and Pleasure of every Man. No, let us hear the Truth, but not in the face of a Court permit Men to asperse the Government as they please by asking such Questions.

*Mr. Att. Gen.* And the Witnesses say nothing to it neither.

*L. C. J.* No, nothing at all like it, but 'tis Asperion for Asperion sake. And we must sit still and hear it.

*Mr. Wallop.* My Lord, I think 'tis for the Honour of the Government to have all things fairly enquired into.

*L. C. J.* And 'tis for the Honour of all Courts of Justice not to suffer Reflections upon the Government, let them be by whom they will. And in Gentlemen of the Bar 'tis worse than others.

*Mr. Just. Withins.* Truly, I do not see where there is any countenance for asking such a Question.

*L. C. J.* No, but some People are so wonderful zealous—

*Mr. Wallop.* My Lord, Zeal for the Truth is a good Zeal.

*L. C. J.* It is so, but Zeal for Faction and Sedition, I am sure is a bad Zeal. I see nothing in all this Cause but Villany and Baseness. And I believe



believe no Man that has heard it, but will readily acknowledge that it appears to be an untoward malicious ugly thing, as bad as ever I heard since I was born, on purpose to cast an Indignity upon the King and Government, and set us all in a Flame.

*Then Anne Burt appeared, and was sworn.*

Mr. Braddon. Mrs. Burt, I desire to know what Discourse you had with Mrs. Edwards, and that Family?

Mr. Att. Gen. I beg your Pardon for that, here Mrs. Edwards is herself to tell what she has said.

Mr. Braddon. I desire to know what Discourse she had with any of the Family?

Mrs. Burt. I went to make a Visit to Mrs. Edwards, and I had not been there half an Hour but in comes this Gentlemen; now I had asked no Questions about the Business, but in he comes and desired to speak with Mrs. Edwards; Mr. Edwards was called, and when he came in with Mr. Edwards, the Gentleman sat down in the Room, and told Mr. Edwards he had heard a Report of something his Son had spoken, but he desired to have it from his Son's own Mouth, and the Boy was called in, (this is a real Truth, Sir, for I do not know whether I may stir from this Place where I am alive or no;) And when the Boy came in, the Gentleman said to him, if it be true that you have reported, own it; if not, do not own it; for, said he, it is a dreadful thing to be found in a Lye, I would have you read the 5th Chapter of the Acts, where a Man and a Woman were struck dead for telling a Lye. Sir, said the Boy, 'tis true, and what I said I will speak it before any Justice of Peace in the World. And then he asked him what he had reported, and the Boy made a Repetition of what he had seen and said before, that he went into the Tower and came to the first Row of Houses that goes along. And at the first House he saw nobody look out at the Window, nor at the second House, but he looked up at the third House, and he took his Hand and shewed thus, said he, I saw a Man's Hand he did not say, but an Hand throw a Razor out, of this fashion, and he imitated it with his Hand. Said the Gentleman, was it not the wrong Window, or the wrong House? I will not take the thing upon this Credit, take your other Brother down, that was a bigger Boy than this, and, says he, go down to the House, and shew your Brother the Window where you saw this. The two Boys went down, and he shew'd his Brother the Place where he saw the Hand—

L. C. J. Were you present at his shewing?

Mrs. Burt. Will your Lordship please to give me leave—

L. C. J. And pray give me leave too. I ask you, Were you present? For you tell it as if you knew it yourself.

Mrs. Burt. Both the Boys came up and said so.

L. C. J. You should have said so then, that they told you it, for you are upon your Oath, and must affirm nothing but your own Knowledge.

Mrs. Burt. If I do misplace my Words I cannot help that—

L. C. J. You misplace your Evidence, Woman, you must not swear that to be true, that you don't know to be true.

Mrs. Burt. My Lord, I heard what I say with my own Ears.

L. C. J. But you talk of a thing you did not see with your own Eyes, as if you had seen it.

Mrs. Burt. I beg your Pardon, my Lord, I can't tell how to place my Words so exactly.

L. C. J. I care not how thou placest thy Words, tell thy own Knowledge.

Mrs. Burt. I tell what is Truth, what I heard and saw; for, said Mr. Braddon, I believe it was not the right Window, when the Boy came up and said he had shewed the Window. And this Gentleman, I cannot hit his Name right, (he is a Stranger to me) he and Mr. Edwards went down with the Boy, to see whether it were the right Window of the House where my Lord died (which where it is I cannot tell any otherwise than has been reported, or whether there be one Room or two of a Floor I don't know;) and when he came up again he called for a Sheet of Paper, that he might write from the Boy's Mouth, and that he might not differ one Word from what the Boy had said himself. And when I saw Mr. Braddon begin to write I went away, for I thought it may be the Gentleman might expect I should set my Hand to it as a Witness, and I did not desire any Trouble.

Mr. Braddon. I desire this Question may be asked her, my Lord, Do not you remember it was said the Boy denied it?

Mrs. Burt. Yes, it was said, the Boy did deny it.

Mr. Braddon. What did his Sister say was the reason of his denying it?

Mr. Thompson. Ay, what did you hear the Sister say?

L. C. J. I told you before, that was no Evidence what another body did say.

Mr. Wallop. Mistress, The Boy denied it, for what Reason?

Mrs. Burt. Because his Sister, as his Mother told me, had been talking to him.

L. C. J. As his Mother told you, prithee, Woman, speak your own Knowledge, and not what another body told thee.

Mrs. Burt. Pray, give me leave, my Lord—

L. C. J. I tell thee, I will not give the leave to say what thou should'st not say.

Mrs. Burt. I heard his Sister say—

L. C. J. It is not Evidence if thou didst hear never so many People say it.

Mrs. Burt. My Lord, I speak nothing but the Truth.

L. C. J. Shall we allow that in this Case for Evidence that we allow in no other Case, for what Reason, pray? I do not see it deserves any such extraordinary Favour.

M. Just. Withins. Mr. Wallop, we must not hear what another said, that is no Party to this Cause. You know it is no Evidence, therefore do not press it.

Mrs. Burt. My Lord, I have done, if that will satisfy you.

L. C. J. Prithee, satisfy thyself, good Woman.

Mrs. Burt. My Lord, I have done. I come here to speak the Truth, and so I do.

L. C. J. Nay, prithee be not so full of Tattle, so full of Clack.

*Then a little Girl came into Court.*

L. C. J. What Age is this Girl of? How old art thou, Child?

Girl. I was 13 last Saturday.

L. C. J. Do you know the Danger of telling a Lye?

Girl. Yes.

L. C. J. Why, What will become of you if you tell a Lye?

Girl. The Devil will have me.

L. C. J. Give her her Oath. What is thy Name, Child?

Girl. Jane Lodeman.

*Then she was sworn.*

L. C. J. Child, do not be afraid of any thing in the World, but only of telling any thing but what is true; be sure you do not tell a Lye, for if, as you say, you shall be in Danger of Hell-fire by telling a Lye, much more will you be in danger if you swear to a Lye. Now, what do you ask her?

Mr. Braddon. What did you see in the Tower that Morning the Earl of Essex died?

Lodeman. I saw a Hand out of a Window, but I cannot tell what Window it was, but it was a Hand throw out a Razor.

Mr. Braddon. And what did you hear after that?

Lodeman. I can't well remember, but it was either two Shrieks or two Groans that I heard presently after.

L. C. J. What time of the Day was it, Child?

Lodeman. It was between nine and ten of the Clock.

L. C. J. Who was with you besides yourself there?

Lodeman. There were more besides me, but they went away.

L. C. J. Who were they, Child?

Lodeman. A great many that I did not know.

L. C. J. And how came you to take notice of it?

Lodeman. And there was a Coach stood just at the Door.

L. C. J. Tell us some of them, Child, and that were there besides thyself, speak the Truth, be not afraid. Thou say'st a great many People were there, and all the People must necessarily see it.

Lodeman. They were People I did not know.

L. C. J. But they all saw it as well as you?

Lodeman. So I suppose they did.

L. C. J. And you heard a Shriek or two, you say?

Lodeman. Two Shrieks or two Groans, I can't well remember which.

L. C. J. How high was the Window?

Lodeman. Not above one pair of Stairs high.

L. C. J. How high from the Ground might it be?

Lodeman. Not above one Story.

Mr. Thompson. Whereabouts in the Tower was it?

Lodeman. Sir, it was as you go upon the Mount.

Mr. Wallop. Whose Lodging do you think it was?

Lodeman. I did not know whose it was, but Folks said it was the Earl of Essex's.

L. C. J. Who did you tell this to?

Lodeman. I told no body till I came to my Aunt, and I told her.

L. C. J. What is her Name?

Lodeman. Margaret Smith.

L. C. J. Did you ever tell this to that Man?

Lodeman. Yes, afterwards I did.

L. C. J. How came he to enquire of you about it?

Lodeman. He came and asked me, and I could not deny it.

L. C. J. Ay, but how came he to ask you?

Lodeman. There was a Gentlewoman that was at our House, and she heard of it, and spake of it at a Gentlewoman's at Dinner, and so he came to our House to enquire about it.

L. C. J. Who is that Gentlewoman? What is her Name?

Lodeman. Susan Gibbins.

L. C. J. Let me see the Information of this Girl, that Mr. Braddon had taken?

Cl. of Cr. Yes, my Lord, there it is.

L. C. J. Do you know my Lord of Essex's Lodgings?

Lodeman. They said it was his.

L. C. J. Did you know it of your own Knowledge?

Lodeman. No, Sir, I did not.

Mr. Thompson. Pray what became of the Razor that was thrown out of the Window, after it was thrown out?

Lodeman. I saw a Woman in a white Hood come out, but I did not see her take it up.

Mr. Sol. Gen. Girl, you say, that when you were at this Place in the Tower, and saw this Matter, there were a great many People there besides yourself?

Lodeman. Yes, Sir.

Mr. Sol. Gen. Did the Razor fall among the People that stood there, or did it fall out in the Street, or how?

Lodeman. Sir, it fell within the Pales.

Mr. Sol. Gen. And was the Passage easy into the Pales?

Lodeman. Yes.

Mr. Sol. Gen. What, they must climb over, must they?

Lodeman. No, you need not climb over, there is a Door to go in. And when People went in the Soldier opened the Door.

Mr. Sol. Gen. Who went in with the Soldier? Did you see any Body go in?

Lodeman. There was a Man went in, but I know not who he was.

Mr. Sol. Gen. Did the Soldier stand at the Door when this Razor was thrown out?

Lodeman. I cannot tell that, a Soldier used to be at the Door.

Mr. Sol. Gen. The Woman came out of the Lodging, did she not?

Lodeman. Yes.

Mr. Sol. Gen. Did she go in again?—Lodeman. I did not see her go in again.

Mr. Sol. Gen. Did she go into the Pale?

Lodeman. I did not see her go into the Pales.

Mr. Sol. Gen. Did you see the Razor after it fell upon the Ground?

Lodeman. No.

Mr. Sol. Gen. Was it bloody?—Lodeman. Yes.

Mr. Sol. Gen. Very bloody?—Lodeman. Yes.

Mr. Sol. Gen. Did you see no body take it up?



Lodeman. No, I did not.

Mr. Sol. Gen. Come hither, Child; Are you sure it was a Razor; or a Knife?

Lodeman. I am sure it was a Razor.

Mr. Sol. Gen. Was it open or shut?—Lodeman. It was open.

Mr. Sol. Gen. What Colour was the Handle?

Lodeman. Sir, I can't tell, I see it but as it flew out.

Mr. Sol. Gen. Was it all over bloody?—Lodeman. No.

Mr. Sol. Gen. All but a little Speck?—Lodeman. It was very bloody.

L. C. J. Blessed God, What an Age do we live in! Girl, you say, you did not know it to be my Lord of Essex's Window?

Lodeman. No, but as they told me.

L. C. J. Nor you did not see any body take up the Razor?—Lodeman. No.

L. C. J. But you are sure you did not?—Lodeman. I am sure I did not.

L. C. J. But, Child, recollect thyself, sure thou didst see somebody take it up?—Lodeman. No, I did not.

L. C. J. I ask thee again, Didst not thou know it to be my Lord of Essex's Window?—Lodeman. No, but as they told me.

L. C. J. Did you hear no body speak to the Maid that came out?

Lodeman. No body at all.

L. C. J. No, pr'ythee is that thy Hand, Child? Shew her the Paper, the uppermost Part of it.—Lodeman. Sir, I can't write.

L. C. J. Who put thy Name to it?

Lodeman. Sir, I don't know, no more than the Pope of Rome.

L. C. J. Whose Hand-writing is that?

Lodeman. I cannot tell, I never could write in my Life.

Mr. Braddon. Those are the Names of such as heard her say it.

Mr. Att. Gen. Yes, you have cooked it up bravely.

L. C. J. You shall see what a brave Managery you have made of this poor Child. Read the Information.

Cl. of Cr. Reads.—*The Eighth of August, 1683, Jane Lodeman, aged about 13 Years, did in the Presence of these whose Names are under-written, declare as follows, That the said Jane Lodeman was in the Tower on Friday Morning, the 13th of July last, and standing almost over-against the late Earl of Essex's Lodging-Window, she saw a Hand cast out a Razor out of my Lord's Window, and immediately upon that she heard Shrieks; and that there was a Soldier by my Lord's Door, which cried out to those within the House, that somebody should come and take up a Razor, which was thrown out of the Window, whereupon there came a Maid with a white Hood out of the House, but who took up the Razor she cannot tell.*

L. C. J. Here 'tis said the Soldier cried out, but now she says, the Soldier she does not know was there; and she heard no body speak to the Maid.

Mr. Braddon. With Submission, my Lord, I desire to ask her this Question.

L. C. J. Pr'ythee ask her what thou wilt. We hear what she says.

Mr. Braddon. Did you hear the Soldier cry out, or did you not?

Lodeman. No, I did not.

Mr. Braddon. Did not you say, you heard him cry out?

Mr. Sol. Gen. My Lord, we cannot admit Mr. Braddon should ask such Questions, they are leading Questions. Ask her a general Question, and you shall have an Answer, but you shall not give her Words to Swear to.

L. C. J. No, upon my Word, you have given her too many Words to Swear to already.

Mr. Braddon. My Lord, I only writ what she declared.

Mr. Sol. Gen. Were you carried by Mr. Braddon before any Magistrate, or any Justice of Peace?—Lodeman. No.

Mr. Sol. Gen. Did he take the Examination himself?—Lodeman. Yes.

Mr. Att. Gen. Did not he desire you to go before a Justice of Peace to be Sworn?—Lodeman. No, Sir.

Mr. Sol. Gen. Did he write it himself?

Mr. Att. Gen. Ay, he writ it, and took it, and this Woman that is coming here, is a Witness to it.

L. C. J. What is this Woman's Name?

Mr. Braddon. This is the Aunt, Margaret Smith. [Who was Sworn.

L. C. J. Well, what say you to her?

Mr. Braddon. I desire to know, what this Girl said to you, when she returned from the Tower the 13th of July?

Mrs. Smith. She said to that effect that she speaks now.

Mr. Braddon. What was that? Tell the Court.

Mrs. Smith. I chid her, because she had been playing: That is all I can say.

Mr. Just. Withins. Did she tell you, the Soldier cried out for somebody to come and take up the Razor?—Mrs. Smith. I cannot say that.

Mr. Just. Withins. Did she say, she saw a Razor thrown out of my Lord of Essex's Window.

Mrs. Smith. She said, she saw a Razor thrown out of a Window; I can't tell whether she said out of my Lord of Essex's Window.

Mr. Freke. Did you set your hand to that Paper?

L. C. J. Were you a Witness to that Paper?

Mrs. Smith. There were others heard what the Girl said, as well as I.

L. C. J. Who desired you to sign it?

Mr. Freke. Who writ that Paper, Mistress?

Mrs. Smith. Pray excuse me, Sir, I do not know.

Mr. Freke. Did you see it writ?—Mrs. Smith. No.

L. C. J. No: It was one got ready drawn by Mr. Braddon.

Mr. Just. Holloway. Pray let the Boy's Information be read again, for I observe there is a Difference; she says, the Razor fell within the Pales; the Boy says, it fell without.

L. C. J. Ay, ay, the one says it was the Inside; the other, the Outside of the Pales.

Then the Information was read.

L. C. J. Go on now, and ask your Questions.

Mr. Braddon. Did the Girl say, That after the Razor was thrown out, the Soldier cried to somebody to take it up?

Mrs. Smith. Sir, I can say no more than what I have said.

Mr. Braddon. Did she, or did she not?

Mrs. Smith. Pray, Sir, excuse me; I have spoken what I know.

VOL. III.

Mr. Att. Gen. You may see how he has managed this Matter; my Lord, by his urging the Witnesses with Questions they know nothing of.

L. C. J. Yes, yes, we see he would fain put Words into their Mouths.

Mr. Att. Gen. Mistress, Did you send to Mr. Braddon, to inform him of what the Girl had said? Or did he come to you?

Mrs. Smith. Sir, I never saw him before in my Days.

Mr. Att. Gen. He came first to you then?

Mrs. Smith. Yes: He hearing of it, came as a Stranger to me.

Mr. Braddon. Did I, directly or indirectly, offer you, or your Niece, any Thing?—Mrs. Smith. No, never in this World.

Mr. Braddon. Did I ever desire her, or you, to say any thing but what was true?

Mrs. Smith. No, Sir: You ever encouraged the Girl to speak Truth; and bid her speak nothing but what was Truth.

Mr. Att. Gen. You need not pay dear for a Lye; you are like to pay dear enough before you have done.

Mr. Braddon. My Lord, as to personal Knowledge, I am as much a Stranger to this Matter, as any body here; and in all my Concern in it, I have done nothing but what was very fair.

L. C. J. Mind your Defence, Mr. Braddon, and leave commending yourself; or, if you will, rather commend yourself by your Actions, than your Expressions: One good Action is worth Twenty good Expressions.

Mr. Braddon. Swear William Glasbrooke.

[Which was done.

L. C. J. Well, what do you ask him?

Mr. Freke. My Lord, we desire to know of him, whether he was by on the 13th of July, when the Girl gave this Report?

Mr. Glasbrooke. I was up two pair of Stairs when she came in.

L. C. J. What is your Name, Sir?—Mr. Glasbrooke. William Glasbrooke.

Cl. of Cr. Ay, here is his Information, among those that were taken about Braddon.

Mr. Glasbrooke. She came in to her Aunt, that went out just now before me, and I heard her very loud with her Aunt, saying, the Earl of Essex had cut his Throat in the Tower. Her Aunt chid her upon it; and her Aunt chiding her, she said, she was sure it was true; for she saw a bloody Razor, with a bloody Hand, thrown out of the Window.

Mr. Freke. Was this the Day of my Lord of Essex's Death?

Mr. Glasbrooke. It was the Day the King was in the Tower; and, as was reported, the Day he was killed.

Mr. Braddon. Were you present when I first discoursed the Girl?

Mr. Glasbrooke. Yes.

Mr. Braddon. Had you ever seen me before, or no?

Mr. Glasbrooke. No.

L. C. J. Did she say, my Lord of Essex cut his Throat at that Time?

Mr. Glasbrooke. Yes.

L. C. J. Are you a Witness to this Paper? Did you set your hand to this Paper?

Mr. Glasbrooke. To the Paper Mr. Braddon writ, I did: I am a Witness to that.

L. C. J. Then read his Information.

Cl. of Cr. Reads.—*Mr. William Glasbrooke does declare, That one Jane Lodeman, aged about Thirteen Years, inhabiting in the same House where he, the said William Glasbrooke, lodged, did on Friday, the 13th of July last past, between Ten and Eleven in the Morning, in the Presence and Hearing of him, the said William Glasbrooke, declare to her Aunt, That the Earl of Essex had cut his Throat; upon which her Aunt was very angry with her; whereupon she, the said Girl, did declare, That she was sure of it, for she saw him throw the Razor out of the Window; and that the Razor was bloody; and that she heard two Groans or Shrieks (which of the two Words she used, he, the said William Glasbrooke, is not certain:) Of this, he, the said William Glasbrooke, is ready to make Oath.*

L. C. J. Now my Lord of Essex cut his own Throat, and after threw the Razor out of the Window.

Mr. Glasbrooke. 'Tis what the Girl did declare.

Mr. Att. Gen. Does not this Girl usually tell Lies?

Mr. Glasbrooke. I have before that Time taken her in a Lye.

Mr. Att. Gen. Did you acquaint Mr. Braddon with that?

Mr. Glasbrooke. I cannot tell that I did.

Mr. Att. Gen. Do you remember that you told Mr. Braddon, That she was a Girl that told Truth?

Mr. Glasbrooke. No, I never did that; for I was always of another Persuasion about her.

Mr. Sol. Gen. He never was of that Temper, to praise her; he was always of a contrary Persuasion.

L. C. J. I'll assure him, that I am of his Opinion too: I do believe she is a lying Girl, and hath told us a company of Lies now.

Mr. Braddon. These two Children told me, they never saw one another till they were examined at the Council.

L. C. J. Well, well: Go on with your Witnesses.

Mr. Braddon. Where is William Smith? [Who appeared, and was sworn. I desire to know of you, Mr. Smith, what you heard the Girl say, when I was there?

Mr. Smith. I heard the Girl tell us, That she saw a Hand cast out a Razor, and either the Hand was bloody, or the Razor, I can't tell which; but she said it was out of the Window, where she said the Earl of Essex lodged.

L. C. J. Did she say the Earl of Essex did it himself?

Mr. Smith. She said, she saw an Hand cast out a Razor.

L. C. J. Did she tell you, it was the Earl of Essex's Lodging-Window?

Mr. Smith. She said it was that Lodging.

L. C. J. Ay, but she says now, she does not know it to be his Lodging.

Mr. Braddon. My Lord, she says she was told it was his Lodging.

L. C. J. But you have made her to say positively, it was his Lodging, and that he threw out the Razor.

Mr. Sol. Gen. Pray, Sir, where did you first hear this Report of this Girl?

Mr. Smith. There, at the House, where she was.

Mr. Sol. Gen. Were you alone when you went to the Girl the first time?

Mr. Smith. No, I went with Mr. Braddon.

Mr. Sol. Gen. Did you hear any thing of it before? What did induce you



you to go along with Mr. Braddon? What were the Arguments that prevailed with you to go with him?

Mr. Smith. I did not know where he was going; Mr. Braddon called me at the Shop, as I stood at the Door, and asked me if I was busy, or would go with him? So I went with him to the Tavern.

Mr. Sol. Gen. You never heard one Word before of the Girl's Report?

Mr. Smith. No, I did not.

L. C. J. What else did the Girl tell you?

Mr. Smith. I can't say what else she said. This I remember, that I have told you.

L. C. J. Did she name the Earl of Essex's Lodgings?

Mr. Smith. I am sure she said the Lodging where the Earl of Essex lay.

L. C. J. Did she name the Earl of Essex?

Mr. Smith. She did name the Earl of Essex's Lodgings?

L. C. J. Did she in so many Words say, That it was the Earl of Essex's Lodgings?

Mr. Att. Gen. Your Lordship sees, they give one Evidence, and she another.

Mr. Smith. I cannot say whether she did in so many Words say so, or no; but she said, That she saw a Hand tofs out a Razor, and either the Hand was bloody, or the Razor, and it was where my Lord of Essex's Lodgings was.

L. C. J. But did she name my Lord of Essex's Lodgings?

Mr. Smith. Yes, she did.

L. C. J. Well, what else did she say? Tell us all she said.

Mr. Smith. She said, There was a Man stood below, and she heard two Shrieks, and the Man did say, Here is a Razor; and a Woman came out, or one in Woman's Clothes, with white Head-clothes. Mr. Braddon asked if she see any body take it up, and she said, no; but she heard a Man say, here is the Razor, and she saw a Woman come out.

L. C. J. You are sure that is all you heard her say?

Mr. Smith. I think so.

L. C. J. Recollect yourself, pray good Mr. Smith.

Mr. Smith. I do not know that I heard any Thing else.

L. C. J. Pray read his Information.

Cl. of Cr. Here is William Smith subscribed.

Mr. Smith. Mr. Braddon writ down what the Girl said, and we did read it over all, and then set our Hands to it.

L. C. J. Well, Sir, Read the Information then.

Cl. of Cr. Reads the Information as before—

L. C. J. You hear what you have affirmed in this Paper, that the Girl said; you have forgot in your Evidence now this long Business about the Soldier.

Mr. Smith. My Lord, I have told all I did remember.

L. C. J. Why, you have set your Hand to it.

Mr. Smith. I did read it over, and it was nothing but what the Girl said, I am sure.

L. C. J. Where do you live?—Mr. Smith. In Throgmorton-street.

L. C. J. What Trade?—Mr. Smith. A Barber.

L. C. J. A notable Shaver, upon my Word! a special Fellow, I'll warrant him!

Mr. Braddon. Call Mrs. Mew.

[Who appeared and was sworn.]

Pray what Day was it you went from London to Berkshire?

Mrs. Mew. The Day before my Lord Russell was tried.

Mr. Braddon. What Expression did you hear from a Gentleman in the Coach?

L. C. J. We must not suffer such a Question to be asked, that is not Evidence.

Mr. Braddon. My Lord, I ask the Question in general Terms, what she heard such a Day?

L. C. J. Does she know any Thing of her own Knowledge?

Mr. Braddon. She can tell what she heard, my Lord.

L. C. J. 'Tis no Evidence.

Mr. Braddon. Will your Lordship please to hear what she says?

L. C. J. No, I will not hear what I should not hear; let her speak what she knows.

Mr. Braddon. She knows this, that a Woman told her—

L. C. J. Ask your Counsel, whether that be Evidence. If you will not be satisfied with what I say, ask them?

Mr. Wallop. She proves a Report.

L. C. J. I ask it of you, Mr. Wallop; Is what another said to her, Evidence in this Case?

Mr. Wallop. My Lord, if really there was such a Report—

L. C. J. Is that Evidence?

Mr. Wallop. 'Tis Evidence there was such a Talk, and that is Evidence of the Probability of the Thing.

L. C. J. I'll leave it to yourself, if you as a Lawyer say it is Evidence, we will hear it, because you say so; but I believe you, nor no body else will offer to say any such thing.

Mr. Wallop. My Lord, we lay it before the Court, as part of the Ground upon which we went, in our being concerned in this Business.

L. C. J. Is that a Justification of Mr. Braddon?

Mr. Wallop. Upon these Probabilities he engaged in this Matter, and to prove this Report, he brings this Gentlewoman to tell what she heard.

L. C. J. Why, is what the Woman told her, Evidence; She reported a Report to me, can that be Evidence?

Mr. Wallop. My Lord, with Submission, we think it justifies Mr. Braddon, that he went upon these grounds.

L. C. J. Where is the Woman that told her? Why is not she brought?

Mr. Wallop. They say, she is so big with Child she can't come.

L. C. J. Why, if that Woman were here herself, if she did say it, and would not Swear it, we could not hear her; how then can her saying be an Evidence before us? I wonder to hear any Man that wears a Gown, to make a doubt of it.

Mr. Braddon. I desire Jeremy Burgis may be called.

[Who appeared and was sworn.]

Mr. Wallop. What can you say about the Report in the Country?

Mr. Burgis. I was at Frome about my Business on a Friday—

L. C. J. Why, Gentlemen, what are we doing all this time? Do you think we sit here for nothing? Is not this the first time that a Report was given as Evidence in Westminster-hall?

Mr. Freke. My Lord, we are necessitated to use this Sort of Evidence.

L. C. J. I tell you, Sir, It is no Evidence, be necessitated what you will.

Mr. Freke. My Lord, They have produced this Man's Letter that was taken about Mr. Braddon, that is produced in Evidence against him: Now this Man comes to give an Account how he came to write that Letter.

L. C. J. But he shall not give an Account by a Report in the Country.

Mr. Burgis. It was written to the Landlord of the House where I quartered, that he might give notice to Mr. Braddon of a Discourse that passed in his House that Friday, of a Report that was there concerning the Earl of Essex's murdering himself.

Mr. Att. Gen. Had the Master of the House told you any such thing?

Mr. Burgis. No, he had not told me so; but I heard it in the House.

L. C. J. Of whom did you hear it? Who told you so?

Mr. Burgis. Sir, I was a Stranger there.

L. C. J. They can never tell any of them, who it was first reported it, nor particularly who told it them; but it was reported by some body, we don't know who.

Mr. Beech. Under Favour, my Lord, I rode directly to the Postmaster at Frome, whither this Letter was directed, and by the way, there is a Remark in the Letter of an Alteration of the Figure, 'tis interlined the 13th; it was not so before, to hit the Day exactly of the Murder of the Earl of Essex; and when I came thither, the Postmaster told me, There was no such Report in his House, nor in the whole Town at that Time.

L. C. J. I desire to know, upon your Oath, who told you that Report?

Mr. Beech. Sir, I do not know; I was a Stranger there.

L. C. J. Was it a Man or a Woman?

Mr. Burgis. He did not tell his Discourse to me.

L. C. J. But thou couldst guess by the Habit, whether it was a Man or a Woman?—Mr. Burgis. It was a Man.

L. C. J. Who did he tell it to?

Mr. Burgis. The Company in the House.

Mr. Att. Gen. Pray, let him tell how Mr. Braddon came to speak to him about it?

L. C. J. Shew him that Letter. Look upon it, Friend; Is that your Hand?—Mr. Burgis. Yes, it is.

L. C. J. When did you put that Figure of 13 in? There was another Figure before, and that is blotted out.

Mr. Burgis. It was a mistake in me, I mistook the Day, and I corrected it.

L. C. J. When did you correct it? How soon did you correct it?

Mr. Burgis. Presently.

L. C. J. What Day had you put in first?—Mr. Burgis. The 6th Day.

L. C. J. Ay, but that was not the right Day, Man.

Mr. Burgis. It was a great while after, and I did not expect to be brought in question for any such thing.

L. C. J. How long after?—Mr. Burgis. Six Weeks.

L. C. J. How camest thou to recollect, to make it from the 6th to the 13th, six Weeks after?

Mr. Burgis. Mr. Braddon was there when I had writ it.

L. C. J. And he corrected it, did he?

Mr. Burgis. He said, that that was not the Day of my Lord's Death.

L. C. J. You had written it the 6th, and he put you in mind of the 13th.—Mr. Burgis. Yes.

Mr. Att. Gen. And he was to be the Messenger that carried the Letter himself?—Mr. Burgis. Yes, he was.

Mr. Sol. Gen. That is very well. I suppose, Gentlemen, you hear what he says, He says, Mr. Braddon was there, and told him that was not the Day.

L. C. J. Ay, Mr. Braddon said, You have mistaken the time, that will not do it, it must be the 13th.

Mr. Att. Gen. Pray let me know one thing, Who recommended Braddon to you?—Mr. Burgis. Indeed I can't tell.

L. C. J. Who did he say he came to you from? Tell the Truth, upon your Oath.

Mr. Burgis. Sir, I was at work at my Business, and knew nothing of his Coming.

L. C. J. What Trade art thou?—Mr. Burgis. A Pinmaker.

L. C. J. Where do you live?—Mr. Burgis. At Marlborough.

L. C. J. How came Mr. Braddon and you acquainted?

Mr. Burgis. Sir, I will tell you; I was at work at my Trade, and there came came down a Gentleman that lives in our Town to me, and asked me—

L. C. J. What is that Gentleman's Name?—Mr. Burgis. Mr. Butcher.

L. C. J. What is that Butcher?

Mr. Burgis. A Gentleman that lives in Marlborough, a Grazer by Trade. He came and told me, There was a Gentleman came from London, about the Business now in Dispute—

L. C. J. Prithee, what was spoke of?

Mr. Burgis. It was concerning the Earl of Essex's Death. And he desired me to speak what I heard at such a time.

L. C. J. Who had you told what you heard first to? You must have told it to some body; who did you tell it to first?

Mr. Burgis. Indeed I can't directly say who I did tell it to.

L. C. J. Had you told that Gentleman of your Town, Butcher, as you call him?—Mr. Burgis. No, not that I know of.

L. C. J. Well, when he came to you, what then?

Mr. Burgis. He desired me to go to Mr. Braddon to the White-Hart. And so I went up to the White-Hart; and when I came to Mr. Braddon, I told him what I had heard at Frome.

L. C. J. And what then?

Mr. Burgis. Then Mr. Braddon asked me the same Night, Whether I would go down with him to Frome, and I could not; so then he desired me to write a Letter to recommend him to the House where I had heard it.

Mr.



Mr. Sol. Gen. And you did write that Letter?—Mr. Burgis. Yes, I did so.  
Mr. Att. Gen. Your Lordship observes, this House was the Post-house, to be sure, to have it spread in Publick Places.

Mr. Sol. Gen. Did you tell Butcher of your Knowledge, before he carried you to Braddon?—Mr. Burgis. Yes, Sir, I did.

Mr. Sol. Gen. When?—Mr. Burgis. Then, at that time.

Mr. Sol. Gen. Did he ask you of your Knowledge, or did you tell him voluntarily?

Mr. Burgis. He asked me if I remember'd any such thing as I had spoken.

Mr. Sol. Gen. Why, had you spoke of it before?

Mr. Burgis. Yes, I had.

Mr. Sol. Gen. Did he tell you upon whose Recommendation he came to you?

Mr. Burgis. I do not know upon whose Recommendation he came.

L. C. J. When you writ this Letter, did he dictate it to you, or did you write it of yourself?—Mr. Burgis. I writ it of myself.

L. C. J. Did he tell you what you should write?

Mr. Burgis. I shewed him what I had written.

L. C. J. And when you writ it, of yourself you put in the 6th Day?

Mr. Burgis. Yes, I did so.

L. C. J. What he did say then?

Mr. Burgis. Mr. Braddon said, it was the 13th Day.

Mr. Sol. Gen. Why did you shew Braddon your Letter after you had written it?

Mr. Burgis. He came to my House before I had sealed it.

L. C. J. But why did you shew him the Letter?

Mr. Burgis. He desired a Letter to recommend him to that Man at whose House I heard it.

Mr. Sol. Gen. What was he to be recommended to him for?

Mr. Burgis. It was to desire him to inquire, who brought the News first to Town.

Mr. Sol. Gen. You say, he desired a Letter of Recommendation?

Mr. Burgis. Yes, it was to recommend him to that Man.

Mr. Sol. Gen. That you may not be in a Mistake, pray recollect yourself; for there is not one Word of Recommendation in the Letter. Tell the true Reason, why you shewed him the Letter?

Mr. Burgis. I can't tell any other, but only he came before I had sealed it.

Mr. Sol. Gen. Did he desire to see it?

Mr. Burgis. No, but the Letter lay writ upon the Table.

Mr. Sol. Gen. Was the Master of the Post-house at Frome present, when that Report you talk of was made?

Mr. Burgis. I cannot rightly say, whether he was or no.

L. C. J. How comest thou to put it in thus? This bears Date a pretty while ago, Marlborough, Aug. 21. and that was a good distance of Time from that Report that thou talkest of: How comest thou then to say, These are to desire you to call to mind, That I was at Frome such a time, and heard such a Report: If he was not there, why should he call to mind? What didst thou mean by that calling to mind?

Mr. Burgis. I would have had him called to mind my being at his House at that time.

L. C. J. But if he was not there, why didst thou ask him to call to mind that Report?

Mr. Burgis. He might hear of it from some other at that time, tho' he might not hear it in that Company where I was.

Mr. Sol. Gen. There is a Riddle in it, if we could but solve it.

L. C. J. No, no, Mr. Solicitor, the Riddle is unfolded; 'tis a plain Contrivance.

Mr. Att. Gen. Pray, from whom did he tell you he was recommended?

Mr. Recorder. How came you to talk so to a Stranger, Sir, whom you never see before, about such a Business?

Mr. Burgis. He was recommended to me by Mr. Butcher, as I told you, who carried me to him.

Mr. Att. Gen. But who, as Braddon, or Butcher told you, did recommend him first to come down thither to you?

L. C. J. Upon your Oath, Sir, Who did Butcher tell you he came from?—Mr. Burgis. I have forgotten, Sir; I do not remember.

Mr. Recorder. Was it not a Non-conformist Parson, Sir, upon your Oath?—Mr. Burgis. Sir, I cannot remember.

Mr. Att. Gen. Mr. Beech, Do you know any particular Person that Braddon said he came recommended from?

Mr. Beech. I can tell what Account Braddon gave of his Journey himself: He said, he had a Letter that came particularly from this Man to London, to bring him down into the West: Said I, when came you out of London? I came on Thursday, said he: Where did you lodge a Thursday Night? At Ockingham. Said I, That is not your way to Marlborough: Where did you lie the next Night? He told me, at one Venables; and the next Night at Salisbury, I think.

L. C. J. Did Braddon tell you he had a Letter from that Man?

Mr. Beech. He said a Letter from that Man brought him down into the West.

L. C. J. Burgis. Did you send him e'er a Letter?

Mr. Burgis. No, I did not.

Mr. Beech. He said he came down purposely upon this Report.

Mr. Att. Gen. What said the Postmaster to you, Mr. Beech?

Mr. Beech. If you please to give me leave to speak, I'll tell you: I did desire, that Mr. Braddon might have no Pen and Ink, and presently I rid away to Frome, to this Postmaster's House, and spake with the Postmaster, and all his Family: We then examined them all, and there was no such Report in that Town 'till the Sunday after.

Mr. Sol. Gen. He was persuaded, sure, all People would say just as he would have them.

Mr. Thompson. Well, Mr. Braddon, Who do you call next?

Mr. Sol. Gen. Nay, I desire this Man may go on; for methinks he mends every Step he goes.

Mr. Braddon. Mr. Burgis, Do you remember how it was that you came to recollect yourself, and to know it was the 13th, and not the 6th?

L. C. J. He says, you told him.

Mr. Braddon. Pray, Sir, remember yourself, whether you did not say

yourself you remember'd the true time; for you came from Frome to Marlborough on the Saturday Night, and then you heard there the Earl of Essex had cut his Throat the Day before; and when they told you so, you cried out, How can that be? It must be done before; for Yesterday I heard at Frome before Five of the Clock.

Mr. Just. Withins. Did not Mr. Braddon himself tell you, you had mistaken the Day?

Mr. Braddon. Sir, It was from this, he told this whole Story that I just now repeated, that the Saturday Night he was told, that the Earl had cut his Throat, and replied to them, that he had heard at Frome, the Day before, that he was murdered, and then I said, that must be the 13th.

L. C. J. How came you to tell that Man, you had a Letter from Burgis?

Mr. Braddon. No, my Lord, I did not tell him any such Thing.

L. C. J. Mr. Beech, Did not he tell you he had a Letter from Burgis?

Mr. Beech. He told me he came down upon the Information of this Burgis.

L. C. J. And he swears he never saw him before, nor never writ to him.

Mr. Braddon. You ask me, whether I had received any Letter from this Burgis. I told you, I had a Letter of Recommendation to Mr. Butcher, thinking he had been the Person that had reported it, and Mr. Butcher went to this Person and brought him to me, and he told me what he heard.

Mr. Beech. I never heard of the Name of Butcher 'till now he mentioned it.

Mr. Braddon. My Lord, I will call no more Witnesses.

Mr. Att. Gen. Your Lordship and the Jury observe, I suppose, his confident Behaviour.

L. C. J. Ay, He is no more concerned at it, than if he had been doing the most justifiable thing in the World.

Mr. Thompson. My Lord, I have but one Word to add on the Behalf of Mr. Speke, who is likewise joined in this Information. Truly, Mr. Speke, is a young Gentleman of some Quality, his Father is of very good Quality, Mr. Braddon was of his Acquaintance, and being his Acquaintance, and thus concerned, as you have heard in the Prosecution of this Business; he hearing of these Reports, and resolving to go down into the Country about it, desired Mr. Speke to lend him his Man and his Saddle, for he was going into the Country. Mr. Speke inquires what his Business was, whereupon he told him it was to inquire about some Persons that had reported something relating to the Earl of Essex's Death. And being to go into the Country where Mr. Speke, who was that Country-man, had some Acquaintance, upon this he desired him to write him a Letter, to recommend him to some Persons of Credit. He did write that Letter, but was never concerned in this Business, either before or after; and this is the whole of the Case, as to this Mr. Speke.

Mr. Speke. My Lord, I desire I may speak one Word for myself.

L. C. J. Ay, say what you will.

Mr. Speke. My Lord, One Day, some time after Mr. Braddon had concerned himself in this Thing, I met him casually and accidentally, and he was telling me somewhat of the Matter. And after this, one Night as I was going to Bed, between 10 and 11 at Night, somebody knocked hard at my Door. My Man went to the Door, and opened the Door, and Mr. Braddon comes in, and tells me, he desired the Favour of me, that I would lend him my Man, and lend him my Saddle. He being my Acquaintance, and I knowing him, I was willing to do him that Kindness; and asking him, whither he went? He told me he was going down to Marlborough, and he told me he had heard that my Lord of Essex's Death was discoursed of there in the Country that Day it was done; besides other Things of a Boy and of a Girl, that could prove such and such Things. Said I, This is a Thing of great Concernment, and I would have you take good Advice in it, before you proceed, because otherwise it may be a Reflection upon the Government; therefore, said I, I would not have you proceed to concern yourself further in this Thing, but take the Advice and Judgment of some prudent and discreet Person or other, that you may do nothing but what is according to Law. I was never at all concerned, nor knew any thing of the Business but what I heard from Mr. Braddon at first. And before he came into my Chamber, I knew nothing of his coming; and I writ this Letter, because he should not concern himself without the Advice of some Person that I thought was able to advise him, that he might do nothing that might bring him within the Danger of the Law, or reflect upon the Government.

Mr. Just. Holloway. And you advised him to go by the Name of Johnson, not Braddon.

Mr. Speke. It was late at Night, and I had been at the Tavern drinking a Bottle of Wine or two with a Friend, and might not so well consider what I did write.

L. C. J. But, Mr. Speke, You hear what you writ, We row against Stream, and we thank you for the Countenance you have given to Us. And here is a worthy Gentleman, Mr. Braddon, who is a very proper Man for the Design he has in hand, and none better than he, and when you are with him, you may discourse freely; and he is a true Man, and a stout Man, and fit to be trusted; but he must not go by the Name of Braddon, but of Johnson.

Mr. Speke. My Lord, the Reason was, because he was not personally known to Sir Robert Atkins; and for him to go down directly, and to have it reported, one of such a Name came to Sir Robert Atkins, who was a Man that had retired himself into the Country from all Publick Concern, I thought not so well.

L. C. J. Why did you trouble him, if he was so retired?

Mr. Speke. I had particular Concerns of my own, that Sir Robert Atkins was pleased to concern himself for me, and I knew him a prudent Man, that would advise him nothing but according to Law.

L. C. J. You should not have disturbed him in his Privacies, Mr. Speke.

Mr. Speke. My Lord, I never was any other way concerned, I knew nothing of the matter.

L. C. J. You had done well if you had not concerned yourself about it at all.

Mr. Sol. Gen. Most here do fear, you say, that he will be either stabbed or knocked on the Head, and therefore you lent him your Man to guard him, I suppose.



Mr. Speke. He desired me to lend him my Man, because he did not know the way so well himself.

Mr. Sol. Gen. But why was there such Fear about him?

Mr. Speke. I know nothing at all of the Matter, but what I had from Mr. Braddon.

L. C. J. Ay, we live in such a stabbing Age, that such an extraordinary Gentleman as Mr. Braddon, that is such an extraordinary good Protestant, can't walk the Streets for fear of being murdered.

Mr. Speke. My Lord, I writ it at such a time of the Night, after I had been at the Tavern, that I knew not well what I writ.

Mr. Just. Withens. Mr. Speke, You see what a Sort of a Man he is, upon the Evidence that hath been given.

Mr. Speke. Truly, my Lord, I never knew any thing, but what I had from him.

Mr. Sol. Gen. But to make the Country believe, that there were such Endeavours here to stifle any Thing that might give light into the Murder of the Earl of Essex, there must be great Caution used to conceal his Name.

L. C. J. Yes, being such a virtuous Man, as Mr. Braddon, there was great need of all Circumspection and Care to preserve him: Why did not he get his Life-guard to keep him from the Danger that was thought so near him?

Mr. Sol. Gen. They had not raised them as yet, but he was contented at present with Mr. Speke's Man.

Mr. Speke. My Lord, I am wholly innocent in all this Matter.

L. C. J. Would to God you were Innocent, You are a Man of Quality, Mr. Speke, I know; I should be glad you were innocent with all my Heart. But when Men forget their Studies and their own Business, and take upon them the Politicks without being called to it, That puts them into Frenzies, and then they take all Opportunities of shewing themselves Men of Zeal.

Mr. Att. Gen. We need but read the Letter which Mr. Speke has owned, and you will say it is ten times worse than what Mr. Braddon has done.

L. C. J. Nay, I will not have Mr. Braddon topped upon for all that, I assure you.

Mr. Att. Gen. My Lord, if you read it once again, you will find, that he therein owns it all, and pins the Basket upon himself.

L. C. J. Indeed, Mr. Attorney, I will not have such a Reflection put upon Mr. Braddon, That any Man should be a greater Actor in the Business than he.

Mr. Speke. My Lord, I writ it at Night after a Bottle of Wine, and other People may be mistaken as well as I.

L. C. J. If some of these Gentlemen, that now and then think themselves better-headed than others, and that are so extraordinarily concerned to preserve our Religion, but are generally much mistaken, were, and I observe their Mistakes are always on the wrong Side; I wish you could have gone and recollected yourself next Morning, Mr. Speke, and then the Mistake had been more pardonable.

Mr. Speke. I writ nothing as to matter of Fact, but what he told me, and I could hardly recollect it next Morning, when he was gone away.

Mr. Recorder. My Lord, we shall prove he has bragged, that is, Mr. Braddon, That he was the only Inventor of the Protestant Flails, an Instrument you have heard of, Gentlemen, and for what Use designed.

L. C. J. But, Brother Jenner, that is nothing to the Purpose now, what he was before this Business, or what he was after. You are, Gentlemen, to Try him upon this Indictment only, and are not to mind any other Thing at all.

Then Mr. Speke's Letter was read again.

Mr. Att. Gen. You see, Gentlemen, in what Strain it runs, *We* and *We*; he makes himself a considerable Party in the Design.

L. C. J. Aye, *We* thank you for your Kindness towards *Us*, and *We* hope to bring on the Trial of the Earl of Essex, before they can any of those in the Tower.

Mr. Speke. He told me, Sir Henry Capell said it was a Thing too great for him to meddle with. And I knew nothing, but what I had from him.

L. C. J. He was a Man of Integrity, and could tell you nothing but what was true, Mr. Speke.

Mr. Wallop. My Lord, All I can say, for Mr. Speke, is this, He did believe Mr. Braddon's Grounds, as he told him, were probable to go upon, but he knew nothing himself, and concerned himself no further. I hope the Jury will consider of it, that there is no Contrivance proved against him.

L. C. J. Nay, Mr. Wallop, though we interrupted you in making Remarks upon every Witness, yet now make what Remarks upon what hath been said that you will.

Mr. Wallop. My Lord, I shall leave it to your Lordship and the Jury, how far they think the Defendant guilty of this Information.

Mr. Att. Gen. My Lord, We have indeed given as great an Evidence as ever was given I think of any Offence. But to clear up the Matter, that it was impossible for any Man, unless the most maliciously and villainously inclined against the Government and Peace of the Kingdom, that can be, to imagine such a Thing, much less spread such a Report, we will call you two or three Witnesses to prove, that the Earl of Essex murdered himself.

L. C. J. 'Tis necessary, Mr. Attorney, I think, for you to do, to satisfy the World, though to a discerning Eye there is enough given from the Evidence this Day, to make it appear to be a most malicious and scandalous Contrivance, to hawk about for every idle Rumour, to pick up Children of such tender Years, and make them Swear any thing to serve a Turn.

Mr. Att. Gen. My Lord, we do not call these Witnesses, as if there were any Doubt of it in the World.

L. C. J. But we live in an Age, when Truth passes for nothing in the World, and Swearing and Forfeiting is taken for a Thing of Course. Had his Zeal been half so much for Truth as it was for falsehood, it had been a commendable Zeal. But when Men are so zealous and fierce for such vile Things as these are, 'tis time of my Word, for the Government to interpose.

Mr. Att. Gen. 'Tis not to satisfy the Court nor the Jury, who I believe are all of them already sufficiently satisfied, but 'tis to satisfy the World, that may have entertained some Prejudices from this Conspiracy. Call Mr. Bomeney in.

Mr. Sol. Gen. Not as if there were any doubt, whether Mr. Braddon

were the malicious Inventor of this Report at the beginning, and went down into the Country to spread it. The Evidence has been full, and by his own Management of his Defence, he has proved it himself, and seems by his Confidence to justify it. But we shall, to give the World some Satisfaction, call some that waited upon the Earl in the Tower, and others that saw him when dead, that will give a Confutation to any thing that could be supposed, as if my Lord of Essex had not murdered himself.

Then Bomeney was Sworn.

L. C. J. Did you wait upon this unfortunate Gentleman, my Lord of Essex?—Mr. Bomeney. Yes, my Lord.

L. C. J. Well, what do you know of his Death?

Mr. Bomeney. I went with him from Whitehall, and I stayed with him all the while he was in the Tower.

L. C. J. How came he by that unhappy End, pray?

Mr. Bomeney. When we were at his Lodging, my Lord used to call for a Pen-knife to cut his Nails of his Hands and Feet, and he then had long Nails, and said he to me, give me your Pen-knife to cut my Nails; said I, my Lord, I have none, I came in haste, but I will send to Morrow for one; and therefore I sent our Footman, one William Turner; to whom I gave a little Note for Provisions, and among other Things which I writ Directions to the Steward to send, there was a little Line; *Pray send a Pen-knife for my Lord.* He brought some Provisions, but he did not bring a Pen-knife on the Thursday, because he said he had none, but he would send one the Morrow after; I sent William Turner, the Morning after very early, and gave him another little Note for Provisions; and, among other Things, I writ in the Note, *Do not forget the Pen-knife for my Lord.* He went, and when he was in the way, my Lord, sent the Warder to me, to call me. I came to my Lord, and my Lord asked, Is the Footman come? Has he brought the Pen-knife? No, my Lord, said I, but I hope he will not stay long, because I sent him early. Then I was turning to come down from the Chamber, and I saw my Lord walking in the Room, and picking of his Nails with the Pen-knife----

L. C. J. How? With a Pen-knife?

Mr. Bomeney. No, with the Razor that I gave him. For I went to my Lord, and when my Lord asked me if I had gotten him a Pen-knife, I said the Footman was not come, but I hoped it would come immediately, because I sent him early. And I was turning from the Chamber, thinking I had done with my Lord, and my Lord called me again, Hark you, Bomeney, said he, I can do it with one of your Razors. My Lord, said I, I will fetch one, so I went into my Closet and fetched one. And I went to my Lord, and when he had it, he did as if he picked his Nails with it, and was walking in the Chamber. I looked a little while upon him, and turning out of the Chamber into the Passage, where I talked with the Warder, *Ruffel* his Name was, and when I looked out of the Window, his Majesty was in the Tower, and there was a great Bustle in the Street; and when I had talked a little while with the Warder, I went down into my Closet again, and at the same time that I was in my Closet, there came the Footman, and one with him that brought the Provisions, and he gave me the Pen-knife, and gave me a little Note, that he had brought with the Provisions, which, he said, Mr. *Billingly*, that was our Steward, bid me to shew that to my Lord. I took it, and went up to shew it to my Lord; I found no body in my Lord's Chamber, there was a Closet there, in which was a Close-stool, and that I found shut, and thinking my Lord was there, I would not disturb my Lord, but came down again, and stayed a little while, in so much as I thought my Lord by that time might have been come out. I went up again, and found no body in the Chamber, but the Closet-Door shut still, I went against the Door, and knocked three times, and said My Lord, my Lord, and no body answered: Then I looked through the Chink of the Door, between the Door and the Wall, and I could see Blood, and a little part of the Razor. Then I called to the Warder, and the People of the House, and they came up and found him there.

Mr. Att. Gen. Had you much ado to open the Door, or could you open the Door easily?

Mr. Bomeney. No, the Door could not be opened easily, I know not how they opened the Door, but I think *Ruffel* the Warder, when he came up, pushed at the Door, but could not open it very far, because my Lord's Foot was against the Door, and so they had much ado to open the Door.

Mr. Att. Gen. Which way does the Door open, out of the Room, or into the Room?—Mr. Bomeney. Inward, into the Room.

L. C. J. And so his Feet being against it, it could not easily be opened.

Mr. Att. Gen. How big is the Closet?

Mr. Bomeney. A very little Closet, I believe no wider than that; and the length of a Man, and a Close-stool at the upper end would fill it up. My Lord lay all along on his Side.

Mr. Att. Gen. Did you observe your Lord melancholy, Mr. Bomeney?

Mr. Bomeney. Yes, he was melancholy. But we took no notice of it, for he was used to be so, and we had no reason to suspect any thing more than ordinary.

Mr. Att. Gen. Did you find the Razor?

Mr. Bomeney. Yes, it lay by him.

Mr. Att. Gen. What became of the Razor?

Mr. Bomeney. The Coroner's Jury had it.

L. C. J. Was there any Window in that Room, where the Close-stool was?

Mr. Bomeney. Yes, there was a Window.

L. C. J. Was there a Casement to that Window?

Mr. Bomeney. Yes, I think there might.

Mr. Just. Withens. Which way does that Window look?

Mr. Bomeney. I can't very well remember, my Lord.

Mr. Just. Withens. Which way do you think?

Mr. Bomeney. I believe it is upon a Yard.

L. C. J. He says he does not well know. But, Mr. Bomeney, you saw Mr. *Ruffel* the Warder in the same Place, as you came up again, that you left him in when you went down?

Mr. Bomeney. My Lord, I went down but a little while.

Mr. Sol. Gen. Where did you find *Ruffel* the Warder, when you came up again?—Mr. Bomeney. At the Guard.

Mr. Sol. Gen. Did you find him in the same Posture, when you went up again, that you left him when you went down?



Mr. Bomeney. Yes.

Mr. Sol. Gen. Did you hear of any body that went up else?

Mr. Bomeney. No, my Lord.

Mr. Sol. Gen. Then we will call Mr. Ruffel the Warder he speaks of.

[Who was sworn.]

Mr. Att. Gen. Pray will you give my Lord an Account at that Time where you were, and what was done?

Mr. Ruffel. I was in the Chamber, next opposite against my Lord's Chamber, there is but a little step betwixt the Doors, the Stairs come up betwixt the two doors, no body could pass backwards or forwards but I must see them; for I was then Waiter at that time, and stood upon the Guard; and my Lord asked Mr. Bomeney, Whether the Pen-knife was come; and he told my Lord, No. Then says he, lend me your Razor, that will do it. And my Lord took the Razor in his Hand, and the Door was open, and he went two or three Turns in the Room, with the Razor so. This I saw, the Door being open, as I stood in the Passage. My Lord, by and by Mr. Bomeney goes down, and my Lord shut the Door to him, and Mr. Bomeney staid below a little while, and afterwards comes up again. And my Lord was gone to the Closet to Stool, as he supposed. So away he comes down again, and staid about a quarter of an Hour, or thereabouts. And this I see all myself, my Lord.

L. C. J. Had any Person been there, from the time Bomeney went down, to the time he came up again?

Mr. Ruffel. No, my Lord, there was no body went up or down all the time, but Bomeney. He came up, and seeing my Lord was not come out of his Closet (this I did stand and hear) so he puts by the Hanging, and looks in, and sees my Lord in his Blood, lying in the Closet; and he makes an Oration, a great Noise; with that I stepped two or three Steps, hearing him make such an Oration, and I found the Key was on the outside of the Door, and I opened the Door, and saw him lie in his Blood.

L. C. J. Could you open the Door with ease?

Mr. Ruffel. Yes, I could put it a little way open, and there saw him.

L. C. J. But you could not put it quite open?

Mr. Ruffel. No, for his Legs lay against the Door.

L. C. J. Was it a narrow Closet?—Mr. Ruffel. Yes, a very narrow Closet.

L. C. J. In what Posture did my Lord lie?

Mr. Ruffel. He lay all along on one Side.

L. C. J. Where lay the Razor?

Mr. Ruffel. By him. But I did not take so much notice of the Razor, for I was surprized with the Sight.

Mr. Just. Holloway. Was there any Window in the Closet?

Mr. Ruffel. Yes, that looks into Captain Hawley's Yard. And the Window is quite Northward.

L. C. J. Which way does that Window look?

Mr. Ruffel. Quite the other way, into the back-yard.

L. C. J. Then there is no way out, Nor Light, nor Casement out into the Fore-yard?

Mr. Ruffel. No, my Lord, 'tis backward, and 'tis paled in, only into the House there is a Door.

Mr. Att. Gen. Was there any Door out of the Street, that way?

Mr. Ruffel. No, there is one Door that goes out from the Entry to go into the Yard.

L. C. J. Has any body else access to come to the Yard, but what must come through Hawley's House?

Mr. Ruffel. No, no body.

Mr. Sol. Gen. We will call Captain Hawley himself.

L. C. J. Warder do you remember there was any Coach that stood there?

Mr. Ruffel. No, there was no such thing.

L. C. J. I ask you for this reason, because here was a Girl that spake of a Coach, that came through the House I suppose, and so through the Entry out of that Door into the Yard.

Mr. Att. Gen. Where is Lloyd the Soldier? For, my Lord, as there was a Warder above, so there was a Soldier that stood at the Door below. And while he staid there, there could not any one come in, nor near, but he must observe them.

Mr. Sol. Gen. Pray, my Lord, be pleased to ask Mr. Bomeney, how long he lived with my Lord?

L. C. J. How long had you lived with my Lord of Essex?

Mr. Bomeney. Six Years.

Mr. Just. Withins. You waited on him in his Chamber, I suppose?

Mr. Bomeney. Yes, in the Nature of his Valet de Chambre.

Then Lloyd was sworn.

Mr. Recorder. Hark you, Lloyd, you were the Sentinel. Give an Account where you stood that Day that my Lord of Essex murdered himself?

Lloyd. At my Lord's Door.

Mr. Att. Gen. Which Door?—Lloyd. At my Lord of Essex's Door.

Mr. Att. Gen. Were you above Stairs, or below at the Street Door?

Lloyd. Below at the Street Door.

Mr. Just. Withins. Did any body come into the House that Morning?

Lloyd. No body came in, all the while I stood there, that I knew of.

Mr. Just. Withins. Were you there at that time when my Lord killed himself?

Lloyd. I was there when the Noise was made of it above Stairs.

L. C. J. Did you e'er see a Coach there?

Lloyd. Not to stand at the Door at all.

L. C. J. Didst thou see e'er a Coach in Captain Hawley's Back-yard?

Lloyd. No, no.

L. C. J. Why, could not the Coach go through the Door and the Entry into the Yard?

Mr. Sol. Gen. Had you seen my Lord of Essex that Morning?

Lloyd. Yes, he spake to me, and asked me What o'Clock it was?

Mr. Sol. Gen. Where was he?—Lloyd. At the Casement.

Mr. Sol. Gen. What did he say to you?

Lloyd. He said, Centry, What o'Clock is it?

Mr. Att. Gen. Did you see him when my Lord Ruffel went by?

Lloyd. Yes, I saw him then.

VGL. III.

Mr. Att. Gen. How long after was the Cry of my Lord's having killed himself?

Lloyd. I believe, not half an Hour after.

Mr. Att. Gen. Did any Maid go out of the House?

Lloyd. None at all.

L. C. J. What, not in a white Hood?—Lloyd. No.

L. C. J. Why, didst not thou call to the Maid to come and take up the Razor, that was thrown out of the Window of Captain Hawley's House?

Lloyd. There was no Razor at all thrown out, that I saw.

L. C. J. Did not you open the Pales for her to go in, and take up the Razor?

Lloyd. No.

L. C. J. Was there any other Soldier there besides you?—Lloyd. No.

L. C. J. Then you must be he that cried out, or no body?

Lloyd. I saw no Razor, nor did not cry out to any body.

Mr. Sol. Gen. Could you open the Pales? is there a Door to the Street-side, out of the Pales into the Yard?

Lloyd. 'Tis no Yard, but there is a Door that all pass through that come to the House.

Mr. Sol. Gen. What else did my Lord of Essex say to you?

Lloyd. He only examined me, what o'Clock it was? That was all.

Mr. Att. Gen. My Lord, We have here two Women, who were the only Women that were in the House, they will tell you what they saw.

L. C. J. Pray Gentlemen, do not mispend your Time unnecessarily, because I am to sit this Afternoon at London.

Mr. Att. Gen. My Lord, We will then only call Captain Hawley.

[Who was Sworn.]

Mr. Sol. Gen. Pray, Captain, tell what you know of this Matter?

Capt. Hawley. My Lord, All the Account I can give, is, That about four or five o'Clock in the Morning, I went to open the Gates, that being the usual Hour to open the Gates. And I was at the Gate then when a Warder came, and told me, my Lord of Essex had killed himself, and that was between nine and ten of the Clock. When I came into the House, I went up Stairs, and saw no body in the Room, nor no blood; said I, to the Warder, What, do you make a Fool of me? Here is nothing: Says one of the Warders, look into the Closet; I went to the Closet, and could not open the Door above this Wideness, and I looked in, and saw the Razor all in Blood, and my Lord lay on his Arm in this fashion. I could not tell, whether he was dead or no, but I thought it was not my Business to stir him. Then my Lord Constable was ordered to come and Secure, and Examine all the Servants.

L. C. J. Pray, Captain Hawley, where does the Casement look into?

Capt. Hawley. The House, ever since I came to it, is just as it was; and the House having settled, the Casement won't open above thus far: And 'tis so low, and the Pales are nine or ten Foot high, that 'tis impossible for any one to throw anything out of the Window three Foot hardly. It is one of the horridest Reports that ever was heard of, and the unlikeliest Thing, they cannot throw any thing out of the Window to be seen.

Mr. Att. Gen. My Lord, I think it is not necessary to call any more Witnesses.

L. C. J. Have they any thing to say further, on the other Side?

Mr. Speke. I desire, my Lord, to call my Man.

L. C. J. Call your Man, for what Purpose?

Mr. Speke. My Lord, If your Lordship pleases, I will call my Man to prove, that I knew nothing of Mr. Braddon's coming to me.

Then Mr. Speke's Man was sworn.

L. C. J. Ask him what you will.

Mr. Speke. Did you ever see Mr. Braddon with me?

Servant. Never but once, before that time he came to my Master's Chamber, which was the Night before he went out of Town; and when he came, after he had been there a little while, my Master ordered me to get me ready to go into the Country with him. And after I had been with him a little time, he got another to go with him, and sent me Home again.

Mr. Speke. I was going to Bed, Was I not?—Servant. Yes, you was.

L. C. J. Have you done of both Sides;

Mr. Speke. Was it not a Surprize to me, when he came to me?

L. C. J. How does he know that?

Mr. Speke. I tell you why, my Lord, I ask it: Because when I go out of Town, I always tell him to prepare himself.

Servant. It was a Surprize to me; I knew nothing of it.

L. C. J. Well, have you done now? Have you a mind to say any thing to the Jury you that are of Counsel for the Defendants; or you, Mr. Braddon?

Mr. Braddon. No, I will say nothing.

L. C. J. Have you, Mr. Speke?

Mr. Speke. My Lord, I have proved it here, That I had no Hand in what I am accused of. It is put down in the Information, that I conspired with Mr. Braddon, to endeavour to procure false Witnesses. I have proved I never had any Hand at all in any Thing of it. It was an accidental Thing, his coming to me; and it was a great Surprize to me, when he came; and I never concerned myself in it more, than the writing of that Letter: And I had no ill Intent in it; I did it not designedly, for I knew nothing of his coming; and I had not writ the Letter if he had not come to me. And 'tis plain, it was a Surprize, for I always give my Man notice, when I go out of Town, before-hand to prepare himself. I thought nothing at all of ill in the Letter: I writ it late at Night, when I had been with some Company at the Tavern. And he made me believe that to be true, which was not; I hope the Gentlemen of the Jury will consider that. I have nothing to say of the Thing, I did not concern myself in it any further at all, than writing the Letter, which I did not well know what I writ.

L. C. J. Well, have you any more to say, Mr. Speke?

Mr. Speke. No, my Lord.

L. C. J. Have you any more, Mr. Braddon?

Mr. Braddon. My Lord, I have only this to say for myself. It has not been proved directly, or indirectly, That I used any evil Arguments to persuade these Witnesses to testify what was false; but I dealt with them with all the Candor, that any Person in the World could use; and used all the Caution that I could, to hinder them from speaking any thing that is



false. There has been nothing proved of evil Practice used by me; and I desire the Gentlemen of the Jury to take no other notice of any Thing that has been, or shall be spoken, but what has been proved.

*L. C. J.* Gentlemen of the Jury, The Evidence has been very long, that has been given both for and against the Persons, against whom this Information is exhibited. 'Tis an Information exhibited by the King's Attorney-General, in His Majesty's Name against *Lawrence Braddon* and *Hugh Speke*. And the Information does set forth, That the late Earl of *Essex* murdered himself in the Tower, and that thereupon there was an Inquisition taken before the Coroner, that did find that he had so murdered himself, he being before that Time committed for High-Treason, in Conspiring the Death of the King, and levying War to disturb the Government. And these Persons did render that Inquisition, as tho' it had been fraudulently and irregularly obtained; and also to breed ill Blood, and spread false Rumours among the King's Subjects, by endeavouring to persuade them to believe, That the Earl of *Essex* was murdered by some other Hand, and had not murdered himself, and had procured false Witnesses to testify some such Matter, in order to the spreading about that false Rumour. This is the Substance of the Information. To this Information they have both pleaded, Not Guilty; and the Evidence, as I was telling you, has been somewhat long; but according to the best of my Memory, and for the Assistance of yours, I will mind you of as many Things, as occur to me, that have been said against them, and what has been said on their Behalf, I mean so much of it as is Evidence. For I must tell you, all Hear-says, and common Discourses of other Persons are not Evidence, and I will give you that Reason, that is sufficient to satisfy any Man that is unbiased. That if in case the Person that so told the Story had been here, if he had not told it upon Oath, you could not have believed that Person. Therefore, surely there is less Credit to be given to him, that tells a Tale out of another body's Mouth. And I tell you this, because there have been great Allowances given, and ought to be when People are accused of such great and weighty Crimes; for these are monstrous Crimes that these Gentlemen are accused of; but 'tis you that are to try, whether they are guilty or not. Certainly there is scarce in Nature a greater Crime that can be committed, than this that is now before you; for I think Robbery or any other such Felonies, are not such monstrous Crimes in their true real Weight, though in consideration of Law, in respect of Punishment they are greater; yet in Point of Crime, they are surely less; for to spread false Reports, in order to raise Sedition, Ill-will, Heart-burnings, and Jealousies in the King's Subjects against the Government, and to suborn Witnesses to that evil Purpose, is surely a much greater Crime than robbing on the High-way. Now, Gentlemen, 'tis not unknown to most of you, what Endeavours have been of late made, to possess the Minds of the King's Subjects of great Injuries designed to be done them by the King, or His Authority: And in order to foment Differences and Misapprehensions between the King and his People, and among the People between one and another, all Arts have been used, to proscribè People that they are minded to expose. Those, they bear ill-will to, must be called Papists, or Papists in Masquerade; but They and their Confederates are the Sober Party, the true Protestants, as if there were none Sober or true Protestants but such as are Factious and Troublesome in the Government. But by these Things they bring an Odium upon the Name of a Protestant, their Aim is by distinguishing to divide us; whereas if they were Protestants in Truth, the Church of England Protestants, they would have another Behaviour, they would learn to obey, and submit to Authority, and not go buzzing from House to House, and spreading false Reports, but study to be quiet, and do their own Business. And though Mr. *Braddon* made use of the 5th Chap. of the *Acts*, to the Child, he would have done well to have taken notice of some other Parts of Scripture, that are as much Scripture as that, That injoin Obedience and Submission to the Magistrate; and, being quiet and minding his own Business, it's odds, he had never come to that Trouble, he is now likely to meet with. But the Crime he is accused of, carries all the Venom and Bafeness, the greatest Inveteracy against the Government that ever any Case did, that I have met with. For it's insinuated, That because the King and the Duke were walking in the Tower, that Day, and near that Time, when this unfortunate Thing happened, now it must be whispered, as though the King and the Duke had designed this Murder. How Base? How Devilish and Hellish a Design is this? But yet, this must be spread about, and endeavoured to be distilled into the Minds of the King's Subjects. But besides, Gentlemen, you are to consider, as was opened by the King's Counsel, to what this Thing tended; for in as much as there was an horrid bloody Conspiracy, to take away the Life of the King, and of his dear Brother, His Royal Highness the Duke of York. And forasmuch as several Persons have been duly executed for that Conspiracy, who were concerned along with this unfortunate Lord; (I cannot help the naming of it, though I am sorry for his Misfortune, for the Sake of that Honourable Family) but rather than he would abide his Trial, God knows what other Reason he had, but the probability of the Thing speaks it, he being conscious, the great Guilt he had contracted, in being concerned in such a Conspiracy, made him destroy himself. And 'tis easy to imagine, how far that might prevail upon him, it being done immediately after my Lord *Ruffil*, who was one of the Conspirators with him, was carried to his Trial. It cannot be thought, but it was to prevent the Methods of Justice in his own particular Case. And, Gentlemen, there was *Digitus Dei* in it, and it is enough to satisfy all the World of the Conspiracy; though we live in an Age, wherein Men are apt to believe only on one Side; they can believe the greatest Lye, if it makes for the Advantage of their Party, but not the greatest Truth, if it thwarts their Interest.

But because Mr. Attorney has produced his Proofs, to manifest, that this Lord murdered himself, I will take notice a little of it, because it may have some good effect to undeceive some that have been imposed upon. Not for my own Satisfaction, I thank God I am satisfied, and so I believe are most honest Men: But that silly People may not be imposed

upon by every busy Fellow for the future, that takes the liberty to run about and spread false News; and that Men may be aware of such Fellows, and may not be decoyed any more by such false Pretences; it was therefore fit that Evidence should be given of the Truth of the Fact, that that Gentleman did murder himself. And the Evidence is this.

Besides the Inquisition, which was taken upon the Oaths of several Persons of Quality, (as you hear upon the reading their Names, several of them were Esquires, and Men of Note) 'tis here also proved by the Testimony of his Servant that attended him, how he came to this untimely End. And, Gentlemen, I would observe, 'tis Sworn by his Servants, one that had lived six Years with him, not an upstart, or a wandering Fellow, but one whose Integrity and Fidelity to my Lord was confirmed by six Years Experience of his Service. Then here is the Warder that was at the Door, here's the Soldier, here's the Master of the House, who are all the Persons that probably can give any Account of the Matter, and they tell you positively that no one did go up and down, but this Frenchman, who was his *Valet de Chambre*. And the Warder tells you, That he coming to the Door, and knocking at the Door, and hearing no one answer, did endeavour to open the Door, but it was so fast by my Lord's Feet, that he could open it but a little, and looking in, discerned Blood, and that made him make Acclamations, as the Warder calls it, Orations, which brought all the People in the House thither, and they gave the same Account that he does.

And 'tis likewise fit to be taken notice of, that the Window of this Closet looks into a private Yard, where no Strangers usually come, and where no Coach could come; and that the Pales were so high, that in case a Man were desirous to throw any thing out, it were impossible to cast it above three Foot. And if there could no Coach at all come into the Yard, as it is plain there could not, (for there is no Door, save only a back House-door) then this must needs be a Lye that was spread abroad. And 'tis beyond all peradventure true that my Lord of *Essex* did murder himself.

Now to have so great a Truth as this to be perverted, and to reproach the Government with Falsties, is the most malicious Thing in the World. If in case the Law has made it Penal for any Man to scandalize any one private Person as it has; and if it be by Law much more Penal to scandalize a Nobleman: How much more ought it to be, when the King and the whole Government is thus scandalized?

Now to come to the Fact, as near as I can recollect, I will give you an Account of what Evidence has been given of the one Side, and of the other. But this I thought fit to premise, because there will some Circumstances fall out fit to be taken notice of in the Evidence, especially about the Window in Captain *Hawley's* Yard and House, which may be cleared this Way.

In the first Part of the Evidence for the King, they call a Witness to prove the Earl of *Essex's* Commitment, which is Part of the Inducement in the Information.

But for the Information itself, there is this Evidence. First, *Evans*, he comes and tells you, how that he had heard at the *Custom-House* from *Edwards*, the Father of this Boy, as though there had been a Report came to him from Home, at Ten o'Clock that Morning my Lord *Essex* cut his Throat, of a Razor thrown out of my Lord of *Essex's* Window; That he came to him in the Afternoon again, and in the Afternoon told him he had examined the Matter further, and his Boy confirmed the Truth of it. He says, That after this, Mr. *Braddon* and another Man, one Mr. *Hat-fell*, if I am not mistaken in his Name, came to the Place where he was in *Essex*, and there they had some Discourse about my Lord of *Essex's* Death, and there *Hat-fell* took out of his Pocket a printed Copy of the Inquisition; and Mr. *Braddon* was then in the Room, but he says he thinks Mr. *Braddon* at that time took no manner of notice of it, but walked about the Room; but he says, the Inquisition was read while he was in the Room, and *Evans* said something about the Report he had heard, which did seem to contradict that Inquisition. But some time after, he says, That he being at the Coffee-house, *Braddon* and *Edwards* came to him into the Coffee-house, and there they began to talk; *Edwards* said, That *Braddon* had been with his Child to examine him, to bear Testimony about flinging the Razor out at Window. He was very full of the Word [Matter] and tossed that to and fro, but at length the Substance of his Matter was, that Report of the Boy's, and he advised them to forbear talking any farther to him about the Matter, for it might do *Edwards* and *Braddon* both an Injury; and he had read the Inquisition which was quite contrary. That was all he could say.

Then comes *Edwards*, and the Substance of what he says, is this, That he first heard it from his Family, and afterwards the Boy confirmed the Truth of it; but then afterwards he heard he had denied it, which was after *Braddon* had been there to inquire about it. And then he says, *Braddon* came to him again, and then he had got a Note dictated by himself and not by the Boy, but at first he tendered it to the Boy, and the Boy refused to put his Hand to it; and Mr. *Braddon* came again another time, (though he was told the Boy had denied it as he heard) and then the Boy did set his Hand. This is the Substance of what *Edwards* says. He does say indeed, the Boy used to tell Lies very often, to make excuses when he played Truant, and that his Family told him, the Boy was often guilty of telling of Lies.

Then the next Evidence is the Evidence of the Boy himself. He it seems is thirteen Years of Age: Certainly any Man that had been of an upright Mind and Conscience, as Mr. *Braddon* pretends to be, and would have you, Gentlemen, think them so; would have it thought that he was full of Honesty and Integrity to the Boy, when he baited his Hook with a Text of Scripture, about the Danger of telling a Lye, and, *How a care, Child, of telling a Lye*; if he had done no more but given him this Advice, it had been worthy of Commendation: But when the Boy had refused to sign it, for him to go and make such a stir, without examining further into the Particulars, but only taking a slight Report from such a Child, and to make such a Disturbance in the Nation, and such a Noise,



Noise, not only here, but Abroad, as this has done, sure argues neither Uprightness nor Conscience. Had the Boy stood in it and persevered in it, it had become him, in regard of the Tenderness of the Boy's Age, to have been more inquisitive into Circumstances, before he gave such Credit to what he said, as to make all this ado.

But what says the Boy when he comes here, he is now upon his Oath, and he tells you, He did tell his Mother so at first, and he did tell Mr. Braddon so at first; but afterwards when his Sister spake to him, and bid him be sure to tell nothing but what was Truth, then he said truly, it was not Truth. He tells you, Mr. Braddon offered him the Paper to sign, but he would not sign it; and being asked the Question, Why he would not sign it; He says, because it was not true; and being asked, Whether Braddon had notice of this? The Mother and Sisters, all tell you, He had notice the Boy had denied it.

How came Mr. Braddon, what Authority had he to take this Examination? He is no Justice of Peace, no Magistrate that had any Authority to take Examinations. What Concern had he in it more than other People? The Boy could tell him there were abundance of People there besides himself, tho' it was a Lye he told then, and that the Girl told now. Why did not he stay to have it confirmed by some of those People? Why did not he carry these Children before some Magistrate or Justice of Peace, some body that had Authority to take Examinations? There was a Spirit that prevailed with Mr. Braddon to engage and make a stir in this Business, and you may easily guess what a kind of Spirit it was which gave him this Authority that he had not before.

Gentlemen, another thing is this, 'Tis plain, and the Boy now swears it directly, That whereas he put it into his Information, How that he told him he was going to see my Lord Brandon Gerard's Lodgings, but now he is upon his Oath, he swears directly he never told him any such thing, and yet he hath put it into the Paper he made him sign.

He tells you a second time, Mr. Braddon came to him, which was after the Boy had refused and declared himself unwilling, and that then he was persuaded by Mr. Braddon, who told him there was no Harm in it; if there be any Harm, it would be to him, and not to the Boy, and so by Virtue of that, he insinuated himself, and got the Child to sign that Paper, which is every Tittle of it false, as the Boy now swears directly. And he tells you, how he was imposed upon by Mr. Braddon, pretending there was no Harm to him, all the Harm would come to himself, and by reason of these Insinuations he was prevail'd upon to put his Name to that which was notoriously false.

The next Witness (to make it appear that it was notoriously false, not only by the Boy himself, but by other Circumstances) is Hawkins the Minister's Son, Dr. Hawkins's Son of the Tower. And he tells you, I play'd Truant as well as he that Day, and I saw the King and the Duke at the Tower, and when I had seen them I went about as they did, and afterwards I went home, and there came a Report, that my Lord of Essex had cut his Throat, which made me go back again to the Tower, and there was I a considerable time gaping among other People, and there did I see this Boy Edwards; when he came there, I was there, I was there all the time that he was there, and we went out of the Tower together, and there was no such thing, nor any pretence or ground for such a Story. And Edwards himself being asked the Question, upon his Oath, doth likewise say, Hawkins was with him all the time there. So that that shews not only by what the Boy says, that it was false, but it is also proved false by the Testimony of this other Witness Hawkins.

Then next comes Mr. Blathwaite, who was present when Mr. Braddon was before the King, and what does he say? He says, there was the Boy fetched, and the Girl fetched, and all Persons examined there, and then 'tis told him, all the Boy had said to him was false, and it was told him with all its Circumstances. So that Notice sufficient, if you will believe Mr. Blathwaite, was given to this Mr. Braddon, That the Boy had denied it then, as he had before to his Sister: So he knew it was false.

But what does Mr. Braddon do now? He is so far from being satisfied in the matter, that instead of stopping there, his Zeal transported him to pursue it further: And so he tells you, that Mr. Braddon confessed he would have got some Justice of Peace to have the Boy examined; and he applied himself to Sir Robert Clayton, and Sir John Lawrence. There were many Justices of the Peace besides them, in London, to whom he might have applied himself. But when he comes to Sir Robert Clayton, and acquaints him with the matter, he would not do it alone; it was thought a matter of that Importance. Then says Mr. Braddon you shan't do it at all. He must have the Kindness of having it done in private; to have it examined when any body was by, was not so well for his purpose; which shews you still, Gentlemen, his Design was to contrive privately, to effect that which the Light should not easily discover.

Then the next thing is the Evidence of Mr. Monfrevens, and he gives you an Account, That he came to him, and he read the Information, and gave him a Caution, that he wondered at him: Says he, Why do you concern yourself about this Business, there is Sir Henry Capell, he does not concern himself? Then he pretended to come in his Name; but at length, when Mr. Monfrevens began to dispute it with him, why Sir Henry did not appear himself in it? then truly Sir Henry Capell was very ill, and could not possibly come himself, but I am to go to him, and give him Satisfaction about what I do, and so also to the Countess of Essex. No, says Mr. Monfrevens, that cannot be, for Sir Henry Capell is not so ill but that he has been with my Lord Sunderland, and with the King too, since the Death of my Lord of Essex. To which he made him no Answer. So that that was but an Excuse and a Subterfuge; but yet notwithstanding all this Caution, he continues on his Zeal in the thing: Whereupon Mr. Monfrevens brought him to my Lord Sunderland, and what Discourse has past between them, he has given you an account of.

The next Evidence is Sir Henry Capell, who tells you, That Braddon comes officiously and tells him, he had some Discovery to make about the

Death of the Earl of Essex, and you hear that poor Gentleman being related to this unfortunate noble Lord, was at the first time very much under Surprise, (being in such great Affliction as one Brother must needs be for another, Nature obliges People to a great Concern for such Accidents) and he says, he is not able to give an account what he said or did at that time, or what Braddon did particularly say to him. But when he came the second time to him, he was a little more sedate and calm, and then (he does remember) he told him, If you have any thing of this nature to say, go to a Secretary of State, it is his Business to inquire into this Affair, and 'tis not the Business of every particular private Man, because these are Matters that concern the Government. But Braddon pretended (forsooth) it was his Zeal and his great Conscience that made him to be thus transported, and to be so eager for carrying on this Prosecution.

The next Witness, Gentlemen, that you hear of, is the Gentleman that seized upon Mr. Braddon in the Country; and that is Mr. Beech, who brought him before a Justice of Peace (one Ares that it seems is since dead,) and in his Pocket he found a Letter from the other Defendant Speke, which is the only thing indeed in the Evidence that does affect that Gentleman; and what that Letter is, you have heard it read, and for your better Satisfaction, because the Language of the Letter is pretty extraordinary, if you have a mind to have it to peruse while you are here in Court, you may have it with you. I suppose you remember the Substance of it, commending the great Integrity, Courage, and Magnanimity of this Gentleman Mr. Braddon, thanking the Person to whom it was writ, for his great Kindness to him and his Friends, how they did hope to be able to get the Murder of my Lord of Essex tried before any in the Tower could come to their Trial; That the Tide ran strong against them: And, pray, you must take notice, I have given him a hint he must go by another Name, by the Name of Johnson, and not by the Name of Braddon? for alack-a-day he would be stabbed in these dangerous Times, or knocked on the Head, if he be known by his own Name. Mr. Braddon would be thought a Man so considerable in the World for his Zeal for Truth, and the Protestant Religion, that there was very great Hazard of his being murdered, we live in such perilous Times.

Gentlemen, This is to amuse and affright People, and to put odd Thoughts and Jealousies and Fears into the Minds of the King's Subjects, which was the Beginning and Rise of the late Rebellion, which we have all reason to remember with Horror; that Rebellion that in the Issue of it brought the late King of Blessed Memory to the Scaffold: And therefore we must have a great care of such things growing upon us now.

And pray, Gentlemen, mind the Style of the Letter: We have many Thanks to give you, for your Care of Us, and Countenance you have given to Us, and We don't doubt We shall be able to carry on the Business of the Earl of Essex, notwithstanding that the Tide runs strong against Us; We hope this, and We hope that, and t'other, and so makes himself a Party. And he recommends him in particular to Sir Robert Atkins, to whom the Letter was written, to advise him in the matter he went about (which by the way, you see, was to pick up false Evidence) to carry on this wicked Design. And I must tell you, Gentlemen, if Mr. Speke was given to believe a Lye, and did write that Letter, with a Design to have that Lye spread abroad, he makes himself a Party, and he is as guilty in every Circumstance as the other, as to the Design in general laid in the Information, though not equally guilty about the Management of the Witnesses: And it is the Letter only that particularly affects him. But I tell you, If in case you think he was surprized in the thing, or did it ignorantly or innocently, without any Concern, (though he seems to have a wonderful Concern in his Letter, and very zealous he seems to be in the Prosecution of this Business) you are to acquit him. But, if he did contribute to the Design of spreading this false Report, he is as guilty of that Part as Mr. Braddon, though he be not guilty of Suborning the Witnesses. But the Evidence against Braddon goes farther; There is not only the Evidence of this Letter, which speaks plain enough as to this Design, but you find also about him all the Informations that have been read. The Information of this Boy of 13 Years of Age; the Information of the Girl of 13 Years of Age: There was also taken in his Pocket a Letter from one Burgis a famous Pin-maker of Marlborough, written to one Cumpen a Postmaster at Frome, in this manner: "Pray call to mind such a Business of hearing such a Report of my Lord of Essex's cutting his Throat upon Friday the 13th of July last. Pray recollect such a thing, and impart it to this Gentleman the Bearer." This likewise was intrusted with Mr. Braddon: But it seems the Man had gone and writ this Letter, and had put in the 6th Day, which happened to be a Week too soon, and this must be rectified by Mr. Braddon himself, he being a great Companion of Mr. Braddon's; for it seems he had such a Confidence in him, that upon his Report, he came down from London to Marlborough, tho' now indeed they pretend they never knew one another before: But it is proved he confessed he had such a Regard to his Report, that that brought him down from London. He had (as I was saying) put it down the 6th at his first writing; and I believe as to the thing itself, it was as true the 6th as any other time, and the 16th and the 26th is all one to such People. And this Letter, he tells you himself, was written six Weeks after, but Mr. Braddon must correct it: No, says he, you mistake, it must be the 13th, it must not be the 6th; the 6th would not do the Business, for the 13th was the Day that he was murder'd, and so he was forced to interline it, the 13th, to make it to humour the Story; for the Lye would not pass so well if it had been put upon a Day so long before; but to make the Lye a correct Lye, and to humour the rest of the Evidence, Mr. Braddon comes and informs him, it must be the 13th.

That was the next piece of Evidence that was given, and I think the Substance of the Evidence of the whole Matter given against the Defendants for the King, except it be some Remarks out of the Evidence that has been given on the other side, which it will be material for you to take notice of.

Now



First, They bring a Man, I think his Name was *Lewes*, to whom they gave the Money before he would give his Evidence. And he says, one Day he was going up a Hill, near *Andover*, and going up the Hill, he heard the News of my Lord of *Essex's* cutting his Throat; but what Day, Week or Month it was he cannot tell, that he heard this. And, Gentlemen, Let me tell you, 'tis as bad as the Case itself, and worse if possible, the endeavouring to pick up Witnesses to put a Colour and Countenance upon so black a Villany as this is. Then the next Evidence is *Fielder*, and he tells you, That at their Town of *Andover*, the *Wednesday* before my Lord murder'd himself, it was all the Talk about the Town, that he had cut his Throat; it was in every body's Mouth, the Market People, Men, Women, and Children, all over the Town had it, when the Earl of *Essex* did it not till the *Friday* following. We asked him to name any one; no truly he could not, the Town was so full of People, and yet he cannot remember one, whence he had it: But, Gentlemen, here is the malicious Design of the Matter. 'Tis to make it believed it was a designed Business to murder my Lord, and cast it upon himself, and they knew of the Design at *Andover*, two Days before the Fact was done; as though the Persons that designed to murder him, would go to make it publick, as such a Report was likely to do. But the Design of this, besides the Falshood and Baseness of the thing itself, does speak Malice and Seditious, and all the Distempers of a disloyal Man's Heart, and to go about to get Witnesses to support the Credibility of a thing that is notoriously false, is ten times worse than the spreading of such a Report itself.

Then comes Mrs. *Edwards* the Mother, she is the next Witness, and she tells you at first, the Boy did tell this strange Story, but afterwards denied it; but she likewise tells you, how Mr. *Braddon* came, and how he dealt with the Boy. He is a busy Man, you see, a great Reformer, that does mightily concern himself in the Reformation of the Government. I never knew that Mr. *Braddon* had any great share in it: He has not such a prodigious Estate I suppose, that for fear of losing his great Estate he should be so wondrous busy and active in reforming the Government; but I have always observed it for a Rule, that your beggarly inconsiderable Fellows are the warmest People in the Business of Reformation, and for defending Liberty and Property as they call it; and then they put it under the Disguise of Religion, when, alas, those that have no Religion are generally the greatest Pretenders of taking care of it; and those that have no Estates nor Properties, are usually the fullest of Noise about Liberty and Property. But the meaning of it is plain, if they can but exasperate the People into a Rebellion, that is the way to get a Property: And if they can but have Liberty do what they please, that is all the Liberty they contend for. They are such mean inconsiderable Fellows only that make all this ado among us: For no Persons of any Interest or Quality will offer to engage in any such thing. But I hope the Snare is seen, and we shall avoid it; for God be thanked we live under a regular Government, where the Laws are duly executed; we need not be afraid of wrong from the Government. The Courts of Justice are open where they may have Security; and the best Security to good Subjects, is that which the Law gives them.

Mrs. *Edwards*, she tells you, When *Braddon* came to enquire about it, it made them all a little concerned; and the Daughter was affrighted, and she comes to the Boy, and says, *Billy*, *Billy*, here has been a Man about such a thing, pray speak the Truth: Why, says he, will any harm come of it; Says she, I can't tell, but tell you the Truth. And then when the Boy comes to tell Truth, he then says, all the Story was false. Besides this, says she, We told Mr. *Braddon*, before the Boy signed it, That he had said it was false; and he was told it again before the King and Council, that it was false. But nothing would serve him but he must have a Horse and a Man, and he must go his Circuit to pick up ridiculous Stories. Letters must be contrived from one to another to give a Colour to the Matter, and all this to spread about his malicious Reports and false News.

And by this means, Gentlemen, I must tell you, The Matter is fixed as to the second part of the Information, which is the corrupting of Witnesses; for tho' he did not get any Witnesses sworn, and so 'tis no Subornation of Perjury, strictly, yet however 'tis a Misdemeanour to labour any one, much more such a Child, into a Falsity, as apparently he did; for as the Boy swears now, He never did make mention of going to my Lord *Gerard's* Lodgings.

The next Evidence is young Mrs. *Edwards*, *Sarah* the Daughter, and she comes and gives an account of the same. That the Boy did tell such a Story at first, but, says she, I knew him to be such a lying Boy, and I had so often found him in Lies, that I did not mind what he said. And he used to tell Lies when he had been playing Truant. Then comes Mr. *Braddon* to enquire about the Business, and when he began to prosecute it, the Girl began to be affrighted, and she calls the Boy to her, and engaged him to tell her the Truth, and then immediately upon that, he did say it was all a Story, and Invention of his own.

And then 'tis very material to observe, That the Boy in that Paper of Information (which is all of Mr. *Braddon's* Hand-writing) makes the Circumstance of the Razor's falling down, to be cast of the inside of the Pales, and the Girl says, it was of the outside, and there was a Coach, and abundance of People by, and a great many fine Circumstances, and not one of them true.

The next piece of Evidence is, she does say, That after he told her it was false, she gave notice to *Braddon*, and being asked, Whether she did not frighten him by threatening his Father would be turned out of his Place? She swears, No. But all those kind of Questions were by a Side-Wind, to make Reflections upon the Government; as tho' the King would turn Men out, because they would not swear what was false. It carries, I tell you, a Sting towards the Government still, and shews the Malice of the Design. But, Gentlemen, you hear what is said about that, there was no such thing said; They did apprehend some Fear, but from whom their Fear came, that they can't tell. But she

positively swears, when the Boy had denied it, he had Notice of it; and when he refused to sign it, yet he pressed him, by telling him, there was no Harm in it like to come, but only to Mr. *Braddon* himself, and so he was persuaded to sign it.

The next Witness is Mrs. *Barton*; She comes and tells you, that she was at Mr. *Edwards's* House, and what she tells you of her own Knowledge, you are to take for Evidence, and nothing more. She says, *Braddon* did engage the Boy to tell Truth, and put him in mind of that Chapter in the *Acts*, of the great Displeasure of God against the two Witnesses that forswore themselves, and bid him speak nothing but the Truth. And after he had talked thus awhile, she observed he was going to take Pen, Ink, and Paper, and she was afraid she might be drawn in for a Witness, and so she went out of the Room. But before that time, Mr. *Braddon* did go to see the Window, and the Place where the Boy said the Razor was thrown out.

Then there is the Evidence of the little Girl, who is the next Witness, *Jane Lodeman*, I think her Name was, and that is likewise written by Mr. *Braddon*. Now you hear what that young Wench says. She comes and would give some sort of Countenance to the thing, How she was looking up at the Window of my Lord of *Essex's* Lodgings, and that there was a bloody Razor thrown by a Hand out of the Window, but whether it was half bloody, or all over bloody, she can't tell, but bloody it was; and it was, as she says, thrown on the outside, though the Boy said, it was thrown of the inside. But the Wench being asked, Whether she knew that was my Lord of *Essex's* Lodging? She answered, No, she did not, when they come and make her swear in her Information, that she saw the Razor thrown out of my Lord of *Essex's* Lodgings: And then she says, she heard no Soldier speak a Word at all; but in the Information, it is set down, that the Soldier cried out to the People of the House, Go fetch up the Razor. And this was all done in the open Day, and there were abundance of People, but she could not tell any particular body. So that of one hundred People, which, if she say true, were there, Mr. *Braddon* could not satisfy himself to enquire after some of them, but only he must pick up a Child of 13 Years of Age to practise upon in this villainous manner. And it carries the greater Venom, and Malice, and Virulency, and Baseness, to endeavour to corrupt young People to that height, as to come and say, and swear those things in the Face of a Court, that are impossible to be true. It is impossible to be true, that she saw a Coach in the Yard; for you hear what Account Captain *Hawley* gives of his House. It is impossible to be true, that there should be a Crowd of People, because that there was a Sentinel at the Door, who must see all that go out, and that come in; and there is no way to go into the Yard, but through the Back-door, and the Pales are so high, that nothing can be flung over, that could be easily discerned. So that the very Thoughts of such a thing as this are ridiculous in themselves, and not only the Falsity of the Story is apparent, but there is also apparent a great Villany, in endeavouring to get Witnesses to prove that Falsity. For you see who Mr. *Braddon* employs; he gets a Barber to go along with him on purpose to testify what idle Reports he could pick up. But this Barber, and the other Witnesses, when they come here, can't tell any thing. For the Barber, he says, she said, *There lay a Razor*; but the Information says, (to which he is a Witness) that the Soldier cried, *Take up the Razor*; and she now upon her Oath denies any thing of that.

The next Evidence is the Aunt, and she tells you, she does not remember such and such Particulars, but somewhat to that purpose she does; but whether she named my Lord of *Essex*, or no, in particular, as to his Lodgings, she cannot give an account.

Then you have *Glabrooke*, that comes to give an account concerning this Girl's Story, and he plainly is quite different from what the others had testified before; for his Evidence is, That the Girl had said my Lord of *Essex* cut his own Throat, and afterwards flung the Razor out of a Window: After he had committed this horrid Murder upon himself, he got to life again, and threw away the Instrument he did it with; that is plainly his Testimony, that this Child should say so. So that, as in the Case of *Susanna*, which I heard cited here upon another occasion, the wicked Elders were discovered by the different Circumstances of Time and Place; so here you have Circumstances of Time and Place, and of all things in the World that can contribute to prove the Falsity of this Report, and to prove the malicious Design of these People that were engaged in this Business.

The next Witness is one *Smith*, and he speaks much to the self-same purpose. He was the Barber that went with *Braddon* to examine this Girl.

Now, Gentlemen, you are to consider of these Contrivances of *Braddon*, in buying himself to sollicite these Children to testify these Stories, after a Denial by the Boy to sign the Paper, To tell him there was no Harm could come to him, to dictate what he should say, and put Words into his Mouth, about going to see my Lord *Gerard's* Lodgings, which he never spake of; for him to dictate to the other Witness the Pinmaker of *Marlborough*, what the right Day should be, to set up such a senseless Story that he heard such a thing at the Post-house, but he cannot tell from whom, or name any one that heard it or spake it besides himself: It is strange how he should meet with this Man, for even the Man himself tells you, he knows not who he had discoursed of it to; and never saw *Braddon* till that time he writ the Letter. But you may observe, that to be sure the Report might be spread, it was so contrived that the Scene should be laid in the Post-house, and then it was like to run abroad quickly; for alas it was not their Business to make Truth of it, but to make the discontented Rabble believe it to be a Truth. And so they began to consult with themselves where it was best to lodge it, and upon Deliberation the Place must humour the Design as well as the Time, and that must be at the Post-master's House, in order to disperse the Noise of it; and then Mr. *Braddon* takes his Circuit to *Salisbury* unto Sir *Robert Atkins* at *Strat* in the *Held*, and to other People, filling the Country with his braded Ware; and 'tis time to look after such Pedlars, for they vent the worst of Ware.

Now, Gentlemen, for the Defendants they bring this Evidence:

First,



Then, Gentlemen, you may observe this Fellow is easily persuaded to swear any thing, for he gives no manner of Account how he came to hear what he speaks of, or from whom, or how Mr. Braddon came to him: He had never seen him before that time, he says (tho' Mr. Braddon had such a value for this worshipful Pinmaker, whom he never saw, that he came from London upon the least intimation of this Man, so zealous he was for the carrying on this weighty Affair, which I may call this impudent and intolerable Lye).

Gentlemen, I must tell you, if any Proof in the World be sufficient to prove Malice, you have sufficient Proof of it before you now. If it had been a thing of Indiscretion only without Malice, if there had been nothing of Caution given to him about it as a thing that concerned not him, there might have been something said to alleviate it; but for him to come as if he had Authority from the Countess of Essex, and Sir Henry Capell, who denies it, shews the Malice of his Design.

Gentlemen, 'Tis a Concern of an High Nature, and if you do believe these Persons that are Defendants, or either of them to be guilty; such as you believe to be guilty, you must find guilty, and of so much as you believe them guilty. And if in case they shall by you be found guilty, the Court is to take care to inflict a Punishment, if it be possible, suitable to their Offence.

Then the Court arose, and the Jury afterwards gave in a private Verdict, which the next Morning was repeated in Court and recorded. And by that Verdict they found the Defendant Laurence Braddon guilty of the whole Matter charged upon him in the Information, and the Defendant Hugh Speke guilty of all but the Conspiring to procure false Witnesses, and of that they found him Not Guilty.

Lunæ 21 Aprilis.

Mr. Att. Gen. MY Lord, Here are two Persons to receive your Judgment.

L. C. J. Who are they?

Mr. Att. Gen. Braddon and Speke. But it being late, I know not whether you will give it now, or appoint some other time.

L. C. J. No, no, let them come in. They will say we are afraid of giving Judgment else.

Then Mr. Braddon and Mr. Speke came into Court.

Mr. Att. Gen. My Lord, we pray your Judgment for the King, that you will set a good Fine.

Mr. Williams. We are retained to move in Arrest of Judgment.

Mr. Att. Gen. Judgment is enter'd already, and there is nothing but a Fine in the Case.

Mr. Williams. My Lord, If it be entered, it is entered but this Term; and 'tis in the Breast of the Court, if they please, to admit us to speak in Arrest of Judgment.

L. C. J. When were the Rules out?

Mr. Williams. My Lord, It was put off by Consent to this Day.

L. C. J. But when were the Rules out, I ask?

Cl. of Cr. The Rules were out the last Day of the last Term, and then Judgment was entered.

L. C. J. Well then, Judgment is entered, what say you against a Fine?

Mr. Williams. We were retained to move in Arrest of Judgment, I am sure I was, and instructed to that purpose.

L. C. J. I cannot tell what you were retained to do, but now Judgment is entered, what say you as to the Fine?

Mr. Williams. We cannot say any thing as to that, we are not instructed; I am sure I am not.

Mr. Wallop. My Lord, We took it, and I was told so, That it was put off by Consent to this Day.

L. C. J. I know nothing of your Consent, nor what you consented to. If you consent among yourselves at the Bar, that is nothing to the Court. Here we find Judgment entered, and we must proceed upon what is before us.

Mr. Wallop. Your Lordship will please to remember, what the Evidence was.

L. C. J. I do remember it very particularly.

Counsel. My Lord, Mr. Speke is found Guilty of nothing but writing that Letter.

Mr. Att. Gen. He is found Guilty of all but the Suborning.

L. C. J. We do very well know there is a difference between them.

Then the last Rule was read.

L. C. J. Well, Judgment is regularly entered, What say you to it for the Defendants?

Mr. Wallop. My Lord, we conceive we have very good Matter upon the Verdict, to move in Arrest of Judgment.

L. C. J. Yes, no doubt what you have to say is extraordinary material, but you come too late, we cannot hear you. Sir Samuel Astrey, is Judgment entered according to the Course of the Court?

Cl. of Cr. Yes.

L. C. J. Then we must proceed to fine them.

Mr. Braddon. Pray, my Lord, Let Mr. Ward be asked, whether they did not agree we should move to Day?

Mr. Ward. That was only an Agreement on Saturday, that they might appear to Day, and I would not take them in Execution.

Mr. Braddon. This was the Day I was to move in, my Lord; Mr. Burton knows very well, he agreed to it.

Mr. Burton. I know nothing more of it, my Lord, but that indeed I did consent on Saturday, that whatsoever they could move then, they should move on Monday.

Mr. Ward. That was only that they should appear to Day, instead of Braddon's being taken up by a Capias pro Fine.

L. C. J. Well, well, I know nothing of your Agreements, here is Judgment entered regularly, as we find it; you had best bring your Action against Mr. Burton, if he have done you any wrong, but I did not know that Mr. Burton was the King's Attorney. But I find here is Judgment against you, and 'tis a very foul Offence, as notorious an Offence as any Per-

Vol. III.

son, under that which is Capital, could be guilty of; base Aspersions of the Government, in order to promote Sedition and Faction; and for that End, made use of all villanous Means to corrupt Infants, and then justify that Villany with a brazen Face, to that degree of Impudence, as I never before saw, That all the Justice of the Nation must be affronted by such audacious Fellows, for it seems his Confidence has not left him; but here he smiles, and seems as if he had done no Harm.

Mr. Braddon. My Lord, I know my own Innocency, and therefore have no reason to be troubled.

L. C. J. Your Innocence! Your Impudence, you mean. I tell you, had you been in any other Country but this, the Innocence you brag of, would have sent you to the Gallies.

Mr. Just. Withins. Then you think, Mr. Braddon, you have done very well in what you have done?

L. C. J. Ay, I assure you, does he. And the Zeal of his Party has gone so far, that at Winchester, when I was there in the Circuit, I was told that his Doctrine had obtained so much in that Country, especially about that Place, whence some of his Witnesses came, I mean Andover, that there was a Woman that was here the other Day, Mrs. Drake, being at Conventicle, held forth, That my Lord of Essex was murdered while the King was in the Tower, and that God was the Avenger of Murder, and had found out a proper Person for the Prosecution of it, that was Mr. Braddon; and this snivelling Cant prevailed at the Conventicle. It is no such smirking Matter as you make it, Mr. Braddon, I assure you.

Mr. Braddon. My Lord, if I did know myself to be under any Guilt, I would very readily and humbly acknowledge it.

L. C. J. Well, I see a great many of the Party about you, I can spy them out, though they think they are not seen; but they shall know we will not suffer such Monsters as these to go without due Punishment.

Mr. Just. Withins. He stands upon it, he is innocent still, notwithstanding all that was proved, and the Jury's Verdict.

L. C. J. Yes; alack-a-day; he wipes his Mouth, and has not so much as eaten, I'll warrant you.

Mr. Just. Withins. I expected you would have been sorry, Mr. Braddon, for what you had done, and expressed some Penitence, but it seems you are very innocent.

Mr. Braddon. I did not directly, nor indirectly, offer any thing to induce the Children to give their Testimony, nor was any such thing proved: I know my own Innocency.

Mr. Att. Gen. The Jury have found it otherwise.

L. C. J. And that upon a fair, a full, and a convincing Evidence, and no Man in the World can make any doubt of the Truth of that Verdict; but he that had a share in your Guilt, or in that it had a tendency towards, I mean that horrid Conspiracy. And I assure you, Mr. Braddon, you tread upon the very Heels of it; smirk at it, and be as merry about it as you will.

Mr. Braddon. If I did not know my own Innocency, then I had reason to be troubled.

L. C. J. Your own Innocency? If you did not know your own Impudence, you mean; 'tis that only that makes you smirk and smile at such Things as these.

Mr. Just. Withins. Mr. Braddon, when you were advised by Sir Henry Capell to take a prudent and a good Course, to go and leave it with a Secretary of State, you would not take that Advice, but you would go your own way, and you would turn Examiner, and Prosecutor yourself; when he that was the Earl's Brother, and was sure more concerned than you, thought it fitter to go that way.

L. C. J. We remember what Sir Samuel Barnardiston, in his Letter, speaks of this Matter, Mr. Braddon, he was got off; why, they dare not meddle with Mr. Braddon, he is such a dreadful Man, and his Party are so considerable, that we dare not meddle with them; and the TORIES are all cast down. Alack-a-day! because these Fellows can't cast down the Government, therefore all honest Men must be cast down, and not dare to meddle with them. But they shall see we are not so much cast down, but we are able to reach the highest of them. What Condition is this Man in? I speak in Point of Estate, for his other Conditions, we know what they are, his Trial will satisfy any Man of that.

Mr. Att. Gen. He is the eldest Son of a Father that has a good Estate.

Mr. Williams. He is then but Heir Apparent.

Mr. Braddon. No, I am a younger Brother.

Mr. Williams. It seems he is but the Second Son, and a young Gentleman.

Mr. Braddon. My Father has an elder Son alive.

L. C. J. I remember particularly 'tis said in one of the Letters, that he was a Man of 7 or 800l. a Year.

Cl. of Cr. That was in Mr. Speke's Letter. He says his Father had so much.

Mr. Braddon. That is in Mr. Speke's Letter; but that is not true.

L. C. J. I don't know truly, that may be as false as any thing else you went about to have these Children Swear; but I'll undertake it, if thou hadst told the little Girl that he had 800l. a Year, she would have been as ready to have Sworn it as the other.

Mr. Just. Withins. 'Tis a wonderful Thing, Mr. Braddon, you could bring no body to come and testify these Things, but those two little Children.

L. C. J. But oh! What a Happiness it was for this Sort of People, that they had got Mr. Braddon, an honest Man, and a Man of Courage, says Mr. Speke, a Man à propos; and pray, says he to his Friend, give him the best Advice you can, for he is a Man very fit for the Purpose, and pray secure him under a sham Name, for I'll undertake there are such Designs upon pious Mr. Braddon, such Contrivances to do him a Mischief; that if he had not had his Protestant Flail about him, somebody or other would have knocked him on the Head, and he is such a wonderful Man, that all the King's Courts of Justice must needs conspire to do Mr. Braddon a Mischief; a pretty sort of a Man, upon my Word, and he must be used accordingly; Men that arrogate and assume to themselves a Liberty to do such kind of Things, must expect to fare accordingly.



Mr. Just. Withins. Mr. Speke is not found Guilty of the Subornation.

Mr. Att. Gen. He is found Guilty of all but the Subornation; he is found Guilty of Conspiring to spread the Report. The Subornation will require another Sort of Punishment.

L. C. J. Ay, but there is a Difference between them. The Crime was very great in Mr. Speke, though not so great as in Mr. Braddon, and I am sorry that Mr. Speke should be concerned in it, and should take such care about such a Business, with all that Piety and Zeal for Religion he expresses in his Letter to Sir Robert Atkins (Mr. Justice Atkins that was,) that he should recommend him to have a wonderful Care of him, and then thank him for his Kindness shewed to Our Party. So he makes himself to be of the Party, and makes this the Business of the Party, and so makes himself to be a Sharer in the Business; for 'tis *We thank you for your Kindness to Us, and the Tide is strong against Us, and We hope We shall be able to bring the Business of my Lord of Essex upon the Stage, before they do any of these in the Tower.* So Mr. Speke makes himself a Party in the Business. And I am mighty sorry that when he comes to be asked the Question, How he came to write this Letter? he should tell us, He had been at the Tavern, and did not know what he writ, but does not say, he recollected afterwards. It seems he used to be often at the Tavern, and had been there when he writ this pious Letter, and so his Saintship broke out in a Fit of Drunkenness, for most of our Reformers of Religion now-a-days want common Morality. And yet they are wonderfully Zealous for Reformation and Religion. All the Villany that has been thought of, nay more than ever could enter before into the Imagination of Mankind, has been wrought by these Men, that pretend to be Reformers of Religion, and amongst the rest Mr. Braddon; and indeed I look upon Braddon to be the Daringest Fellow of the Party, he and his Brother Smith. If there were any Reluctancy, or any Sense of any Guilt they had contracted, and would shew it by acknowledging their being surprized into it, and testified Repentance by a submissive and dutiful Behaviour, that were something to incline the Court to Commiseration; but when we see, instead of that, they are more obdurate and steeled in their Opposition to the Government, they must be reclaimed by Correction, and kept within due Bounds by condign Punishment, otherwise it will be thought by the ignorant Sort of People, that all Courts of Justice are afraid of them.

Mr. Just. Withins. Nay, Mr. Braddon's Zeal was very extraordinary in the Case, going on in this Business, not only without, but contrary to the Advice of Sir Henry Capell, who surely was most concerned about the Death of his Brother.

Then the Judges between themselves consulted about the Sentence, which Mr. Just. Withins pronounced thus.

Mr. Just. Withins. Mr. Braddon, You see what it is you are convicted of. It was for as foul an Offence, as any can be imagined, that is not

Capital, wherein the King is very much concerned, for the Insinuations were such, as that the King was mightily concerned; for in as much as you say the Earl of Essex should be murdered at that time the King was in the Tower, it was an implied Accusation of the King, and an Insinuation that the King should design to take away an innocent Man's Blood; and so downright be guilty of murdering an innocent Person, which how great an Offence that is, let any Man that has any Loyalty, or Reverence for the King in him consider, and you cannot say you are innocent, Mr. Braddon. Your Prosecution was most pertinacious, and you would proceed after the Boy had denied it, and proceed in such a manner, when Sir Henry Capell had told you what you should do; and what did you go upon? You had got a little Girl, a Child of 11 or 12 Years old, to tell a Story of I know not what, and nobody else knew any thing of it, and this must be a ground sufficient for you to go up and down, and spread such a Report, when Sir Henry Capell gave you Advice to go to a Secretary of State, and let him examine it; indeed you did go to him, but would not rest satisfied with what the King and Council did; no, Mr. Braddon, you thought that would not gratify your own Passion, and Malice against the King and the Government, but you must take Ways of your own. This is to scandalize the whole Justice of the Nation, and not only make the King a Murderer, but you would have all the Plot hereby quite lose its Credit; and you would make it, as Sir Samuel Barnardiston would insinuate, a Sham Plot, to take away innocent Protestants Lives. But as to the Plot, there has been fresh Proof of it beyond all Contradiction this Day; a Man here in the Face of the whole Court has owned the whole Thing; he would not take the Liberty of defending himself, that was offered him, if he would try it, but confessed that Conspiracy, which you had a great mind to be an Instrument of making the World to believe, was nothing but a Sham. I shall not make any long Speech to you, The COURT, for this Offence,

Sets upon you, Mr. Braddon, the Fine of 2000l. and order that you find Sureties for your good Behaviour during your Life, and that you be Committed till this be Performed. And for you Mr. Speke (we have considered that you are not so highly Guilty as Mr. Braddon, you are Guilty of a great Offence, but not so Guilty as he, and therefore) we think fit to set upon you the Fine of 1000l. and that you find Sureties for your good Behaviour during your Life, and be Committed till you perform it.

L. C. J. Marshal, take them in Custody, and use them as they ought to be used.

Counsel. My Lord, Mr. Speke's Bail is discharged, I suppose?

L. C. J. Ay, they must be, as to this Matter, but nothing else but this.

Then they were carried away to the King's Bench-Prison.

## The Earl of Essex's Innocency and Honour vindicated; in a Letter to a Friend: By Laurence Braddon.

S I R,

YOURS of the 10th Instant came the last Night to my Hands; and I give you many Thanks for your kindness therein expressed; and more particularly, that you have so often endeavoured to rescue me from the Slanders of such, as without either knowing my Person or Offence, have given me those uncharitable and unjust Terms, worse than which, the greatest Offenders can hardly deserve. Sir, Your Country is not the only Place where I have been so traduced: But my Misfortunes having made my Name known where in Person I have never been, and my Adversaries being as malicious as numerous, I have heard from other hands, That I have elsewhere met with the like treatment. But to do myself that Justice which I think is incumbent on me, in order to the clearing myself from those undeserved Calumnies with which I have been, and am daily slandered, I have herein sent you a particular Account of *what*, and *how*, and *for what* I did so unjustly suffer under our late Male-Administration. And seeing the Honourable late Committee of Lords (appointed to examine into the Death of the Right Honourable Arthur (late) Earl of Essex) is dissolved, by the last Dissolution of Parliament, and most of the Depositions and Examinations taken before this Honourable Committee have been read before the Honourable House of Lords, (and so no longer to be thought a Secret,) I do humbly conceive it's neither an Offence, or divulging a Secret, to publish what (since this happy Revolution) hath been proved for the clearing of *That Truth which* (when I first engaged) *to assert was the highest Offence.*

By the Proceedings before this Honourable Committee, you will in some measure perceive what great pains those Honourable Persons have been at, in the many Committees which have herein sat, and the many Examinations taken before their Lordships: All which had long since been published to the World, had it not been for the Prorogations and Dissolution which have happened, depending upon this Prosecution. But when the Honourable House of Lords shall think fit to revive this Committee, and order this Report to be made, I hope I shall have an opportunity to vindicate myself in some other way than at present is proper.

Sir, Though this Letter may at first sight seem much longer than you think the Subject-matter required; yet when you shall have read the whole, and observed the numerous Examinations and Depositions which herein have been made, what industrious and villainous oppositions it hath met with, not only in false Reports and sly Insinuations, but the many false Oaths which have been procured, to destroy the belief of this

barbarous Murder; you will (I hope) not find this Discourse so tedious in its perusal, as at the first glance you may fear it will prove.

Sir, With leave of a late Author upon this Subject, I have freely borrow'd of that Discourse: Yet in all parts not observed his Method; but according to your Command, shall begin with the Reasons that moved me to this Prosecution: In order to which, I shall in the first Place give you a short Relation of my Lord's Commitment to the Tower, with the Depositions taken before the Coroner upon my Lord's Body; for the reading those Depositions proved the occasion of my first engaging herein.

The Right Honourable Arthur (late) Earl of Essex was committed to the Tower the 10th of July 1683, by virtue of a Warrant from Secretary Jenkins; which Warrant ran as followeth:

Sir Leoline Jenkins, Knight, of His Majesty's Most Honourable Privy-Council, and Principal Secretary of State.

THESE are in His Majesty's Name to Will and Require you to receive into your Custody the Person of Arthur Earl of Essex, herewith sent you, being committed for High-Treason, in compassing the Death of the King, (whom God preserve,) and conspiring to levy War against His Majesty: And him the said Earl of Essex to keep in safe Custody, until he shall be delivered by due Course of Law. And for so doing this shall be your Warrant. Given under my Hand and Seal at Whitehall, the 10th of July, 1683.

To Thomas Cheek, Esq; Lieutenant of His Majesty's Tower of London.

L. JENKINS,

The first Night his Lordship lay at Captain Cheek's, the then Lieutenant of the Tower; but the next Day was removed to Major Hawley's (then Gentleman-Porter of the Tower;) and the two Warders placed upon his Lordship, were Nathanael Monday and Thomas Russel; one to stand at my Lord's Chamber-door, or in his Chamber; and the other at the Stairs-foot; and thus by turns. Paul Bomeney, my Lord's Servant, was permitted to be with his Lordship. At Major Hawley's my Lord lay Wednesday Night and Thursday Night; but Friday Morning about nine of the Clock, his Lordship was found with his Throat cut through both Jugulars and Arteries, even to the Neck-bone, on both Sides the Neck. The next Day, being Saturday, the Jury sat; and before them were sworn the aforesaid Paul Bomeney, Thomas Russel, and two Chirurgeons; whose Informations are as followeth, according to the Print; but that (as I shall observe in its own proper place) varies in the Original from Bomeney's Information.

The



The Information of *Paul Bomeney*, Servant to the late Earl of *Essex* for about three or four Years now last past, taken upon Oath the 14th day of *July* 1683, *Anno Regni Caroli secundi Dei Gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regis, Fidei Defensor, &c. Tricesimo quinto, Annoque Domini, 1683.*

**S**AITH, That when my Lord came to Captain *Hawley's*, which was the 11th Instant, my Lord of *Essex* asked him for a Penknife to pare his Nails, as he was wont to do; which this Informant answered, being come in haste, he had not brought it; but he would send for one; and accordingly sent the Footman with a Note for several things for my Lord, amongst which the Penknife was inserted; and the Footman went, and gave the Bill to my Lord's Steward, who sent the Provisions, but not the Penknife; and he told the Footman he would get one next Day. When the Footman was come, my Lord asked if the Penknife were come? This

Note. Informant answered, No; but he should have it the next Day. And accordingly on the 12th Instant in the Morning, before my Lord of *Essex* was up, this Informant sent the Footman

home with a Note to the Steward, in which, amongst other things, he asked for a Penknife for my Lord. When the Footman was gone, about, or a little after eight of the Clock, my Lord sent one Mr. *Ruffel*, his Warder, to this Informant; who came, and then he asked him if the Penknife was come? This Informant said, No, my Lord; but I shall have it by and by. To which my Lord said, That he should bring him one of his Razors, it would do as well. And then this Informant went and fetched one, and gave it my Lord, who then went to pare his Nails, and then the Informant

This was not in the Original, but added by Authority.

went out of the Room into the Passage by the Door, [On Friday the 13th Instant] and began to talk with the Warder; and a little while after he went down Stairs; and soon after came the Footman with the Provisions, and brought also a Penknife, which this Informant put upon his Bed, and thought my Lord had no more need of it, because he thought he had pared his Nails; and then this Informant came up to my Lord's Chamber about eight or Nine in the Forenoon, [on Friday the 13th Instant] with a little Note from the Steward [where there were three Lines writ]. But not finding his Lord in the Chamber, went to the Closet-door, and found it shut; and thinking his Lord was busy there, went down, and staid a little; and came up again, thinking his Lord had been come out of the Closet; and finding him not in the Chamber, he knock-

ed at the Door with his Finger thrice, and said, My Lord! But nobody answering, he took up the Hangings, and looking through the Chink, he saw Blood, and part of the Razor; whereupon he called the Warder *Ruffel*, and went down to call for help; and the said *Ruffel* pushed the Door open, and there they saw my Lord of *Essex* all along the Floor, without a Penwig, and all full of Blood, and the Razor by him. And this Deponent further deposeth, That the

Note. Razor now shewed to him at the time of his Examination, is the same Razor which he did bring to my Lord, and which did lie on the Ground in the Closet by my Lord.

The Information of *Thomas Ruffel*, one of the Warders of the Tower, who had the Custody of the Earl of *Essex*, taken the 14th day of *July*, *Anno Regni Caroli secundi Dei Gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regis, Fidei Defensoris, &c. Tricesimo quinto, Annoque Domini, 1683.*

**S**AITH, That on Friday the 13th Instant, about eight or nine of the Clock in the Forenoon, he was present, when he did hear the Lord of *Essex* call to his Man, Mr. *Bomeney*, for a Penknife to pare his Nails; and then for a Razor, which Mr. *Bomeney* brought him; and then my Lord walked up and down the Room, scraping his Nails with a Razor, and shut the outward Door. Mr. *Bomeney*, half a quarter of an Hour afterwards, not finding my Lord in his Bed-Chamber, went

Note. down Stairs again, believing that my Lord was private in his Closet. *Bomeney* came up about a quarter of an Hour afterwards, and knocked at the Door; then called, My

Lord, my Lord: But he not answering, peeped through a Chink of the Door, and did see the Earl of *Essex* lying on the Ground in the Closet; whereupon he cried out, That my Lord was fallen down sick; and then the Informant went to the Closet-door, and opened it, the Key being on the outside, and then did see my Lord lie on the Ground in his Blood, and his Throat cut.

The Information of *Robert Sherwood* in *Fanchurch-street*, Chirurgion, taken the 14th day of *July*, *Anno Regni Caroli secundi, Dei Gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regis, Fidei Defensoris, &c. Tricesimo quinto, Annoque Domini, 1683.*

**S**AITH, That he hath viewed the Throat of the Earl of *Eex*; and doth find, That there is a large Wound; and that the *Aspera Arteria*, or Windpipe, and the Gullet, with the Jugular Arteries, are all divided; of which Wound he certainly died.

The Information of *Robert Andrews* of *Crouched-Friars*, Chirurgion, taken upon Oath the 14th day of *July*, *Anno Regni Caroli secundi, nunc Regis Angliæ, &c. Tricesimo quinto, Annoque Domini, 1683.*

**S**AITH, That he hath viewed the Throat of the Lord of *Essex*; and doth find, That it was cut from the one Jugular to the other, and through the Windpipe and Gullet, into the *Vertebres* of the Neck, both Jugular Veins being also quite divided.

Upon these Informations, the Coroner's Jury found my Lord *Felo de se*. The Substance of these Informations in short is this, viz.

That my Lord of *Essex* called for a Penknife to pare his Nails; but the Penknife not being ready, his Lordship required a Razor, which was delivered him; with which Razor his Lordship retired to his Closet, and locked himself in: But soon after, the Closet-door being opened, my Lord was found with his Throat cut through both Jugular and Arteries, to the Neck-bone, and the Razor (as before delivered) lying by him.

These Informations taken by the Coroner were published the next Monday after my Lord's Death; and I the 16th of *July* buying one of these, that very Morning (with one Mr. *William Hatfield*) went to *Wansted*, to the House of one Mr. *John Evans* (then an Officer of the Custom-house). Upon reading the last part of *Bomeney's* Information, which depose, That when they opened my Lord's Closet-door, they found his Lordship on the Ground, with his Throat cut, AND THE RAZOR BY HIM; Mr. *Evans* declared, That could not be true; for Friday Morning about Ten of the Clock, being upon the Custom-house Key with one Mr. *Edwards*, the said Mr. *Edwards* told him (with several others,) "That his Son being in the Tower that Morning, just before the Death of the Earl of *Essex* was known; he was standing just over-against the Earl's Chamber-Window, and saw a bloody Razor thrown out of that Window, which he went to take up; but a Maid came out of Captain *Hawley's* House, and took it, and forthwith ran with it into my Lord's Lodgings, and up Stairs immediately, several times crying out *Murder!* and then coming down, pretended the Earl of *Essex* had cut his Throat."

Upon hearing Mr. *Evans* give this Relation, I declared, If this was true, what was sworn before the Coroner must be false; and I did not believe they had sworn false for nothing; but must conclude my Lord was murdered. Hereupon I did desire the said Mr. *Evans* to inform me where this Mr. *Edwards* lived; for I protested, I would inquire into the Matter. Mr. *Evans* then told me, Mr. *Edwards* lived in *Mark-Lane*, by the Tower.

When I came to Town that Afternoon, about Six of the Clock, I did forthwith acquaint several of my Friends with my Design of making immediate inquiry into the Truth of this Story; which if I found Reason to believe, I thought it was proper to be taken upon Oath before some Justice of Peace, in order to a further inquiry. By most of my Acquaintance I was dissuaded from it; they telling me, That if my Lord was indeed murdered, the Persons and Interest concerned in the Murder were too Powerful for me to engage; and therefore I must expect nothing but Ruin by meddling in the Matter. To all which Dissuasions, I generally gave this Answer: That I would do nothing herein, but what I could justify to God and a good Conscience. And the threatened Ruin I did not fear, or would thereby be deterred; for if my Lord was indeed barbarously murdered, the same Principles and Practices that murdered him, might take off many of those Honourable Persons they then had, or should take into Custody, and pretend, as they did in this Case, That this was done by the Prisoners themselves, to avoid an Infamous Execution: So that God only knew in how many Men's Destruction such treacherous Practices might determine. But if those Bloody Men once found, that such their Design was suspected, and like to be detected, in all probability, they would desist from the like villainous Practices; and seeing this would be more for the Interest of the Publick, than I could possibly be either in my Liberty, or otherwise, I was resolved to sacrifice that, and whatsoever else I had, to the Service of my Country.

My Friends finding me thus resolved to engage, they advised me at first to inform my Lord's Honourable Family herewith, and to observe such Directions as from them I should receive; wherefore that very Monday Evening, I went to *St. James's-Square* to my Lord's House, where I found Sir *Henry Capell* under great Disorder, by Reason of that deplorable Accident. I did inform Sir *Henry* of what I had heard, but told him, That I had not then spoken either with the Boy, or his Father, who (as I was informed) lived in *Mark-Lane* by the Tower; and if Sir *Henry* thought fit, I would the next Morning go with any whom he should appoint, to Discourse the Father and Him: Sir *Henry* thanked me for my Information, but said he was then under such a Concern for so great a Misfortune, as had herein befallen his Family, that he hardly knew what he did or said, &c. The next Morning I went to Mr. *Edwards*, to whom, as soon as I had told the Cause of my coming, the old Man seemed much surprized and concerned, and in Tears told me he was Ruined; to which I answered, That I did suppose he was not ignorant what great Things the Father of this Unfortunate Lord had done, and suffered for His Majesty's Interest, and how this very Lord himself had been highly in His Majesty's Favour, having been employed in Places of the greatest Honour and Trust; and therefore, if his Lordship fell by treacherous Hands, none (in Reason) could be supposed so zealous for a Discovery as his Majesty would, who could protect him from whatsoever Danger might seem to threaten him: besides, if there were any Danger, I stood principally subject to it; but the Danger I did not fear, considering of what Consequence this might prove, by being inquired into: At length Mr. *Edwards* gave me the same Information (in Substance) I had the Day before received from Mr. *Evans*. I then desired to see his Son, who being then at School, I could not speak with him; but that Afternoon about Two of the Clock I went again, and was then told, That the Boy had denied all, which denial was occasioned by his Sister's telling him, He should be Hang'd for what he had therein declared: this the Sister could not deny; but as soon as the Boy was called into the Parlour, where I with several others were, before I questioned him about it, I discoursed him concerning the Danger of a Lye; and after I had solemnly enjoined him to tell me the very Truth, he Boy then declared to me, as he did at first to his Father and Sisters, and told me, That his Sister's Threats had frightened him into a Denial. Upon this, I took in Writing the Substance of what the Boy declared, and the next Day drew it into a formal Information, which followeth:

The Information of *William Edwards*, Second Son to *Thomas Edwards*, of the Parish of *All-hallows Barking, London*, taken the 18th Day of *July*, in the Thirty Fifth Year of the Reign of our Sovereign Lord King *Charles* the Second, *Anno 1683.*

**S**AYS, That this Informant on Friday the 13th of this Instant *July*, as he was going to School, with his Brother *Edward*, he heard that His Majesty, and His Royal Highness the Duke of *York*, were going to the

Tower;



*Tower*; whereupon this Informant left his Brother, and went to the *Tower* to see his Majesty and His Royal Highness. And when this Informant had seen His Majesty, and his Royal Highness, this Informant about Nine of the Clock in the Morning of the same Day, went to see my Lord *Brandon Gerard's* Lodgings; and as this Informant was standing almost over-against my Lord *Brandon Gerard's* Lodgings, between the Lord *Gerard's* and the late Lord of *Essex's* Lodgings, this Informant saw a Hand cast out a bloody Razor out of the said Earl of *Essex's* Lodgings: And this Informant was going to take up the said Razor, which he saw on the Ground to be bloody; but before this Informant came to the Razor, there came a Maid running out of Captain *Hawley's* House, where the said Lord of *Essex* lodged, and took up the said Razor, which she carried into the said Captain *Hawley's* House: And this Informant believes, that it was the said Maid, whom he first heard cry out Murder: And this Informant further saith, That he heard the said Maid say to some which were about the Door, after the Murder was cry'd, That she did hear the said Lord of *Essex* to groan three times that Morning.

The Information of Mrs. *Edwards*, Wife to *Thomas Edwards*.

**S**AITH, That about Ten of the Clock in the Morning, on *Friday* the 13th of this Instant *July*, This Informant's youngest Son *William Edwards*, aged about Thirteen Years, came trembling to this Informant, and in great Amazement and Horror, told this Informant, That the Lord of *Essex* had cut his Throat in the *Tower*; and further said, That he the said *William Edwards* in the Morning about Nine of the Clock, did see a Hand cast out a Razor out of the said Lord of *Essex's* Lodging Window, which Razor he saw on the Ground to be Bloody, and the said *William Edwards* was going to take up the said Razor, but before he came to it, there came a Maid running out of Captain *Hawley's* House, where the said Earl of *Essex* lodged, and took up the Razor, which she the said Maid forthwith carried into the said Captain *Hawley's* House; and soon after, he the said *William Edwards* heard her, as he the said *William Edwards* did believe, cry out, Murder. And this Informant further saith, That the Substance of what the said *William Edwards* hath sworn in his Information, he the said *William Edwards* on *Friday* last did declare to this Informant, and her whole Family, several times, attesting it to be true, and several times since.

This the Boy declared he was ready to attest; but finding several Justices of the Peace very shy, I thought it proper to carry these Informations to the Secretary of State, and know his Pleasure therein: accordingly, *Thursday* the 18th of *July*, about Four of the Clock, I delivered these Informations of the Boy and his Mother, to whom the Boy had discovered it, as soon as he came from the *Tower*. My Lord *Sunderland* seemed much surprized, and after some Pause, told me, That I should bring the Persons (who were not then with me) the next Morning, and if it were proper, he would take their Depositions. — The next Morning about Nine or Ten of the Clock, I went with the Boy and his Sister, (the Mother not being well) to whom the Boy had likewise, as soon as he came from the *Tower*, revealed what he had as before seen. As soon as I came to the Secretary's Office, I sent his Lordship word, that according to his Lordship's Order, I did attend. Immediately upon which (before myself, or either of the Informants were examined) Mr. *Atterbury* the Messenger came to the Office and took me into Custody; (the only Instance where such as came to give Information on the Behalf of the King, were so treated before any Accusation against them,) and some short time after, thus in Custody, I was called in before the then King and Council.

The first Question (to my Remembrance) asked, was, What made me engage in that Matter? To which I answered, That I was altogether un-related to, and unacquainted with, that honourable Family; so that there lay no more personal Obligation upon me first to move, than upon any Man whatever, who might have met with the like Information; but it was my love to Truth and Justice first engaged me in it; and through the Grace of God, my Duty therein I would do, though Death stared me in the Face every Step I made. I can't but here observe the Carriage of the then Duke of *York*, who with a concerned Countenance, leaning his Elbow upon the Board, covered his Face with his Hand, upon which I did immediately imagine, that somewhat within did more trouble him, than all the trouble from without did me; for though I stood as the supposed Criminal, I had reason to guess — — — — — *somebody else* was the real one. I did then observe to his Majesty the Incoherence and Contradictions sworn before the Coroner by *Bomeny* and *Ruffel*, who were the Persons that pretended to prove the Self-Murder before the Coroner; upon which his Highness called for those Informations, but said nothing in Answer. His Majesty then took them, and said as little; but the then Lord Keeper *North* having read them, went about to reconcile those Incoherences and Contradictions; upon which I did object against what his Lordship said, as insufficient, and further urged the Objections I had before made. His Lordship seemed very angry that I made those Reflections; but, with Submission, I think, by printing the Coroner's Depositions, every Man was in some sort appealed to, whether what was so sworn, and printed, was not sufficient to induce every impartial Person (for such the Coroner and Jury ought to have been) that the Earl of *Essex* did indeed cut his own Throat; and the printing those great Incoherences, and contradictory Depositions, argued as great Impolicy in the Authority that published them, as the deposing them did Villany in the Informants, or the believing them want of Understanding (not to say Honesty, Integrity and Impartiality) in the Coroner, and most of the Jury. After some time spent in the Examination, I was ordered to withdraw into the Secretary's Office, and repeated Orders given by the then King, that I should be kept close (perhaps that I might not hear the Boy or his Sister examined); the Boy was then called in, and at first (as I was afterwards informed) did not deny the Truth of his Information; but being not then past Thirteen, and frightened by being before so

great Authority, he wept; upon which his then Majesty stroked him upon the Head, and said, *Did you not invent this to excuse your truanting?* To which the Boy trembling, answered, *Yes* (this the Boy declared at Home after his Examination). Then the sister was called, who declared how the Boy, upon his first coming from the *Tower*, had informed her as before set forth; and tho' after threatened to be whipt, never retracted till the *Tuesday*, when I having been there, his Sister had frightened him into a denial, which as soon as I came the second time, he retracted, and stood to his first Information, saying his Sister had frightened him, and told him he should be hanged, and his Father would be undone; the Fear of which made him deny it: She further declared, that she did verily believe they never knew nor heard of me till the *Tuesday* after my Lord's Death, and that I never did give, or offer her Brother one Farthing, but still enjoined him to speak nothing but the Truth (this the Sister did after declare was the Substance of her Examination). After the Sister's Examination was over, I was the second Time called for, and told by my Lord Keeper, that I would have suborned the Boy; to which I answered, that I was well satisfied of my Innocency in, and Abhorrences of all such Practice, which in this case appeared impossible, seeing that the Relation of the Boy was several Days before I ever saw or heard of the Boy; nevertheless I was ready to give what Bail his Lordship should be pleas'd to command; upon which I was ordered to give Bonds with Two Securities in Two Thousand Pound a-piece; this I did that very Afternoon; but the Omission of the Under-Secretary, in the Form of these Bonds, was very advantageous to me, and my Security; for whereas the Conditions of all Council-Bonds were to conclude, and in the mean time to be of the good Behaviour; this Clause in mine was left out, by which my Friends were saved from that, which otherwise would (as you will afterwards find) have ruined them. Standing thus under Two Thousand Pound to answer to an Information of Subornation, I thought I was in Self-Justice bound to make what further Inquiry I could, to strengthen the Boy's Evidence. To which my Lord Keeper (without the least Colour) suggested, I did endeavour to suborn the Boy to swear. In this Inquiry I was daily hurried up and down, and found most People afraid to discover what they herein knew; and which was more, few of my Acquaintance could I prevail with to go with me upon these Inquiries; for my Misfortunes, with the Danger that from the Corruption of the then Times naturally threatened Men, deterred all from engaging any way herein. But at length I met with a Gentleman, who readily went with me upon all Occasions. Mr. *Cragg*. In a constant search after many Particulars (which would be too tedious here to repeat) I was likewise informed of a Girl that had also seen the bloody Razor, as before, thrown out of my Lord's Chamber Window; upon which I went to *St. Catharines*, where the Girl lived, and several Persons being present, I took in Writing what she could say herein, and what her Aunt and Mr. *Glasbrooke*, to whom she related it as she came from the *Tower*, could testify; which Relation was as followeth:

*August* the 8th, 1683. The Information of *Jane Lodeman*, aged about 13 Years, who did in the Presence of these whose Names are here under-written, declare as followeth:

**T**HAT the said *Jane Lodeman* was in the *Tower* on *Friday* Morning, the 13th of *July* last, and standing almost over-against the late Earl of *Essex's* Lodging Window, she saw a Hand cast out a Razor out of my Lord's Window, and immediately upon that she heard Shrieks; and that there was a Soldier, by my Lord's Door, which cried out to those within the House, that somebody should come and take up a Razor, which was thrown out of the Window; whereupon there came a Maid with a White Hood out of the House; but who took up the Razor she cannot tell.

*John Broom and William Smith.*

*August* the 8th, 1683, Mr. *William Glasbrooke* doth declare:

**T**HAT one *Jane Lodeman*, Aged about 13 Years, inhabiting in the same House where he the said *William Glasbrooke* lodged, did on *Friday* the 13th of *July* last past, between the Hours of Ten and Eleven in the Morning, in the presence and hearing of him the said *William Glasbrooke*, declare to her Aunt, That the Earl of *Essex* had cut his Throat; upon which her Aunt was very angry with her; whereupon she the said Girl did declare, that she was sure of it. For she saw him throw the Razor out of the Window, and that the Razor was bloody, and that she heard two Groans or Shrieks (which of the two Words she used, he the said *William Glasbrooke* is not certain.) Of this he the said *Glasbrooke* is ready to make Oath.

*William Glasbrooke. Lodeman's Aunt, Margaret Smith.*

About this time I was informed, That the Report of the Earl of *Essex's* Death was at *Tunbridge* about Nine of the Clock that very Morning he died, whereas my Lord's Death was not known in the *Tower* till about Nine; whereupon I rid to *Tunbridge*, but I found the Person very shy, and unwilling to appear in the Matter. I had no sooner returned to *London*, but I was told, the same Report was at *Marlborough* in *Wiltshire*, (about 70 Miles from *London*) the very Morning of the Earl's Death; whereupon I rid to *Marlborough*, resolving to trace the Report as near as I could to the Author. When I came to *Marlborough*, I met with one *Jeremiah Burgis*, whom before this I never to my remembrance saw or heard of; who declared, That the very Morning my Lord died, he was at *Frome* in *Somersetshire* (about 30 Miles distant from *Marlborough*, and an hundred Miles from *London*;) and being there at the *Dolphin*, he was informed that the Earl of *Essex* had cut his Throat in the *Tower*. I did desire *Burgis* to write me a Letter to the Master of the House at *Frome*, to inform me (if he could remember) who it was that reported this at his House. I did at *Marlborough* likewise speak with one *Lewis*, who did also inform me, "That about Two of the Clock the Day the Earl died, as he was riding up *Husband's-Hill*, (not far from *Andover*) he overtook a Gentleman, riding a very easy Traveller's

page;



"pace; and as they were discoursing of the News in the Country, the Gentleman said, He had heard a Report of the Earl of Essex, that he cut his Throat in the Tower: But the Gentleman was altogether a Stranger to him, and therefore he could not inform me how or where to find him." With Burgis his Letter I was riding to Frome; but when I came within about six Miles of the Place, at a Town called Bradford, I stopt at an Inn-Door to drink a Glass of Cyder; upon which, one Beech an Attorney, (notorious in his Country and Generation) informed a Justice of Peace then there, That I looked like a disaffected Person, by wearing Band and Cuffs, and therefore in that dangerous Time I ought to be examined; upon which, the Justice came out to examine me, and there came with him one who knew me, so that the Justice seemed well satisfied: But Beech taking the Justice aside, tells him, That he ought to be more strict, and search me; for by my wearing Band and Cuffs, it was plain I was disaffected to the Government, (of this I have been often told by some then there;) upon which the Justice told me, He must search me. When I perceived this, I thought it proper to give the Justice a particular Account of the Occasion of my being in the Country, as also, what Papers I had about me; which Papers being read, after some Debate, and advising with Beech, he made a Warrant for my Commitment; the Form whereof, in the Conclusion, was the most illegal I ever saw.

The Warrant ran in these Words, viz.

*Wilts.* **T**O the Keeper of His Majesty's Goal of Fisherton-Anger, in this County, or his sufficient Deputy, These. I send you herewithal the Body of Laurence Braddon, apprehended in the Town of Bradford, in the County aforesaid, this present Two and twentieth Day of August, taken upon Suspicion of being a dangerous and ill-affected Person to the Government, and for refusing to give an account of his Business in these Parts, and for having Letters of dangerous Consequence about him. These are therefore in the King's Majesty's Name to will and Require you, That upon sight hereof, You receive him, the said Laurence Braddon, into your Goal, and him there safely keep, (not permitting him to have Pen, Ink, or Paper, or Person to converse or speak with him) until you shall receive further Orders from His Majesty and Privy-Council. Hereof you are not to fail at your Peril. Given under my Hand and Seal at Bradford, this 22d Day of August aforesaid, Anno Regni Caroli Secundi, Angl. &c. 35 Anno Dom. 1683.

It was long before I could prevail with the Justice to let me hear my Warrant read; but when I told him by the Statute I would have a Copy of it within six Hours after I was brought to Goal, he read it to me; finding the Conclusion to be so Arbitrary, I told him he could not justify his Warrant; which should the Jailor obey, I might be kept a close Prisoner during Life. For I was not to be admitted to Pen, Ink or Paper, or converse, till the Jailor heard from the King and Council, without which I must perish in Prison without Conviction or Trial: I told him, That all such Warrants of Commitment ought to conclude, till he be discharged by due Course of Law; but the Justice told me he would maintain the Legality of his Warrant. By Virtue of this Warrant I was carried to *Wiltshire* Goal (about 30 Miles distant from Bradford,) where I found the Keeper of more Sense or Honesty than either his Worship, or his Cabal; for there were several Attorneys in the Inn when I was examined; (with whom Mr. Justice advised) for the Goaler told me, that notwithstanding the strictness of my Commitment, I should discourse with whom I would, himself being by; and write to whom I would whilst he was present and saw it. Thanking my Keeper for this Civility, I did immediately demand a Copy of my Commitment, and writ to London for my *Habeas Corpus* thereupon, which within some short time I received, and was brought to London to be bailed; but all the Judges being out of Town, I was, according as the Statute herein directs, to be carried before my Lord-Keeper (North); but his Lordship ordered the Goaler to bring me before him at the Council that Afternoon; as soon as I appeared before his Lordship, my Lord seemed well pleased at a supposed, but mistaken Advantage he thought to have had against my Bail; for his Lordship smiling, told me, notwithstanding he did not expect that I should have had much regard to myself, yet he did believe I would have had that just respect to my Bail, as not to ruin them by those new Matters then to be laid to my Charge. To which I answered, I knew not wherein I had prejudiced my Bail, of whom the only thing required was my Appearance the then next Term, which (if God permit) I would do, and thereby indemnify them: No, replied his Lordship (smiling), the good Behaviour was likewise required; a notorious Breach whereof appears in these Matters you stand afresh charged with. I did humbly appeal to the Bonds themselves, and in the Condition there appeared the Omission before observed. For which his Lordship was very angry with Secretary Jenkins, who immediately transferred the Blame thereof to his Under-Secretary. When his Lordship found, that by his neglect my Bail was slept from his Hands, his Lordship was resolved to hold me fast enough; and therefore demanded Bonds with Sureties in Twelve Thousand Pounds, for my Appearance, and as much more Security for the good Behaviour. I did hereupon desire his Lordship, That he would consider the Statute upon which I then came to be Bailed; and, as that Statute required, his Lordship would consider my Quality, and the nature of my Offence: As for the first, I was a younger Brother, and my Father living; and as to the second, the pretended Crime, it was of the very same nature with that under which I stood bound with Sureties in Two Thousand Pound for my Appearance. My Lord Keeper replied, That according to the Statute, he did consider both my Condition and the Offence, and regulated his Demands accordingly; for had I been an Alderman of London, my Quality answerable to the Crime, for every Six Thousand Pound his Lordship would have demanded Twenty; so that then I must have given Eighty Thousand Pound Bonds in Bail and Suretiship; which (to the best of my remembrance) is twice as much as I ever yet heard demanded of any No-

VOL. III.

bleman in England, though under a Commitment of High-Treason. Whilst I was before the Council, I desired his Lordship, that some of those Witnesses might be sent for out of the Country where the Report was of the Earl's having cut his own Throat in the Tower, before his Lordship was dead: Upon which, one of the Lords of the Council (to the best of my remembrance, the now Marquiss of Halifax) said, *This is just as it was in the Case of Sir Edmundbury Godfrey*. But the Lord-Keeper, I found, would not send for Witnesses to prove what his Business was industriously and oppressively to *stifle*. Not being able to comply with these hard Terms, I was remanded to *Wiltshire* Goal: But that Night lying in Town, I read the Statute, and advised with some of my Friends, who found that the Good Behaviour could not be demanded, but that Bail to answer the Cause of Commitment, was all the Statute did require. I did therefore the next Morning desire my Keeper to carry me to his Lordship's House in *Great-Queen-Street*; and for the Reasons before observed, I did hope his Lordship would not insist either upon the Good Behaviour, or yet upon so great Bail. My Keeper accordingly carried me: But before his Lordship that time saw me, my Keeper did acquaint his Lordship with the Occasion of his bringing me once more before his Lordship. Upon which, the Lord-Keeper sent for me, and told me, That the Good Behaviour he neither did or could require; and if I would give Bail to answer my Commitment, I might have my Liberty. To which I replied, That in so large a Sum as was demanded, I could not; but in all would give Ten Thousand Pound Bail, which I hoped his Lordship would judge sufficient. His Lordship said, What was agreed upon at the Council, he could not there change: but my Keeper should bring me down that Afternoon to the Council; and if there it could be complied with, I should be bailed. That Afternoon I did accordingly attend the Council, where I found his Lordship's Mind changed, and returned to his first Demand, Twelve Thousand Pound for my Appearance, and Twelve Thousand Pound more for my Good Behaviour; notwithstanding that very Morning he had (as before) declared he could not by Law require it.

His Lordship did represent my Offence such as deserved the greatest Punishment, and told me, Such Practices might shorten my Days (or Words to that effect). I replied, That I was not conscious of my having done any thing which deserved a Prison, much less Death; but the manner of Death I did not fear; and if in the way of my Duty I met it, I could as cheerfully die at Tyburn in a Halter, as in my Bed of a Fever.

Having thus suffered in the defect of this Act, I cannot but here take notice of one great Omission in this Statute. This Act inflicts a Penalty of One Hundred Pound upon the Goaler that denies the Prisoner, or any on his behalf, a Copy of his Warrant; and Five Hundred Pound Penalty on every Judge that refuses to grant an *Habeas Corpus* upon the Statute, for the removal of such Prisoners; but inflicts no certain Penalty upon the refusal to bail the Prisoner that shall upon this Act be brought before them; so that if the Judge either demand Ten times more than the Quality of the Prisoner, or the Nature of the Offence requires, or refuse to take any Bail whatsoever, there can no Action of Five Hundred Pound for this refusal be brought, for no Penalty in this Case is enacted. It's very strange, that the Statute should lay so great Penalties upon the denial of the means of Bail, (viz.) the Copy of the Warrant, and *Habeas Corpus*; and yet not enact an express Penalty for refusal of the end, (viz.) Bailing the Prisoner; for what signifies either a Copy of the Commitment, or an *Habeas Corpus* thereupon, if Bail be not procured? This is the putting the Prisoner to a very fruitless Expence.

I must confess, seeing the Statute requires the Judge shall Bail the Prisoner, taking Recognizance with one or more Sureties, according to the Quality of the Person and Nature of the Offence, a Special Action of the Case lies against such Judge upon his refusal: But if there be little Damages sustained, as it may happen; for though one Judge refuse, another may grant the Prisoner his Liberty upon Bail, and consequently so proved, the Jury being sworn to go according to Evidence, as well in the Damages, as in the Matter directly in Issue, must go according to Proof unless they think the extravagant Verdicts of late Times, (which found One Hundred Thousand Pounds, where not one Farthing was proved) will excuse them, in giving Fifty times more than was sworn to be sustained. Few Words more in the Statute would, I humbly conceive, have sufficiently provided in this Case; for in the Statute, wherein it is said, That if the Judges shall deny any Writ of Habeas Corpus, by this Act required to be granted, being moved for as aforesaid, (it had been added, or shall refuse such Bail as the Quality of the Prisoner, and Nature of the Offence requires,) they shall severally forfeit to the Prisoner or Party grieved the Sum of Five Hundred Pound, to be recovered in manner aforesaid: These few Words would have given the Five Hundred Pound for refusal of Bail, as well as denying the *Habeas Corpus*; whereas without the like Clause, the Statute may (in effect) be daily evaded.—To return.

But now, instead of being sent back to *Wiltshire*, I was turned over to Mr. *Atterbury* the Messenger, where upwards of Five Weeks, I lay at no less Charge than 4*l.* and odd Money per Week directly, besides other collateral Expences; this being too great for my Fortune to comply with, I was advised to remove myself to the *King's-Bench*; but before-hand, to agree with the Marshal, upon Security, to have the Liberty of the Rules; this I did by a Friend, who told me, That upon giving the Marshal 2000*l.* Security for my faithful Imprisonment, and 5*s.* 3*d.* per Week Chamber-Rent, he had promised to allow me the Liberty of the Rules. Whereupon (after some Opposition) I removed myself; but the Marshal found false to his Promise, for he having got me into his Custody, demanded Two Men for my Security in 10,000*l.* a-piece, and 10*s.* 3*d.* per Week, Chamber-Rent, and then assured me, I should have the Liberty of the Rules. To these Terms (so much above our first Agreement) I submitted. But the Marshal the second time unjustly disappointed me; for under this Security and Chamber-Rent, I was ordered to be kept close Prisoner at no less Charge, than 2*l.* 5*s.* 3*d.* per Week; and under this strict Confinement, the Marshal refused to give me back my Security-



Bonds, which at last I was forced with Guineas to redeem. For this severe and unjust Usage, the Marshal pretended the special Order of the then Lord Chief Justice *Jeffrey*, before whom at the *Kings-Bench-Bar*, I was the then next Term bailed; after which, with all possible Industry and Diligence, I renewed my former Inquiries. But about the 12th of that November, I was taken up by the City-Marshal, by Virtue of a Warrant of the Lord-Mayor, or Court of Aldermen, as illegal in the Cause, as the other was in the Conclusion of the Commitment: for the only Cause (if it can properly be so called) in the Warrant, was, *My being suspected to be Disaffected to the Government*; finding the Words so general, and not one particular Instance to justify that Suspicion of Disaffection, I could at first give no probable guess at the Information. By the City-Marshal I was carried before Sir *James Edwards*, and after that, the then Lord-Mayor, before whom I refused to answer such general Questions as were asked, without seeing my Accuser, and hearing my Accusation; but I soon found what was the Pretence of my Commitment, which I had grounds to suspect, was designed to be stretched to the highest Offence, nothing less than Treason; for I was charged with bespeaking several Hundreds of the *Protestant-Flails*, with a Design therewith to massacre the King's (then called) Loyal Subjects. Refusing to answer the Lord-Mayor's Questions, I was committed to Captain *Richardson*, who was ordered forthwith to carry me before the King and Counsel; as soon as I came there, my old Friend, the Lord Keeper *North*, began to interrogate me in several Particulars; but I refused to answer any, till I saw my Accuser, and heard my Accusation; his Lordship told me, my not answering that Honourable Board was a Contempt, for which I might be prosecuted. To which I replied with Submission, 'I did not understand I was obliged, in strictness of Law, to answer to any Accusation, till I came judicially to be tried, where I should both see the Accuser, and hear my Accusation.' At length the King ordered my Accuser to be called in, whose Charge (in Substance) was this, (*viz.*) *That such a time, about four Years and a half before, I came to his Shop, and bespoke a Pocket-Flail; which by Description, I did order him to make; the next Day after I bespoke three more, which I was to fetch the third Day. And did likewise declare, He should make me several Hundreds, but I came not according to my Promise for either of the three, or did he make any of that Number I pretended to bespeak. That I did bespeak one, and the next Day three, I did confess to be true, and likewise fetched one of the three the third Day; but these not being made according to Direction, I would not have the other two. As for the Five Hundred, or any such Number I should bespeak, I did declare, (a the Truth was) that Part of the Charge was very Malicious and False.* Major *Richardson* being then there, as foolishly as maliciously endeavoured to frustrate my Defence; for he told His Majesty, the true Cause I came not according to my Promise for any of that great Number I had bespoke, he would give His Majesty. For Captain *Richardson* declared, 'That almost three Years before, he had been in that Turner's Shop, where seeing one of those Instruments (it being the first that he ever saw) he demanded of the Turner what he called them; who answered, *A Pocket-Flail*.' And then further told him, 'That the Gentleman for whom he made the first above a Year before, pretended he would then have several Hundreds made, and bespoke three Flails after the first, but came not for either of the three, or any of that Number which he pretended he did want.' Captain *Richardson* declared upon this, 'He did believe there was a general Design against the Government, and therefore he did Charge the Turner, That if the Gentleman came according to his Promise, he should endeavour to secure him; which Caution he did suppose I had heard of, and therefore came not according to my Promise.' Of this most ridiculous Suggestion, I took immediate Advantage, and told his Majesty what the Captain alledged, could not possibly be true, even by his own Suggestion. For he confessed, That the Turner told him when he first saw the Flail, that I had bespoke a great Number above a Year before, and was forthwith to have fetched one of them, but came not according to my Appointment; and yet the Captain alledged, 'That his Caution so long after given, did influence my not coming a Year and a half before. Immediately upon this, the King saw this Charge mixt with such Folly and Falshood, that His Majesty thought fit to order my immediate Discharge. As soon as I came into the Room next the Council, Captain *Richardson* took me by the Hand, and protested he was extremely glad I was discharged; but considering his good Service, in just before endeavouring to prevent it, I gave little Credit to this Assurance. Being once more at Liberty, I continued, as before, my Enquiries, in which I was daily hurried up and down; for having made it my Business to get the Names of most of the Soldiers upon Duty that Day my Lord was murdered, I was in a constant Enquiry after some of them; for I had Reason by some Information I had received, to believe that not a few could speak not only to the throwing out of the Bloody Razor, but to that which was more material, the sending in the Russians to my Lord, and from whom those Villains went commissioned. But as I spoke with any of those Soldiers, I perceived them very shy, and denied to me, what they had before freely confessed to their intimate Acquaintance; and afterwards told their Friends, they would not be brought into Trouble, by testifying their Knowledge therein, which they knew would most certainly prove their Ruin.

Whilst I was Prisoner in the King's Bench, I (with the rest of the King's Prisoners) was several times search'd; but having still notice some short time before such Search, I conveyed away such Papers, as being seized, might have tended to my Prejudice. But in such hurries, I lost a List of such Names that could have declared that which was not a little material to this Discovery.

In *Hillary Term 83*, Mr. *Speke* and myself were tried upon an Information; the Substance whereof was, 'That whereas *Arthur* late Earl of *Essex*, the 13th of *July*, (being Prisoner in the Tower for High-Treason) himself feloniously, and as a Felon of himself, did Kill and Murder,

and the Day after, was by the Coroner's Inquest so found; The said *Laurence Braddon* and *Hugh Speke*, well knowing hereof, but contriving, and maliciously the Government of our said Lord the King, of this Kingdom of *England*, into hatred, disgrace and contempt to bring, &c. did falsely, unlawfully, maliciously, and seditiously Conspire, and endeavour to make the King's Subjects believe, that the said Coroner's Inquisition was unduly taken, and that the said *Arthur Earl of Essex*, by certain Persons unknown, IN WHOSE CUSTODY HE WAS, was killed and murdered; in order to which they the said *Laurence Braddon* and *Hugh Speke*, did falsely, unlawfully, unjustly, maliciously, and seditiously Conspire to procure certain false Witnesses to prove, that the said *Arthur Earl of Essex*, by the said Persons unknown, was killed and murdered.'

Observe, The Information doth not Charge us, or either of us, with conspiring, or endeavouring to Suborn false Witnesses; because to prove that, some Money, or other Consideration must have been prov'd offered, or promised; which they being not able to prove, the Information saith we did Conspire to procure false Witnesses. And yet, because Subornation would represent the Matter most odious, in the Title Page of the Trial, it was expressed, *Upon an Information of High Misdemeanour, Subornation, and spreading false News.*

This Information charges Mr. *Speke* and myself with falsely, unlawfully, maliciously and seditiously endeavouring to procure false Witnesses to prove, That (the Right Honourable) *Arthur*, late Earl of *Essex*, was killed and murdered by Persons unknown, in whose Custody he was; but to destroy this conspired Charge of Mr. *Speke*, and myself, against those in whose Custody my Lord was (at the time of his Death), the then Attorney-General tells the Court, That they would give an Account of the Earl's Death, how he murdered himself, and for that they had a CLOUD OF WITNESSES. But when this Cloud appear'd, it consisted in Major *Hawley* (at whose House my Lord was murdered,) *Russell* the Warden (who then kept the Chamber-door,) *Bomeney* my Lord's Servant (then attending on his Lordship,) and *Lloyd* the Sentinel (who kept the outward-door whilst my Lord was murdered.) Here are Three (Monday being the 4th) of the Men in whose Custody my Lord was, and consequently (according to the Information), the very Men Mr. *Speke*, and myself had conspired to charge with my Lord's Murder; and these very Men, in whose Custody my Lord was, were like a Cloud of Witnesses brought to prove, that those Men, in whose Custody my Lord was, did not murder his Lordship, but that the Earl himself, feloniously, and as a Felon of himself, did kill and murder.

How very ridiculous would it have looked, should the then Court, or King's Counsel, have thus spoke to those Three Witnesses, (*viz.*) Gentlemen, YOU (being three of the Men in whose Custody my Lord was at the time of his Death) are designed to be charged by the Defendants *Speke* and *Braddon*, with the Murder of my Lord; but WE have thought it convenient and JUST by YOU to prove, that YOURSELVES did not murder this unfortunate Lord, but that this Lord himself feloniously, and as a Felon of himself, did kill and murder, as UPON ONLY SOME OF YOUR DEPOSITIONS he hath been already found by the Coroner's Inquisition. Do YOU therefore upon Oath but purge YOURSELVES, and lay this Murder to your Lord's own Door, and WE will inflict exemplary Punishment upon these Defendants, whose Conspiracy tended to the charging YOU as Actors in it, or Priory therunto.

I do humbly conceive, That all this was virtually included in the Examination of those Witnesses, whose Oaths were not only admitted to purge themselves, but to render such as Criminals as should endeavour to charge them. Should the like be practised in protection of all accused (I am well satisfied) no Man will turn Accuser.

If any shall say, THESE (being the Men attending on my Lord at the time of his Death, and his Lordship then a close Prisoner) are the Persons to be presumed privy to what was done BY his Lordship just before his Death, and therefore the Parties which as to that could be sworn.

I answer, As they were THE MEN which were to be presumed privy to what was done BY his Lordship just before his Death, because they were the Persons whose Stations were so near his Lordship, for this very Reason they were THE PARTIES which were likewise to be supposed privy to what was done TO HIS LORDSHIP just before his Death; and therefore admitting that his Lordship fell by Treachery and Violence, these were THE MEN must be presumed consulant thereof. Wherefore these Men's Testimony being in effect a Self-discharge, ought not here to have been admitted.

With all Submission to that great Justice, Judgment and Policy, which drew and managed this Information against Mr. *Speke*, and myself, I think herein the Managers of this Prosecution extremely failed in their Proof; for Mr. *Speke* and myself, being accused with falsely, &c. conspiring to charge those in whose Custody my Lord was, with murdering my Lord; The Duty incumbent on the then King's (or rather DUKE's) Counsel was to prove, That we, or one of us, did use indirect Means, by Bribes, Threats, or the like, to procure those False Witnesses; and this (or whatever else was brought to prove this Information) ought to have been deposed not by such as appeared in Court (in effect) with Halberds about their Necks to swear for their OWN Lives; being virtually told, This do, and you shall live; but in the Day ye fail thereof, ye shall surely die: But this Information ought to have been testified by Men who stood recti in Curia, which were neither themselves to be hanged for murdering my Lord, provided they would not (by consequence) prove he did murder himself; or to be not only saved, but well rewarded in case they did (though contradictorily) confirm the same.

As for all those Witnesses which were produced against us, to prove any Bribes, or the like, I do suppose Prejudice itself will not pretend to say, That by the Trial (which none can believe Sir *George*

(908) *Jeffrey* your *Th* vernon will; a Cor Punil don't For the po The proved reign, Up ous R and u MOU prelen ber, o chief, on the long su who ha the Ro she cam Provoc the gre invent, have do Storm, charged pleafan was pol furious his Wi had he I did all to cond did so whose S that Cri charged that hon railed at knew, a Lordship bloody L Crime a fetcht str the Tri least app dergone of a Tim corrupt a Colours: against th faved my man, wh was swea to prepar have a mi or no.--- were stron butchered unto; bu beaten by Truth, a venient no should not Witnesses true, and which I d former De so their C As soon I was tried Buifness; u Jury had'd and I found the least P the Inform spiring to p In this C Conspiracy ene only co to be the co when Falsh for Sense; Speke was Criminal, Life. But Mr. prets it; fo Speke's Lett



Jeffries would order partially in our favour, to be printed) the least colour of Proof is given by any.

That Nation is happy whose Government answers the true end of Governors, (viz. To be Terrors to Evil-doers, and a Praise to those that do well; but when once this end is inverted, and Justice (or rather that which a Corrupt Court falsely calls so) becomes a *SCREEN* to Malefactors, and Punishment inflicted on those who would punish them, then is that Kingdom in a much worse Condition than it could be by the State of Nature. For Justice thus corrupted, would prove as fatal to the Body Politick, as the poisoning all Drugs, Simples, &c. would to the Body Natural.

This by the perversion of all Law and Justice would probably have proved our general Fate, had not God (in Mercy) by our present Sovereign, removed the Source hereof.-----But to return;

Upon my Trial, I did expect all that the most inveterate and malicious Rage could utter, and therefore was not surprized with all that Fury and unjust Inveteracy that appeared in the Court; especially the MOUTH thereof; for in the midst of his Rage, when I was falsely represented under the most odious Character, worse than a Common Robber, or Burglar, (for these Men's Crimes tended only to a private Mischief, but mine to a general Confusion;) I could not forbear smiling upon the then remembrance of this Story. A Neighbour of mine, whom long since I knew in the Country, an illiterate plain Country Farmer, who had a Wife of as violent Spirit as liv'd; and one Day she came into the Room where her Husband was (with several Neighbours); as soon as she came, tho' there was not, or it seems had been, the least colour for Provocation, for he still carried himself well towards her, she flies into the greatest Rage imaginable, calling him all the Names that Malice could invent, or Rage could utter; and had she not been prevailed upon might have done him some Mischief. The Husband in the midst of this great Storm, well knowing all to be false with which the Fury of his Wife had charged him, stood as a Man altogether unconcern'd, and appeared rather pleasant than displeased. One of his Neighbours then ask'd him, How it was possible for him, so to receive the scurrilous and bitter Railing of that furious Woman? To which the Husband smiling, calmly replied, That his Wife talked of a Man he did not know; and therefore, what Reason had he to be concern'd, when he was not the Person she spoke of, &c. I did ask my Conscience, an Infallible Evidence, according to the Truth, to condemn or acquit, whether I was this profligate Villain his Lordship did so infamously characterize; and I found that impartial Judge (by whose Sentence at the last Day I shall stand or fall) did acquit me from that Crime, which his Lordship's Corruption against his Belief unjustly charged me with; and therefore I thought I might well say to myself, as that honest Country-Fellow did to his Neighbours, *I am not the Man thus railed at*; but his Lordship reviled a Man I was not acquainted with, or knew, and therefore stood very much unconcerned at whatsoever his Lordship's corrupt virulence falsely and maliciously (in suberviency to that bloody Design that committed the Murder), without the least colour of Crime applied to me, who was as innocent of the Offence, as of the far-fetched strained and groundless Aggravations. Let any impartial Man read the Trial, and well observe what is sworn, if in the Evidence he find the least appearance of an Offence, I dare suffer what I have already undergone; but if Men will take the malicious and groundless Insinuations of a Time-serving, Mercenary Counsel, &c. or the corrupt Charge of as corrupt a Judge for Evidence, they will find me painted in the worst of Colours: I did not expect that my Innocence would prove my Protection against these unjust and violent Proceedings, and therefore I might have saved myself, and Friends the trouble of a Defence; and with that *Welchman*, who sleeping at the Bar, whilst the Evidence in a Capital Crime was swearing against him; and being awaked by his Friends, and advised to prepare for his Defence, starts up, and rubs his Eyes, saying, *If they have a mind to hang him, they will hang him whether he make his defence or no*.-----But desiring in some measure to satisfy the World that there were strong grounds to believe this unfortunate Lord was treacherously butchered, I thought it proper to produce some Witnesses in order thereunto; but when I found that some of these so produced, were so brow-beaten by the King's Counsel, and saw that they were afraid to testify the Truth, and upon Oath denied what I knew to be true, I thought it convenient not to produce many of these whom I had subpoena'd, because they should not be baffled, and spoiled by the Court; for should any of these Witnesses upon Oath (through fear) have denied what they knew to be true, and afterwards (when Truth in this Case became not Criminal, which I did still believe I should live to see) testify the very Truth, their former Denial would be produced to invalidate their after Testimony, and so their Credit be destroyed.

As soon as the great Counsel against me came into Court that Morning I was tried, before ever the Information was read, he told me *he would do my Business*; upon which I desired he would have the patience to tarry till the Jury had done it to his Hands; to which he replied, *he did not doubt them*; and I found by woful experience he had no reason; for the Jury, without the least Proof, found me guilty of the whole Matter charged upon me in the Information, and the Defendant *Hugh Speke*, guilty of all but the conspiring to procure False Witnesses, and of that they found him Not guilty.

In this Verdict I stand only guilty (could such a thing be possible) of a Conspiracy to procure False Witnesses. It was never before known that one only could commit a Conspiracy. For the Notion of a Conspiracy I take to be the combining together of two or more to do that which is ill. But when Falshoods are to pass for Truths, Contradictions must be admitted for Sense; & *quod fieri non debet factum valet*. Upon this Verdict Mr. Speke was fined 1000*l.* and because (the Court said I) was the greatest Criminal, my Fine was 2000*l.* and both ordered to give Security during Life.

But Mr. Attorney-General at the Trial was pleased otherwise to express it; for Sir Robert Sawyer tells the Court, They need but read Mr. Speke's Letter, and they would find it ten Times worse than what Mr.

Braddon had done. For which his Lordship seemed very angry with the Attorney-General, and told him, None should appear so great an Actor in the Business as myself.

His Lordship's Behaviour at this Trial was so very remarkable, that (as I have been informed by several) he was scarce ever seen more passionately to express himself. And though my Trial shews great Bitterness of Expression, yet it is not printed in all its Parts as it was spoke, but some of the *Billinggate* Railing left out; yet such as it is, by his Lordship's Authority published (I do humbly conceive) there have few, if any, Trials being stuff'd with such foul-mouth'd Invectives. But his Lordship in this was to act counter to his Title; for though the Duty of his Place required his greatest Encouragement to the Detection of Blood, and the Punishment of such vile Offenders, at this Trial his *Business* was quite different: For (as I have been long since informed) one Day, not long after my Trial, his Lordship having drank very freely, upon some Discourse with relation to the Earl's Death, a Gentleman took then an Occasion to tell his Lordship, That my Trial was excellently well managed by his Lordship and the whole Court. To which his Lordship made answer to this effect, (viz.) *That though he was well satisfied the Earl of Essex was murdered, his Business was to stifle it*. This Gentleman is altogether averse from betraying the common Rules of Conversation; by appearing as an Informer or Evidence, in judicially exposing what passed over a Glass of Wine; Whether the effects of Wine in this verified the Proverb (*In vino veritas*;) I knew not: But it appeared notorious to Persons unprejudiced, that there was just ground to believe his Lordship's Corruption did herein endeavour to stifle what his Love (had he any) to Justice in the Duty of his Place, should have zealously strove to detect.

Under this Fine I lay Prisoner for about five Years: But about August 1687, *Graham and Burton* came over to the *King's-Bench* to treat with several of the King's Prisoners, in order to their Discharge; and they brought with them a List of such Prisoners; in which List perceiving my Name the ONLY Name crossed, I did enquire how my Name became so marked; To which I was answered, That as soon as His (then) Majesty had seen my Name, he called for a Pen and Ink, and with his own Hand crossed it; by which I perceived I was designed for Judgment not Mercy; and upon Application was so told; for I was informed, that no Man was more obnoxious to His Majesty than myself, who was the only Person that ever cast Blood in his Face: But if his own Conscience by a just Application threw it there, I could not help that; I am sure they that said it, talked without Book; for nothing at my Trial, or at any time after proved against me, made any such thing appear. I must confess, several Witnesses at my Trial subpoena'd, could have mentioned somewhat with Relation to his (then) Highness's Guilt in this Matter; but I found it was a Truth too hot, which that Court would not hear, and therefore thought it not proper to call them, but left them till such a Season, wherein Truth in this Matter should not be prosecuted as the highest Offence.

And this brings me to the Proofs that have in this Case been taken before the late Right Honourable Committee of Lords. But before I do begin with the Evidence, it may not be amiss to give some short Account how this Case came before that Right Honourable House, where it was occasionally brought, upon the Motion of the Right Honourable the Lord *Lucas*, then Governor of the Tower.

For the Day before the Convention sat, (viz.) the 21st of February 1683, having a Warrant against several as suspected privy to, or concerned in the Murder of this Honourable Patriot; and amongst the rest, against Major *Hawley*, at whose House my Lord was murdered, and *Ruffel* the Warder before-mentioned; both which belonged to the Tower: I desired a Friend of mine to acquaint the honourable Governor therewith, so that these Persons might be secured. As soon as the Lord *Lucas* saw the Warrant against these two, he did order them both to be secured; and the next Day there were several Depositions, with relation to my Lord's Murder, taken before Justice *Robins*, who that very Day carried Copies of them to my Lord *Lucas*; upon which his Lordship the very next Day moved the House of Lords for their Lordship's Directions as to the disposal of *Hawley* and *Ruffel*, and thereupon produced these Informations Mr. *Robins* had before brought him. Upon reading of these, the House entered into a Debate of the Matter, and then called me before their Lordships, before whom I gave a short Account of what is as before most materially mentioned. After which, their Lordships constituted a more general Committee.

This Committee having several times met, there was a close Committee appointed; the Order for which followeth:

#### The Order for the Close Committee.

*Die Martis, 5 Februarii 1683.*

**L**ORDS Committees appointed by the House to be a Close Committee to examine and take Informations concerning the Death of the late Earl of *Essex*, and have Power to send for and examine what Persons they please, and such Affidavits, as have been already made in this Business; as also for what other they please, in order to give their Lordships further Light therein, whose Lordships are to make a Report thereof to the House.

*E. Bedford.  
E. Devonshire.  
L. Viscount Mordant.  
L. Delamere.*

Whole Lordships are to meet when, and where, and as often as they please.

Before this Right Honourable Committee, there have been above 60 Persons examined of which most were examined upon Oath, and many of these several times before this Committee, which in all have sat above 30 times, and several times, adjourn'd when other extraordinary Occasions hinder'd their Lordships from taking the Depositions of such as then attended to be examined.



mined. In May last, three of the four Lords of this Committee, (*viz.*) the Earl of Devon, the Earl of Monmouth, and the Lord Delamere, being commanded by His Majesty into the Country, the Earl of Devon (being Chairman of this Honourable Committee), the 22d of May brought such Depositions and Examinations as in this Case had been taken, into the House: But the House not having time that Day to read them, it was deferred till the then next Day. Upon the reading of them (it appearing that the Earl of Devon, the Earl of Monmouth, and the Lord Delamere were absent in His Majesty's Service, for the Earl of Devon that very Morning went into the Country,) their Lordships thought fit to suspend the full Examination of the Matter, till these three Lords returned. This appears by the Order following.

*Die Jovis, 23 Maii, 1689.*

**A**FTER reading several Papers and Depositions relating to the Death of the late Earl of Essex, it is ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Considerations of this Business shall be suspended, until the return of the Lord Steward, the Earl of Monmouth, and the Lord Delamere, who were of the Committee before whom they were made, and who are now in the Country in His Majesty's Service. And it is further Ordered, That the said Depositions and Papers shall be sealed up, and kept by the Clerk of the Parliament in the mean time.

*John Browne,*  
Cleric' Parliamentor'.

These Depositions lay sealed up with the Clerk of the Parliament till the 26th Day of October, when their Lordships of the first Committee moved for reviving the Committee; which the House revived by this Order.

*Die Sabbati, 26 Octobris 1689.*

**O**RDERED by the Lords Spiritual and Temporal in Parliament assembled, That the Committee appointed on the 5th Day of February, to take Informations concerning the Death of the late Earl of Essex, be, and is hereby revived, to continue and sit as before.

*John Browne,*  
Cleric' Parliamentor'.

Several other Persons were now examined before their Lordships, who having finished their Examinations, they began to reduce those Depositions and Examinations into such order, as to their Lordships should seem most meet; but this was hardly finished before the 27th Day of January, when the last Parliament was prorogued, and the 6th of February dissolved, and consequently all Proceedings hereupon stopt till their Lordships shall think fit to revive the Committee in order to bring in their Report.

The Substance of what hath been deposed before the Honourable Lords of the late Committee, and some Justices of the Peace, I shall, in as short an Abstract as I can well reduce it, here give you; in which I shall observe, for the most part, as it falls in order of time; and first, what passed before my Lord's Murder; secondly, the Day of his Death; thirdly, after the Day of his Death.

As to the first, before my Lord's Murder; it is deposed by Dorothy Smith to this effect: "That about nine Days before my Lord's Death, being Servant with one Holmes in Baldwins-Gardens, and standing upon the Kitchen-Stairs, she heard several Papists discoursing (in the Parlour of the said Mr. Holmes's House) concerning the taking of the Earl of Essex; and it was then and there declared, That they had been with his Highness, and His Highness was first for poisoning the said Earl; but that manner of Death being objected against, it was proposed to his Highness, That the Earl should be stabbed; but this manner likewise not being thought proper, His Highness had concluded and ordered his Throat to be cut; and his Highness had promised to be there when it was done. About three Days after this, (*viz.*) about six Days before the Earl's Death, some of the aforesaid Persons met again at her said Master's House, where she heard them declare to this effect, That they had resolved the Earl's Throat should be cut; but they would give it out, That he had done it himself; and if any should deny it, they would take them up, and punish them for it. This Informant being hereupon much troubled in her Mind, and willing to prevent (if possible) this intended Mischief, did hereupon advise with one Mr. Billinger, who before that time had been her Master; but the said Mr. Billinger told her to this effect: That if she valued her Life, she should not discover it to any; for the Papists then carrying all before them, she was ruined if she did. Wherefore she did not before my Lord's Death (to her Remembrance) discover it to any other, unless she might to Mrs. Billinger, in which she can't be positive: But the Day of my Lord's Death, about Two or Three of the Clock the same Day, some of the aforesaid Consult coming to her said Master Holmes's House, one leap'd about the Room as extremely over-joy'd, and strikes the said Mr. Holmes on the Back, and cried, *The Feat was done, or, we have done the Feat*; And further said, *He could not but laugh to think how like a Fool the Earl of Essex look'd when they came to cut his Throat*. She further saith, That about five Years since, living with Mr. Rowden of the Old-Exchange, she was willing to discover what she had as before heard, to her said Master and Mistress, and Daughter; but her said Master Rowden was not free to hear all she could say with relation hereunto, but advised her to hold her Peace; for by such her Discourse she might ruin Him and all his Family." This is further confirmed by the Oath of Mr. Rowden, Mrs. Rowden, and Mrs. Mary Rowden: And Mrs. Rowden doth further depose to this effect; (*viz.*) "That the said Dorothy Smith hath some Years since with great Concern declared, that she did hope to live to see the Day wherein she might fully testify her Knowledge herein; and this she would do, when she might without Danger." Mr. Adams and his Wife have deposed to this effect: "That November last was two Years, this Dorothy lived with them as their Servant; and in Tears hath often declared her over-hearing the Papists consult of my Lord of Essex's Murder several Days before his Death, and by whose Order the Earl was to be murdered: But these Informants know-

ing the Danger of such Discourse (the late King James being then in so great Power) did advise her, for her own Safety, and the Safety of those she lived with, not thus to discourse: But the said Dorothy in Tears did usually answer, That it lay upon her Mind Night and Day, and she could not be quiet in her Thoughts, that the Earl of Essex should be falsely charged with cutting his own Throat, when she had heard the Papists Resolution to cut it themselves, and after own they had done it. And if ever she might with Safety testify the Truth here-in, she would; and did hope those Men that did it, might suffer for it." Richard May deposeth to this Effect: "That (to the best of this Informant's Remembrance) before the Death of King Charles the Second, observing Dorothy Smith to be very melancholy, he desired to know the Cause; upon which she said, *That somewhat which she knew, with relation to the Death of the late Earl of Essex, was the Cause of her Trouble*; and it was not safe for her to reveal it to any. Upon which this Informant advised her then to be silent in the Matter. But about the Beginning of February, after our now King's coming, finding it safe for the said Dorothy Smith herein to declare her Knowledge, this Informant went to the said Dorothy Smith, and told her, She might now safely speak what she knew as to my Lord's Death; upon which, the said Dorothy Smith told this Informant, How she had heard the Papists several Days before my Lord's Death, declare How the Earl's Throat was to be cut, and by Whom ordered, (with several Particulars in relation thereunto;) upon which, this Informant discovered this to Mr. William Tournay, who thereupon told this Informant he would reveal this to Mr. Brad-don, then upon the Prosecution of my Lord's Murder; and some short time after, Mr. Tournay told this Informant, That he had therewith acquainted Mr. Brad-don, and desired this Informant, with the said Dorothy Smith, to meet the said Mr. Brad-don, and the said Mr. Tournay, such a time, at the Cross-Keys in Watling-street, where they met accordingly: But when Mr. Brad-don had been particularly informed herein by the said Dorothy Smith, the said Mr. Brad-don declared, That unless the said Dorothy could make it appear, That she had long since revealed this, he would esteem it as a new-made Story and a Lye. Upon which, the said Dorothy mentioned the Names of several to whom she declared she had long since revealed it; but by all was enjoined to Secrecy."

Mr. William Tournay hath likewise deposed what herein relates to him. And I am ready to depose, That I never heard of this Dorothy Smith, till Mr. Tournay, about February last was Twelve Month, informed me of her; and I never, to my Remembrance, saw the said Dorothy Smith, till the said Mr. May had, as before, brought her to the Cross-Keys in Watling-street, where I first discoursed her in the Presence of Mr. May, Mr. Tournay, and another. Here are five or six Witnesses prove the very Substance of this Evidence, revealed some Years since, when it was little less than Death to discourse it, which clearly proves it is not a new-made Story, and strongly argues the Truth of the Relation; for it can hardly be supposed, that this Woman should often, under the greatest Concern and Danger imaginable, declare any thing of this Nature, unless the Relation was really true; Because she could (rationally) then propose no Advantage by this Invention; but was still told, and convinced of the Danger. Wherefore it is rational to suppose, that only the Power of Truth moved her to declare what she so often in Tears related. But as a further Argument of the Truth of this Deposition, I shall briefly relate what Informations have been taken in Contradiction to this Relation, and how these Informations have been detected as false in every Particular, which corroborates the Truth of the Accusation: For as a true Defence detects and frustrates a false Charge; so a false Defence (being discovered to be such) as strongly strengthens a true one. The Depositions in opposition to Smith's Evidence, were, Dorothy Hewit's, a most violent Papist, who the 9th of April 1689, before Mr. Justice Dolben, deposed, "That in April before my Lord of Essex's Death, the said Dorothy Smith was turned away from Mr. Holmes's upon Suspicion of having stolen a Silver Spoon; and that from April 1683, to nine Months next after, one Elizabeth Christopher, then Elizabeth Cadman, was Servant to the said Mr. Holmes, and no other Maid-Servant in all that mean time."

Elizabeth Christopher (of a very loose Character), who in this particular upon Oath, the 9th Day of April 1689, before Mr. Justice Dolben, confirms Hewit's Testimony; but that these two are Forsworn, appears by many Depositions. For,

It's proved by Robert Bond, that Dorothy Smith did not go to Mr. Holmes's Service, till the beginning of June 1683, and that Green Beans were fit to be eat, before she left that Service in which she lived, just before she went to Holmes's House.

It's further proved by five Witnesses, that Dorothy Smith *Eliz. Morris, Anne Dupuis, Catbarine Colabam, Corab Douthwait, and Robert Bond* was Servant at this Holmes's, when Green-Peas were very plenty and cheap, (which is naturally evident it must be the latter end of June, or sometime in July, which is about two Months after Hewit swore Dorothy Smith was turned away); and it's positively sworn by one, that Dorothy Smith was Servant in Holmes's House in July 1683, after the Death of the late Earl of Essex; and this Informant remembers the time, by a very remarkable Particular. So that here are five or six Depositions in Contradiction to Hewit's and Christopher's Evidence, which was designed to destroy the Credit of Dorothy Smith's Testimony; but this Opposition, thus detected, adds Strength to what it was designed to prejudice. But it was further sworn by Hewit, that the 6th of July 1683, (which was the Friday in the Week before my Lord's Death) she went with the said Mr. Holmes into the Country, and the first Night lay at Wickham in Buckinghamshire, the next Night at Oxford, and continued there till the 9th; and the 9th, this Informant went with the said Mr. Holmes to Alderminster in the County of Worcester, to the House of one Mr. Nathanael Swan, Minister of the said Town, and continued there till the 23d of the said Month of July, and then returned, &c.

Nathanael Swan, Clerk, deposeth before Mr. Justice Dolben the 9th of April 1689, "That about the 9th of July 1683, Hewit and Holmes came



"came to his House in Alderminster, and continued there till about the 23d.

This last Information is of little force (tho' the Parson designed well) for it swears, about such a time Holmes came to his House, and about such a time went away; but about makes the time very uncertain.

This was designed to destroy that part of Dorothy Smith's Testimony, which declares Holmes in Town the Day my Lord was murdered.

When I found Mr. Holmes endeavoured to prove (as before sworn by Hewit) himself out of Town, from the 6th of July 1683, to the 26th or 27th of the same Month; I did endeavour to inquire out of all such, as either Mr. Holmes, or Mrs. Hewit were well known to, or traded with; and therefore I made inquiry after those with whom (in that Month and Year) they Bought of, or Sold to, all Shopkeepers, Taylors, Butchers, Fishmongers, Shoemakers, Hatters, &c. and such as upon inquiry I received such Characters of, as I might expect fair Satisfaction from, I did desire to see their Books in that Month of July, to see whether any Goods were bought in Town by the said Mr. Holmes, or Mrs. Hewit, (for proving Hewit in Town, proves Holmes likewise in Town, because it's sworn, and can be proved, they both went out of Town together) or any Money paid between the 6th and 26th of July, by either of these. After a very long and tedious Inquiry (all those Tradesmen being altogether strangers to me), I providentially met with one Mr. Wellstead, who very readily shewed his Book, wherein is entred according to his Information, which followeth:

John Wellstead of St. Dunstan's in the West, London, declareth, and is ready to depose, "That in July 1683, he lived in Poppin's Alley, nigh Fleet-street, very near Mrs. Dorothy Hewit, and often wrought for the said Mrs. Hewit; and between Monday the 9th of July 1683, and Monday the 16th Day of the same Month and Year, this Informant made, or caused to be made, a Duff-Gown for the said Mrs. Hewit, as appears by this Informant's Book, ready to be produced; and the very same Week, (viz.) between Monday the 9th of July 1683, and Monday the 16th of the same Month and Year (but in the very Day this Informant is not certain,) this Informant carried the said Gown to the said Mrs. Hewit, who did then pretend she was about going into the Country; but how long after the Duff-Gown so delivered, the said Mrs. Hewit did go into the Country, this Informant knoweth not."

This Book hath not been of any use to Mr. Wellstead for almost five Years, and it was a very great Providence this had not been torn out, seeing the Book for some Years had been used as waste Paper, and the very next Leaf to this torn out, and lost. As soon as Mrs. Hewit understood such a Taylor's Entry was against her Oath, she, with Mr. Holmes's Wife, went to this Taylor, and desired to see his Book; which being shewed, Hewit first pretended that this Entry was forged, and new; but Mr. Wellstead declared he could safely, and would depose, That the Entry was real; it was then pretended, that the Gown was sent into the Country after Mrs. Hewit; but when, in answer to that, Mr. Wellstead declared he could depose, That Mrs. Hewit was in Town when the Duff-Gown was made and delivered, and that she then pretended she was about going into the Country; (but how many Days after she did go he could not tell) Mrs. Hewit told him, if he did swear that, he would take off her Brother's Life, and Holmes's Blood would be upon his head.

Some time after my Lord's Murder, this Holmes abusing his Wife, she told him, He was a murderous Rogue, and he well knew she could hang him when she pleased. To which Holmes answered, That he little thought she would have spoken of it, who of all the World had the least Reason: For said this scurrilous Fellow, You Bitch, you Whore, Don't you remember I bought you a good Sattin Gown and Petticoat, and therefore you above all the World ought not to prate. But she replied, He was a murderous Rogue for all that.

I have been the more large and particular in this Evidence, as well because it hath met with such villainous Opposition by false Oaths, as for that it alone proves by what Party, and by whose Order this Unfortunate Lord was treacherously murdered.

The next thing previous to my Lord's Murder, are the several Reports in many Places in England (before my Lord's Death, or before it could be known) that the Earl of Essex had cut his Throat in the Tower. This is proved by Eight Witnesses. It is as to this sworn "That

Mr. Hubland, "at Frome (which is about 100 Miles from London) it was  
Merch. "reported the very next Morning after my Lord's Com-  
Mrs. Hubland. "mitment to the Tower (viz.) the 11th of July 1683, that  
Mrs. Meux. "the Earl of Essex had cut his Throat in the Tower:"  
Treherne. "And this Informant, the Week after my Lord's Death,  
Jr. Burgess. "meeting the Gentleman which had before given him this  
Tho. Feiler. "Information, and desiring to know how before my Lord's  
— Savage. "Death he could declare it; the other replied, That all Men  
Mr. Butler. "concluded my Lord would either cut his Throat or turn Evidence against  
his Friend my Lord Ruffel; but it was generally believed that my Lord  
would rather destroy himself, than be made a Witness.

This Report so far off the very next Morning after my Lord's Commitment, proves the Tower to be the Place (before my Lord's Commitment) pitched upon as the most proper for this perfidious Tragedy.

But the very next Day (viz.) the Wednesday after my Lord's Commitment, was it reported about 60 Miles off, that the Earl of Essex had cut his Throat in the Tower for this Reason, (viz.) The King and Duke coming into the Tower to view the Tower, the Earl of Essex was afraid the King would have come up into his Chamber, and seen him; but his Guilt and Shame was such, that he could not bear the Thoughts of it, and therefore cut his Throat to avoid it.

Observe in this previous Report sixty Miles from London, the next Day after my Lord's Commitment, the very pretended Reason for the Self-murder is given; which Reason carries in it an Accident that could never be before reported, or indeed expected, but by those which were the most secret in this Treacherous Cruelty; for herein is it said, the Wednesday before the King and Duke went to the Tower, that the King and Duke were in the Tower when the Earl cut his Throat, &c. It is no-

Vol. III.

torious that the King and Duke did not go till Friday Morning, and their then going was a Surprise to their very Guards, for it seems they had not been there together above once since the Restauration. In short, The several Reports proved by Eight Witnesses, all agree in the manner how, and place where; and one more particularly sets forth the pretended Reason wherefore. I do therefore humbly submit to every impartial Reader, whether these very Reports do not strongly prove, That the manner, place, and pretended reason, were all agreed upon before this barbarous complicated Tragedy was acted. For otherwise, how could it possibly be so particularly related so far off, and so long before it was done?

I shall in the 2d Place observe what passed in the Day of my Lord's Murder, which proves his Death to be such.

Bomeney and Ruffel before-mention'd, did before the Coroner's Jury upon Oath deny, that any Men were let into my Lord that Morning my Lord died. The like did John Lloyd, the Soldier that kept the outward Door, depose at my Trial.

Nathanael Monday, who was my Lord's other Warder, and likewise Ruffel, before the Lords, have denied that any Men were that Morning let into my Lord. But that there were some Ruffians a little before my Lord's Death let in to Murder him, plainly appears by the Proofs following.

Mr. Samuel Story depose to the effect following, (viz.) "The 21st of January 1688, being the Day before the Convention sat, John Lloyd (Sentinel upon the late Earl of Essex at the time of his Death) was taken up as suspected privy to the said Earl's Murder; and being therefore in Custody, the said Lloyd, with Tears in his Eyes, wrung this Informant by the Hand, and declared, That by special Order of Major Hawley, or one of my Lord's Warders, he did let in two or three Men into the Earl's Lodgings just before his Death, and he was very sure, and could safely swear that Major Webster (then there in Custody, suspected as one of the Ruffians that murdered my Lord) was one; and that as soon as he so let them in, he heard a Noise in my Lord's Chamber, and somewhat thrown down like the Fall of a Man; soon after which it was said, 'The Earl of Essex had cut his Throat.'

This Lloyd the same Day before the Justice did confess the letting in some Men a little before the Earl's Death, as appears by his Examination following.

The Examination of John Lloyd of Goodman's-Yard in Aldgate Parish Without, in London, Cloth-worker, taken before Jo'n Robins, Esq. one of the Justices of the Peace for the County of Middlesex, the 22d Day of January, 1689.

THIS Examinant saith, on the Day whereon the Right Honourable the late Earl of Essex was found dead, upon the suspicion of having been murdered in his Lodgings in the Tower of London; he then being a Soldier, was standing Sentinel at the Door of the said Earl's Lodgings, and had order to let no body up Stairs to the said Lodgings without leave from Major Hawley, or the Warder then in waiting on the said Earl; and that about half an Hour after Eight of the Clock in the Morning of the said Day, two Men (to this Examinant unknown) knocked at the Hatch-Door belonging to the said Lodgings, and by Permission of the said Warder, entered the said Lodgings; but when they came out, he can give no account; and that about Nine o'clock he heard a struggling on the said Morning, and a little time after heard a Crying, My Lord is dead.

After Lloyd had lain some time close Prisoner in Newgate, he did desire to see one Mr. Tempest, a Neighbour of his, who having permission of the Secret Committee to discourse Lloyd, thereupon went to Newgate, where he found the said Lloyd very melancholy; when Mr. Tempest first came, Lloyd told him, that he did hope, as he was his Neighbour, he would be his Friend, and true to him; to which the other answered, that he would, if the said Lloyd was ingenuous in his Discovery; whereupon the said Lloyd (after often pressing the said Mr. Tempest to be true to him) told him, that when he was first seized, he did confess to a Gentleman, who was altogether a Stranger to him, the letting in some Men into my Lord of Essex just before his Death; and this Confession did lie upon his Conscience, and troubled him Night and Day; upon which the said Mr. Tempest replied, That the like he had confessed to several the same Day he was taken; and he declared the same before a Justice of Peace; but if it was false, he ought to retract it, and be sorry for having said it; whereupon the said Lloyd renewing his Request, that the said Mr. Tempest would be true to him, said, it was indeed very true, but it was what he should not have confessed.

Lloyd did then farther declare, "That upon the letting in those Men, there was so great a Bustle in my Lord's Chamber, that the said Lloyd would have forced in after them, but the Warder had made fast the outward Door, so that he could not; and that upon the Bustle he did hear somewhat thrown down like the Fall of a Man, which he did suppose was my Lord's Body; and soon after, it was cry'd out that my Lord of Essex had cut his Throat." This is the Substance of what Mr. Tempest hath depose before the Lords.

By this it appears more than probable, not only that my Lord was murdered, but that there was some villainous Oath of Secrecy entred into by those concern'd therein, not to discover what they knew with relation thereunto; for what other as likely reason can be assigned for Lloyd's being troubled in Conscience (as he pretended) for having confessed, what at the same time, under repeated Injunctions of Secrecy he confirmed to be true, though he said he should not have confessed it?

But to put this Matter beyond all doubt, that some Men were bustling with his Lordship just before his pretended Self-murder discovered, evidently appears by this Information following.

Martha Bascumb declareth, and before the Lords in substance hath depose'd, "That a little before the Death of the late Earl of Essex was discovered, this Informant was walking up before the Earl's Chamber-Window, and hearing a very great Trampling and Bustle in



"my Lord's Chamber, this Informant stood still, and looking to the Window of the said Chamber, saw three or four Heads move close together, and heard one in the Chamber (which seemed to be one in this Bustle) cry out very loud, and very dolefully, *Murder, Murder, Murder*; this Informant not then knowing it to be my Lord's Lodging, nor thinking any other of this Cry, than what might be occasioned by some accidental Quarrel, walked up towards the Chapel, but not out of sight of the Lodgings, and about a quarter of an Hour after (or less) it was first cried out in the House, that the Earl of Essex had cut his Throat; upon which this Informant went down to the House, and being shewed the Chamber where the Earl lay, she found that was the Chamber where she saw the Men, and heard the Bustle, and Murder cried out, as before related." This Informant further saith, "That some few Days after this, telling Mr. Perkins and his Wife (whom she then kept in her Lying-in) of what she had seen and heard, as before declared; the said Perkins advised her not to speak of it, for her divulging it, in all probability, would prove her Ruin."

Mr. Perkins hath upon Oath confirmed the latter part of *Martha Bafcomb's* Information, which clearly proves this not a newly-invented Story.

I think this Proof is little less than ocular Evidence of the Murder; for my Lord was a close Prisoner, to whom (as was pretended, and sworn by such as kept the Chamber-Door) none was admitted that Morning, but his Lordship cut his Throat in all silence; whereas it is here deposed, that several were bustling together in my Lord's Chamber before his Death, (and this part agrees with the Confession of the Sentinel who let in the Ruffians) and one in this Bustle (which can be presumed to be no other than my Lord) cried out several times very loud, and very dolefully, *Murder, Murder, Murder*.

And as a farther Confirmation of these Men being (and by whom) sent to murder my Lord, *Elizabeth Gladwin* and *Sarah Hughes* declare, (and before the Lords in substance have deposed) "That the Day of the Death of the late Earl of Essex, (*viz.*) the 13th of July 1683, about Eleven of the Clock the same Day, one *Ruddle*, in the hearing of these Informants, did declare, That he was in the Tower that Morning, where it was reported that the Earl of Essex had cut his Throat, but he was sure he was murdered, and that by the Order of his ROYAL HIGHNESS; for the said *Ruddle* then declared, That he did observe His Majesty and Royal Highness part a little from those that attended them, and discoursed (to the best of these Informants remembrance) The said *Ruddle* declared it was in French, concerning the Prisoners then in the Tower; and his HIGHNESS declared, That of all the Prisoners then there, the Earl of Essex ought to be taken off; but His Majesty said he was resolved to spare him for what his Father had suffered; upon which his HIGHNESS seemed very dissatisfied; and a little before the Death of the said Earl, his HIGHNESS parted a little way from his Majesty, and then two Men were sent into the Earl's Lodgings to murder him."—So far before their Lordships.

The said *Ruddle* declared this with great Earnestness and Passion, and protested he thought no Man safe who was against the Popish Interest, if once they began thus barefaced to cut Throats. And he protested his Blood did so boil against his Royal Highness, that if he could have got a Party that would have stood by him, he would have shot his Highness dead upon the spot, for so barefaced a Murder had before scarce ever been committed under a Civil Government.

*John Bampton* and his Wife both declare, and in substance before the Lords have deposed, "That about One of the Clock, the very Day the late Earl of Essex died in the Tower, one *Robert Meake* that Morning (a Soldier in the Tower) came to these Informants House, and these Informants desired the said *Meake* to give them the best Account he could how the Earl of Essex cut his own Throat; to which the said *Meake* (with some earnestness and passion) answered, That the said Earl did not cut his own Throat, but was barbarously murdered by two Men sent for that purpose by his ROYAL HIGHNESS to the Earl's Lodgings just before his Death."

What *Robert Meake* did further declare, and what was since his Fate, you will hear in its proper order.

I do expect it will be objected, That these four are but Hear-say Evidence. To which I shall answer almost in the very Words of a late Discourse on this Subject, *viz.* Seeing there is Reason to believe that the sisting the first Murder occasioned the Addition of these two Soldiers Blood (as you will hereafter have some Grounds to suppose) I think such Informations ought not to be slighted; for after that rate 'tis but taking off such as knew any thing with relation to a Murder, and you are very secure from any Discovery, though never so many upon Oath gave an Account of what those Men (whose Mouths have been by Murder stoppt from giving their own Relation) have declared in the Matter. These two Soldiers related the same as to the sending the Men into my Lord's Lodgings in two Houses as far distant as *Duke's-Place* and *Baldwin's-Gardens*; and I am verily persuaded that neither *Hughes* nor *Gladwin* ever spoke to *Bampton* and his Wife in their Lives, for neither two remember to have seen or heard of the other Informants. And who could imagine that two Soldiers should declare with such concern and earnestness that which was so very dangerous to be spoken, if their Love to Truth, and Hatred of such a treacherous and bloody Murder had not even forced it from them, to the hazard of almost their Lives by such their Relation?

'Tis true, no Man ought to suffer barely upon Hear-say Evidence, but such Testimony hath been used to corroborate what else may be sworn, and of itself may (in some cases) be enough to give Satisfaction in the general, of the Truth of a Matter, and no farther is it here used: And I would have all Men consider the many such Testimonies heretofore produced, amongst which I shall only mention one which had an immediate relation to myself. Mr. *Blatwaite* (Clerk of the Council in 1683, and as I think still in that Post) being sworn on the behalf of the King, against Mr. *Speke* and myself, in his Relation of what the Young *Edwards's* Sister should declare to the Council-Board, *viz.* That *Braddon*

compelled the Boy to sign it (the Paper the young *Edwards* signed). This you find to be Hear-say-Evidence, and the Author (the Sister) then in Court, but testified no such thing; therefore this Hear-say-Evidence ought (if any ought) to have been rejected: And yet this Hear-say-Evidence (though not confirmed by the Author then upon Oath) was not only admitted, but ordered to be printed in the Trial in large Capital Letters. How much sooner ought the Evidence of *Bampton* and his Wife (as to what *Meake* declared) and of *Hughes* and *Gladwin*, as to *Ruddle's* Account, be particularly remarked, seeing *Meake* and *Ruddle* we cannot now produce in Court, (as that Author was) they (especially the first) being supposed to be murdered by way of Prevention, by that bloody Party that murdered my Lord.

But the next Account of these two Men being sent, as before, by his Highness, shall be from the first Hand. Mr. *Peter Effington* declareth, (and before the Lords in substance hath deposed) "That he this Informant was in the Tower that Morning the late Earl of Essex died; and about a quarter of an Hour before the said Earl's Death was discovered, this Informant observed His Highness to part a little way from his Majesty, and then beck'ned to two Gentlemen to come to him, who came accordingly; and this Informant did observe his Highness to send them towards the Earl's Lodgings; and less than a Quarter of an Hour after, this Informant did observe these very two Men to return to His Highness, and as they came they smiled, and (to the best of this Informant's Hearing and Remembrance) said, *The Business is done*; upon which, His Highness seemed very well pleased, and immediately thereupon his Highness went to his Majesty; soon after which, News was brought to the King, That the Earl of Essex had cut his Throat."

I do expect that will be objected to this, which heretofore hath been, (*viz.*) That it cannot be thought the late Duke of York (admit he was so bad as to give Order for such a Fact) would be so impolitick as to send the Ruffians, so that any People might see their Mission, and their Return. But I desire such would consider this Murder in all its Circumstances, and then tell me, Whether those bloody Varlets had not all the Reason in the World to have all the Security could be expected or desired? You well know, that my Lord of Essex was deservedly very popular; and therefore a Parliament that should have had the least Information of this treacherous and bloody Murder, would have prosecuted the Matter with all the Diligence and Vigour such a Piece of Barbarity deserved. Now, should they, in such their Inquisitions, have detected those treacherous Villains, these bloody Men without a full Discovery, must have expected no Mercy; and should the Duke have employed them in his Closet only, and they could not by any Circumstance have given Satisfaction that they were his hired Journeymen in this piece of great Service, their Evidence against him had not been the tenth part so credible as it would have been, could they have proved that they were sent by His Highness towards the Earl's Lodgings just before His Death, and soon after returned to His Highness, before others knew that this cruel Tragedy was finished. This Circumstance, I say, would have so corroborated their Evidence against their Master, that none could in the least have doubted of the Truth of their being so employed, that were once satisfied they were, as before, sent by, and returned to His Highness. This then obliged His Highness, under no less Obligation than Self-Preservation, to screen those his faithful and ready Servants from any Prosecution, well knowing that his own Interest (and Indeed Life) was wrapt up in theirs.

Wherefore I think this Matter was very cunningly managed (as to the Security of these Cut-throats from the Hands of Justice, either in their Punishments or Prosecution.) And it could not possibly have been done with greater Safety to the Persons of those that did it.

The Sentinel *Llyd* declared, He could not be positive whether Major *Hawley* or the Warder let the Men into the outward Door: But Major *Hawley* pretends, He could not; for he (as he saith) went out of his House at Five o'Clock in the Morning, and did not go nigh his own House till News of my Lord's Death was brought him by *Monday* the Warder; and therefore he could not open the Door to any that went in just before my Lord's Death. This Reason of Major *Hawley* is equally true with what else he saith in his Defence, as appears by this Information.

**R**ichard Nicolson, in the Ward of Queenhithe, Corn-Factor, deposes, That the Day of the Earl of Essex his Death, this Deponent was a Warder in the Tower, and stood Warder at the Inner-Tower-Gate that Morning the Earl dy'd, (before the Earl's Death) and by Major *Hawley* (then Gentleman-Porter of the Tower) ordered to let no Man into the Tower, or out of the Tower. This Deponent further deposes, That about Eight of the Clock, or a little before, whilst this Deponent was Warder at the Gate as aforesaid, he did observe the said Major *Hawley* five or six times turn up towards his own House through the Gate (over-against the Traytors-Gate) leading towards his own House; and about Eight of the Clock the same Morning, this Deponent was desired by a Stranger to let him into the Tower, for which the said Stranger gave this Deponent a Shilling: This Deponent let him through the Gate; the said Major *Hawley* thereupon came to this Deponent in great Fury, and check'd this Deponent for letting in the said Stranger into the Tower. This Deponent further deposes, That Major *Hawley* ordered this Deponent (with several others) to go Warder with the Lord *Ruffel* to the Old-Bailey; and as this Deponent was going with the Lord *Ruffel* to the Old-Bailey, (*viz.*) about Eight of the Clock, he passed before Major *Hawley's* House, and did observe Major *Hawley* then to go into his own House.

Jurat' gno die Aug.  
1689, coram me,

*Tho. Pilkington*, Mayor.

*Richard Nicolson*.

That Major *Hawley* was in the House when my Lord was murdered, seems farther probable from the Relation of *Mary J. Jenson*, then at work in Major *Hawley's* House at the time of my Lord's Death; and what Account she hath hereof given, appears by these two Informations.

The



The Information of Philip Johnson of White's Alley in Coleman-Street, in London, Free-Mason, taken the 22d Day of January 168<sup>3</sup>, before John Robins, Esq; a Justice of the Peace for the County of Middlesex.

THIS Informant maketh Oath, and saith, That Mary Johnson, his Wife, (since deceased) being a labouring Woman to Major Hawley, in whose House the late Earl of Essex was found dead, That the Morning on which he died, as she was at Work, she heard a Noise; and designing to go up Stairs, she met Major Hawley coming down, who told her, My Lord was dead; upon which, she went up Stairs, and found the said Earl dead in his Closet, as she gave her Husband, this Informant, an Account; and that by Order of the said Major Hawley, she helped and assisted a Man (to the best of his Memory his Name is Major Webster) to strip the said Earl from his Clothes; and at the further Command of the said Major Hawley, she washed the said Earl's Body, and also washed the said Chamber and Closet belonging to the said Earl; for the said Major Hawley gave her 10s. and that the Neck of the Cravat that she took off the said Earl's Neck, was cut in three Pieces.

The Mark of Philip Johnson.

The Information of Miriam Tovey, of Red-Lion-Street, in Whitechapel-Parish, in Middlesex, Widow, taken the Day aforesaid, before John Robins, aforesaid.

THIS Informant maketh Oath, and saith, That she several times heard Mary Johnson, above said, declare the Substance of the preceding Information; and further sweareth, The said Mary Johnson told her, That Major Webster was the Person who helped her to strip the said Earl of his Clothes; which she was very unwilling to do, saying, She should bring herself into Trouble and Hazard of her Life, by intermeddling with the Body before the Coroner had sat upon it; and that Major Hawley told her, She must do it, and should come to no Trouble by it.

Miriam Tovey.

But it seems Major Hawley's Principles were ever averse to those brave True English Champions that opposed the late Court-Arbitrary Designs and could afford those Honourable Lords, and Truly-worthy Knights and Gentlemen, no better Titles than Rogues. This appears by what he declared the very Day that a great Number of Honourable Lords (amongst which this unfortunate Lord, I hear, was one) and Worthy Knights, Gentlemen and Citizens, dined together at Mile-End-Green; for some time that Afternoon Hawley told Mr. Bunch, then a Warder, That above Two hundred Rogues that Day dined together at Mile-End-Green; but he did with that he had Forty of the biggest of them there in the Tower, that they might be made shorter by the Head; for till then the Land would never be at quiet. This in Substance is depofed by the said Mr. Bunch, who with one Mr. — are ready likewise to depofe, That some time since discoursing with one — a Servant-Maid in the Tower at the time of my Lord's Murder, but since turned out, they told her, That it was supposed to be Major Hawley that occasioned her being turned out of the Tower; but she replied, 'It could not be the Major, for he was the best Friend she had in the World, upon the Account of somewhat which she knew with relation to the Death of the late Earl of Essex.'

I have some Grounds to believe, that not a few in the Tower, that Morning my Lord was murdered, could discover several Things very material in order to a farther Detection; and particularly, as to the coming out of the Ruffians after they had perpetrated this not-to-be-parallel'd treacherous Cruelty; for I have been informed by some, who that very Morning my Lord was murdered were in Leaden-Hall-Market, That there came a Servant-Maid (who then lived, as she said, in the Tower) to that Market the very same Morning; and wringing her Hands, she wept, and cried out, 'The Earl of Essex was murdered;' upon which the People gathering about her, advised her to Silence, telling her she would bring herself into Trouble by such Expressions; the Maid thereupon declared, 'She was sure it was true, for she saw the Men that murdered him, just as they came from his Lodgings.'

I have used all Diligence possible to find this Maid out: but neither of those I have met with could tell me her Name, or the Name of the Person in the Tower with whom she lived. Not long after my Lord's Death, I was likewise informed of the Name of one who declared he saw the Ruffians just as they came out of my Lord's Lodgings, and did observe some Blood upon the Clothes of one of them: But having been obliged in a Hurry often to convey away my Papers, this Name I have lost. I do wish I could find Men as free, as their Duty obliges them in this Matter, to declare what they knew.

I have reason to suppose many Men would be then examined; and whoever there is that can discover any Thing material with relation to this Murder, and in silence stifles it, by such his silence he consents to the Blood of my Lord; and though our Law may not reach his Offence, yet He who knows it, will one Day lay it to his Charge; for if God requires that all Governments should make diligent Inquisition for Blood, in defect whereof he will require the Blood of the Slain at the Hands of such Magistrates on whom this Neglect is chargeable: then on those more especially will the greatest Guilt lie, who refuse or neglect to give Information to those ordained for such Inquisition.

But, to return:

Bomeney and Ruffel, you find, have before depofed, That there was a Razor delivered to my Lord wherewith to pare his Nails; which his Lordship having done, he retired into his Closet, and there cut his Throat. The Closet-Door being opened, Bomeney and Ruffel have declared they saw the Body there lie in its Blood, and the Razor lying by him.

This is, in short, the Substance of these Men's Relations, whose Interest it is to prove the Self-Murder. That this Story is false in every Part, I doubt not but to convince every unprejudic'd Person, and hope to satisfy all who are not blinded with prejudice.

First, That his Lordship did not pare his Nails that Morning he died, as all these have sworn or declared; nor was there any Razor delivered to my Lord for that Purpose that Morning he died.

Secondly, That his Lordship's Body was not locked into the Closet, when first found.

Thirdly, That there was no Razor lying by the Body when these Three first saw the Body; but the Razor laid there after my Lord was murdered, to colour the pretended Self murder.

That my Lord's Nails were not par'd, John Kittlebeater hath depofed, That he being of the Coroner's Jury did very narrowly observe my Lord's Nails on his Fingers and Feet, and could not discern either of them par'd or scrap'd.

I shall now prove Bomeney's Relation to be false, by what Ruffel swore; and Ruffel's Deposition forged by what Monday declared the very Day, and some time after my Lord was murdered: and Monday's Account in every material part is a Fiction, by the Depositions of the two former: In order to which, I shall give you Bomeney's first Information, taken in the Coroner's own Hand, which is as followeth:

THE Information of Paul Bomeney saith, That the Earl of Essex on the 11th Instant did speak to this Informant to bring him a Penknife to pare his Nails; but this Informant could not then get one. The Earl of Essex called to him again on Friday the 13th Instant, about Eight of the Clock in the Forenoon, did again speak to this Informant to bring him a Penknife to pare his Nails: But this Deponent telling him that he had not one, his Lord commanded him to bring him a Razor, which he did accordingly; and then his Lordship walked up and down the Room, scraping his Nails with it: and this Informant then left him; and coming about half an Hour afterwards up into the Bed-Chamber, found his Closet-Door fast; whereupon this Informant knocked at the Door, and called My Lord, My Lord; but he not answering, pushed the Door a little open, where he did see his Lord lying all at Length on the Ground in his Blood, with the Razor near him on the Ground. And further depofeth, That he hath not any Papers of his Lord's, nor doth know where any of his Papers or Writings are. And also, That on Thursday-Night last was very merry at Supper, and did not seem to be discontented the next Morning.

This Information is verbatim as the Coroner took it from Bomeney's own Mouth: But the Coroner proceeding to ask further Questions, Bomeney began extremely to hesitate, and thereupon desired he might write his own Information; which being granted, he retired from the Coroner and Jury into the next Room; where having been some considerable time, he brought the Information first mentioned, according as it is there observed to be in the Original.

James Whitechurch declareth, (and in Substance before the Lords hath depofed) 'That the very Day the Earl of Essex died, he went with one George Jones to the Tower, to discourse Nathanael Monday concerning the Death of the said Earl; and when they came to the Tower, meeting with the said Monday, he gave them this Account: That as soon as the Gentleman-Goaler had opened my Lord's Chamber-Door, that very Morning he the said Monday (by Order) went into my Lord's Chamber, and tarried there, because their Orders were, That one of the Warders should be in his Lordship's Chamber, and the other at the Stairs-Foot; and that they had this farther Order, Not to suffer his Lordship to have a Knife, or any thing like it, but whilst he used it in cutting his Meat; and that being done, all Knives and such like were to be taken from him; with which Orders having acquainted my Lord, his Lordship answered, He should take nothing ill from them in observing their Orders.'

This Informant further saith, That the said Monday did then declare, That he tarried with my Lord in his Chamber two Hours or better that very Morning; and that whilst he was with my Lord in his Chamber, he did observe his Lordship pared his Nails with the Heel of a Razor. This Informant further saith, That the said Monday did further declare, Before he left his Lordship, and went down Stairs to stand below, he called up Ruffel, his Fellow-Warder, to stand in his Chamber; and as he went down Stairs, he lighted his Pipe, and sat at the Stairs-Foot; but before he had half-smoked his Pipe, he heard it cried above Stairs, That my Lord had cut his Throat; whereupon he the said Monday ran up Stairs, and pushed the Closet-Door open, and there found my Lord dead. This Informant further saith, That the said Monday did further declare, That when he came up Stairs, he asked Mr. Bomeney and Ruffel, Where they were whilst my Lord was in the Closet? The said Bomeney answered, He was sitting upon the Bed in my Lord's Chamber; and the said Ruffel declared, He stood at my Lord's Chamber-Door, just without the Door: Whereupon he the said Monday (as the said Monday declared) checked the said Ruffel for not keeping in the Chamber according to Order.

Richard Jordan declareth, 'That on the Day Mr. Braddon was tried, in Hilary-Term, 1683, (upon the Account of the late Earl of Essex) this Informant heard Nathanael Monday declare, That the very Morning the late Earl of Essex died, as soon as the Gentleman-Goaler opened the Chamber-Door, which was about Seven of the Clock, the said Monday stood as Warder above Stairs upon the said Earl; and at the first opening the Door, did observe the said Earl to have a Razor in his Hand, paring or scraping his Nails with it; and this the said Monday declared he saw a long time before Ruffel stood Warder above Stairs upon the said Earl.'

By these two Informations, you may perceive what Monday declared; My Lord had this Razor in his Hand about Seven o'Clock in the Morning, long before Ruffel came up Stairs to stand Warder upon my Lord; and that my Lord pared his Nails with the Heel of the Razor.

By the Way, I cannot but here take notice of what Monday would have insinuated, (viz.) That the Government was jealous my Lord would destroy himself; for otherwise, how should there be Orders given not to suffer his Lordship to have a Knife, &c.? This was said, the more easily to induce People to believe that my Lord did indeed cut his own Throat: but Monday will not now pretend such Orders were given him. And observe how inconsistent Monday's Relation is! for he pretended that they had Orders not to suffer his Lordship to have a Penknife or Razor, &c. and yet at the same time confessed he left this Razor with his Lordship.

Ruffel the Warder hath before depofed, and now declares, That this Razor he saw Bomeney deliver to my Lord, whilst he stood Warder at my Lord's Chamber-Door, after Monday was gone down Stairs.

Let



Let us now compare these three Men's Relations as to the Time of Delivery of the Razor; by doing which, it will plainly appear that no Razor at all was delivered to his Lordship. For the clearer understanding hereof, I suppose *Bomeney* under Examination with the Jury, and answering according to what he hath sworn:

*Jury.* Did you deliver this Razor to my Lord?

*Bomeney.* Yes.

*Jury.* When did you deliver this Razor to my Lord?

*Bomeney.* About Eight of the Clock that Morning my Lord died.

This is according to what he first swore; but he then withdraws to write his own Information, which point-black contradicts this his Oath in that particular; for he is then examined, and answereth as followeth:

*Jury.* Do you remember the very time that you delivered the Razor to my Lord?

*Bomeney.* Yes.

*Jury.* When did you deliver this Razor to my Lord?

*Bomeney.* About Eight of the Clock on *Thursday* Morning, being the Day before my Lord's Death.

This, as you observe, he swears in the Information himself writ, and brought to the Coroner.

*Bomeney* then to withdraw, and let *Ruffel* answer to this particular.

*Jury.* Mr. *Ruffel*, do you know when this Razor was delivered to my Lord?

*Ruffel.* Very well; for I saw it delivered to my Lord by *Bomeney*.

*Jury.* When did you see this Razor delivered?

*Ruffel.* Less than a Quarter of an Hour before we found my Lord dead. I stood Warder at my Lord's Door; and I heard his Lordship ask for his Penknife to pare his Nails; and *Bomeney* said, It was not brought; upon which my Lord required a Razor, saying, It would do as well; and I saw *Bomeney* give my Lord the Razor, it being then about Nine o'Clock.

*Jury.* Who first stood as Warder at my Lord's Chamber-Door, or in my Lord's Chamber, Yesterday Morning before my Lord died; was it You or *Monday*?

*Ruffel.* *Monday*, upon my Lord's Chamber-Door being opened first, stood at the Door; and after he had been there as long as we use to stand, he called me up, and then went down and stood at the Stairs-foot, at the House-Door, where I did before stand.

*Jury.* Then this Razor you saw delivered to my Lord after *Monday* went down Stairs, and whilst you stood as Warder at my Lord's Door?

*Ruffel.* It is very true; for I am sure I stood by *Bomeney* when he delivered the Razor, and saw it delivered to my Lord.

*Jury.* What distance of Time do you say there might be, from the Time this Razor was delivered, to the time of my Lord's Death?

*Ruffel.* I am sure it could not be Half an Hour from the time of the Delivery of the Razor, to the time we found my Lord dead in the Closet.

*Ruffel* withdraws, and *Monday* is examined.

*Jury.* Mr. *Monday*, did you see my Lord have any Razor in his Hand Yesterday Morning before his Death?

*Monday.* Yes, I did.

*Jury.* What Time was it when you saw my Lord have the Razor in his Hand?

*Monday.* About Seven of the Clock, as soon as the Gentleman-Goalor had opened my Lord's Chamber-Door; for I first stood Warder above Stairs; and as soon as the Door was opened, I saw my Lord have the Razor in his Hand, and observed him to pare his Nails with it.

*Jury.* Was this before *Ruffel* came up to my Lord's Chamber-Door, to stand Warder there?

*Monday.* Yes, almost Two Hours.

This is according to their own Informations and Relations. Now, can you believe that this Razor was delivered by *Bomeney* at Eight of the Clock on *Friday* Morning, according to his first Oath; and yet not delivered till Eight of the Clock on *Thursday* Morning, according to *Bomeney*'s second Oath? And can you also believe that the Razor was not delivered till about Nine of the Clock on *Friday* Morning, according to *Ruffel*'s Information; and at the same time give Credit to *Monday*, who declared, My Lord had the Razor by Seven of the Clock, Two Hours before *Ruffel* came up to stand Warder at my Lord's Chamber-Door?

These Three are of equal Credit, and consequently you have as much reason to believe *Bomeney* as *Ruffel*; and *Monday* deserves equal Credit with either of the former: But all cannot be credited; neither can *Bomeney*'s Contradiction be reconciled: Or can One of these be thought True, without giving the Lye to the other Two?

Therefore, upon the whole Matter, you cannot reasonably believe there was any Razor at all delivered.

If any shall say, that all Three in the main agree, That my Lord had a Razor delivered him to pare his Nails, and their Contradictions is only in Point of Time:

I answer, 'Tis true, it's a Circumstantial Contradiction in Point of Time; and the Contradiction of the Two Elders in the History of *Susanna*, was a Circumstantial Contradiction in Point of Place; for the first swore they took *Susanna* in Adultery under a *Mastick-tree*, and the second under a *Helm-tree*: Both these agree in the main, viz. That they found her in Adultery; but by this Contradiction, as to the place where, *Daniel* convinced all then present, that these Two Elders were perjured in their Evidence, (and consequently *Susanna* innocent of her Charge) and thereupon these two Accusers justly suffered, what by Perjury they would have unjustly caused to be inflicted upon the Innocent. And I never yet heard any deny *Daniel*'s Wisdom in this Detection; or arraign his Justice in the Punishment those Two False Accusers thereupon suffered.

Secondly, That my Lord's Body was not locked into the Closet. I will now suppose that *Bomeney*, *Monday* and *Ruffel*, were to answer as to the opening this Door, according to their former Informations, and you will find their Contradictions, as to this, as gross as the former.

*Bomeney* first appears.

*Jury.* Mr. *Bomeney*, was my Lord's Body locked up into the Closet, when he was first found dead?—*Bomeney.* Yes.

*Jury.* Who opened the Door?

*Bomeney.* When I had knocked at the Closet-Door, my Lord not answering, I did open the Door, and there saw my Lord lying a-long in his Blood, and the Razor by him; and I then called the Warders.

This according to his first Information, taken (as before) by the Coroner. About an Hour after this, the Jury did again examine him as to this Point; and he answering according to the Information, which (as before) he writ in the Room next the Jury, and then you will find it as followeth.

*Jury.* Mr. *Bomeney*, Did you first open the Closet-Door upon my Lord's Body?

*Bomeney.* No, I did not, but *Ruffel* did; for after I had knocked at the Door thrice, calling, My Lord; my Lord not answering, I took up the Hangings, and peeping through a Chink, I saw Blood, and part of the Razor, whereupon I called the Warder *Ruffel*, and the said *Ruffel* pulled the Door open.

At my Trial, *Bomeney* being asked who did first open the Door, upon Oath answered, he knew not who opened the Door.

*Jury.* Mr. *Ruffel*, Did you find the Closet-Door lock'd upon my Lord's Body?

*Ruffel.* Yes.

*Jury.* Who first opened the Closet-Door?

*Ruffel.* When *Bomeney* saw my Lord's Body through the Chink, he cried out, my Lord was fallen down sick; whereupon I went to the Closet-Door, and opened it, the Key being on the out-side.

Here *Ruffel* makes no Difficulty in opening the Door; but observe *Monday*'s Answer.

*Ruffel* withdraws, and *Monday* is called.

*Jury.* Mr. *Monday*, Where were you when my Lord was first found dead?

*Monday.* I was standing at the Foot of the Stairs, and hearing a great Noise of my Lord's Death, I ran up Stairs, and found *Bomeney* and *Ruffel* endeavouring to open the Door; but the Body being so close and strong against the Door, neither could.

*Jury.* Who then opened the Door?

*Monday.* I being much stronger than either of these Two, put my Shoulder against the Door, and pushing with all my might, I broke it open.

Upon the whole Matter you find, first *Bomeney* opened the Door before he called either of the Warders, according to *Bomeney*'s first Information taken (as before) by the Coroner; and secondly, That he did not open the Door, for *Ruffel* opened it, according to *Bomeney*'s second Information (which himself writ) and *Ruffel*'s Deposition: And thirdly, That neither *Bomeney* nor *Ruffel* could open the Door, because the Body lay so close against it, and so *Monday* broke it open. This according to *Monday*'s Account of the Matter.

These Contradictions before observed of themselves, are as (I do humbly conceive) sufficient to convince the Man not bias'd, that this Unfortunate Lord was treacherously murdered; for our Law supposes every Man, destroy'd by violent Means, to be murdered by others, unless the contrary appears to the Coroner, and his Jury; now those which in this Case come to testify the contrary, are so notoriously self-destructive in their Evidence by their gross Contradictions, that all these Three appear treacherously false; and therefore these Men's Evidence thus contradictory, cannot prove the Self-murder, but rather demonstrate the contrary; for these three being the only Men, who by their Stations near my Lord at the Time of his Death; could then be supposed capable of giving any Account how my Lord came by his Death; (for *Bomeney* attended upon my Lord in his Chamber; and *Monday* and *Ruffel*, the Two Warders, which alternately kept my Lord's Chamber-Door, for when *Monday* kept my Lord's Chamber-Door, *Ruffel* stood at the Stairs-Foot-Door, and this by turns;) and seeing these Men's Relations, for the Reasons before observed, are notoriously false, there was a Truth which these Perfidious Men thought neither convenient or safe to declare, which would have detected the true Manner of my Lord's Death, and in what Parts these Three stood related thereunto.

I would fain ask the Coroner and his Jury, What Inquisition they would have brought in upon my Lord's Body, in case *Bomeney*, *Monday* and *Ruffel* should have declared they would not discover what they knew with relation to my Lord's Death? I am apt to have such a charitable Opinion of the Discretion and Integrity of these Gentlemen, as to believe they would have been so far from finding my Lord *Felo de se*, that they would have found him murdered by others, and these three concerned therein; for by their respective Stations at the time of my Lord's Death, they could not be ignorant of the true manner thereof; and by their Refusals to discover their knowledge therein, they (tacitly) would have confessed their Guilt, either as Actors in that cruel Tragedy, or privy and consenting to it. Now as such their first positive Refusal would have rendered them Guilty before the Coroner and his Jury; so their false and contradictory Account makes some of them more Criminal, by so great an Addition to their first Offence. For in the first, by their silence they would have endeavoured to conceal the Murder, and their Guilt therein; So here by their many false Relations (which have so plainly appeared, for Contradictions cannot be true) have they designed to attain the same End.

And for my own Part, (admitting what is sworn against them to be true) I think these Three are worse Criminals than those Ruffians who cut my Lord's Throat. For some of the latter were not so intrusted with my Lord's Body, as properly to be termed treacherous, neither have they appeared by Falsities to conceal their Guilt, by perfidiously transferring the same on him whom their own Hands have destroyed; But two of the three Former, (viz.) *Ruffel* and *Bomeney*, if what is sworn against them be true, have superadded the greatest Treachery and Falsity to Blood, and therefore stand Guilty of a complicated Villany, by which they have, as much as in them lay, murdered his Lordship's Honour, and stained his Family with such Guilt, as nothing but the Discovery of Truth, and a just Re- crimination of those Treacherous Men can wipe off.

But as a farther Argument of the Closet-Door's not being locked upon my Lord's Body; it appears, That when *Bomeney*, *Monday* and *Ruffel* pretended my Lord was lying in that Posture wherein they first found him, his Lordship's Legs were part out of the Closet-Door. This



is declared by *William Turner* and *Samuel Peck*, who before the Lords have in Substance depofed, 'That thefe two Informants were Servants to the late Earl of *Essex* at the Time of his Death, and brought fome Provisions into the Tower juft upon the firft Difcovery of my Lord's Death, of which as foon as they heard, they ran up Stairs, and found my Lord's Legs lying upon the Threfhold of the Clofet-Door, and a Print of a bloody Foot upon my Lord's Stockings.' This proves not only that the Clofet-Door could not be lock'd (as was fworn and declared by *Bomeney* and *Ruffel*), but likewife that Somebody had been with the Body in the Clofet, or otherwife how came the Print of a bloody Foot upon my Lord's Stockings, as thefe fwear to have obferved.

In the third and laft Place, I fhall difprove that Part of thefe Men's Relations which faith, That the Razor was lock'd into my Lord's Clofet, when his Lordship was firft by them feen dead. Thofe Three have all depofed, or often declared, 'That the Razor was found by my Lord's Body lock'd into the Clofet; and all three denied that there was any bloody Razor thrown out of my Lord's Chamber-Window juft before my Lord's Death was firft difcovered to thofe out of the Houfe.'

*William Edwards*, aged about Eighteen Years, and *Jane Lodeman*, aged about Eighteen Years, have both before the Lords in Substance depofed, 'That a little before my Lord's Death was difcovered, they faw a bloody Razor thrown out of my Lord's Chamber-Window; and that juft after there came a Maid in a White Hood out of Captain *Hawley's* Houfe; which Maid, *William Edwards* hath depofed, 'took up the Razor, and ran with it into Major *Hawley's* Houfe; and up Stairs, crying out Murder; and immediately hereupon was it firft laid; that the Earl of *Essex* cut his Throat.'

*Thomas Edwards*, Father to the faid *William Edwards*, *Sarah Edwards*, *Ann Edwards*, and *Elizabeth Edwards*, Sisters to *William Edwards*, (in Substance before the Lords) have depofed; 'That the very Morning of my Lord's Death, when *William Edwards* came home, he did give this Information (in Substance) to thefe Informants.'

*William Edwards* did farther depofe to this effect, 'That the very Morning Mr. *Speke* and I were tried, going into *Westminster-Hall* to be an Evidence at that Trial, he met with Major *Hawley*, who in a threatening manner told him, That if he might have the Management of him, the faid *William Edwards* fhould be whipt once a Fortnight, for feven Years together; which Threat of the faid Major *Hawley* did fo terrify this Informant, (he being then about Thirteen Years of Age) that he was afraid to fpeak the Truth at that Trial, left he fhould feverely fuffer for fo doing.'

Mrs. *Smith*, Aunt to *Jane Lodeman*, and Mr. *Glasbrooke*, did depofe, 'That this Relation *Jane Lodeman* gave as foon as fhe came from the Tower that Morning.' Mrs. *Gibbons* hath before the Lords (in Substance) depofed the fame.

Here are two Children (aged then about Thirteen Years) altogether Strangers to each other, and whole Relations were as much Strangers to one another, that gave the fame Relation, exactly agreeing in feveral Circumftances, and this Story by them was told when there could not poffibly be any ufe made of it to prove my Lord's being murdered. For here are Seven or Eight Witneffes have (for both Parties) depofed, That this Story was related by thefe two about Ten of the Clock the very Day my Lord died, when it could not poffibly be known what would be fworn before the Coroner's Jury the then next Day. Now the only ufe made of it, is to contradict the Depofitions of thofe which before the Coroner would have proved the Self-Murder. Which Depofitions (as before obferved) were not taken till the Saturday (which was the Day after thefe two Children had given this Relation), and not publifhed before the then next Monday Morning. Nay, thefe two Children were firft fo far from uſing it as an Argument of my Lord's being murdered, that both of them (to their refpective Relations) when check'd for ſaying that my Lord cut his own Throat; in their Childifhnefs and innocent Simplicity, urged this as an Argument of my Lord's Self-Murder; For they declared they were ſure 'twas true, for they ſaw him throw the Razor out of the Window. But thefe two Children were not the only Perfons that ſaw this Razor thrown out; for feveral others that very Morning my Lord died, declared, That the bloody Razor was thrown out of my Lord's Chamber-Window before my Lord's Death was known, and that a little Boy did endeavour to take up this Razor, but was prevented by the Maid, who took it up, and ran with it into the Houfe, and up Stairs, immediately whereupon my Lord's Death was difcovered. This Relation *Robert Meake*, before mentioned, did give the very Day of my Lord's Death, to *Bampton* and his Wife, (as they have depofed before the Lords). The ſame Account did the aforeſaid *Ruddle* give before Twelve of the Clock the Day my Lord died, to *Hughes* and *Gladwin*, as they have teſtified before the Lords. This Relation of thefe Two you find agrees exactly with what *William Edwards* declared. And that the throwing out this bloody Razor was commonly reported in the Tower juft after my Lord's Death was known, appears by the Teſtimony of feveral Perfons; for *John Salifbury* hath depofed, 'That being ſent as one of my Lord *Ruffel's* Guard to the *Old-Bailey*, as they were returning to the Tower that Morning, one met them in great haſte, and declared he juſt then came from the Tower, and that the Earl of *Essex* had cut his Throat in the Tower, and thrown the Razor out of the Window; upon which one replied to this effect, That my Lord had a good Reſolution, firſt to cut his Throat, and after to throw the Razor out of the Window. He farther teſtifieth, That when he came into the Tower, he heard it declared by feveral, that the bloody Razor was thrown out of my Lord's Chamber-Window before his Death was known.' *Grimes* and *Boſſick* both, likewiſe in the Tower that very Morning, have depofed, 'That the throwing out of this bloody Razor was talked of by feveral then in the Tower upon the firſt Difcovery of my Lord's Death, ſome then and there declaring, That they ſaw this bloody Razor ſo thrown out.' But if theſe many Teſtimonies will not ſatisfy, I ſhall next give you the Confefſion of him who declared he threw it out, and of the Sentinel who ſtood by my Lord's Lodging-Door, and confefſed he ſaw it thrown out.

VOL. III.

Mr. *Samuel Story* did farther depofe, 'That the very Day Major *Webſter* was taken up, to wit, the 21ſt of January 1688, as ſuſpected to be concerned in my Lord's Murder; the faid *Webſter* being then charged as concerned in my Lord's Murder, declared, 'He did nothing but throw the Razor out of my Lord's Chamber-Window.' Being asked, What made him throw the Razor out? He ſaid he was under ſuch a Conſternation, that he knew not what he did. Upon this Confefſion of Major *Webſter*, *Lloyd* confirm'd the ſame, ſaying, 'That it was indeed true that the bloody Razor was thrown out; for it was thrown out juſt over his Head, and a little Boy did endeavour to take it up; but the Maid came out of the Houfe, and took it up, and ran immediately in with it, and then difcovered my Lord's Death.' That this Maid did carry up the Razor, and then difcover my Lord's Death, farther appears by the Teſtimony of *John Nuthill*, who depofeth, 'That juſt before my Lord's Death was known, he was leaning over the Pales before Major *Hawley's* Houfe, and asked my Lord's Sentinel how his Lordship did? To which the faid Sentinel answered, Very well: And this Deponent did then obſerve a Maid run into the Houfe in great haſte, and up Stairs (when a Warder and another were coming down my Lord's Stairs, but declared nothing of my Lord's Death, as this Deponent could hear, who ſtood about fix Foot from them) but ſhe immediately came down, and cried, My Lord had cut his Throat. And this Informant did obſerve the faid Maid to have a Razor in her Hand, either as ſhe ran up Stairs, or as ſhe came running down.'

The ſeveral large Notches in the Razor, were Self-Evidences of its Fall from ſome Height upon an hard Body; for thofe Notches could not be made by my Lord againſt his Neck-bone, as a Surgeon fooliſhly or knaviſhly ſuggeſted to the Coroner's Jury.

To ſum up all in a Word with relation to this Particular. Major *Webſter* (one of the ſuppoſed Ruffians) confefſed he threw the bloody Razor out of my Lord's Chamber Window. *Lloyd* the Sentinel likewiſe own'd that he ſaw it thrown out. *Edwards* and *Lodeman* have depofed, That they did ſee the bloody Razor thrown out of my Lord's Chamber Window; four have depofed, That *Edwards* declared (juſt as he came from the Tower that Morning) he ſaw it thrown out. Three have ſworn that *Lodeman* gave this Relation as ſoon as ſhe returned from the Tower that very Morning; (and theſe Children, and their Relations, far diſtant from, and altogether Strangers to each other;) Two Soldiers in every part of their Relation, the very Day of my Lord's Death, did at two Places, far diſtant from each other, declare this Matter; and three more have depofed, That the throwing out of the Razor was generally diſcourſed in the Tower juſt upon the firſt Difcovery of my Lord's Death. This I do humbly conceive to be ſufficient to convince any but Prejudice itſelf, That the Razor was ſeen thrown out, and confequently that it could not be locked into the Cloſet with the Body, as *Bomeney* and *Ruffel* have depofed, or often declared. Whereas *Bomeney* ſwore before the Coroner, That peeping through a Chink of the Cloſet-Door, he ſaw the Razor; this appears to be impoſſible, conſidering the Poſition of the Razor, and the Circumſtances of the Chink.

For the Razor they all declare lay in the upper part of the Cloſet by the Cloſe-ftool, and the only Chink of the Door is in that part next the Chimney; now looking through that Chink when the Door is lock'd, you cannot ſee within three Foot of the Place where the Razor was ſaid to lie; this was about a Year ſince demonſtrated to the Right Honourable the Lord *Lucas*, now Governor of the Tower, and to ſeveral Gentlemen more.

The Maid, who is ſuppoſed to have taken up the Razor, denies it, and in her Defence faith to this Effect: 'That ſhe went out of her Maſter's Houſe almoſt half an Hour before my Lord's Death was known, and returned not until my Lord's Death was publick, and ſeveral People in the Houſe to ſee my Lord.' For ſhe tells this Story, 'That about half an Hour before my Lord's Death was difcovered, my Lord's Footman came to her, and told her, the Warder would not open the Wicket to let in my Lord's Proviſions that were brought, and therefore begged her to go to her Maſter (Mr. *Hawley* the Gentleman Porter) to deſire him to go to the Warder that kept the Gate, and order him to let in the Proviſions.'

She did accordingly go to her Maſter, who thereupon order'd the Warder to let in my Lord's Proviſions; and as they (*viz.*) my Lord's Footman, *William Turner*, and one *Samuel Peck*, and a Porter, were bringing the Proviſions, a Sentinel told them they were come too late; upon which, this Maid declares ſhe was ſurpriſed, and asked *William Turner* what ſhould be the Meaning of that Expreſſion, You are come too late; for ſhe did not underſtand it: whereto *Turner* answered, That he did ſuppoſe the Sentinel believed thoſe Proviſions to be my Lord *Ruffel's*, who being gone to his Trial, this Soldier might think he would never return again to the Tower, and ſo the Proviſions were brought too late. This (ſhe declares) ſhe then believed; but as ſoon as they came in Sight of her Maſter's Houſe, they admired to ſee ſo great a Crowd about the Door; but were ſoon too well ſatisfied in the Occaſion, for it was juſt before difcovered that my Lord of *Essex* had cut his Throat.'

But this is a forged Lye throughout; for *William Turner*, *Samuel Peck*, and the Porter, do all three declare, That the Maid was not with them whiſt they were bringing in the Proviſions, neither did the Warder that kept the Gate in the leaſt ſcruple the letting in my Lord's Proviſions; this they all ſay, they are ready to depofe.

All Men, I find, are to ſeek of the Reaſon that ſhould move theſe Men to throw the bloody Razor out of the Chamber-Window, before my Lord's Death was difcovered. But if we conſider the Amazement that might naturally ſeize theſe Men upon the leaſt Diſturbance in this Deed of Darkneſs, we muſt not expect that what is done under ſudden Confuſion,

a Mr. Story.

b Mr. Story.

c Mr. Tho. Edwards,  
Sarah Edwards,  
Elizabeth Edwards, and  
Anne Edwards.

d Mrs. Smith.  
Mrs. Glasbrooke.  
Mrs. Gibbons.  
e Bampton and his  
Wife as to Meake,  
Hughes and Gladwin  
as to Ruddle.

f Grimes, Salifbury,  
and Boſſick.

6 B

fuſion,



fusion should be according to the deepest Policy. And you find that *Webster* did confess, That when he threw the Razor out, he was under such a Confusion, that he knew not what he did. This Disorder might be occasioned by some one's coming up Stairs, who was not then privy to the Murder, before they had laid all things aside, as they designed they should be found by such as were not immediately concerned in it; and *Webster* having the bloody Razor in his Hand, which was designed to be laid by the Body, as the pretended Instrument of the feign'd Self-Murder; upon the coming up of one, of whom he was not aware, he, under a surprizing Fear of a Discovery, threw the Razor out of the Window, and the Maid was afterwards sent for it, and then was it laid by the Body as the pretended Instrument of Death. For this I have some Reason; which I think not fit now to publish.

That Major *Webster* was one of the Russians, and consequently might be the Man who threw this bloody Razor out of my Lord's Chamber-Window (as himself confessed), farther appears probable by his producing (that Day my Lord was murdered) the Earl's Pocket-Handkerchief all bloody, (the Handkerchief was known by the E, and Coronet upon it) and shaked it, saying, There was the Blood of a Traytor; and the very next Morning a Purse of Gold of 49 Guineas, and a Pistole, which, rejoicing, he produced to some of his Neighbours, and immediately after my Lord's Death lived at a Rate much above his Quality, (being a poor Alehouse-Keeper, and Under-Bailiff of the Tower-Liberty) and (as I have been credibly informed) in some few Months after my Lord's Death, lost at Gaming several Hundreds of Pounds, which made those that had well known his Poverty, conclude he robbed. But ill got, ill spent; for his Extravagancy and Losses soon reduced him to his former Necessity; whereupon one upbraiding his Wife (or his Whore as he now calls her, for he saith he never married her, and therefore though she is living, he keeps or hath married another;) I say, upbraiding his Wife with her Husband's Poverty, she replied, That her Husband not long before, had Five Hundred Guineas; whereupon the other declared he could not come by them honestly, for his Trade would scarce find him Bread. In Alehouse-Keeping he run very deep in the Brewer's Debt; but just after my Lord's Murder, he paid his Brewer Thirty Guineas in Part, which made the Brewer wonder how he came by so much Gold. But not discharging the whole Debt, and beginning to contract new, the Brewer sued him, and at last in Execution seized his Goods; whereupon Major *Hawley* (for what reason is not unsuspected) was a daily Solicitor to the Brewer for this *Webster*, and at last offered a considerable Sum in discharge of the Debt.

This *Webster* very much abusing his Wife (or Whore) she told him, 'That he was a Fool as well as a Rogue, to abuse her so, when he knew 'it was within her Power to hang him, and one in the Tower, and naming ' (as I have been informed) Major *Hawley* for the Man in the Tower.' A great part of this is deposed, and the whole ready to be proved.-----But farther, to disprove my Lord's cutting his Throat in the Closet:

Had my Lord cut his Throat standing in the Closet, that part of the Wall as high as his Throat would have been all bloody; for the Closet being about three Foot and two Inches wide, it could not be otherwise; for the Blood out of so large an Orifice might have gushed five Foot. Or, if my Lord had cut his Throat kneeling, the Blood in the Wall would then have been as high as his Throat might have been in that posture. But there was no Blood a Foot higher than the Floor, therefore he could not cut his Throat either standing or kneeling. Neither can it be supposed to be done lying along, for then the Wound beginning at the Left-side, (and his Lordship being Right-handed) and ending at the Right, the Razor would have lain on the Right, whereas the Razor lay on the Left-side of the Body. But left the Circumstances of the Body, as first pretended to be found, might prove a detection of this Villany, care was taken that before the Coroner's Jury saw the Body, the Body should be stripped, and the Clothes carried away, and the Room and Closet washed, so that the Body might appear as naked of its first Circumstances, as it was of its Clothes. This Particular was so notoriously irregular, or rather criminal in some degree, that all Men know the Law requires the contrary. For by the first Posture of the Body, with the Circumstances of the Clothes, &c. great Light may be given to the true Manner of his Death. But that in this Case was not to be discover'd, and therefore such Practices were necessary. My Lord's Clothes were not only carried away, but when demanded by the Jury, as what might be serviceable in their Inquisition, the Coroner was upon this Question immediately called into the next Room, and returning, told the Jury, *It was the Body, and not the Clothes, they were to sit upon; the Body was there, and that was sufficient.* It is an unhappiness the Coroner hath forgot (as he swears) who those were which were in the next Room, whilst the Jury sat, and to whom, whilst they sat, he did several times go; but had the Jury seen the Clothes upon the Body in its full Posture, these would of themselves have convinced them, that my Lord of *Essex* was murdered; for how could there be a print of a bloody Foot upon my Lord, and yet none (as they pretended) had been in the Closet with him? Or how could his Lordship with such an Instrument as the Razor, cut twice through the Neck of his Cravat? For *Alice Carter* and *Mary Johnson*, who (together with Major *Webster*) stripped the Body, have declared, as hath been deposed, the Neck of my Lord's Cravat was cut in three Pieces. The Circumstances of the pretended Instrument of Death gives strong suspicion of the Murder; for the pretended Instrument of the Self-murder, was a French Razor about four Inches and a quarter in its Blade, and no Spill or Tongue at the end; wherefore this Razor in its use must be held by the very Blade, and not less than two Inches of that could well suffice to be held in his Hand for that Strength and Steadiness the Cutting twice through the Cravat, and afterwards so deep in the Neck, required. And then the Wound, if made at once, would not have been above two Inches and a Quarter deep, no more of the Blade being outside the Hand, which length could not at once possibly make a Wound above three Inches in depth; I do suppose none do believe his Lordship cut twice to effect it.

The largeness of the Wound at first, did make very ingenious Physicians

and Surgeons say, That they supposed it impossible for any Man to cut his Throat, according as the two Surgeons upon my Lord's Body deposed, the Wound being such, both Jugulars and Arteries quite divided, and cut to the very Vertebres of the Neck: now in cutting the first Jugular Artery, there would immediately have issued such a quantity of Blood and Spirits, as would have soon incapacitated him from dividing the second; and tho' as ingenious an Anatomist as most in England, before their Lordships would not say that he thought it impossible his Lordship should so cut his Throat; yet he did confess, that he never saw or heard of any before, who cut through both Jugulars and Arteries to the Neck-bone, as my Lord's was cut. This Gentleman for some Years having been Physician to *Bedlam*, he may be supposed to have as many Instances of Self-violences as any Physician in England; and of all Men, none do it with that good will and vigour as the Distracted do, and therefore should make the deepest and largest Wound. But I think I need not insist in this Case upon such Arguments, considering what is before said to be proved. Now to proceed with the Jury.

These Gentlemen, had they not been hurried into their Inquisition (as you will hereafter find they were) by the Body as it was left naked, upon a strict view might well have been satisfied his Lordship fell not a Self-sacrifice; for it's proved there were Five Cuts in his Right-hand (*viz.*) \* one almost on the top of the Fore-finger, and another upon the same near the Hand; † one upon the Fourth-Finger, and another upon the Little-Finger, and ‡ a fifth about two Inches long in the very Palm of the Right-hand; can it be supposed that his Lordship made these Wounds (and that upon his Right-hand) for trial how sharp the Razor was, and how well it would perform what he designed to execute? These Cuts cannot be supposed to be made by holding the Razor. No, these were previous to that direful Cut; and the effects of his struggling with those bloody Men, when he so often cried out, *Murder, Murder, Murder*; as he then used his Tongue to discover, so did he likewise his Hands to prevent that treacherous Wound he perceived designed for his Destruction; and in thus striving to put off the Instrument of Death, did his Right-hand receive these several Wounds. Mr. *Fisher*, one of the Coroner's Jury, hath deposed to this effect: 'That he asked *Bomeney*, whether his Lord was not esteemed a good Man, for such he had heard him represented? *Bomeney* answered, As good a Man as lived. Upon which *Fisher* said, Then it was very strange so good a Man should be guilty of so bad an Action, for nothing could be worse than Self-Murder; whereupon Major *Hawley* told *Fisher*, Whoever thought that Action unlike his Lordship, did not know my Lord of *Essex*; for every one that was but well acquainted with the Earl, knew 'it was his Lordship's fixed Principle, That any Man might cut his own Throat, or otherwise destroy himself, to avoid a dishonourable and infamous Death, and therefore this was like my Lord of *Essex*'s avowed Principle.' *Fisher* believing this to be true, was the more easily inclin'd to believe that his Lordship had followed such his own fixed Principles. But when Major *Hawley* was questioned for this Suggestion to the Jury, he positively deny'd it, and for Answer saith, that he was not nigh the Victualling-House in the Tower all the time the Jury was there considering of their Inquisition: And as for the Principle, he could not say it, for he never heard it said to be my Lord's Principle, till their Lordships charged him with having suggested it. I know it is commonly discoursed about Town, that such was his Lordship's Principle; and this was industriously spread immediately upon my Lord's Death; but observe, Major *Hawley* was the Man that suggested this to the Jury, that they might the more easily believe the Self-Murder. And the Major's now denial of this Suggestion, or that he ever heard it said to be my Lord's Principle, when the Matter is positively sworn against him (I think) naturally argues that this was a false, forg'd, and maliciously invented Story by that bloody Party that murdered my Lord, and *Hawley* the Man by them pitch'd upon as the most proper Person to corrupt the Jury (the then proper legal Judges of the Manner of my Lord's Death) with this treacherous and villainously contriv'd Suggestion; so that the Jury might the more easily be inclin'd to believe my Lord's Self-Murder upon Evidence as inconsistent as false. And the Major's disowning that he was near the Jury at the Victualling-House whilst they were upon their Inquiry, implies his being conscious that he was there for a very ill purpose, and therefore thought it not safe to own his being with them; but he was too officiously there, not to be remembered; for when some of the Jury moved for Adjourning their Inquisition, in order to the giving notice to my Lord's Family; so that if any Thing could be proved on my Lord's Behalf, it might be by them heard; *Hawley* immediately enters a Caveat, and prevents it; for he tells the Jury, That they could not Adjourn, but must immediately dispatch their Inquiry; for His Majesty was then in Council, and had sent for their Inquisition, and would not rise till it was brought him. This further Suggestion caused the Jury to make more haste than good speed; and so, without that time which was convenient, ended their Inquisition. But Major *Hawley* denies this likewise, and protests, He was not nigh the Jury at the Place, or did at all thus hasten them. But this is positively sworn against him by some of the Jury; and many of the Jury declare they remember the Major with them at the Victualling-House. The Indiscretion in the Coroner and his Jury, I cannot but observe; which was, their suffering *Bomeney* and *Russell* to come together, and hear each other's Examination; and, which was more foolish, to permit *Bomeney*, when he began to hesitate in his Examination, (which alone gave reasonable Grounds of Suspicion that he was telling a Lye; for Truth would have readily occur'd; but Lies were first to be invented, before they could be given in Evidence,) to write his own Examination; and not only so, but in the Room next the Jury, where his Tutors were ready to instruct him: And yet, after all, this forged Deposition needed further Amendments at *Whitehall*, (as you will immediately hear) for as it was sworn, it was not thought fit to be exposed. All Men must agree, That the Circumstances in which *Bomeney* and *Russell*

\* Mr. *Shillingsford*.  
† *Turner* and *Park*.  
‡ Mr. *Sherwood* the Surgeon upon the Body.

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Good related to my Lord at the time of his Death, render'd them highly to be suspected as privy to my Lord's Death, if not acting in it, in case my Lord did not destroy himself: For, could *Ruffel* keep my Lord's Chamber-Door (as himself upon Oath confesses), and be ignorant of what Violence was offered to his Lordship within the Chamber (the Room not being fourteen Foot square)? Or could *Bomeney* be waiting on his Lord in the very Chamber, and a Stranger to the true manner of his Death? Wherefore, in common Discretion and Justice, these Two (and *Monday*, the other Warder, who first that Morning kept the Chamber-Door, with the Sentinel that kept the outward Door) should upon the first Discovery have been seized, and separated, and kept apart, and examined apart, so that neither might have been privy to the other's Examination, by which the Truth would have been soon detected; for had my Lord destroyed himself, all their Depositions would have so harmonized (though separately and crossly examined) that the Truth would the more plainly have appeared; whereas, on the other hand, in case his Lordship fell by Treachery, then such Proceedings would have immediately discovered it to the Jury; for then these Warders, and Servants, and Sentinel, not being able to foretell what Questions the Jury would ask them, consequently could not previously agree upon their Answers. And should their Examinations, upon this Management, have materially interfer'd, and thwarted each other, (as it is natural to suppose they would, for though Truth be still the same, yet Lies are almost infinite,) these Depositions would have been so far from proving my Lord a Self-Murderer, as they would have plainly discovered the contrary, and these Men guilty in a most perfidious and barbarous Connivance.

For, admitting that these Men, upon their cross and separate Examination, should have answered the Jury as it is before represented (which is according to their own Oaths, or repeated Relations,) can it be supposed that any Coroner and Jury could be so void of common Sense and Honesty, as to give credit to such, and so many Contradictions? But, alas! such fair Practices were not to be expected, where such a foul Villany was to be concealed. And therefore, instead of securing apart the two Warders, Servant, and Sentinel, poor *William Turner* and *Samuel Peck* (whose Depositions are before mentioned) were to be locked up close, (with *Bomeney* for a Colour,) as though these two Men were more to be suspected than my Lord's two Keepers. And thus in Custody were these two innocent Men kept, whilst the two Warders and Sentinel, more to be suspected Criminals, were permitted to go at large. But this was contrary to his then Majesty's Command: For as soon as King *Charles the Second* (then in the Tower) had heard of my Lord's Death, he did immediately send the Lord *Allington*, Sir *C---*, and *Thomas Howard*, Esq; to my Lord's Lodgings, with Orders, That such as were attending upon my Lord at the time of his Death, should be secured and examined, and all Things to remain till the Coroner's Jury had seen the Body. In Obedience to which Command, Sir *C---* coming into the Lodgings began to take some Examinations; but was soon interrupted by one, who told Sir *C---*, His Majesty did command him immediately to go to the *Old Bailey*, and give notice to the then Attorney-General of my Lord's Death, and to know what was to be done therein. Sir *C---* by the same Gentleman desired his Majesty's Leave to finish those Examinations he was then upon; but the same Messenger came the second time, with positive Orders (as from His then Majesty) for Sir *C---*'s immediate going in Obedience to this repeated Command. Sir *C---* went: But Sir *C---* remembers not who this Gentleman was, which thus twice came with Orders as from his then Majesty. It is a great Misfortune, Sir *C---* remembers not; for by the Messenger (it is strongly suspected) it would be soon found, His then Majesty's Authority (in this Command) was used by him, who too often abused it.

This great haste to the *Old Bailey*, when that great Patriot, (but unfortunate) Lord *Ruffel* was there Trying, and the indirect use, by malicious Application of this pretended Self-Murder to the taking off him, of whom we were no longer worthy—This gave to an Honourable Person then upon the Bench just Grounds to suspect, that this Noble Earl was murdered without Form of Law, the more easily to destroy that Great Lord under colour of Justice.

The Coroner's Inquisition, and the Depositions of *Bomeney* and *Ruffel* being carried in all haste to *Whitehall*, in order to their immediate publication, they were there perused; and it being found that *Bomeney* and *Ruffel* had point-blank contradicted each other (for the first, as before observed, had sworn the delivery of the Razor the Day before my Lord's Death; and the second, that it was not delivered till the Day of his Death): these Contradictions were not thought convenient to be exposed, lest they should give just Ground of Suspicion that the whole was forged; and therefore a Reconciler was ordered to amend the one, so it might be agreeable to the other, it matter'd not how inconsistent or contradictory they were in the Original, for those could be seen by none but the Coroner himself, in whose Custody they were; and it was to be supposed, that the Coroner would not then dare to contradict what Authority had ordered so to be printed; and hereupon was that Alteration made, as was before observed, in *Bomeney's* Information, page 899, but this done (as some Years since observed by an ingenious Author upon this Occasion) without the least congruity either to Sense or Grammar; for nothing can be more apparent, than that the foregoing part of the Information relates wholly to *Thursday*: but at last, without any regard to what *Bomeney* had before sworn, on *Friday* the 13th Instant is foisted in, contrary to all Rules of Grammar, and common Measures of Sense as well as Justice, which justly esteems this printed Information forged. This forged Reconciliation is done with the greatest incongruity and absurdness, as well as falseness imaginable; and I know not whether the Folly of the Suborner (for without doubt the Suborner and Reconciler in this case are the same, or of the same Stamp) or the Perjury of the suborned in that false Information, be most conspicuous.

The Soldiers that were in the Tower that Morning my Lord was murdered, having made such Discoveries as satisfied them my Lord was treacherously taken off; they used too great freedom in their Discourse with relation thereunto; and therefore (as *Robert Meake* declared to two

who have deposed it) 'An Officer called several of them together, and under severe Threatening enjoined them not to speak one Word of what they had either seen or heard with relation to my Lord's Death. Wherefore the said *Meake* desired his Friends not to divulge what he had told them; for should it be known, it would prove his Ruin: But some short time after *Meake* declared (as three have deposed) That he did believe he should be privately murdered for what he knew and had said with relation to my Lord's Murder, and therefore he desired *Bampton* or *Davidson* (as they have both sworn) to keep him Company that very Day, for he much feared he should that very Day be destroyed. But both of them (fearing the Danger themselves might be in) refusing, that very Night was the said *Meake* thrown into the *Tower-Ditch*. As for *Ruddle* before-mentioned, all the Information I can have of what is become of him, is, That not long after my Lord's Death he was drawn out of the Tower, and sent to the *East-Indies*, and at *Fort St. George* shot to Death, but for what Reason I cannot learn. There was one Mr. *Hawley*, a Warder in the Tower that very Morning my Lord was murdered, and by what he had observed with relation thereunto, he had Reason to declare to a Friend, That it was a Piece of Villainy throughout. This Mr. *Hawley* being in *Westminster-Hall* whilst I was upon my Trial, said, He wondered what made me stir in it, when to his Knowledge I knew nothing of the Matter; upon which one Mr. *B.* said, Mr. *Hawley*, if you know Mr. *Braddon* knows nothing in this, what must you know? To which Mr. *Hawley* made no Reply. But this Gentleman's Knowledge in the Matter cost him too dear; for about March next after my Lord's Death, being missing, one of the Warders suspected to be a Papist, said, Mr. *Hawley* had been prating about the Earl of *Essex's* Death, and therefore was forced to fly. But six Weeks discovered how he fled; for he was then found in a River by *Rocheſter* so changed through the Barbarity he had met with, that neither his Face or Body could be known by his nearest Relations; and his Clothes were all taken off except his Stockings and Shoes, by which he was discovered to be the Man; for he wore three Stockings upon one Leg, and two Stockings and a Cere-Cloth upon the other, and (as I have been informed) the Lining of the Toes of his Shoes cut out. By these remarkable Circumstances his Wife knew him. She had used all possible Diligence for finding her Husband; in order to which she offer'd in several *Gazettes* an Hundred Pound Reward to any that could discover his Body dead or alive, but it was six Weeks before he was found. Several of the Soldiers in the Tower, that Morning my Lord was murdered, I have been inquiring after, but have been told they were killed in the *West* against the late Duke of *Monmouth*.

But considering what Fate befel *Hawley*, *Ruddle* and *Meake*, before-mentioned, I have Reason to suspect that others may likewise have been murdered by Way of Prevention.

Besides such Addition of Blood, other violent Methods were used to prevent a Discovery, by punishing such Soldiers as seemed to disbelieve (upon very good Grounds) my Lord's Self-Murder: This appears by his Information following:

*Richard Jordan* declareth, 'That (some time that Summer the Earl of *Essex* died, and not long after the said Earl's Death) he saw a Soldier tied to the Wooden-Horse in the Tower (by Order of Lieutenant Colonel *Nichols*) and whipt after a very cruel Manner.' And this Deponent heard the said Lieutenant Colonel tell the Soldier, he ought to be hanged. This Deponent further declareth, 'That he was just after informed by the Marshal that whipt the said Soldier, that by Order of Lieutenant Colonel *Nichols*, he gave the said Soldier 53 Stripes (tho' the usual Number was but 12), and that the said Soldier had lain a Fortnight before in close Custody, and been fed with Bread and Water, and all only for the Offence following; (viz.) Some short Time after the Death of the late Earl of *Essex* a Dr. H. of *Norwich* coming into the Tower, the said Soldier was sent with him to shew him the Tower; and as the Doctor was almost over-against Major *Hawley's*, the Doctor asked the said Soldier, Which was the Chamber wherein the late Earl of *Essex* did cut his Throat? whereupon the said Soldier (pointing to the Chamber in which the Earl had been Prisoner) said, That is the Chamber in which it is said the Earl of *Essex* cut his Throat. The Doctor then asked the Soldier, what he did believe? To which the Soldier answered, That he did believe in God; but being prest by the said Doctor to tell him, whether he did believe my Lord cut his Throat? the Soldier then replied, he would not say he did believe it; for which only saying, the Punishment aforesaid was inflicted.

And the more effectually to prevent any Discourse that might give the least credit to my Lord's being murdered, our then Misgovernment took all possible Care to punish, or rather oppress such as should declare their Belief thereof; amongst which one of the Coroner's Jury upon the Earl's Body, suffered under this Tyranny; for this Man, sometime after my Lord's Death, discoursing concerning the Earl's Death, and the several Irregularities which he observed practised upon my Lord's Body before they saw it, and how they were not permitted to make that Inquiry which was necessary; said to this effect: 'That he did believe they (viz. the Coroner's Jury) were all infatuated to bring my Lord in *Felo de se*; but he did suppose, had they not been hurried into their Inquisition, they should have found it otherwise.' For this Discourse this honest poor Man was prosecuted upon Information, and fined (at first I have heard) 300*l.* but it appearing he was very poor, his Poverty prevailed for a mitigation of his Fine; and his Age and great Infirmities of Body (together with the charitable Intercession of a Gentleman of Interest in the then times) avoided the corporal Punishment which he had otherwise undergone.

If such Practices as these were used by our then Court to prevent my Lord's but being suspected to be murdered, it could not be supposed that any Encouragement should be given to a full Detection, and therefore all Proposals in order thereunto, were to be rejected; an Instance whereof was as followeth, (viz.)

About six Weeks after My Lord's Death, there was a Letter (unsealed) left with one Mr. *Cadman*, then living at *Durham-Exchange*; the Letter was



was directed to the Right Honourable the Countess Dowager of Essex; the Substance of this Letter was, 'That if her Honour could prevail with the King for the Author's Pardon, he would ingenuously make a full Discovery, how, by whom, and whose Order my Lord was Murdered: and this Letter did assure her Honour, that the DUKE of YORK and — were authorizing this Murder.'

This Letter was subscribed P. B.

By the Hand that writ it, and the Letter subscribed, it was Paul Bomeney before-mentioned, who did once blasphemously say, 'That he could as well tell how my Lord came by his Death, as God Almighty himself;' for the Letter was fairly writ, in an Hand between a Roman and an Italian, and such an Hand Bomeney, when he would write fair, did write; besides, the two Letters subscribed, are the Letters of his Name.

I do suppose it may be objected, That this Letter cannot be thought to be writ and subscribed by Bomeney; for the Letter, had it been brought in Accusation against him, and prov'd to be his, would have cost him his Life, seeing herein he confess'd himself Guilty of the Fact.

But, with Submission, I think Bomeney by this Letter, could it have been proved to be his own Writing, was in no Danger at all of being punished; for had they seized Bomeney, they would have caught a Tartar; should they have proceeded against him for this Murder, upon this Confession, the World would have believed the whole Contents of this Letter to be true; and consequently that the Duke of York and — authorized (or rather commanded) this most treacherous Murder. And then pray consider what that Government could have got by such Prosecution, Conviction and Punishment.

This Letter was carried by Cadman to a Justice of Peace, and by him to the Secretary of State: But this Bookfeller was never sent for, nor any Enquiry made after the Author.

The Backwardness of the then Government in not examining into the Matter, gave just Grounds of Suspicion they were too well satisfied in the Truth of the Contents; which was of such a Nature, as it could not bear an Inquisition; for that would have centered in His Ruin, who was then by Blood and Cruelty, and other illegal and oppressive Methods, endeavouring the total Subversion of our Church and State; and this by the Removal of some of the Chief of those noble Lords and Worthy Gentlemen, who had ever opposed their Arbitrary Designs. Amongst which, this Noble Lord and the Right Honourable the Lord Russell they did esteem two of the Chief.

Had none then in Authority and Power been concerned in this barbarous Treachery, and had our then Government had the least Desire to know this Truth, in order to a just Punishment of those bloody Villains; with what Diligence would they have search'd out the Author, who desired no other Reward than the Security of his Life; and in order to his Indemnity (if they could no otherwise have found him out) a Proclamation of Pardon would immediately have been issued forth, by which the Author would have been assured of his Life; and then, without doubt, according to his Promise would have laid open this bloody Deed of Darkeness? Hath our Age ever seen or known recorded, any Murder (admit this one) committed within this Kingdom, that hath been (all its Circumstances considered) attended with such Aggravations? We have seen a Reward of 200*l.* (as well as a Pardon) by Proclamation offered for the Discovery of those bloody Ruffians, who barbarously wounded but (design'd to have murdered) that worthy Gentleman, Mr. Arnold. And was there not 500*l.* and a Pardon by Proclamation promised to Him or Them that should detect the Murder of Sir Edmundbury Godfrey? Such Means as these would have been likewise in this Case used, if such who then misled Charles II. and corrupted the State, had not been the deepest in this black Contrivance.---

This Bomeney, soon after my Lord's Death, gives an eminent Divine an Account to this Effect: (*viz.*) 'That his Lord did use to be taken with sudden frenzied Passions; and in particular, with one that Morning he died, just before his Death: For (said this vile Judas), as soon as my Lord saw my Lord Russell go to his Trial, he struck his Breast, and said, Himself was the Cause of my Lord Russell's Misery, seeing he had vouched for that Gentleman whose Treachery would prove my Lord Russell's Ruin, &c. and hereupon fell almost distracted'.---But this Fellow's repeated Oaths give the Lye to this Forgery. Before the Coroner, in the Conclusion of his first

\* Pag. 918. \* Deposition, he swears, 'That on Thursday-Night, (which was the Night before his Lord's Death) the Earl was very merry at Supper, AND DID NOT SEEM TO BE DISTURBED THE NEXT DAY.' And when one of the King's Counsel at my Trial, ask'd such a Question as seem'd either to imply my Lord's being Melancholy, or else would have had Mr. Bomeney---for the Question was thus worded, (*viz.*) 'Did you observe your Melancholy, Mr. Bomeney?' Bomeney answered, Yes; but we took no Notice of it; for he us'd to be so, and we had no Reason to suspect any Thing more than ordinary.'

Had this Varlet rested in the general Affirmative, without proceeding farther, his Answer would (it's probable) have better served the Design of the Question: but by the latter part of his Answer, he destroy'd that Service which the first Word [Yes] might have otherwise done. And observe what a point-blank Contradiction this Evidence at the Trial is to what he depose (before the Coroner) the very next Day after my Lord's Death, when (had this been true) it would have been fresh in his Memory, and he would (without doubt) have sworn it. But this was according to some After-instruction, not thought of at the Time of the Coroner's Inquest.

In the next place, I shall give you some Account of what was sworn against one Mr. Holland, so much talked of in this Affair, by which you will have some ground to suppose a more convenient Instrument than a Razor gave this barbarous and treacherous Wound.

The Information of Richard Davis of the Parish of St. Mary Somerset, London, School-master, taken before J. Cardran, Esq; Justice of the Peace for the County of Middlesex.

THIS Informant saith, That a little after the late Duke of Monmouth was routed in the West, one Mr. J. E. (to the best of this Informant's Remembrance) told this Informant, That it was almost

universally whispered amongst the Acquaintance of Mr. John Holland, (formerly Servant to the Earl of Sunderland), That the said Mr. Holland had confes'd to one Mr. D. of his intimate Acquaintance, (and afterward concerned with Holland in the Robbery of Mr. Gatford, for which both were condemned, and the said D. executed, but Holland pardoned), That the said Holland was concerned in the Murder of Arthur late Earl of Essex, in which he was employed by the Earl of Sunderland, upon this occasion, (*viz.*) 'The said Mr. Holland one Day waiting on my Lord Sunderland, his Lordship seem'd much disturbed with Passion; upon which, the said Holland told his Lordship, That if his then coming to his Lordship had so discompos'd him, he would withdraw, and wait on his Lordship some more convenient time; whereupon my Lord said, That he should tarry, for it was not with him (the said Holland) that he was angry, but with others; and that he was concerned to think that of so many Servants his Lordship had made, and being so very kind to, he had not one he could trust, or would serve him (or Words to that Effect); upon which, the said Holland replied, He was then ready faithfully and punctually to observe his Lordship's Commands in any thing. My Lord then discover'd to the said Holland the designed Murder of the said Earl of Essex, and would have the said Holland therein to be engaged, to which the said Holland readily consented; and that the said Earl's Throat was cut with a large Knife, and not with a Razor.' And this Informant was then further inform'd, That the said Holland had further declared to the said D. That some People were afterwards made away for blabbing what they knew concerning the said Earl's Death; and that the said D. had charged the said Mr. Holland, before several of their Acquaintance one Day drinking together, with what the said Holland had confes'd to him the said D. as aforesaid; and that he the said Holland being so charged, seem'd much dejected, but could not deny it. This Informant further maketh Oath, that one D. P. about three Years since, did give this Informant almost the same Account with Relation to Holland and D. And the said D. P. did further tell this Informant, That when the said Holland and D. were committed to Newgate for robbing Mr. Gatford, the said D. P. went to see the said Holland in Newgate, to condole his Condition; but the said Holland was very cheerful, and told the said D. P. 'He was secure of his Life, and likewise not to want Money as long as the Earl of Sunderland was living.' The said D. P. did likewise then further tell this Informant, That the said Holland (as soon as he was committed to Newgate for the foresaid Robbery) sent to my Lord Sunderland for some Money, and that his Lordship sent him the said Holland sixteen Guineas. And this Informant hath been told by several, That the said Lord Sunderland hath many times supplied the said Holland with Money.'

When Holland was imprisoned for Mr. Gatford's Robbery in Newgate, my Lord Sunderland sent often thither, and took a more than ordinary Care of him; whereupon Major Richardson told my Lord's Gentleman, That he did much wonder his Lordship would be so kind to so profligate a Fellow. To which it was answered, That his Lordship had a very great Kindness for Holland, because he had been Servant to my Lord Spencer (my Lord Sunderland's Son); but it seems somewhat else was in the Matter; for it's depose'd by John Waytis, 'That observing Holland to be frequently furnished with Money by my Lord Sunderland, and ---, this Informant ask'd Holland how his Lordship became so kind to him? To which Holland replied (with his usual Phrase) *Damn him, he had done that for him, that HE DURST NOT DO OTHERWISE.* And when this Informant was once saying, It was whisper'd that the late Earl of Essex was murdered; Holland said, *Damn him, it was not a Farthing matter if Twenty such were taken off.*' He that so little valued the Lives of Twenty, would not in all probability much boggle to be concerned in the murdering One.

Holland writ a Letter to the Earl of Feversham, wherein he represented me as endeavouring to suborn him to appear an Evidence in the Case of the late Earl of Essex; which Letter was read in the House of Lords. But that which Holland falsely called *Endeavours to suborn*, I shall truly and faithfully (as it can be prov'd) declare, and appeal to every impartial Reader, Whether it deserves that infamous Name.

Having some reason to believe Holland one of the Ruffians, I did use all Means possible for his Apprehension; but I found that Holland lay very private, and, as I had reason to believe, designed to fly beyond Seas (as his own Letter before mentioned declared). Hereupon I applied myself to some of Holland's Acquaintance, and by them being brought to Mrs. Holland, I told her, That I had reason to believe her Husband was concerned in this villainous Murder, and herein I was confirmed by Mr. Holland's absconding; for Innocence desires a Trial, but Guilt still flies from Justice. I then told her, That if her Husband were really guilty of this Fact, and would immediately surrender himself, ingenuously declaring, *how, by whom, with whom, and for what he'd* to do this barbarous Murder, her Husband should have a general Pardon, and both Him and Her provided for: But if her Husband was innocent, (notwithstanding whatsoever was said to the contrary), and should take upon him a Crime (for any Advantage whatsoever) of which he was not guilty, he deserv'd to be Hang'd here and Damn'd hereafter, seeing by his Perjury he would make Justice an Instrument of executing the worst of Murders.---But if he were indeed the Man, and should surrender himself, and discover the whole Matter, he must be sure to keep within the Limits of Truth; for should he be detected in the least Perjury, no Man was ever more vigorously prosecuted, nor any more severely punished, than he (for such his Perjury) must expect to suffer.

These were the Arguments with which I would have suborn'd (as that Letter calls it) Holland to a full Discovery: And I do appeal to all the World, Whether, admitting this to be true, (as it will be proved when the occasion serves) I deserve this villainous Charge. For the Truth of this, I do appeal to the Consciences of Mrs. H. Mr. P. and Mr. S. with whom I several times treated in this Affair.

I shall now mention one or two more Objections against my Lord's being murder'd, and then draw to a Conclusion. The first is this, *viz.* The Right Honourable the Lady Countess Dowager of Essex, having



heretofore declared (whether lately, I cannot say) That she did believe her Lord cut his own Throat; and being so possessed, some time after this Committee had several times sat, she desired several Lords (amongst which some were of this Right Honourable Committee) to meet at her House; and after her Honour had acquainted their Lordships with the occasion of her Request, an eminent Divine (and now Bishop) did inform their Lordships what were the Reasons that moved her Honour to believe that her Lord did indeed lay violent hands on himself; the Chief, if not the Only whereof, was, That some short time before my Lord's Commitment to the Tower, his Lordship seemed to be under a great concern of Mind; but then declared, That the Trouble he was in did not arise from any Thoughts of Self-preservation, for Himself was the least of his Care; but the Thoughts of his Family, what would after his Death become of them, was what did indeed trouble him: As for himself, he was resolved what to do; SEVERAL TIMES VERY RESOLUTELY REPEATING THAT EXPRESSION, AS FOR MYSELF, I AM RESOLVED WHAT TO DO. This I was told by a Gentleman then present, who (as I have great Reason to believe) would have represented every Thing to the best Advantage (as far as Truth would permit) on the Behalf of such Objections. But, with all Submission to such Judgments as are swayed with this Objection, I think it carries not that Force which many imagine: For is there nothing to which that Resolution of his Lordship might so probably have relation, as a Self-Destruction? Was that the only, or the most likely thing he was resolved to do? I do humbly conceive, a little Consideration may afford us both a more charitable Opinion of his Lordship's Resolution, and somewhat more probable than Self-Murder to be assigned as what his Lordship was resolved to do. For when I consider the Time when his Lordship was apprehensive of the like Danger as threatened him just before his last Imprisonment, (viz.) when my Lord Shaftesbury and my Lord Howard, &c. were committed to the Tower, and a Gentleman who had a very great Honour for his Lordship, (as all good Men had, who had the Honour to know him) in true Zeal for his Lordship's Preservation (having heard that the Court designed likewise to commit my Lord of Essex, and to take off many in Form of Law; or rather, that which they falsely called so), went to his Lordship, and informed him of what he had been told, and humbly submitted it to his Lordship's Judgment, Whether it were not proper for some time to withdraw, till the Fury of the Court by time was a little appeased? This Gentleman told his Lordship, He found by the Papists, that they did design to take off several; and his Lordship being to their Arbitrary and Popish Designs as great and profess'd an Enemy as any, he did fear his Lordship might not be safe from their pretended Justice, when once within their Power. My Lord hereupon smiled, and said very sedately, and yet very resolutely, That he would not stir, though he did expect the Court would proceed very far, not only to the Imprisoning, but against the Lives of many; and if God in his Providence should think fit to suffer him to fall a Sacrifice to the Malice and Rage of the Court, he did hope, and did not doubt, but the World should see that he could die with as GREAT RESOLUTION as ever his Father did; for he was ready at all times, and upon all Occasions, to lay down his Life for his Country.

Reflecting therefore on my Lord's declared Resolution of his not stirring, though then under the like Danger, as in this Case apprehended, and with what Readiness, Courage, and Cheerfulness he could lay down his Life for his Country; and likewise the Knowledge that he may be supposed to have of

\* Vid. D. Smith's Evidence first mentioned.

the then Court-Designs (which those Villains, nine Days before his Death declared; for it is \* sworn the Papists then said, The Earl knew so much of their Designs, and was so very averse to their Interest, that they could never carry them on, UNLESS HIS LORDSHIP WAS TAKEN OFF; AND HIS LORDSHIP WAS THEREFORE TO BE MURDERED.) I say, when I consider these Things, and that the more this Honourable Lord knew of the black Intrigues of the Court, the more so good a Man, and so true a Patriot must be supposed to hate them; I can't but imagine that this brave State-Champion, when he had been once satisfied that the Court, under Colour of Law, would have taken him off, had RESOLVED AS TO HIMSELF, to lay open those Popish Arbitrary Court-Contrivances, and justified that just Design of standing upon their Guard; there was no other Way (under God) to defend what was so grossly invaded. Now, though his Lordship might suppose, by dealing thus plainly, he should the more exasperate the Court; so that their Malice would be more inveterately bent in his Destruction; yet that he declared he FEARED NOT, but was ready cheerfully to lay down his Life in so just a Cause. And should this daring true Lover of his Country have thus expired, by his State-Martyrdom, he would have given such Satisfaction in the Truth of what he thus courageously, with his last Breath, should have affirmed, as would have raised a general Hatred against those Arbitrary and Popish Court-Resolutions; and this might so suddenly have given another so general a Resurrection to that just Cause, as would have totally routed those true and only Enemies of both Church and State. Our then Enemies, under Colour of Law, were industriously endeavouring the total Subversion of our Laws; and whilst in shew they seemed to maintain the Protestant Church, they were secretly contriving its total Destruction, by wresting those very Laws which were chiefly designed as destructive to Popery, and making them productive of what they were enacted to destroy: For by a malicious and furious Prosecution of all Protestant Dissenters, they did hope to raise so general Animosities between the Conforming and Non-Conforming Protestants, that they might, through such Division, have an Opportunity to fulfil that notorious Jesuitical Maxim, Divide & Impera.

The late Earl of Essex had the least Reason to despair of the late King's Mercy; for should his Lordship have been convicted through False Evidence, or Corrupt Judgment in the Court, by their adjudging that to be Treason which the Law never made, or designed to make so, (as they did in the Case of the Right Honourable the Lord Russell, and some others;) no Nobleman in England had better Grounds than his Lordship to presume upon the late King's Mercy, seeing his Lordship's Father had sacrific'd his Life in that King's Service; wherefore his then

Majesty had good Reason to declare (when His Highness, not many Hours before the Earl's Death, said, the Earl ought to be taken off) that he was resolved to spare his Lordship for what his Father had sacrific'd; (this you find before by \* two sworn to be declared by Ruddle, who heard it that very Morning my Lord was murdered;) And this Account of Ruddle seems the more probable by what his then Majesty is generally said to have declar'd soon after he heard of that deplorable Accident, (viz.) That he did much wonder his Lordship should murder himself, and not trust to his Mercy, seeing he ow'd him a Life.

Considering therefore that his Lordship had so good Cause for Hopes of Mercy under the greatest Danger [even Conviction,] there is the less Reason to believe, THAT HIS LORDSHIP HAD RESOLVED TO DESTROY HIMSELF.—I find this Objection from the Right Honourable the Countess Dowager of Essex, hath been generally us'd as what should convince every Man that the late Earl did indeed cut his own Throat.—But I would fain ask those Gentlemen (who immediately run away with this as what is sufficient to answer whatsoever seems to prove the contrary), Whether it is within the Power of Belief or Disbelief of a Fact, either to alter the Nature, or destroy the Existence of a Fact. Most certainly none will be so ignorant as to assert, That any Thing becomes true by being believ'd, or false by being discredited, for then, according to different Persuasions, a Thing would be, and not be at the same time, which is impossible. Wherefore no Man should be implicitly swayed by the bare Belief, or Disbelief of another, (without knowing and examining the Reasons of that Belief, or Disbelief) for this is to act in the Belief of Matters of Fact, which we justly condemn in the Church of Rome in Matters of Faith.—But when the Truth of a Fact is question'd, and Reasons given pro & con, every Man is naturally swayed by those Testimonies which to him seem the strongest for the Proof, or Disproof of that Fact; and no Man (but such as are easily impos'd upon, or are willing to impose upon others) will oppose to such Evidences as naturally proves a Fact, another's bare Disbelief of the Fact. But before any unprejudic'd Person will be influenc'd (by another's Disbelief) against the Proof of the Fact, he will know, and well weigh the Grounds of that Disbelief, and compare their Strength and natural Efficacy with that Evidence that seems to prove the contrary; and having judiciously weigh'd both in an unprejudic'd Balance, which Side draws down, MUST naturally draw his Belief; for no Man can believe what he would, but every Man MUST believe according as his Judgment stands inclin'd to assent upon such Evidence as to him seems sufficient.—Prejudice, I must confess, naturally indisposes and corrupts Men on either Side according as they stand affected: For as some are induc'd to ASSENT upon such Evidence as is in itself INSUFFICIENT, so others many times DISSENT upon such as is SUFFICIENT. Amongst the first of these (viz.) the CREDULOUS, a Reverend B. some time since rang'd me. For tho' his Lordship (heretofore) did charitably excuse me from any Malice or ill Design, yet (as I have been credibly inform'd) he hath been pleas'd to say that I am of a very strong Imagination, and possess'd with a Fancy that a Thing is, without rational Grounds to believe the Thing to be. But I dare now appeal to his Lordship's own Judgment, whether Credulity is more justly chargeable on the Belief of the Self-Murder, or its contrary. That is to say, whether such as believe the late Earl of Essex murder'd himself, because his Lordship, some Days before his Death, several times declared, as for himself he was resolved what to do \*. And because Bomeney pretended (contrary to what he twice swore) that morning of his Lordship's Death, my Lord was taken with a Fit of a Frenzy; and because Bomeney, Monday, Russell and Lloyd (the three latter being three of those † in whose Custody my Lord was, and who, as Mr. Attorney in his Information against Mr. Speke, and myself, sets forth, were consequently charged with my Lord's Murder) to save their own Lives, with Halts about their Necks, endeavour to prove his Lordship a Felo de se by their Relation, which in every Part is contradictory to each other.

For Bomeney first ‡ swore he delivered my Lord the Razor about Eight of the Clock in the Morning the very Day of his Death, and within two Hours ‖ depose'd, 'He did deliver this Razor to his Lordship about Eight of the Clock on Thursday Morning, the Day before his Death.' But Russell § depose'd, 'That he saw this Razor delivered by Bomeney about Eight or Nine of the Clock on Friday Morning (being the Day my Lord dy'd) and did ever declare, and still asserts, that this Razor was delivered AFTER Monday the Warder had left my Lord's Chamber-Door, and that it was delivered \* within less than half an Hour of the time they found his Lordship dead in the Closet; both which † Monday (if Contradictions can) confirmed by declaring that this Razor my Lord had, and pared his Nails with it. When his Lordship's Chamber-Door was first opened that Morning (viz.) about Seven of the Clock, about two Hours BEFORE Russell came up Stairs to stand Warder at the Door; Bomeney first ‡ swore, that he first opened the Door upon my Lord's Body; in his § second Information depose'd, 'That he did not, but (seeing Blood, and Part of the Razor through the Chink) he call'd Russell the Warder, and Russell push'd the Door open; and in his third Oath declared, 'He knew not who open'd the Door.' Russell \* depos'd before the Coroner, 'That he first open'd the Closet-Door, the Key being on the Outside (and he mentions no Difficulty in the doing it), but Monday † declared, The Day my Lord dy'd (and afterwards confirm'd the same) ‡ That my Lord's Body lay so close against the Door, that neither Bomeney nor Russell could stir the Door; but he, being much stronger than either, thrusting with all his might, broke it open.

\* Hughs and Gladwin, 915.

\* To an Eminent Divine.

† Vide before page 908.

‡ Before the Coroner. Vide the Deposition, page 918.

‖ Vide the Second Deposition, page 901.

§ Russell's Deposition, p. 901.

\* R's Deposition, p. 901.

† Whitechurch, and Jorden, page 918.

‡ Bom. Dep. p. 918.

§ Bom. Dep. p. 901.

\* Page 901.

† Whitechurch's Inf. page 918.

‡ Jorden. Inf. page 918.



These Men's Depositions and Relations *THUS AGREEING* in every Part in Proof of the Self-Murder, can't but satisfy all Men (except such as are, like myself, of strong Imaginations, and too easily inclined credulously to believe the contrary.) And whereas *Bomeney*,

\* Bom. Dep. p. 899.  
Bom. Dep. 918.

† Mond. and Ruff. in  
their Examination be-  
fore the Lords.

† Vide Page 922.

It's † proved (I do humbly conceive, to the satisfaction of more than the Credulous) that there was a bloody Razor thrown out of my Lord's Chamber-Window (which is about sixteen Foot from the Closet where the Body lay) and the Maid who carried up this Razor, first discovered my Lord's Death to those out of the House (wherefore the Razor was afterwards laid by the Body for to colour the (pretended) Self-Murder); and when my Lord's Body was seen in the very Posture in which the Warders pretended it was first found, his Lordship's Legs lay part outside the Closet-Door (and therefore the Door could not be lock'd), and upon his Stocking the Print of a bloody Foot coming out of the Closet; wherefore somebody before that, and after my Lord was dead, had come out of the Closet.

‡ Turner and Peck,  
832, 833.

Is there not rational Grounds from the many Contradictions before observed, for any Man (though not possessed with Prejudice against the Self-Murder) to believe that there was no Razor delivered to my Lord just before his Death, nor the Closet-Door lock'd upon the Body, or the Razor first found lying by the Body (as these have sworn, whose Interest and Lives depend upon the Proof of the Self-Murder) and consequently their Relation a Forgery throughout, by which they would prove his Lordship *Felo de se*.

But farther, to excuse from Partiality such as disbelieve the Self-Murder upon the Evidence before observed in all Parts contradictory; and from Credulity, because they are persuaded that his Lordship fell by Treachery and Violence, seeing they find it § sworn

§ D. S. p. 911.

to this effect; (viz.) That about nine Days before my Lord's Death, the Papists declared, That because the Earl of Essex knew so much of their Designs, and was so very averse to their Interest, he was to be taken off; and that his HIGHNESS HAD CONCLUDED AND ORDER'D HIS THROAT TO BE CUT, and had promis'd to be there when it was done; and about three Days after these Men said that it was resolved the Earl's Throat should be cut, but they would give it out he had done it himself; and if any should deny it, they would take them up and punish them for it; and the very Day it was done, after my Lord's Murder, they seemed extremely overjoy'd, and confessed, **THEY HAD DONE THE FEAT, AND COULD BUT LAUGH TO THINK HOW LIKE A FOOL THE EARL OF ESSEX LOOK'D WHEN THEY CAME TO CUT HIS THROAT.** And that this is not a new-made Story, but long since revealed to many

\* Mr. Rowden, Mrs. Rowden, Mrs. Mary Rowden, Mr. Adams, Mrs. Adams, Mr. May, and Mr. Tournay, p. 911, 912.

† Mrs. Hewitt's, Christopher's, and Mr. Swan's, p. 912.

‡ Morris, Dupine, Colclham, Douthwaite, Bond and Mr. Wellhead p. 912, 913.

§ Mr. Hubland, Mrs. Hubland, Mrs. Meux, Trehern, Burgis, Savage, and Mr. Buttre Maynoe, will attest the same, p. 913, 914.

who did caution this Deponent to Secrecy, appears by the Testimony of six or seven Witnesses; and for a farther Confirmation of the Truth of that Consult, † three Depositions which were made to destroy the Credit of that Deponent, are detected, and (by † many Witnesses) proved false in every Part; but as farther rational Grounds (and not Strength of Imagination) for this barbarous Murder, † Eight Witnesses have proved, That before the Earl's Death, or before his Death could be known, was it reported in many Parts of England, that the Earl of Essex had cut his Throat in the Tower; all these several previous Reports agreed in the manner how, (viz.) cutting his Throat; and place where, (viz.) the Tower; (though at some of those Places when so reported, it could not be known that the Earl of Essex was a Prisoner in the Tower). And one of these previous Reports, the next Day after my Lord's Commitment, (viz.) the Wednesday, pretended to give the Reason wherefore the Earl cut his Throat (that is to say) because the King and Duke being in the Tower, he was afraid his (then) Majesty would have come up into his Chamber, and seen him; but his Guilt and Shame was such, as he could not bear the Thought of it, and therefore cut his Throat to avoid it: This being said about 60 Miles off, two Days before the King and Duke went to the Tower, and the very next Day after my Lord's Commitment; wherefore many that are not of too strong an Imagination credulously to believe without Grounds from those very particular previous Reports, as to Manner, Place, and pretended Reason, are apt to think that the MANNER HOW, THE PLACE WHERE, AND PRETENDED REASON (to be given out) WHEREFORE, were all previously agreed upon some Days before my Lord's Death; for they cannot perceive how my Lord's Death, in all its Parts (as it was afterwards pretended to be acted) could be so particularly related in so many, and far distant Places from each other.

§ Monday and Ruffel declare this before the Lords.

let into my Lord that

\* Hughes and Gladwin, Bampton and his Wife, p. 915.

of my Lord's Death declared, That they saw his HIGHNESS send two Men to the Earl's Lodgings to murder the Earl, and that his HIGHNESS did send two Men towards the Earl's Lodgings just before his Death, and that these two Men soon after returned, and said, *The Business was done*, appears by the † Testimony of him who saw His HIGHNESS send these Men, and their

† Mr. Effington, p. 916.

Return to His HIGHNESS: And it's farther\* proved, that the Sentinel who kept my Lord's outward Door, confessed, by special Order he let in two or three to my Lord, (of which Webster was one, who that Night produced my Lord's bloody Pocket-Handkerchief, and the next Day a Purse of Gold of 40 Guineas and a Pistole, tho' he was very poor before) just before his Death; and that upon those Men's going into my Lord's Chamber, there was so great a trampling and bustling, that the Sentinel would have forced in after them, but could not, because the first Door was made fast; and that upon the Bustle, he heard somewhat thrown down like the Fall of a Man, which he did believe to be my Lord's Body; soon after which, it was pretended my Lord cut his Throat: And for what those Men were thus bustling, appears by the Murder which was several times very loud and very dolefully cried out during this Bustle; and this heard by † one who saw this bustling, and soon after revealed it, but was cautioned to Secrecy for her Safety, by † him who in this respect upon Oath hath confirmed the same: And that his Lordship made use of his Hand to prevent, as well as his Tongue to discover, that Villany, which he saw designed his Destruction, is verily believed by those who find it proved,

\* Lloyd's Confession, Mr. Story, Mr. Tem-  
pels, p. 914.

† Mrs. Bafcomb, page 914.

† Mr. Perkins, p. 91.

‡ Mr. Stallingford, p. 924.

§ Turner and Peck, Mr. Sherwood the Surgeon, p. 924.

† Mary Johnson, who stript the Body, confessed this.

Johnson and Towry, p. 917. and Alice Carter declared the same.

† This is sworn by the Coroner, and several of the Jury.

† T. Howard, Esq.

§ Mr. Fisher, p. 923.

\* Mr. Fisher, p. 924.

of the Jury were doubtful of my Lord's Self-Murder, because his Lordship was (very deservedly) esteemed a very good Man, and therefore not to be thought *Felo de se*: Major Hawley, to remove this Objection, and to corrupt the Jury with a Lye, tells them to this effect, (viz.) That whosoever did believe Self-Murder unlike my Lord of Essex, did not know his Lordship, for every Man that was well acquainted with the Earl, knew that it was a fixt Principle in his Lordship, that any Man might cut his Throat, or otherwise dispose of his Life, to avoid a dishonourable and infamous Death; and therefore this Action was according to the Lord of Essex's avowed Principles. But when Major Hawley was charged (before the Lords) with this Suggestion, he did utterly deny it, and professed that he never heard it said to be my Lord's Principle, till their Lordships charged him with having suggested it, and therefore he could not suggest it: Besides, he was not nigh the Jury at the Victualling-house any time whilst they were there upon their Inquisition: But the Major had given them another reason not to forget his being then there; for (it is proved by one, and ready to be proved by many then present) that some of the Jury were for adjourning their Inquisition, and immediately to give notice to my Lord's Relations, so that if any thing could be proved on my Lord's behalf, it might be heard: This Major Hawley steps in and prevents it, by protesting † that his (then) Majesty had sent an Express for their Inquisition; and his Majesty had declared, That he would not rise from Council till it was brought, and therefore they could not adjourn, but must immediately dispatch. In answer to this, the Major protests that he was not near the Jury at that House, and so did not, or could hasten them. But the Major was so well known to the Coroner, Surgeons, and Jury, that it is highly improbable all should be mistaken.

† Page 924.

The timing my Lord's Death, and the speedy hurrying it away to the Old-Bailey, and the immediate use that was made thereof as an Evidence from Heaven of his Lordship's Guilt, and of the Truth of the Charge against the Right Honourable the Lord Russell, then upon his Trial, and the corrupt Influence it had upon the Court, Counsel and Jury, (so that they did at one stroke virtually destroy two of as great Patriots as this Age or Nation ever knew, and of whom we were no longer worthy;) This might be used by impartiality itself as a probable Evidence of this treacherous Cruelty.

The unjust Methods and Violence used to prevent any search after, or discovery of this unfortunate Lord's Death, are farther rational Inducements for sober Men to believe this Murder, when they find that † I was committed as soon as I came to Whitehall with the Persons to be sworn with relation to my Lord's Death, and this before either myself, or any Person had been examined, and consequently before any thing criminal could appear against me: And afterwards Mr. Speke and myself prosecuted, and represented (especially myself) as the worst of Criminals, tho' nothing like a Crime was proved against me, admitting, for true, every thing sworn at my † Trial, where those in whose Custody my Lord was, § and consequently whom we would have accused of my Lord's Murder, were called a CLOUD of Witnesses to prove the Self-Murder.

† Vide p. 902.

‡ I do appeal to the Trial as Printed.

§ Vide p. 908.

The



The Prosecution of \* one of the Coroner's Jury, for declaring, That he believed they (*viz.*) the Jury were all infatuated to find his Lordship *Felo de se*; but he did suppose, had they not been hurried, they might have found it otherwise; is another Instance of the Severity of the Government, with relation hereunto; and the cruel Usage of an \* old Soldier, in feeding him with Bread and Water in the Hole, and afterwards causing him to receive Fifty-three Stripes with great Force (tho' the usual Number was but Twelve,) and then telling him, He ought to be Hanged for saying what he did, and so discarded him; and all this, only for declaring (when pressed to give his Opinion with relation to my Lord's Death,) Whether he did believe his Lordship cut his own Throat? declared, *That he would not say he did believe it.* But greater Cruelties than these, some bloody Men may be supposed to have used to prevent a Discovery of my Lord's Murder; for Mr. Hawley, who \* *KNEW THAT I KNEW NOTHING WITH RELATION TO MY LORD'S DEATH*; and his too freely imparting his own Knowledge in the Matter, is thought to have caused him (not to run away, but) to be murder'd.

And honest Robert Meake \* protested, the very Day he was murder'd, that he did fear that same Day he should be murder'd for what he knew and had declared concerning my Lord's Murder; and the very next Morning was found dead in the Tower-Ditch.

And whether poor Ruddle was shot to Death in the Indies, (where I've heard he so dy'd) for his knowing and revealing what he knew of this Murder, Time may discover.

To proceed no farther. Now whether that CLOUD of (Three or Four) \* Witnesses, in whose Custody my Lord was, to avoid being

charged with treacherously consenting to my Lord's Murder, with Halsters about their Necks, by Contradictions endeavouring to prove the Self-Murder,—or that GREAT CLOUD of (upwards of Sixty) Witnesses (for more have been, and will be examin'd with relation to my Lord's Murder) which swear not for their own Lives; but stand *vesti in Curia*, being Persons unprejudic'd, deserve the most Credit—must be left first to the Right Honourable the Lords, before whom this Cause will (in Convenient Time) be reviv'd; and afterwards to such other Judicatures before which this Matter may hereafter be brought; till when it is not proper to publish what might be farther said.——But I do humbly conceive I have herein already furnish'd you with sufficient Grounds to satisfy some (who have been deceiv'd by Misinformation) that there are more arguments than they could have expected, to clear his Lordship's Innocence, and less Reason for them to believe, that I have us'd such villainous practices as my greatest Enemies have suggested, or (as some of my pretended Friends would insinuate) am possess'd with such heat of Imagination, as credulously to believe a thing to be without rational Grounds to convince me that it is.

Sir, As you already have, so I doubt not but you will (as becomes a Friend) endeavour to rescue me from the Slanders of such as have unjustly accus'd me; and likewise from those Reproaches which have been uncharitably taken up against,

S I R,

April 15,  
1690.Your highly obliged, and ever  
faithful Friend and Servant,

L. B.

### CXXV. *The Trial of Sir SAMUEL BARNARDISTON, Bar. at Nisi Prius at the Guildhall of London, for a Misdemeanour, Feb. 14, 1683. 36 Car. II.*

THERE being in Hilary-Term last, an Information in the Court of King's-Bench preferred by His Majesty's Attorney-General against Sir Samuel Barnardiston, for a very great Misdemeanour: Upon Oath made, that he was so extremely indisposed, that he could not appear in Person without danger of his Life; The Court were pleas'd to respite his Recognizance, (which he by Order of the Lords of his Majesty's most Honourable Privy-Council entered into the last Vacation, to appear in Court the First Day of this Term) and to allow him the Liberty of Pleading to the Information by Attorney, which he did. And Thursday the 14th of February 1683, being the Session of Nisi Prius, after the Term holden for the City of London, and County of the same, was appointed for the Trial of this Cause, and accordingly then the same came on, and was tried before the Right Honourable Sir George Jefferies, Knight and Baronet, Lord Chief Justice of his Majesty's Court of King's-Bench, in this manner.

Clerk. Call away, Crier.  
Crier. You good Men of Nisi Prius, summoned to appear here this Day between our Sovereign Lord the King and Sir Samuel Barnardiston, Baronet, answer to your Names, and save your Issues.

Cl. Thomas Vernon and his Fellows. *Vous avez plein Inquest.* Call the Defendant Sir Samuel Barnardiston.

Crier. Sir Samuel Barnardiston, come forth, or this Inquest shall be taken by your Default.

Mr. Williams. He appears.

Cl. Gardez vosfrs Challenges. Swear Thomas Vernon.

Cr. You shall well and truly try this Issue, between our Sovereign Lord the King and Sir Samuel Barnardiston, according to your Evidence. So help you God.

Cl. Percival Gilburn. Who was sworn, and so the rest.

The NAMES of the Twelve were these.

#### JURORS.

Thomas Vernon,	James Wood,	Kenelm Smith,
Percival Gilburn,	Robert Masters,	Thomas Goddard.
Edward Boverly,	Samuel Newton,	Thomas Amy, and
William Withers, Sen.	George Torriano,	Richard Blackburn.

Then they were counted, and Proclamation made for Information, in usual manner.

Mr. Poultney. May it please your Lordship, and you Gentlemen of the Jury; this Cause is between the King and Sir Samuel Barnardiston, and it is upon an Information exhibited by Mr. Attorney-General, wherein he sets forth, That there having been lately a horrid Plot discovered (as appears by the Convictions of those that have suffered justly for it, and by the Evidence that has been given of it, has been made so apparent, that I do not question, but that no Man, but who either has a Hand in it, or else bears a good Will to it, doth at all scruple the belief of it,) Sir Samuel Barnardiston, the Defendant, intending to scandalize and vilify the Evidence, wrote a Letter, wherein are contained these Sentences.

'The Return of the Duke of Monmouth to Whitehall, and his being received into extraordinary Favour of His Majesty, hath made a strange Alteration of Affairs at Court: For those that before spake of him very indecently, now court, cringe, and creep to him. His Grace complain'd to the King of the scandalous Misrepresentation that was made of him in the Monday's Gazette, upon which the Gazetteer was called to Account for it, who alledged for himself, That a Person of great Quality sent him in Writing the Words therein recited, commanding him to put them in the Gazette. Yesterday being the last Day of the Term, all the Prisoners that were in the Tower upon the late Sham Protestant Plot, were discharged upon Bail. Mr. Braddon, who prosecuted the Murder of the Earl of Essex, the Information put in against him in the King's-Bench by Mr. Attorney, for a pretended Subornation, &c. was not prosecuted, and his Bail was discharged. And the passing Sentence upon the Author of Julian the Apostle, and the Printer of the late Lord Russell's Speech, was pass'd over in Silence. Great Applications are made

to His Majesty for the pardoning Mr. Sidney in the Tower, which is believed will be attained, and that he will be banished. The Lord Howard appears despicable in the Eyes of all Men; he is under Guard at Whitehall, and 'tis believed he will be sent to the Tower, for that the Duke of Monmouth will accuse him concerning the Testimony he hath given, and the Papists and High Tories are quite down in the Mouth, their Pride is abated, themselves and their Plot confounded, but their Malice is not asswaged. 'Tis generally said, the Earl of Essex was murdered. The brave Lord Russell is afresh lamented. The Plot is lost here, except you in the Country can find it out amongst the Addressers and Abhorers. This sudden Turn is an Amazement to all Men, and must produce some strange Events, which a little Time will shew.'

And then he goes on further, and says in another Letter these Words: 'I am to answer yours of the 27th and 29th past, and truly I cannot but with great Sorrow lament the Loss of our good Friend honest Mr. John Wright; but with Patience we must submit to the Almighty, who can as well raise up Instruments to do his Work, as change Hearts, of which we have so great an Instance in the Business of the Duke of Monmouth; that no Age or History can parallel. I am now thoroughly satisfied, that what was printed in the Monday's Gazette is utterly false, and you will see it publickly declared so shortly. The King is never pleased but when he is with him, hath commanded all the Privy-Council to wait upon him, and happy is he that hath most of his Favour. His Pardon was sealed and delivered to him last Wednesday. 'Tis said, he will be restored to be Master of the Horse, and be called into the Council-Table, and to all his other Places, and 'tis reported he will be made Captain-General of all the Forces, and Lord High-Admiral, &c. He treats all his old Friends that daily visit him with great Civilities, they are all satisfied with his Integrity; and if God spares his Life, I doubt not but he will be an Instrument of much Good to the King and Kingdom. He said publickly, That he knew my Lord Russell was as Loyal a Subject as any in England, and that His Majesty believed the same now. I intend shortly to wait on him myself. It would make you laugh to see how strangely our High Tories and Clergy are mortified, their Countenances speak it. Were my Sheforary to be moved for now, it would be readily granted. Sir George is grown very humble. 'Tis said Mr. Sidney is reprieved for Forty Days, which bodes well.'

And then, Gentlemen, he goes on further; and in a third Letter says, 'The late Change here in Publick Affairs is so great and strange, that we are like Men in a Dream, can hardly believe what we see, and fear we are not fit for so great a Mercy as the present Juncture seems to promise. The Sham Protestant-Plot is quite lost and confounded. The Earl of Macksfield is bringing Actions of Scandalis Magnatum against all the Grand Jury-Men that indicted him at last Assizes.'

L. C. J. \*. This is the only true thing in the \* Sir George Jefferies whole.

[Mr. Poultney reads.]——'And the several Gentlemen that were indicted in Cheshire and Northamptonshire will bring their several Action at Law against them.'

And, Gentlemen, then in a fourth Letter are contained these Expressions:

'Contrary to all Men's Expectations, a Warrant is Signed at last for Beheading Col. Sidney at Tower-Hill next Friday. Great Endeavours have been used to obtain his Pardon, but the contrary Party have carried it, which much dasheth our Hopes, but God still governs.'

Gentlemen, All this the Information says, he has done against the Peace of the King, his Crown and Dignity. To this he has pleaded Not Guilty. We will call our Witnesses, and if we prove it, we question not but you will find him Guilty.

Mr. Recorder \*. May it please your Lordship, and you Gentlemen of the Jury; I am of Counsel for the King in this Cause. Upon the opening of these Letters to you, you cannot but wonder much more than he does that wrote them. His Matter of Won-

\* Sir Tho.  
mas Jenner.



der was one Way, and I suppose your Matter of Wonder is another Way, that a Man, such an one as he is, should have that Confidence to write such Letters as these are. Gentlemen, I do not doubt but you observe in the Series of these Letters, how he hath travelled through all the Transactions of this horrid Conspiracy, that was of late contrived against the Life of the King, and the Life of his Royal Highness, and for the Destruction of the Government; and how he does endeavour to turn it all into Ridicule, and to magnify the Men that have come to Publick Justice for being concerned in that horrid Conspiracy, as being very brave Men. The brave Lord *Russel* he is lamented as a brave Man lost; The Earl of *Essex* he forsooth was murdered; and Mr. *Braddon*, who prosecuted that Murder, he is a brave Man, whom I suppose some of you have heard of, and what is become of him, how he is convicted of one of the most notorious Facts that ever was acted by Man in any Civil Government, which was, that *Braddon* should go up and down to get Witnesses to make it appear to the World, as tho' some body had murdered that Earl. Thus you see he goes through the Conspiracy from one thing to another, and calls it a Sham Protestant-Plot, and all to ridicule the Discovery, which by these very Letters you may easily be satisfied of the Reality and Extent of. You see how he magnifies his *Julian*, but he likewise is come to condign Punishment for that most pernicious and scandalous Libel. In the next places he comes to the Duke of *Monmouth*, and tells you what a brave Man they have in him to be their Captain-General, and he did not doubt but to see him come to it; and sets forth, that he has denied all the Plot, and how he doth persist in that Denial. And this Gentlemen has raised his Confidence in these Letters to that Degree, that I think any Man, that has lived any time in this Nation, cannot but wonder, that ever there should be such an impudent Action committed in it. Gentlemen, We shall call our Witnesses and prove it positively upon him, that these Letters he did write, and then I suppose he will give an account how he came to write them.

Mr. *Herbert*. May it please your Lordship, and you Gentlemen of the Jury, I have but one Word which I desire to observe; for the opening of the Case, and a right Understanding of the Matter will have a great Influence upon the Proofs. And I shall not insist upon any thing that has been opened at large out of the Letters, but one thing I would observe to you, and that is out of the last Letter. Great Endeavours have been used to obtain his Pardon, but the contrary Party have carried it, which much dasheth our Hopes. So it seems by this that the Faction, the Party, have their Hopes still, and it seems likewise the Writer of these Letters hath a very great Share in them. We have, Gentlemen, nothing to do here before you, but to prove that Sir Samuel Barnardiston was the Author, Writer and Publisher of the Letters, which contain that which is charged in the Information, and that we question not but to prove clearly without contradiction. Call Mr. *Blathwaite*. [Who was sworn.] Pray give in the Letters. [Which was done.]

Mr. *Recorder*. Pray, Sir, look upon those Letters, and give the Court and the Jury an account where you had them.

Mr. *Blathwaite*. Gentlemen of the Jury, These three Letters Sir Samuel Barnardiston, upon the 10th of December, before the King and the Lords of the Council, did own to be of his Hand-writing. I marked them at that instant of time, and I am well assured they are the Letters he owned to be of his Hand-writing.

Mr. *Williams*. Did he own them to be of his Hand-writing?

Mr. *Blathwaite*. Yes.

L. C. J. \* Did he own them all three?  
\* Sir George *Jefferies*. Mr. *Blathwaite*. Yes, my Lord, he did.

Mr. *Williams*. Pray, Sir, who are they directed to?

L. C. J. Mr. *Williams*, He is informed against for writing, not for supercribing.

Mr. *Williams*. My Lord, I ask that Question for this reason, He is indicted for writing and publishing, therefore I would know who they are directed to. Did he say they were published by him, or sent to any one?

Mr. *Blathwaite*. He did not deny but that he had published and sent them.

Mr. *Williams*. Did he confess it?—Mr. *Blathwaite*. He did not deny it.

L. C. J. I suppose they on the other side will give an Account where they were taken.

Mr. *Herbert*. Yes, my Lord. Swear Mr. *Atterbury*. [Which was done.]

Mr. *Recorder*. Hark you, Mr. *Atterbury*, Do you know any thing of these Letters?

Mr. *Atterbury*. If you please to let me see them, Sir.

Mr. *Recorder*. Shew him them.

[Which was done, and he looked upon them, and gave them in again.]

Mr. *Herbert*. Did you hear Sir Samuel Barnardiston own them to be his Letters?

Mr. *Atterbury*. My Lord, and you Gentlemen of the Jury, I had a Warrant from Mr. Secretary *Jenkyns*, about two Months, or ten Weeks ago, to apprehend Sir Samuel Barnardiston, and I did, according to Order, by Virtue of that Warrant, apprehend him, and carry him before his Majesty. When he was there, those three Letters I had just now in my Hand, were then shewn to Sir Samuel Barnardiston. I marked them, and know them to be the same; Sir Samuel Barnardiston did own he wrote them Letters all three.

L. C. J. Were the Supercriptions upon them all, as they are now?

Mr. *Atterbury*. Yes, they were all as they are now.

L. C. J. What say you, Mr. *Blathwaite*?

Mr. *Blathwaite*. Yes, they were just so, the same Supercriptions.

Mr. *Atterbury*. His Majesty asked him, Who subscribed them?—

L. C. J. Supercribed them, thou meanest, they are not subscribed.

Mr. *Atterbury*. Yes, my Lord, supercribed them; and he looked on them again, and said, They were supercribed by one of his Servants, and so ordered to be carried to the Post-House.

Mr. *Recorder*. Where is *Nehemiah Ofsand*?

Juryman. My Lord, We would ask the Witness, Whether he did own that he sent them to the Post-House?

L. C. J. He says, he ordered his Man to supercribe them, and so to carry them to the Post-House.

Mr. *Williams*. Look you, Mr. *Atterbury*, Did he say he directed any of his Servants to carry them to the Post-House, upon your Oath?

Mr. *Atterbury*. I am upon my Oath, Sir; I say, that he did say, that they were supercribed by some of his Servants, he could not say which of his Servants it was, and then they were sent to the Post-House.

Mr. *Williams*. Pray, Sir, mind, and answer my Question, Did he say, he directed any of his Servants to carry them to the Post-House?

L. C. J. Did he take any notice to you, or did you understand by him, that they were sent to the Post-House by his Consent?

Mr. *Atterbury*. Yes, my Lord, I did understand him so.

L. C. J. Did he write these Letters to keep them in his Pocket, do you think, Mr. *Williams*?

Mr. *Williams*. I do not know what he design'd them for, my Lord; nor do I yet know till they are read, what is in them: But I ask him this Question, Did he say he sent them to the Post-House?

Mr. *Atterbury*. With your Leave, I remember one thing more, my Lord; while he was in my House, (for there he was in Custody two Days or more) talking about these Letters, says he, I wonder how they were taken, they were sent to Sir *Skippon*, or some such Name he named.

Mr. *Recorder*. Swear *Nehemiah Ofsand*. [Which was done.]

Mr. *Herbert*. Look upon those Letters, Sir. Shew him them. [Which was done.]

L. C. J. Is this Man's Name *Ofsand*?

Mr. *Recorder*. Yes, *Nehemiah Ofsand*, Do you know any thing of those Supercriptions?

*Ofsand*. Two of those Supercriptions I writ by his Order as his Servant.

Mr. *Recorder*. Which are those two? Then he gave them into the Court.

L. C. J. Can you tell whose Hand is the other Part?

*Ofsand*. I did not see it writ, but the Hand is somewhat like Sir Samuel Barnardiston's Hand.

L. C. J. You believe it to be his Hand?—*Ofsand*. Yes, I do.

Mr. *Williams*. Did you ever see the Inside of those Letters that you say you supercribed?—*Ofsand*. No, I never saw the Inside.

L. C. J. What Directions had you about them, after you had supercribed them?

*Ofsand*. I had no Direction, but to leave them where I used to leave his Letters, and that was in a Window that Sir Samuel Barnardiston always left his Letters in, and from thence one of the Boys used to carry them to the Post-House.

Mr. *Williams*. Sir, Did Sir Samuel order you to supercribe those three Letters, and send them to the Post-House?

L. C. J. He said he supercribed them by his Command, and left them in the Place that Letters used to be laid that were to go to the Post-House.

Mr. *Recorder*. Pray, Sir, Look upon those Letters again.

L. C. J. Whose Hand is the Supercription? Is that Sir Samuel's too?

*Ofsand*. I believe it Sir Samuel's Hand.

L. C. J. Shew that other Letter to Mr. *Blathwaite*: What say you to it, Sir?

Mr. *Blathwaite*. Gentlemen of the Jury: This is another Letter that was seized and brought before the King and the Lords of the Council, and this Letter was afterwards owned by *Ofsand*, to be writ by him by Sir Samuel Barnardiston's Order.

L. C. J. Did Sir Samuel own this Letter to be his Hand-writing too?

Mr. *Blathwaite*. No, he did not, but *Ofsand* did own it.

Mr. *Recorder*. My Lord, We prove it otherwise to be Sir Samuel's Letter, because it is not his Hand, but his Man's. You *Ofsand*, Do you know who writ that Letter?—*Ofsand*. I writ it.

Mr. *Recorder*. By whose Order?

*Ofsand*. I transcribed it out of a Copy given me by Sir Samuel Barnardiston, as I was his Servant.

L. C. J. And did you write the Supercription too?

*Ofsand*. Yes, I writ the Supercription.

L. C. J. In order to what? To go down into the Country too?

*Ofsand*. In order to go where it was directed, my Lord.

L. C. J. Where was that?—*Ofsand*. Into *Suffolk*, to Sir *Philip Skippon*.

L. C. J. This Letter was written at *London*, was it not?

*Ofsand*. In *Bishopsgate-street*, at Sir Samuel's House.

Mr. *Williams*. What is your Name, Sir?—*Ofsand*. My Name is *Ofsand*.

Mr. *Williams*. Your Christian Name?—*Ofsand*. *Nehemiah*.

Mr. *Williams*. Then, *Nehemiah Ofsand*, I ask you this Question upon your Oath, when these Letters were supercribed by you, did you lay them in that Window you speak of, or did you give them back again to Sir Samuel?

*Ofsand*. Sir, I am not so certain as to swear to these particular Letters; but his usual Custom was, He would write a Letter, and then give it me to copy: His Closet-door was near another Window, and there he would leave it. If it were but one Letter, he would use to say, Direct such a Letter to such a Person, or such a Place, and when it was so directed, I was used to put my Letters there, and thence one of the Boys came and fetched them to carry them to the Post-House. But sometimes he would send me down directly with it away to the Post-House, if he had not any other Business for me to do.

Mr. *Williams*. But, Sir, mind the Question. I ask you again: Did you deliver these Letters, or any of them, back again to Sir Samuel Barnardiston, or no?

*Ofsand*. I cannot tell for these particular Letters. I tell you what the usual Custom was in the House.

Mr. *Williams*. Pray when you had supercribed them, or Sir Samuel, what became of them Letters?

*Ofsand*. They went to the Post-House, as I believe.

Mr. *Williams*. How long have you served Sir Samuel Barnardiston?

*Ofsand*. Five Months.

Mr. *Williams*. Did you serve any body before?

*Ofsand*. No.

Mr. *Recorder*. Why, do you think he doth not serve him well now, Mr. *Williams*?

Mr. *Williams*. I know very well what I think of it, Mr. *Recorder*.

L. C. J. Well, come read them.

Clerk reads.—This is directed to Sir Philip Skippon, Knight, at Ipswich, and dated Novemb. 29, 83.

(Reads)



(Reads) Sir, The Return of —

Mr. Williams. That is not Sir Samuel's Hand, I think.

L. C. J. No, but writ by his Order.

Osland. I transcribed it by his special Order: For he came to me and gave me a Letter, says he, Go and make me a Copy of this Letter.

Mr. Recorder. And you did transcribe it exactly as it was in the Paper he gave you?

Osland. I examined it after I had writ it my self, and read it over again.

L. C. J. What did you write it out of? — Osland. A Copy he gave me.

L. C. J. Was that Copy his Hand-writing?

Osland. I did not see him write it, but I believe it to be his writing.

L. C. J. Come read it. — Clerk reads —

SIR,

THE return of the Duke of Monmouth to Whitehall, and his being received into extraordinary Favour of His Majesty, hath made a strange alteration of Affairs at Court: For those that before spake of him very indelicately, now court, cringe, and creep to him. His Grace complained to the King of the scandalous Misrepresentation that was made of him in the Monday's Gazette, upon which the Gazeteer was called to Account for it, who alledged for himself, That a Person of great Quality sent him in Writing the Words therein recited, commanding him to put them in the Gazette.

Yesterday being the last Day of the Term, all the Prisoners that were in the Tower upon the late Sham Protestant Plot, were discharged upon Bail. Mr. Braddon, who prosecuted the Murder of the Earl of Essex, the Information put in against him in the King's Bench by Mr. Attorney, (for a pretended Subornation,) &c. was not prosecuted, and his Bail was discharged. And the passing Sentence upon the Author of Julian the Apostate, and the Printer of the late Lord Russell's Speech, was passed over in Silence. Great Applications are made to His Majesty for the pardoning Mr. Sidney in the Tower, which is believed will be attained, and that he will be banished.

The Lord Howard appears despicable in the Eyes of all Men; he is under Guard at Whitehall, and believed he will be sent to the Tower, for that the Duke of Monmouth will accuse him concerning the Testimony he hath given, &c.

The Papists and High Tories are quite down in the Mouth, their Pride is abated, themselves and their Plot confounded, but their Malice is not abated. 'Tis generally said the Earl of Essex was murdered. The brave Lord Russell is afresh lamented. The Plot is lost here, except you in the Country can find it out amongst the Addressers and Abhorers.

This sudden Turn is an Amazement to all Men, and must produce some strange Events, which a little Time will shew.

Mr. Recorder. Now go on to the next. The Second Letter.

Clerk Reads. — This is directed, To Sir Philip Skippon, Knight, at Ipswich, Suffolk.

L. C. J. That is one of his own writing.

Mr. Recorder. Yes, my Lord.

Clerk. It is dated London the first of December 1683.

Dear SIR,

I Am to answer yours of the 27 and 29th past, and truly I cannot but with great Sorrow lament the Loss of our good Friend honest Mr. John Wright, but with patience we must submit to the Almighty, who can as well raise up Instruments to do his Work, as change Hearts, of which we have so great an Instance in the Business of the Duke of Monmouth, that no Age or History can parallel. I am now thoroughly satisfied, that what was printed in the Monday's Gazette is utterly false, and you will see it publicly declared so shortly. The King is never pleased but when he is with him, hath commanded all the Privy Council to wait upon him, and happy is he that hath most of his Favour. His Pardon was sealed and delivered to him last Wednesday. 'Tis said, he will be restored to be Master of the Horse, and be called into the Council Table, and to all his other Places, and 'tis reported he will be made Captain-General of all the Forces, and Lord High-Admiral, &c. He treats all his old Friends that daily visit him with great Civilities, they are all satisfied with his Integrity, and if God spare his Life, doubt not but he will be an Instrument of much Good to the King and Kingdom. He said publicly, That he knew my Lord Russell was as Loyal a Subject as any in England, and that his Majesty believed the same now. I intend shortly to wait on him my self. It would make you laugh to see how strangely our High Tories and Clergy are mortified, their Countenance speak it. Were my Sheforary to be moved for now, it would be readily granted. Sir George is grown very humble. 'Tis said Mr. Sidney is reprieved for Forty Days, which bodes well.

Mr. Kedder sat with me sometime this Evening.

L. C. J. There is no more in the Record.

Mr. Recorder. No, my Lord. Then go on to the Third.

Clerk. This is directed For Mr. Edward Gael, Linen-Draper, at Ipswich.

Mr. Williams. Is it likely he should write these Letters to a Draper?

L. C. J. It is, it seems, the ordinary riff-raff he writes. He thinks not below him to keep a Correspondence with all the Scoundrels of this Party in the Country.

Mr. Recorder. Ay, all Sorts of Trades he is acquainted with.

Clerk. It is dated the first of December 1683.

Reads. — Mr. Gael,

This Evening Mr. Kedder came and sat with me —

L. C. J. Will you have it all read?

Mr. Williams. No, my Lord, we do not desire it.

L. C. J. Then read what is in the Record.

Mr. Recorder. Look where that Passage begins, The late Change —

Clerk. Where is it, Sir? It is not marked.

L. C. J. If you cannot find it out, then read the whole.

Clerk Reads —

Mr. Gael,

THIS Evening Mr. Kedder came and sat with me, when acquainted him what you and others writ me in reference to himself, as also of the Death of Mr. Wright, which he was sorry for. He protested, if could persuade

VOL. III.

his Wife, he would accept of Ipswich Choice, notwithstanding all the Discouragement he had met with. One more he acquainted me with, that had seen a Letter from Mr. Cutliffe to Dr. Clegat, extremely discouraging him from coming to Ipswich, where if he did come, said, would find himself mistaken, for that would never enjoy Quietness or Peace, notwithstanding his Balsamick Temper, &c. as he called it. These Things frights Mr. Kedder, who I am now persuading so soon as he is up again, to go down for a Month or two, and then if he doth not like the Place and People, may return hither again. This I resolve to press hard on Monday, when have promised to Dine with me, as also Mr. Hodges. Be confident, I shall think nothing too much to effect this Business, though one or other still pulls down as fast as I build up. — Here is now a Door of Encouragement opened for sober Men to come into publick Employment. You will undo the Town of Ipswich if you bring not sober Men into play: For God's sake consider of it. Persuade Mr. Snilling, or some sober Men, to come in their two Ports-Mens Places void for other Matters, refer you to Sir P. the late Change here in Publick Affairs, is so great and strange.

L. C. J. There begins the Passage in the Record.

Clerk reads — The late Change here in Publick Affairs is so great and strange, that we are like Men in a Dream, can hardly believe what we see, and fear we are not fit for so great a Mercy as the present Juncture seems to promise. The Earl of Mackensfield is bringing Actions of Scandalis Magnatum against all the Grand Jurymen that indicted him at last Assizes. And the several Gentlemen that were indicted in Cheshire and Northamptonshire, will bring their several Actions at Law against them. Acquaint Mr. Snilling —

L. C. J. There is all that is in the Record.

Mr. Recorder. There are but two Lines more

Clerk reads — Acquaint Mr. Snilling we received the two Barrels of Oysters, and two Couple of Ducks, and desire him to take Money of Buckle for them. I rest, yours.

Mr. Recorder. Now go on to the next.

Clerk. This is the Fourth Letter: it is directed to Mr. William Cavell, at Brightwell near Ipswich in Suffolk, and dated London the 4th of December 1683. Shall I read it all?

L. C. J. No, no: If you can find that Part that is in the Record, Contrary to most Men's Expectations, there it begins.

Clerk reads — Contrary to most Men's Expectations, a Warrant is Signed at last for Beheading Colonel Sidney at Tower-Hill next Friday. Great Endeavours have been used to obtain his Pardon, but the contrary Party have carried it, which much dasheth our Hopes, but God still governs. Acquaint Buckle —

L. C. J. There is all.

Clerk. Here is but a Line more (reads) Acquaint Buckle, here is no News of Crafton Hoy, notwithstanding the Wind is fair, 'tis his Practice always to loiter by the Way. I rest, your loving Friend.

Mr. Williams. Pray let me see that Letter.

Mr. Recorder. We have done, my Lord, we leave it here.

L. C. J. Well, What say you to it that are for the Defendant?

Mr. Williams. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel here for the Defendant, Sir Samuel Barnardiston, and the Question now before you is, Whether this Gentleman be knowingly guilty of the writing and publishing these four Letters that have been read here to you, and which of them he is guilty of writing, and which not? I do not see that his Name is put to any of them; nay, the Letters are not subscribed by any body, and that, Gentlemen, you may see by looking upon the Letters. For the Evidence that hath been given, I beseech your Lordship to observe what it is. As to his publishing of them, I see no Evidence at all to prove him any way concerned in that: Some of them, indeed, are his own Hand-writing, and proved to be his Letters, by his own Confession before the King and Council; that Mr. Blathwaite and Mr. Atterbury the Messenger swear directly, that Sir Samuel Barnardiston did own the Letters, but for the Fourth they say he did disown that to be his Letter, and it is not so much as his Hand; but what Proof is it they have brought to apply this to him? You see what a Sort of Proof is made: They produce you here a young Man that was (as it happened) his Servant at this Time, and lived in his Family with him in the Nature of a Secretary, it seems; and how fit he was to be entertained in that Quality, you, I question not, observe. He says, he did copy this Letter by the Direction of his Master. It is well if he did not keep a Copy himself by him of such a Letter as this for a particular Use, as some honest Servants have done before now, that have designed somewhat of Advantage to themselves: But that is his Evidence about this Fourth Letter. That then Gentlemen which we would offer on behalf of the Defendant, is this, Whether there be any Evidence of the publishing of these Letters by Sir Samuel Barnardiston, either of all, or any, and which of them? All the Proof that I hear, comes from Atterbury, and the Clerk of the Council Mr. Blathwaite, which is but this: Atterbury says, That Sir Samuel should say, They were sent to the Post-House; and Mr. Blathwaite says, he did not deny the publishing of them, but he does not say, he confessed it. As to the sending to the Post-House, if it be true, I shall leave it to your Lordship, how far that, my Lord, can be a publishing of a Libel; Whether that be a publishing within the Information, or no? A Gentleman writes a Letter to a private Friend, and sends it to the Post-House; Whether that be a publishing of a Libel, I leave it to you? For the Fourth Letter, this same trusty Secretary cannot tell you, whether he delivered it back again to Sir Samuel, or no; or whether he put it in the Window; or whether he delivered it in at the Post-House, only, as he believes, he laid it in the Window as he used to do other Letters. But whatever he believes must not pass for Evidence, especially in Matters of this Nature, it being a great Crime, as the Information has set it forth. If then there is no Proof (as with Submission I hope there is not) of the Publication of these Letters, I suppose Gentlemen, you will not take it upon your Oaths, that he is guilty of what he is here accused of without Evidence. This Information, Gentlemen, doth mention several Things, which do very much aggravate the Matter, if they were proved. Many Things are laid in it to induce the Information, and which may much



enhance the Crime, but of which I see no manner of Proof at all. Many Things are mentioned as Facts leading to the main Facts, which is the great Offence; but these not being proved upon him, I desire he may be acquitted of that Part.

L. C. J. What do you mean, Mr. Williams?

Mr. Williams. Of all your Preamble.

L. C. J. What Preamble do you mean?

Mr. Williams. That he being a Person of a turbulent and unquiet Spirit—

L. C. J. Why, Mr. Williams: Would you have the Jury find that he is not so?

Mr. Williams. My Lord, There is no Proof of it; or that he did do it with a Design seditiously to disturb the Peace, that he did it with a seditious Intent.

L. C. J. You would have the Jury find, I warrant, that he did it piously, and with a good Intent.

Mr. Williams. My Lord, There is a middle way—

L. C. J. No, no, Mr. Williams. Let us have none of that Doctrine, we must have a care of that, and your middle Ways. For certainly the Law supplies the Proof, if the thing it self speaks Malice and Sedition. As it is in Murder, we say always in the Indictment, He did it by the Instigation of the Devil: Can the Jury, if they find the Fact, find he did it not by such Instigation? No, that does necessarily attend the very Nature of such an Action, or Thing. So, in Informations for Offences of this nature, we say, He did it falsely, maliciously, and seditiously, which are the formal Words; but, if the nature of the Thing be such as necessarily imports Malice, Reproach, and Scandal to the Government, there needs no Proof but of the Fact done, the Law supplies the rest. If the Fact were indifferent in itself, then to make a Crime of it, the accidental Circumstances must be proved, but it needs not where the Thing implies Malice in its own Nature. You would have the Jury find he had no ill Design in it; he did it with a good Intent, I warrant you.

Mr. Williams. All I would ask, my Lord, is but this—

L. C. J. Do you think he did it to serve the Crown? If the Jury will take it upon their Oaths, that Sir Samuel Barnardiston wrote these Letters to serve the Crown, you say something. Pray ask them that Question. Try if you can make them believe that, Mr. Williams.

Mr. Williams. There is no Evidence given about this Malice.

L. C. J. Yes, the very thing is Evidence of itself.

Mr. Williams. Pray, My Lord, let the Fact lie upon its own weight: There is no Proof given of any of these aggravating things.

L. C. J. How shall any Man prove another Man's Malice, which is a thing that lies only in a Man's Mind? How should any Man know that I am malicious against the Government, but by my Actions.

Mr. Williams. I lay it before your Lordship and the Jury.

L. C. J. No Proof can be expected, but what the Nature of every thing will bear.

Mr. Williams. Then I pray this, my Lord, that I may be at Liberty next Term, if we be convicted, to urge this, and observe in mitigation of the Punishment, that there was nothing of these things proved.

L. C. J. Urge what you can in its proper time, but offer nothing here but what is fit to be offered.

Mr. Williams. Here are mentioned in this Information, (tho' it be by way of Inducement, yet they must be proved) things that are Matters of Record, but they have proved none of them.

L. C. J. Have you any of those Records here, the Convictions of my Lord Russell and Colonel Sidney?

Mr. Recorder. Those things are so well known, I suppose they will not contest them.

Mr. Williams. Sir, I must lay hold on all Advantages for my Client. You have made them Part of your Case, pray prove them.

Mr. Recorder. Truly, my Lord, we did not think they would have made that any Question, and we have them not here. They know it well enough to be true.

L. C. J. If you have them not here, go and find them; if they insist upon it, you must prove them. I will stay till you fetch them.

Mr. Williams. My Lord, we would not hinder your Lordship's Business.

L. C. J. No, no, it will be no Hindrance, I will do something else in the mean time. This is a Cause of public Example and Consequence, and I will give it all the fair Hearing I can.

Mr. Williams. My Lord, if you please, there is, I suppose, no such haste of trying this Cause now, to hinder Business, and keep you here longer than needs. This Cause may as well be tried the beginning of next Term.

L. C. J. No, no, I will make an end of it now, if I stay never so long for it; indeed the Defendant says, *I am down in the Mouth*: 'Tis true, I have got a little Hoarseness, but I thank God my Heart is not down, nor I hope never will be to serve the Government.

Mr. Williams. If they will, they shall find the Letters without the Records.

Mr. Jones. No, no, We must have the Records, tho' it is true it is but Matter of Form, yet we must prove our whole Case.

L. C. J. Well, I will stay till they are fetched. Let the Jury stand by, and I will go on and try another Cause, and in the mean Time fetch these Records. Do not make two Journeys, but bring all that are mentioned in the Record.

*Then the Jury were set by, and the Court went on in some other Causes, and about an Hour and an half after the Records were brought, and this Cause was resumed, and proceeded thus.*

L. C. J. Well, come, have you those Records now?

Mr. Recorder. Yes, swear Mr. Tindal. [Which was done.] Is that a true Copy?

Mr. Tindal. Yes, it is a true Copy of the Indictment, Conviction, and Attainder of my Lord Russell. I examined it with Mr. Tanner.

L. C. J. Well, put it in. [And then a Word of it was read by the Clerk.]

Mr. Recorder. And here is the Record it self of the Attainder of Colonel Sidney. [Which was some part of it read also.]

L. C. J. What say you now to it, Gentlemen, for the Defendant? Mr. Thompson. My Lord, I have nothing more than to say than has been said.

L. C. J. All this was well enough known.

Mr. Jones. Ay, but they would give the Court all the Trouble they could by making them send for that which they could not deny.

L. C. J. Gentlemen of the Jury, Here is an Information exhibited against Sir Samuel Barnardiston, and the Information sets forth this Matter. It doth take notice of a horrid Conspiracy, a damnable Conspiracy, lately hatched and set on foot for the Destruction of the King, and for the Subversion of the Government, That there were divers Persons who were indicted, and stood convicted, and were afterwards executed for this horrid Conspiracy. Among the rest, there is notice taken of my Lord Russell for one, and Colonel Sidney (he went by that Name, *Algernon Sidney* I mean) for another, to be two of those Conspirators that were engaged in that damnable Conspiracy for the Destruction of the King, and Subversion of the Government.

Now, Gentlemen, That these Persons according to the Inducement of this Information, were so indicted, so attainted and executed (as far forth as is cited in the Information) is proved to you by the two Records, which the Counsel on the other side insisted to have shewn, and which have been now produced. The one is sworn to be a true Copy of the Conviction and Attainder of my Lord Russell, and the other which they produced, was the Record it self of the Conviction and Attainder of Sidney. So that, as to that part it is plain, they were convicted and attainted, both the one and the other, as Actors in that Hellish Plot.

The next thing, Gentlemen, and which was so much insisted upon by the Defendant's Counsel, is this: The Information takes notice, that the Defendant Sir Samuel Barnardiston, being a Man of a factious, seditious, disaffected Temper towards the Government, a Man of ill Principles, in order to disturb, disquiet, and discompose the Government, he did cause several Letters, Four in Number, to be writ and published, which Letters have been read unto you.

It hath been objected, That in as much as the Words, *Falsely, Seditiously, Maliciously, Factiously*, and the like Words are in the Information, they would have you believe, That there being no Evidence of any such Thing, as Faction, Malice, and Sedition, or that the Man did it Maliciously, and Advisedly, and Seditiously, (which are the Words in the Premises, as I may call them, or the Preamble of the Information) therefore they must be acquitted of that part. Now as to that, I told them then, and tell you now, Gentlemen, That no Man living can discover the malicious evil Designs and Intentions of any other Man, so as to give Evidence of them, but by their Words and Actions. No Man can prove what I intend, but by my Words and Actions. Therefore if one doth compass and imagine the Death of the King, that by our Law is High-Treason; but whether or no he be guilty of this Treason, so as to be convicted of it by another, is not proveable, or discoverable, but by some Words or Actions, whereby the Imagination may be manifested. And therefore my Imagining, my Compassing, which is private in my own Mind, must be submitted to the Judgment that Reason and the Law passeth upon my Words or Actions, and then the Action it self being proved, that discovers with what Mind the Thing was done; as in the Case I put before to the Counsel. Suppose any Man without Provocation kill another, the Words of the Indictment are, That he did it Maliciously, Feloniously, not having the Fear of God before his Eyes, but being moved and seduced by the Instigation of the Devil. Now all these things, whether he had the Fear of God before his Eyes, or not; or whether he were moved by the Instigation of the Devil, and of his Malice forethought, or no; these cannot be known, till they come to be proved by the Action that is done.

So that in case any Person doth write Libels, or publish any Expressions which in themselves carry Sedition and Faction, and Ill-Will towards the Government; I cannot tell well how to express it otherwise in his Accusation, than by such Words, that he did it Seditiously, Factiously, and Maliciously. And the Proof of the thing it self proves the evil Mind it was done with. If then, Gentlemen, you believe the Defendant, Sir Samuel Barnardiston, did write and publish these Letters, that is Proof enough of the Words, Maliciously, Seditiously, and Factiously, laid in the Information.

The Letters are Factious, Seditious, and Malicious Letters, and as base as the worst of Mankind (tho' he had had all the Provocation that ever could be given a Man to libel another) could ever have invented.

And let Sir Samuel Barnardiston put it under the Countenance, or under the Umbrage, or under the Enamel of his Zeal for the true Protestant Religion, if he will; or if he have a mind to it, to give himself any fine Name, by calling himself one of the Sober Party, or Godly Party, or the Upright Party; let him gild himself, and paint himself as he pleaseth, yet the Inside is rotten, and 'tis Factious and Seditious at the bottom to all Intents and Purposes whatsoever. And if he be guilty of it, as you Gentlemen are to try and consider; the greater the Man is, the greater the Crime; and the more Understanding he has, the more malicious he seems to be: For your little ordinary sort of People, that are of common mean Understanding, they may be wheedled and drawn in, and surprized into such things; but Men of a public Figure, and of some Value in the World, that have been taken to be Men of the greatest Interest and Reputation in a Party, it cannot be thought a sudden Surprize upon them; no, 'tis a Work of Time and Thought, 'tis a thing fixed in his very Nature, and it shews so much Venom, as would make one think the whole Mass of his Blood were corrupted. I had thought the Act of Oblivion might have put Sir Samuel Barnardiston in mind, That it was not fit any more to go down to *Whitball*, to make Uproars and Tumults, and Hubbubs.

But here is the Matter that he now is accused of, and here is in Malice against the King, Malice against the Government, Malice against both Church and State, Malice against any Man that bears any Share in the Government, indeed Malice against all Mankind that are not of the same Persuasion with those bloody Miscreants, (I cannot give them a milder Name) I mean the Conspirators in the late damnable Con-

spiracy



spiracy, some of whom have been attainted and executed for it. Here is the Sanctifying of Traitors, that were justly sentenced to Execution according to the Law of the Land; and at the same time there is joined with it the most inveterate Inimosity against the Government that can be, as though the King was prevailed with, upon a Sham Protestant Plot, to do Things in order to destroy the Government itself, and every one of the *Sober Party*, as they call themselves. For these Persons could not have suffered, but as Condemned according to the Rules of Law, but these Letters carry an Inimosity as if they were cut off by a Sham Trick and Design. For after the good News of the Reprieve of *Sidney* was contradicted, the Warrant for his Execution is taken notice of, and you see the manner of Expression that is used, *their Party has prevailed*, as tho' the putting the Laws in Execution, and hanging of Traitors, were such a Thing that a Party must be set up to prevail to do it, and Mankind must be divided into Parties, their Party and our Party, and the contrary Party, they have prevailed; and truly now our Party, the *Sober Party* as he calls it, are in a very sad Condition.

Then here is, as I said, the Sainting of Two horrid Conspirators, here is the Lord *Ruffel* Sainted, that blessed Martyr, my Lord *Ruffel*, that good Man, that excellent Protestant, he is lamented, and what an extraordinary Man he was, who was fairly Tried, and justly Convicted and Attainted, for having a Hand in this horrid Conspiracy against the Life of the King, and his dearest Brother His Royal Highness, and for the Subversion of the Government. And here is Mr. *Sidney* Sainted, what an extraordinary Man he was? Yes surely, he was a very good Man, because you may some of you remember, or have read the History of those Times, and know what Share Mr. *Sidney* had in that black and horrid Villany, that cursed Treason and Murder, the Murder, I mean of King *Charles I.* of Blessed Memory, a Shame to Religion itself, a perpetual Reproach to the Island we live in, to think that a Prince should be brought by pretended Methods of Law and Justice to such an End at his own Palace. And 'tis a Shame to think, that such bloody Miscreants should be Sainted and Lamented, who had any Hand in that horrid Murder and Treason, and who to their dying Minutes, when they were upon the Brink of Eternity, and just stepping into another World, could confidently bless God for their being engaged in that Good Cause, (as they call it) which was the Rebellion which brought that Blessed Martyr to His Death. It is high time for all Mankind, that have any Christianity, or Sense of Heaven or Hell, to bestir themselves, to rid the Nation of such Caterpillars, such Monsters of Villany as these are.

Nay, In these very Letters is contained the very Language of that cursed Murderer and Traitor *Walcot* himself, *That God Almighty in his own Time would raise up Instruments*. I know, Gentlemen, you have heard and read what that bloody Traitor said to that effect; and you hear what Expressions like it are in these Letters, *I am sorry for the Death of our Friend, honest Mr. John Wright, but God can easily raise up Instruments to do his own Work*; the very Language of *Walcot*. And I would have you take notice of it, Mr. *Blackerby*, for I would have you take Warning by these Things. [Speaking to a Gentleman that was taking Notes.]

Mr. *Blackerby*. My Lord, I have neither said nor done any thing that should give you occasion to speak thus to me.

L. C. J. These Letters tell you, *God will be sure to raise up Instruments*, but what Instruments do they mean? Instruments of Rebellion, and Faction, and Sedition, which they most falsely call, *his own Work*. For it is that monstrous Sin Rebellion, that they mean by it, Instruments of Treason, under pretence of fighting for God Almighty they would fain be fighting against the Government. It was the Language of the former Times, wherewith they destroyed the best of Kings, and subverted the best of Governments for a Time, and were very near having totally destroyed Three Kingdoms, under pretence of doing God good Service. And when once a People pursue such Principles, and, under the pretence of Religion, endeavour to destroy Monarchy and Government itself, it is high time for all honest Men to look about them.

Nay, and you may observe, Gentlemen, another thing in these Letters, it is not only the Destruction of the Civil Government, the King, and those that are in Authority near Him that are aimed at; but all Persons that come with humble Representations of their Loyalty to Him, all that Address themselves to the King to shew their Duty and their Dislike to that damnable Design and Conspiracy against Him. For now (says Sir *Samuel Barnardiston*) *all the Sham Plot is quite blown off, and we cannot find any here, 'tis lost except you can find it among the Addressers and Abhorers in the Country, or among a Parcel of Clergymen*.—So that all Mankind, that ever thought themselves obliged to congratulate that blessed and happy Deliverance, either to own our Thankfulness to God for it, to whom we owe more than we are able to pay for His great Mercy to us therein, or to express our Joy to the King, in humble Addresses, Congratulating His Deliverance from the horrid Conspiracy lately designed against Him, His Brother and the Government; these Gentlemen, because they are Loyal Subjects, and desire to shew themselves so, must be branded with the Names of *Abhorers, Tories, Addressers, Sham-Plotters*, and all the Ignominy they can lay upon them. This shews it was not only aimed at the Civil Magistracy, but at all that dare be honest and oppose Faction and Rebellion.

As for any thing that he has said of me, Sir *Samuel Barnardiston* shall write and speak of me as long as he pleases. But though he says, *I am drawn in the Mouth*; it is true, I have a little lost my Tongue by my Cold, yet I hope I shall never lose my Heart nor Spirit to serve the Government, nor forbear to use my utmost Diligence to see that such Offenders as these Persons, that entertain Principles so destructive to the Government, be brought to condign Punishment. And be they who they will, were they my own Brothers, I should be of the same mind, and so in that mind I hope in God I shall live and die.

Gentlemen, the Question before you is, Whether the Defendant be guilty of writing these Malicious, Seditious Letters; for that they are Malicious and Factious, no honest Man can doubt in the least, and I do not find that the Counsel for the Defendant do offer to say any thing in Defence of the Letters, or can say, but that they are as venomous, malicious, seditious, factious, tumultuous Letters, as can be written, and

I must tell you, tread very near upon the Borders of High-Treason itself. I am sure I may venture to call it *Coxen-German* to High-Treason.

Now that he did write and publish them, you have this Proof before you: Mr. *Blatwaite* tells you, That Sir *Samuel* did own Three of them, acknowledge them to be his own Writing, before His Sacred Majesty in Counsel. *Atterbury* the Messenger says, He was by too when he did before the King acknowledge the Writing of those Three Letters. As to the Superscription to one of those Three Letters, you have the Testimony of *Osfand*, the young Man that lived with Sir *Samuel Barnardiston*, he swears he writ it by his Direction, being his Servant. And as to the Fourth Letter, this young Man does directly swear, That the Original he copied it by (for it is his Writing) he had from Sir *Samuel Barnardiston*, and it was of Sir *Samuel's* own Writing (which he knows well, being acquainted with his Hand) and that Sir *Samuel* expressly directed him to Copy it out, which he did by his Command, and this is the same Letter; and so though it is not under his Hand, yet it is under his Man's, and written by his Direction. And he says, he does believe the other Three to be his Hand-Writing. So as to the Dictating and Writing of these Letters, you have as full and as plain a Proof as can be made.

And as to his Publishing of them, which is another Part of the Information, and of which Mr. *Williams* said there was no Proof, I would say but this to you. Is it not very preposterous, absurd, and senseless, to think that ever it should enter into any Man's Imagination, That Sir *Samuel Barnardiston* would take such a wonderful deal of Pains and Care to write these Letters to Sir *Philp Skippon*, and to the other two Men, to tell them of his Endeavours to take off Mr. *Kedder's* Scruples, and persuade him to go down to *Ipswich*, and to desire them to take care of the *Sober Party*, and endeavour to get *Sober Men* into play, and *all will do well*, and that the Duke of *Monmouth* had denied all the Plot, and so given the Lye to the King and the Courts of Justice, and now there was a Door opened for *Sober Men* to come in, and God would raise up Instruments, and the *Sober Party* will up again? Do you think, I say, he would write all this Fustian Stuff, (for I can call it no better than Stuff, though it be very malicious Stuff) and carry to his Man to Copy out, and Supercribe them and Seal them, only to put them in his Pocket? If you can believe this, upon my Word you have a Faith able to remove great Mountains; but I assure you my Faith cannot get to that Strength.

But for further Proof of the Publishing, you hear what the young Man that was the Defendant's Servant says. He tells you, the usual Way of dealing with Sir *Samuel's* Letters was this, There was a Window near Sir *Samuel's* Closet, and when the Letters were Sealed up, they were used to be put there, in order that the Boy, according to the usual Course, might carry them to the Post-House. And he doth believe these Letters (though he cannot particularly and positively speak to them) were so used.

Besides all this, you have it by *Atterbury* positively Sworn, that about the same time that Sir *Samuel Barnardiston* did acknowledge before the King, that he writ those Letters, being in his Custody, he did say they were sent to the Post-House, and he wondered how they came by them. That proves it was done by his Privy. And beyond all there is this Circumstance, that the Thing speaks it self, they are directed to Men at *Ipswich*, where Sir *Samuel Barnardiston* is known to have a Correspondence; they take notice of the Receipt of Letters from thence, and of the Death of Mr. *Wright*, mentioned in those Letters, which shews them to be Answers to Letters received; and must not these think you be sent, but kept still in his Pocket? There is notice also taken in them, of their Country Affairs: Though they seemed to have met with some Disappointment in such a Business about Mr. *Kedder*, yet they were resolved to go on, and desire them to communicate this Business of Mr. *Kedder* and Dr. *Cleggitt*, to such and such of our Friends, and desire them to bestir themselves, and get in *Sober Men*, such as Mr. *Kedder*, among them. For it is mightily for our Advantage, that there should be *Sober Men* brought into play at *Ipswich*, and pray be sure to keep the *Sober Party* up. These Things in their own nature speak, that these Letters were intended and written, in order to preserve a Correspondence between those of the *Sober Party* in *Ipswich*, and their Friends here, and therefore you may easily conclude what was to be done with them.

So that, Gentlemen, this Information surely (if ever any was) is fully proved, as it is laid in all the Parts of it.

I would not have given you so much Trouble at this Time, in an Affair of this Nature, that has been so evidently proved, because your Question that you are to Try, is only, Whether the Defendant be Guilty of this Offence, or not Guilty? (You are not to inflict the Penalty, that is the Province of the Court above;) but only because I see it is a Matter of great Expectation and Consequence. I would not we should be gulled twice in one Age, by the self-same Men, and the self-same Way, into the same Treason and Rebellion, and all those other Mischiefs, that dreadful Chaos and State of Confusion, Misery and Destruction, that we were brought into in the late Times. And that has made me take so much Notice now in this Place of the Tendency of Things of this Nature, that we may learn to beware of, and know these Men that carry Sheep's Clothing, pretend Zeal and Religion, but their Insides are Wolves. They are Traitors in their Minds, whatsoever they are in their outward Pretences.

Then the JURY laid their Heads together in the Place where they stood, and being presently after agreed upon their Verdict, the Foreman gave it in.

That the Defendant Sir *Samuel Barnardiston* was Guilty of the Offence and Misdemeanour, Charged on him by the Information.

Which Verdict was Recorded by the Clerk.

Afterwards Sir *Samuel Barnardiston* received Sentence, That he should pay 10,000 l. Fine, be imprisoned till paid, and find Sureties for his Good Behaviour for Life.



CXXVI. Proceedings against JAMES HOLLOWAY \* in the King's-Bench, on an Outlawry for High-Treason, April 21, 1684. Pascha. 36 Car. II.

**H**IS Majesty's Attorney General having on Friday last, moved the Court of King's Bench for an Habeas Corpus Returnable this Day, directed to the Keeper of his Majesty's Gaol of Newgate, to bring thither the Body of James Holloway, then in his Custody, to shew Cause why Execution should not be awarded upon an Outlawry for High-Treason against him. The Keeper of Newgate, according to the Command of the Writ, brought him this Day to the Bar of the said Court, where he was proceeded against in this Manner.

*The Return of the Writ of Habeas Corpus was first Read.*

*Cl. of Cr. James Holloway, Hold up thy Hand. [Which he did.]* Thou hast been Indicted in London, by the Name of James Holloway, late of London, Merchant, for High-Treason by thee committed, touching the King's Majesty's Person, and the Government of this His Kingdom of England, and for not appearing and answering that Indictment, by due Process of Law, upon the Indictment thou standest Outlawed, and upon that Outlawry thou standest Attainted of the same High-Treason; What hast thou to say for thy self why Execution should not be awarded against thee upon that Attainder by this Court according to Law?

*Holloway.* My Lord, I have been a great while Absent, and know not what hath been done in this Matter, or proved against me.

*Sir George Jeffries.* L. C. J. Yes, you have been Absent so long it seems, that you now stand Outlawed, and thereby Attainted of High-Treason; there is nothing now remains with the Court, but only to make a Rule for your Execution.

*Holloway.* If an ingenuous Confession of the Truth will merit the King's Pardon, then sure I have done it.

*L. C. J.* For that Matter we are not to dispose of the King's Mercy, he will dispose of his own Mercy as he shall think fit. Is Mr. Attorney in the Hall?

*Crier.* Yes, my Lord, he is.

*L. C. J.* Then pray send for him.

*Which was done, and in a little time after he came into Court.*

*L. C. J.* Mr. Attorney, here is the Prisoner at the Bar, Holloway.

*Sir Robert Sawyer.* Mr. At. Gen. Yes, my Lord, I see he is. Sir Samuel Astry, have you the Record there?

*Cl. of Cr.* Yes, Sir.

*L. C. J.* It has been read to him, Mr. Attorney?

*Mr. At. Gen.* My Lord, I would know what he saith that Execution should not be Awarded.

*L. C. J.* He talks of Discoveries and Confessions which we, you know, cannot take any notice of; Ask him again.

*Cl. of Cr.* Hast thou any thing to say for thy self why Execution should not be awarded against thee, according to Law?

*Holloway.* My Lord, I know not what hath been proved against me, but I have made such an ingenuous Confession to His Majesty of what I know—

*L. C. J.* Proved against you? You are Outlawed upon an Indictment for High-Treason; what can you say against the Court's awarding Execution.

*Mr. At. Gen.* My Lord, has he heard the Indictment upon which the Outlawry was grounded?

*Cl. of Cr.* No, Sir, only the Substance was told him, That he was Indicted of High-Treason, and Outlawed for it, and stands Attainted by that Outlawry.

*Mr. At. Gen.* If your Lordship please, the Indictment may be read to him, that he may understand what it is, and may not go blind to Execution.

*L. C. J.* Ay, Mr. Attorney, if you please, let it be so.

*Cl. of Cr. Reads.* The Jurors being Sworn to enquire for our Sovereign Lord the King, and the Body of the County of the City of London, upon their Oaths present, That—[And so the whole Indictment was read.]

*Cl. of Cr.* That is the Indictment, Mr. Attorney, and upon this he is Outlawed.

*Mr. At. Gen.* And so stands Attainted. What hath he to say to it?

*L. C. J.* Ay, why should we not award Execution against him according to Law?

*Cl. of Cr.* Have you any Thing to say?

*Holloway.* I have said what I have to say.

*Mr. At. Gen.* Pray what is that, my Lord, that he has said, for I was not here?

*Holloway.* I beg his Majesty's Mercy.

*Mr. At. Gen.* If the King be so gracious as to admit you to your Trial, can you make a Defence against the Indictment? Have you any Thing to say that you can defend yourself by, if the King do admit you to be tried, and that is a Mercy and a Grace, for at Law you are gone.

*L. C. J.* It is so, indeed, Mr. Attorney; if you will on the King's Behalf indulge him so far, as I suppose you have authority from the King to Consent unto, that if he has a mind to try the Fact, and can defend himself, he shall have that Liberty, that is a great Mercy, I assure you.

*Mr. At. Gen.* My Lord, That is the only reason why I did cause the Indictment to be read that he might hear it; that supposing he were not Outlawed, but that were out of the Case, if he hath any Thing to say that could defend him from it, the King would not exclude him, but admit him to his Trial, and extend his Mercy so far to him.

*L. C. J.* Mr. Attorney, it is exceeding well. Now you understand what is said by the King's Attorney, you have heard the Indictment read, it is an Indictment of High-Treason, that you with other false Traitors, *Hone, Rumball, the Goodenough's,* and the rest, did Conspire the Death of the King. Now though you are in Law actually Attainted, as much as

if you had been Tried and Convicted, and received Judgment of Death upon that Conviction, to all intents and purposes, and there is no more for the Court to do, but to award Execution upon this Attainder, and be dealt with as a false Traitor. Yet however in as much as you have heard the Indictment read, if you think you have any thing to say that would satisfy the World, or a Jury, that you are not Guilty of what you are Indicted and Accused of, it seems the King is pleased to signify His Gracious Intention towards you by Mr. Attorney-General, that he is contented to wave that other Part the Attainder by Outlawry, and you shall have the Liberty to try it, if you think you can defend your self.

*Holloway.* My Lord, I cannot undertake to defend my self, for I have confessed before His Majesty that I am Guilty of many Things in that Indictment, and I throw my self on the King's Mercy.

*L. C. J.* Then he Confesseth it, and will not undertake to defend himself; as for the King's Mercy, that we must leave to His Majesty, who is the Dispenser of his own Grace, we are to execute his Justice, and must give a Rule accordingly.

*Mr. Just. Withins.* But I hope every Body here takes notice of his open Confession, when he might try it if he would. Surely none but will believe this Conspiracy now, after what this Man hath owned.

*L. C. J.* We were well enough satisfied about it before, and so was every honest Man, I dare say.

*Mr. Just. Withins.* Yet, perhaps, though he saith it, and others have confessed it, and the Evidence hath been made Publick, there are many People that say they will not believe it.

*L. C. J.* We do not mightily concern our selves what the People say. I am sure not one of all that were concerned in this Conspiracy, have dared to deny it absolutely, though some have been prevailed upon by ill Advice, to prevaricate about it, and shuffle it off. But none of them have had the Confidence absolutely to deny the Truth of the Fact, notwithstanding all the Calumnies and Reproaches cast upon the Government, and all the Arts that have been made use of to stifle it.

*Mr. Just. Withins.* My Lord, I speak it the rather, because we see what work Sir Samuel Barnardiston has made of it in his Letters, where he calls it a Sham-Plot, and says it is lost, except it be found among the Abhorers and Addressers.

*L. C. J.* But now the Plot is found among the Conspirators and Traitors, he may write to his Correspondents in the Country the next time: It is found among the Reformers of Government and Religion, that can swallow all Things, that can kill Kings and levy War, and do the worst of Villainies to promote Religion and Reformation, as they call it.—Let us think of some convenient Day, and give such Order that the Sheriffs see Execution done according to Law.

*Mr. At. Gen.* You must first pronounce the Judgment, my Lord.

*Mr. Just. Withins.* It is never pronounced in such a Case, Mr. Attorney.

*L. C. J.* No, we only give a Rule for Execution, the Outlawry is the Judgment, and that is upon the Record already.

*Cl. of Cr.* Yes, my Lord, we always enter it so.

*L. C. J.* Captain Richardson, I think, Wednesdays and Fridays are your usual Execution Days in London, are they not?

*Capt. Richardson.* Yes, my Lord, either of them.

*L. C. J.* Then Wednesday seven-night.

*Capt. Richardson.* Does your Lordship appoint Wednesday next?

*L. C. J.* No, that will be too quick; Wednesday seven-night.

*Capt. Richardson.* What Day your Lordship pleaseth, I suppose I shall have a Rule.

*Cl. of Cr.* You shall have a Rule, and an Habeas Corpus to deliver him, as the Court is.

*L. C. J.* In the mean time take your Prisoner back again.

*And accordingly he was carried back to Newgate.*

After which he sent the following Petition to the King for Mercy.

Most great and gracious Sovereign,

*Your Majesty's now close Prisoner in Newgate, and condemn'd for my Crimes, which I have confessed myself guilty of, in a Paper of my own writing, delivered to the Right Honourable the Lords of your Majesty's Privy Council, in which is a true and faithful Account of all that I know concerning the late Plot, with the manner how I was drawn into it, and the Reasons why I did not come in at the first Discovery, and cast myself at your Majesty's Feet for Mercy, which I hope your Majesty hath perused, and find no Cause to think I have reserved any thing undiscovered; for when I was first taken, I resolved to declare the whole Truth, and nothing but the Truth, which I have here done, and will own to be true, before any that shall offer to contradict it, or say there was no Plot; and if any thing more occurs to my Memory, will not fail to declare it. I have now nothing to say for myself why I should not be executed according to Condemnation, but do most humbly prostrate myself at your Majesty's Feet for Mercy, acknowledging my hearty Sorrow for all that I have been guilty of, and remain in hopes, that that Fountain of Mercy which hath so abundantly flowed from your Majesty's sacred Breast ever since your happy Restauration is not yet dry, but that there are some Drops left for me, which if I may be so happy as to obtain, I shall always whilst I live, endeavour to approve myself your Majesty's most true and faithful Subject; and, I hope, will answer the Ends of a Pardon. Which that I may so do, and for your Majesty's long Life, peaceable and happy Reign, shall ever Pray, &c.*

JAMES HOLLOWAY.

His Petition being rejected, he was Executed April 30th, 1684.

\* Burnet's History of his own Times, Vol. I. p. 376. He had fled to the West-Indies, where he was taken, and sent over to England.

Being



Being come to the Place of Execution, he spoke to the Sheriffs as follows:

*Holloway.* MAY I have Liberty, Sir, to speak what I desire to speak?

*Sheriff Daniel.* Yes, Sir, you may. What you have, I suppose, will be by way of Discovery to the World of what you are brought here to die for.

*Holloway.* You have my Paper, Captain.

*Capt. Richardson.* Yes.

*Sheriff Daniel.* Have it you about you?

*Capt. Richardson.* I have it in my Pocket.

*Sheriff Daniel.* Shew it him (which he did.) Is it your own Hand-writing?

*Holloway.* Yes, Sir.

*Sheriff Daniel.* Is it your own Hand-writing?

*Holloway.* That is my own Hand-writing—A Discovery of what I knew I made to his Majesty, but a great many People think that I have not discovered what I knew, but I have discovered what I knew of the Plot, and I am heartily sorry I was any way concerned in that way, as to the endeavouring any thing by arms. I do think several things have been ill-managed in England, there have been many things done against the King and the Kingdom's Interest, and I wish the King was well satisfied of it, and that a Course might be taken to prevent it. And, I think, one way to prevent plotting (according to my weak Capacity) is, that his Majesty would be pleased to call a Parliament, and pass an Act of Oblivion for all Plotters whatsoever. There was a damnable Popish Plot, and I look upon the stifling of that, to be the only Cause that any Man did any thing in this. Had all the Popish Plotters been—

*Sheriff Daniel.* By the way, Sir, how do you know it was stifled?

*Holloway.* Sir, we have known that the laws could not be suffered against them, and the Parliament could not be suffered in the Prosecution of them. I wish the King would consult his own Safety, and the Safety of the Nation, and that an Act of Oblivion might pass, for I believe there are many concerned; and that there might be an end put to all News-mongers, that write into the Country Letters of News; I look upon that to do the King and the Kingdom more Hurt than any thing else.

*Capt. Richardson.* Mr. Holloway, I beg one thing, have you discovered all? I desire you would declare those (you did not name their Names) that, if Occasion were, would be ready; but that you had not spoke to them. *Wade* and others were to maintain their Poits.

*Holloway.* No, Sir, I had not spoke to them.

*Capt. Richardson.* This you did say.

*Holloway.* Yes, Sir.

*Sheriff Daniel.* And that you promised a Number of Men in this Design.

*Holloway.* Promise it! I did propose I might do it.

*Capt. Richardson.* What do you know of the contriving the Business of the Rye, for lopping, or taking off the King and the Duke?

*Holloway.* I was not with them till after the Time a good while; till about a Month or six Weeks after the Time I was not acquainted with them. I looked upon it as a Business not likely to take any Effect at all, for I could never find above five that were concerned in it.

*Sheriff Dashwood.* But did they not tell you at some one time they were concerned in such a Thing?

*Holloway.* Yes, Sir, they did so. They told me more than once.

*Sheriff Daniel.* In Bristol, or in London?

*Holloway.* In London.

*Sheriff Dashwood.* Mr. Holloway, you have a Liberty to say any thing you have a mind to.

*Holloway.* I have little to say more upon that Account. I am sorry I was concerned in that way, to do such a thing as to take up arms. But as to the Design I had, and the Plot I was acquainted with, it was nothing against the King's Life.

*Capt. Richardson.* Sure it was the same Plot, while there was a Design to seize the King, and take him from evil Company.

*Holloway.* We had a Design to take them that were guilty of the Popish Plot, and were Enemies to the Privileges and Liberties of the Subject.

*Sheriff Daniel.* And as a thing that tended to that, the King was to be seized till he consented to these things.

*Holloway.* It was supposed by them that told me of it, that many things that have been acted of late, were done contrary to the King's Knowledge, and that the King knew nothing of it; and I am perfectly of that belief too, that many things are done contrary to the King's Knowledge. And I was farther informed, that if the King could be but once acquainted with these things, that the King would presently come into those that should stand for his Assistance, and give up all those Offenders to Justice.

*Sheriff Daniel.* And if you could not tell him otherwise, you would take him first, and tell him afterwards.

*Holloway.* You may interpret it how you please, Sir. It was that all such Differences amongst the King's Subjects might be prevented for the future; for I believe there were never greater Differences in the Spirits of Men, though some think the Times were never better than now, because all things go according to their own Humour; but I suppose many in the Nation are satisfied that many things have been done contrary to Law.

*Sheriff Daniel.* Was it fit you should set up for a Politician, or a Statesman?

*Holloway.* No, Sir, I did not take it upon me; that was for the Scribblers that write News. I do not reckon myself worthy to direct in such a Case.

*Sheriff Daniel.* Mr. Holloway, you don't remember to give the Names of those Persons you spake of.

*Holloway.* It would be a Folly for me, Sir, to go to abuse Men that I did not know whether they would be concerned or no.

*Sheriff Dashwood.* But that there were Persons that would be concerned, you say.

*Holloway.* That we did think so; and if we should name every one that we thought would be concerned, I believe we might name three Parts of London.

*Capt. Richardson.* I hope you are in a great Mistake there.

*Holloway.* For that Design, I believe above three Parts would be for. I never had any Design but for the King and the Kingdom's Interest; though I know that Design that was carried on by *Rumsey* and *West* was

a very heinous Design, but I believe they would not have found many in England that would have been for it; I never heard of above five for it.

*Sheriff Daniel.* Were you acquainted with *Walcot*?

*Holloway.* I was in his Company once or twice, but I heard him speak against it.

*Sheriff Daniel.* Was you ever with my Lord *Shaftsbury*?

*Holloway.* No, Sir, I was never with my Lord *Shaftsbury* but once, and that was about a Design I was promoting in Parliament, about the Linen-Manufacture.

*Sheriff Daniel.* Was you ever with my Lord of *Essex*?

*Holloway.* Never but once, and that was about that Business.

*Sheriff Daniel.* Were you ever acquainted with my Lord *Russel*?

*Holloway.* Never with him at all.

*Sheriff Dashwood.* You were saying you knew the Names of Five; who were they that were to be concerned in that Matter?

*Holloway.* I have declared them to his Majesty.

*Sheriff Daniel.* Did you know *Ferguson*?

*Holloway.* I knew him, Sir, but I know *Ferguson* to be against any such Design, and, indeed, we did look upon it to be a Thing that would come to no Effect.

*Sheriff Dashwood.* Do you mean the seizing the King?

*Holloway.* I mean the Infurrection.

*Sheriff Daniel.* Did you know of any Money raised or promised to buy arms?

*Holloway.* No, Sir, never. I heard of Money that was to be raised, but I did not know who was to raise it.

*Sheriff Daniel.* It is not our Business to ask you many Questions, if you have any thing to say you may.

*Sheriff Dashwood.* If you have any thing to say for the Discharge of your Conscience, do it.

*Holloway.* I thank God, I never had any Design against his Majesty's Person; what I intended was only for the Good of the King and Kingdom, and I did take it that it would have been so; and I am very sorry that any things should have gone contrary to Law, as they have done; and I hope care will be taken to prevent any such things for the future.

*Sheriff Dashwood.* The King hath said he will govern according to Law; he hath done so, and will do so.

*Holloway.* That I leave to the Judgment of all; many know better than I.

*Sheriff Daniel.* Such glossy Pretences are very strange, to carry on such a Design, for the seizing a Sovereign Prince, that you have sworn Allegiance to, or ought to have done.

*Holloway.* I think those Pretences, the Grounds that we went upon, were no glossy Pretences at all.

*Sheriff Daniel.* I think it is, that when Things are not done as you would have them, you must immediately rebel.

*Holloway.* No, Sir, not that; we did not design a Rebellion.

*Sheriff Daniel.* The seizing the King is certainly a Rebellion, and one of the highest Steps of Rebellion.

*Holloway.* We say this, that all Ways were used against Protestants; several Sham-Plots; but no Justice could be had against Papists.

*Sheriff Daniel.* Several of them were executed here.

*Holloway.* There were some executed at first, Sir; but afterwards, when so many great Persons came to be concerned, there was nothing could be had against them.

*Sheriff Daniel.* There were mighty Searches made about London, for that great Number of Papists talked on.

*Holloway.* There were a great many seized, Sir; but what became of them?

*Sheriff Daniel.* Generally tried, and brought to condign Punishment. You would not have had every *Irishman* believed against honest Men. Some People were called Papists in Masquerade.

*Holloway.* *Irishmen* were believed against Protestants, after they had turned about, and had sworn against Papists, they were believed then. It was well observed, that while the *Irish* Evidences did continue in the first Discourse of the Popish Plot, and in the first Evidence, then, it is well known, they were slighted, and all cried out against; but when they came to swear against Protestants, then Things were altered presently.

*Sheriff Dashwood.* I pray God all Mens Eyes may be opened to see what is done.

*Holloway.* I would not advise any one to go that Way to work, to do any thing by Force of Arms; and I wish the King's Eyes may be opened, that he may see his Enemies from his Friends; and I think he hath Cause to look for them near his Home.

*Sheriff Dashwood.* Have you any Papers to deliver?

*Holloway.* I have no other Papers; what Paper I wrote the Council had. I did write a Paper, that it might be some Satisfaction to the Opinions of People of what I knew, that care might be taken to prevent other Opinions, if there were an Error. And that Paper the Council had; though they took it very heinously of me that I should presume to write such a Thing. I looked upon it that I could not do more for the King, than to acquaint him of what I knew, that if they were misinformed, there might be care taken to alter the Opinion.

*Sheriff Dashwood.* You have delivered no Paper to your Wife, or to any Friends?

*Holloway.* That, I suppose, is well known to the Goaler.

*Sheriff Dashwood.* You know better than any Body whether you have or not. You may say Ay, or No.

*Holloway.* I could not be admitted to write any, for I could not have Pen and Ink to write any thing but this.

*Sheriff Dashwood.* And you have not delivered any Paper?

*Holloway.* I have written to some Friends. I know it is supposed that I had delivered a Copy of that Paper that the Council had; and, I think if it had been known publicly, it would have done no great Hurt.

*Sheriff Daniel.* You speak of several Peoples Opinions; what do you mean?

*Holloway.* As concerning the Times, Sir, the Management of Affairs.

*Sheriff Daniel.* Pray, Sir, under what Denomination do you reckon yourself?

*Holloway.* I reckon myself a Protestant.

*Sheriff Daniel.* Of what Sort? Of the Church of England, or of the Dissenters from them?

*Holloway.* I am not a Dissenter from the Church of England.

*Sheriff Daniel.* Nor joined with them.

*Holloway.* Nor joined with them altogether. But I thought that if



any good had been designed for England, that I had done enough to merit a Pardon; for I had wrote so much of truth, and was so fair and plain in it, that I thought it would have merited a Pardon, if any Good were designed. If I could have discovered more, that had been for the King and Kingdom's Interest, I would have done it; for I did not do it rashly, but considered of it some time before I gave it in. I hope it will be a satisfaction that there was such a Plot; what other Men's Opinions might be of it I cannot tell, but leave every one to their own judgment. It was feared that arbitrary Government and Popery was designed: and truly, I think, at this present time, by what I can understand, that there is little better designed.

Capt. Richardson. This is reflecting upon the Government.

Sheriff Dabwood. This is not fit.

Holloway. I say it is contrary to the King's Knowledge, Sir.

Sheriff Daniel, Sir, we have neither a Reprieve nor a Pardon for you.

Holloway. I do not expect it, Sir; if Truth and Plainness would have merited a Pardon, I might have had it.

Capt. Richardson. The King is the best Judge of his own Mercy.

Holloway. Had the law been executed against Popish Offenders, I had never been concerned in any Plot.

Capt. Richardson. You know the King was very earnest in that, to have the Laws put in execution against them; and that he moved it to the Parliament to have it done. Have you any thing else to say that more nearly concerns you?

Holloway. I wish I could have been any otherwise serviceable to the King and Kingdom, before I left them. I should have been very willing; and it was always my Design to promote the King and Kingdom's Interest more than my own.

Sheriff Daniel. Well, Sir, you lay some things very well; but others ill.

Holloway. What I say, Sir, I leave to People's Judgments; if I am mistaken, I hope they will be otherwise.

Sheriff Daniel. Well, Sir, have you any thing farther to say?

Holloway. No, Sir.

Sheriff Dabwood. I suppose you used to keep a Meeting, or Club, at Bristol, with several there.

Holloway. I know some have represented a Club very bad in Bristol. A Club we had about the choice of Parliament-men.

Sheriff Daniel. The Horse-shoe Club.

Sheriff Dabwood. Or the Mermaid Club.

Holloway. The Horse-shoe Club it was only for carrying on the Election of Parliament-men. If all such things should be called Clubs, there were greater Clubs kept by another party.

Sheriff Daniel. Well, Sir, you had best fit yourself for death, you have no long time to live.

Then he opened his Bible, and read *Psalms* 62, and part of two chapters in the *Hebrews*, and afterwards asked the Sheriffs if he might have Liberty to pray; which being granted, he prayed.

(Then being asked, Who was in Council at the delivery of the Letter? He answered,)

Holloway. There was the Duke of York, and the Lord-Keeper; I did not deliver it: It was intercepted in a Letter, or given in. I did not know how it was; for I have been kept, so that I had not the Liberty to see any Friend, till Yesterday in the Afternoon I had the Liberty of two or three Hours with my Wife.

Capt. Richardson. You had your Wife with you before, and your Sister, and some other Friends.

Holloway. But that was never without a Keeper, Sir.

Capt. Richardson. You are in the right.

Sheriff Daniel. They do not use to allow Men under your Circumstances such a Liberty as you talk of.

Holloway. I pray God that no other People may concern themselves with public Affairs, out of their own way; and that the Scriblers might be put down, for they do more Hurt to the Kingdom than any thing else.

Sheriff Daniel. Have you any thing more to say?

Holloway. No, Sir.

Sheriff Daniel. Then God have Mercy upon your Soul.

Soon after which he was turned off.

The PAPER delivered to the Sheriffs.

Apr. 26, 1684.

TO stop the Mouths, &c. of all Pamphleteers, and News-Scriblers, who have done more Prejudice to his Majesty and Kingdoms, by their impudent endeavours to sham all Plots, and to fill the Country with false News, than they will ever be able to retrieve; and to satisfy all I leave behind me, I thought good to draw up a short Account of what I knew of the late *Protestant Plot*, how I came to be concerned, what induced me to it, and how far I was concerned, also my now Opinion of it, &c.

It was my Unhappiness to have too public a Spirit for one of my Capacity, and as soon as I came to be a free Man, to prefer the King's and Kingdom's Interest before my own; for having some Knowledge in Linen-cloth, upon the Prohibitions of *French* Linens, &c. I thought the Linen-Manufacture might be brought to Perfection in *England*, to the very great Advantage of the Poor, and so made some Trial of it in *Warwickshire*, where I employed some Hundreds of Poor, and in about eighteen Months time brought it to such Perfection, that I could make as good Cloth as the *French*, and so well imitate it, that few could know it from *French*; but the Prohibition being not so strict as at first seemed to be, *French* Cloth was brought in cheaper than ever; so that I was forced to leave off with Loss; but considering, that by an Act of Parliament for its Encouragement, in a Method I had thought upon, it might be settled much to the King's and Kingdom's Interest, advancing the King's Revenue near two hundred thousand Pounds a Year, and would have employed about eighty thousand poor People, and about forty thousand Acres of Land; concerning which I was (about *June* 1680 brought acquainted with the Earl of *Essex*, to whom I related the Business, who immediately had me to the (now) Earl of *Rocheester*, then President of the Treasury, and he had me to Sir *Edward Dering*, who (when they understood my Proposals) gave me something

to bear my Charges, and encouraged me to attend the next Parliament, to endeavour the Promotion thereof; which I did almost the whole Sessions, and brought to the Speaker's Chamber some of the Cloth, which was compared with *French*, &c. and the Design well approved of by all; which brought me into too large Acquaintance for one of my Capacity; from whom I heard too much (as hath proved, for my Interest) of things that were then in hand concerning the *Popish Plot*, which prevented the doing any thing as to my Design. So after that I was encouraged to attend the *Oxford* Parliament, which I did; and was desired there by the Earl of *Clarendon*, and others, to prepare a Bill; the Heads of which I drew up, though it proved to no purpose but my Ruin. I wish my King and Country might reap the Benefit of what I pay so dear for. The more I knew during my Attendance on those two Parliaments, the more I was desirous to know; and did by some Scriblers and News-mongers constantly know most public Affairs that were acted, which they undertook to represent according to their own Humour; many Actions being represented very illegal, much against the Protestant Interest, in favour of Papists, &c. shamming the *Popish Plot*, and laying Sham Plots upon Protestants; abusing the Rights and Privileges of the Subject, the Truth of which I leave to the Judgment of all; but hearing many such like things, was easily prevailed with to be concerned in the Plot, according as it was proposed to me, viz.

About *July* 1682, I met with a Person who then being come from *London*, gave me a relation at large concerning the Election of Sheriffs that had been in *June*, the manner of which is well known to all; he represented it to me as a very illegal Action, and that there was a devilish Design of the Papists in it, to cut off the King's Friends, the stirring Men in both the last Parliaments, as to the Prosecution of the *Popish Plot*, who I always took to be both the King's and the Nation's Friends. That there were Witnesses had been ready a long time to swear against them, but they could not get Jurors to believe them, but now they had, by force of Arms, &c. got Sheriffs who will find Juries to believe them, and so hang them up at their pleasure; that there was none but bad Council about the King, who kept all ill Actions from his Knowledge; and if they proceeded to swear *North* and *Rich* at *Michaelmas*, and to choose Lord-Mayor, as they had done Sheriffs, the Protestant Gentry were resolved (naming some) to remedy what was designed, by an insurrection in several parts of *England*; and, if possible, to get the King off from his evil Council, and bring all Popish Offenders to Justice, saying, That they were sure that, when the King knew the Occasion of their rising, he would presently give up all Offenders, and come in to them. That it should begin in *November* in *London*, *Bristol*, *Exeter*, *Taunton*, *Chester*, *York*, *Newcastle*; and that we should hear more of it in a Month's time; therefore desired we might consider how it might be managed in *Bristol*; which we did; and concluded, that *Bristol*, with about 350 Men, might be easily secured by a Surprise, without the Bloodshed of one Man. About a Month after that, came the Person he mentioned we should hear more by; but he could declare no more than the former did, only that the Design went on, and there would be timely notice given to all Parts; but we hear of nothing but Disappointments and Delays, putting it off from time to time. In *April* I heard of another Design against the King, and Duke of York, as they were to come from *New-market*, some time in *March*; but when I enquired into that, found it was carried on by three or four; and never could hear the Names of above five that were for it. When I heard it, I declared my Abhorrence of any such thing, and that I was confident none in our Parts would be for such a base Action. After that, I enquired further into it, and could find, that although it was intended to be done six weeks before, that they had only a parcel of Arms ready, and that they had neither Men nor Horses; but one said if they could have raised 6 or 800. to have bought Horses, and also something to encourage Men, they should have found Men enough; so that I looked upon that only to be the Design of five or six Persons, and no way likely to be acted; but the general Design for the Insurrection was carried on by others; who, though they had made a great Stir in the Nation, trying the Inclinations of People, and had treated with the *Scots* and *Irish*, as I heard, who were to be ready at the same Time, yet were never come to any Resolution, as to any Time or Method, before all was discovered; tho' they had been eleven Months contriving of it, from the Time I first heard of it. This, I hope, will be enough to satisfy all People that there was a Plot; I mention no Names here, having given his Majesty a more large Account of what I knew of it, mentioning the Names of all that I knew concerned. The Arguments before mentioned, with many others to the same effect, not only soon prevailed with me, but made me indeed think it my Duty to do what I could for my King and Country's safety; being then fully persuaded, that not only Popery, but Arbitrary Government was intended; not then considering, (as I have since considered) how much Bloodshed it might have caused in the Nation; for then I thought all would have been ended in little time, supposing things to be as to me was reported. But I do now declare my hearty Sorrow or my yielding thereto, and asking therein; (though I can safely say I was not for taking the King's Life, but wholly for his Preservation) yet am satisfied that it might have caused very much Bloodshed in the Nation, and am glad it did not take effect. Also I declare, that I am satisfied it was a very great Sin against God, not only in distrusting his Providence, but in offering to take the Work out of his Hand, who knows the Hearts, Thoughts and Actions of all, though never so secret; whose Mercy and Pardon I most humbly beg, and trust shall have; and in confidence thereof, (through the Merits of the Blood of our Lord and Saviour Christ Jesus) can willingly die. Nothing (next to this and all other my Sins) is more Trouble to me than the Thoughts how (dying) I shall leave all my Relations and Friends in Trouble concerning my worldly Affairs; being, by reason of this unhappy Concern, not in such a Posture as they should be: So that by my Death, my dearest Friends will not only be left in great Trouble, but I under the Censure of many, none understanding how Things are; my Wife and Children ruined, and my Creditors great Losers; whereas might I have been thought worthy to live, I should have taken the Trouble off them all, and hoped in time to have paid every Man to a Penny; for I can from my Heart say, that as I hope for Salvation, I never designed any Fraud to any Man, but to pay every Man his Due. I have heard that some should say, I took up Money at Interest to carry on the Plot; which I disown; for



for I never was at any Charge therein more than common Expences, nor never heard of any Money raised upon that Account; though I heard of Ten thousand Pounds that were to be raised for the Scots, but suppose it was not done. I bless God I am pretty well satisfied, and hope shall be fully, as to my future State, and can willingly leave the World; but upon the Account of my Friends and Creditors, considering the Condition they will be left in, could gladly have lived some Time, that I might have taken off that Scandal that I fear will be laid upon me when I am gone; but God knows my Heart, I am free, and a ways was from any Thoughts of Fraud or Deceit.

I am satisfied that all Means that could be thought on have been used to get as much out of me as possible, but had it not been My Resolution to declare all that I knew concerning the Plot, and also to do what in me lay to prevent all plottings for the future, that there might be an End put to such Heats, Differences, and Heart-burnings, that is, one against another; that his Majesty and his Subjects might live in such Love and Union, as ought to be between a Prince and his People, I had not wrote what I did; for I was never a Man to be wrought upon by Severity, and what I wrote was not without due Consideration, being nothing but Truth. I do suppose, that making such a full and large Confession at first, and some Expressions that might be observ'd in my Letters which I perceive were intercepted, may cause some Thoughts that I still reserve some persons undiscover'd; but as to my Confession, it was not rashly done, I had had some Weeks at Sea to call Things to Mind, and as for Persons, I gave a true Account, and of all Passages I could remember, though others do and may come into Mind. What I suppose was observed in my Letters, might be some foolish Expressions concerning some of my Acquaintance, and that I would betray no Friend, meaning, that no Severity should cause me to accuse any Friends falsely to

save myself, although (if I had thought the accusing of a Number of Persons would have saved my Life, and had been one that would do any such Thing to save Life) I had the most Cause of any Man; for when I first absconded, those in *Bristol*, and elsewhere, that were my most intimate Acquaintance, refused to do any Thing for me; nay, would not receive Letters when I wrote to them, fearing they should be found to hold Correspondence with me. When I gave in my Confession, I stood not upon Terms of a Pardon, being confident, if Truth would merit Mercy from the King, I should have his Pardon, and that it was the only Way to gain Mercy with God. I find it already that People are passing their Censures upon me, some one Way, and some another, for my not pleading, and accepting of another Trial when it was offered, saying, that I confessed the whole Indictment; which I disown; for I said thus, What I was guilty of I had confessed to his Majesty, and wholly depended upon his Mercy; besides, I had some other Reasons why I did not plead, which at present I conceal; and also why I did not speak what I intended. More I may say at the Place of Execution, before I leave the World, which will be according as I find Things; but as to a Discovery of any more Persons (I cannot) than has been already mentioned. Should I mention any whom I thought would have been concerned, I may much abuse them, though I believe many Thousand in the Nation would have appeared, for the Reasons afore-mentioned, which caused me to be concerned. I doubt not, but several that were concerned, who are or may be cleared, for want of sufficient Proof against 'em, or by his Majesty's Mercy, will blame me for confessing what I knew; and not much grieve that I failed of a Pardon, or at my Death. But I repent not my Confession; and could I discover more, would do it willingly, though I find no Mercy with Man.

JAMES HOLLOWAY.

CXXVII. *The Trial of WILLIAM SACHEVERELL, and Nineteen others, at the King's Bench, for a Riot committed at Nottingham, May 2, 1684. Paschæ, 36 Car. II.*

*The Defendants having before pleaded Not Guilty, were now brought to their Trial.*

Cl. of Crown. CALL the Defendants, William Sacheverell, Esq; and others.

Mr. Pollexfen. We appear.

Cl. of Cr. Gardez vestres Challenges. Swear Sir Humphry Miller.

Which was done, and the Twelve being sworn to try the Cause, being Gentlemen of the County of Kent, were these following:

Sir Humphry Miller,	Jury	Humphry Stiles,
Sir Henry Bosville,		Walter Hooper,
William Lambert,		James Masters,
Charles Wheeler,		Richard Britton,
Richard Marjth,		Ralph Petly, and
Edward King,		Edward Bathurst.

Cl. of Cr. Gentlemen of the Jury, hearken to the Record: 'Sir Robert Sawyer, Knt. his Majesty's Attorney-General, has exhibited an Information in this Court against William Sacheverell, Esq; George Gregory, Esq; Richard Mansfield, Esq; Henry Plumtree, Esq; Charles Hutchinson, Esq; John Greaves, Gent. William Greaves, Gent. Samuel Richards, Robert Green, Francis Salmon, Arthur Richards, Ralph Bennett, John Sherwin, William Wilson, Clerk, Samuel Smith, Thomas Trigg, Richard Smith, John Hoe, William Smith, Joseph Turpin, Nathaniel Charnell, Humphry Barker, and Joseph Astlin; For that whereas the Twenty-ninth Day of September, in the Thirty-fourth Year of the King, there was an Assembly at Nottingham, in the County of the said Town, duly summoned, and called, and met before Gervas Wild, then Mayor of the said Town, for the electing and swearing of a Mayor of that Town, for the Execution of the Office of Mayor of that Town for the Year then next following, according to the Effect and Tenour of certain Letters Patent in that Behalf before granted, by our Sovereign Lord the King that now is, unto the Mayor, Aldermen, and Burgesses of the Town of Nottingham, in the County of the said Town; and that in that Assembly the said Gervas, being then, as aforesaid, Mayor of the said Town, began to proceed to such Election; and that then and there the said Mayor made, and caused to be made, a public Proclamation for the Departure of all Persons from that Election that were unconcerned therein, and for keeping the King's Peace; and that nevertheless, they the said William Sacheverell, and the Rest of the Defendants, being Persons well knowing the Premises, and unconcerned in that Election, but being ill-disposed Persons, and to disquiet, molest, and trouble the Peace of our Lord the King that now is, and the common Tranquility of that Town, and the aforesaid Election wholly to hinder, did during the Time of the said Assembly, and after public Proclamation made as aforesaid, viz. the said Twenty-ninth Day of September, in the aforesaid Thirty-fourth Year of this King, at the aforesaid Town of Nottingham, in the County of the said Town, with Force, and Arms, &c. riotously, routously, unlawfully, and seditiously, together with many other ill-disposed Persons, and Disturbers of the Peace of our said Lord the King, to the Number of Five Hundred Persons, to the said Attorney-General as yet unknown, assemble, congregate, and unite themselves together, and themselves together continued, to disturb the Peace of our Lord the King that now is; and that then and there the said William Sacheverell, and the other Defendants, the aforesaid unlawful and ill disposed Persons so assembled, congregated and united then and there, with Force and Arms, &c. riotously, routously, unlawfully, tumultuously, and seditiously, by the Space of

seven Hours, to disturb the Peace of our said Lord the King, and to continue the said Riot, did excite, move, persuade, and procure, and then and there, by the whole Time aforesaid, made, and caused, and excited to be made, great Rumours, Clamours, terrible Shouts, and unusual Noises; and then and there, with Force and Arms, &c. riotously, routously, unlawfully, and seditiously one Mace, being the Ensign of Office to the Sheriffs of the County aforesaid belonging, from one John Malin, the said John Malin being then one of the Sheriffs of the Town and County of the Town of Nottingham, against the Will of the aforesaid John Malin, took, had, carried away, and detained, to the inciting of great Danger, and moving of Tumults, and Effusion of much Blood, to the great Terror, Disquiet, and Fear of all the Liege Subjects of our said Lord the King, to the Evil Example of all others in like Case offending, and against the Peace of our said Lord the King, that now is, his Crown and Dignity. To this Information all the Defendants but Richard Mansfield and Henry Plumtree, have pleaded Not Guilty, and for Trial put themselves on the Country. But the Defendants have alledged that the Inhabitants of the Town and County of the Town of Nottingham ought not to be drawn out of the said County, and that the County of Kent is the next County to the County of the Town of Nottingham, and therefore have prayed that a Jury of the County of Kent might try the Issue; to which the King's Attorney has agreed: And you being Freeholders of the County of Kent, and returned, and sworn to try this Cause, your Charge is to enquire whether the Defendants, or any of them, are Guilty of the Offence in this Information, or Not Guilty, and if you find them, or any of them Guilty, you are to say so; and if you find them, or any of them Not Guilty, you are to say so; and hear your Evidence.

*Then Proclamation was made for Evidence in the usual Manner.*

Mr. Holloway. May it please your Lordship, and you Gentlemen of the Jury, This is an Information preferred by Mr. Attorney-General, against William Sacheverell and others, for a most notorious Riot: And it sets forth, that upon the Twenty-ninth of September, in the Thirty-fourth Year of this King, at the Town of Nottingham there was an Assembly duly summoned before Gervas Wild, then Mayor of the said Town, for the Election and Swearing of a new Mayor of the said Town for the Year ensuing: That the Mayor began to proceed to Election, and made Proclamation for all Persons to depart that were not concerned in the Election, That the Defendants being no way concerned in the Election, but being ill disposed Persons, to disturb the Peace of that Place, and set the Town together by the Ears, did in a riotous manner assemble themselves with many other ill-disposed Persons, to the number of five hundred, and continued in their Riot for the Space of Seven Hours, with a great deal of Noise and Tumult, and with Force and Arms did riotously carry away and detain a Mace from one John Malin, then one of the Sheriffs of the Town, against his Will, to the great Terror of his Majesty's Subjects, to the evil Example of all others in the like Case offending, and against the King's Peace. If we prove all or any of these Defendants who have pleaded Not Guilty, to be Guilty, you will find them so.

Mr. Recorder. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel in this Cause for the King, This is an Information against a matter of twenty-one Persons for being in a notorious Riot, and continuing in it for two Days together. If it please you, Mr.

Sacheverell



*Sacheverell* he is in the Front of them, and he and seven more of these Defendants, very considerable Persons, were not at all concerned either by any old Charter, or by the new Charter in this Election, but mere Strangers, and yet they must needs come on purpose to inflame and set on the others. I shall name them that were not concerned in the Election, *William Sacheverell, George Gregory, Charles Hutchinson, William Wilson, Clerk, Joseph Turpin, Nathaniel Charnell, Humphry Barker, and Joseph Asplin.* These Persons, Gentlemen, had no manner of pretence to be at this Place upon the account of an Election. The matter of it was thus: *Michaelmas-Day, 1682, the Mayor that then was Gervas Wild,* was at his own House, with some of his Brethren, in order to go to Church that Morning, according to the usual Custom of that Place, at the Day of Election; but having notice that there was a Charter coming down, and expected every moment, truly the other Side, *Mr. Sacheverell,* and the rest that were there, for he was present himself, were very zealous to go to Church very early, but I believe not so much out of zeal to go to Church, but more to come to a speedy Election, if possible, before the new Charter came down. The Mayor at the same time desired them to stay a little, but could not prevail, and thereupon they go to Church, and while they were there, the new Charter comes, and then the Mayor having got the new Charter, goes into the Council-Hall, and sends for the Books from the Clerk, who was then in the Church, and he came and brought them. When they came to the Council-Hall, the Mayor was proceeding in order to have himself sworn upon this new Charter, and they having some notice what was doing at the Council Hall, were willing to make all the haste they could out of the Church, and came down to the Council-Hall: And when they came there, the Mayor tells them his business, that he had a new Charter, and was going to be sworn according to the King's express Commission; and *Sacheverell* stands up in the front of them, and says, we will have no new Charter; we will have no such Mayor as you would have; but we will have a *Greaves* Mayor, and that was the Outcry; a *Greaves* Mayor, a *Greaves* Mayor; to that degree, that all the Mayor and Sheriffs could do, could not pacify them. But thus they made a Tumult and an Uproar, by the help of a Parson, *Wilson,* who I believe, will give you an account by and by, what he had to do there, and how he was concerned in the Election of a Mayor. At length the Mayor was forced to withdraw, and did go down out of the Council-Chamber into the Common-Hall, where he got himself sworn; and by that time he had got that done, they came out of the Council-Chamber into the Common-Hall, and acquaint the Mayor, that truly they had chosen *Greaves* Mayor in the Council-Chamber, and required him to swear him. Mr. Mayor said, they had nothing to do to choose a Mayor, it was no Election, and they would proceed to Election according to the Charter, he having now taken the oath. This raised the Tumult higher, and now there were got together about five hundred Persons, so that at last some of the Aldermen that attended the Mayor, were fain to withdraw for fear of Mischief, the tumult was so outrageous, some crying out the new Charter was not worth one Groat, others crying out, No new Charter, and all crying, A *Greaves*, a *Greaves*; and this they stood upon. The Mayor withdrew to his own House, with much ado he got out of the Hall, and when he was got thither, there he proceeds to an Election, and while he was doing that, truly they having gotten one of the Maces away by Force, they went to the Cross, and there they proclaimed their Mayor, with great Shoutings and Outcries, rejoicing for the new Mayor they had gotten, and the new Charter that they have defeated. While they were there, the Mayor having chosen another according to the new Charter, regularly came down, and proclaimed that Mayor at the Market-Place, as is usual in such cases, and made proclamation that the rest should depart; but instead of that they withstood him, and would not suffer the Crier to make Proclamation, that any body could hear him; but a great Riot they committed in an outrageous manner, resisting Authority, defying it, and despising it. After this, this would not satisfy them yet, but the next Day, being Market-Day, they must proclaim their Mayor again, which is a Practice never known upon any Election; but at the open Market there before all the People they proclaim him, with great Rejoicings for the new Mayor they had gotten, and wishing the People to stand by them: And for their parts, if they had not right done them now, they did not doubt but to meet with a Parliament that should do them right. In this great Disorder was this Town by this Tumult, which was thus headed by Persons of Eminency, and popular Persons, who helping to carry on such a Faction as this was, it was great Odds there had not been real Fighting, and Battle in good earnest; but it did happen to be better appeased, and they went Home, but ever since their whole business has been to uphold this Power, and attend him up and down constantly since as their Mayor, and opposing the Authority of the Mayor by the King's new Charter. We will call our Evidence, my Lord, and they will every one of them speak to the several Defendants, and the several Parts of this famous Riot; and when we have done this, we hope you will be satisfied, Gentlemen, to find them Guilty.

*Mr. North.* Will your Lordship please to spare me a word of the same Side for the King? My Lord, this is a Proceeding of an extraordinary Nature, and if not taken notice of, it will be thought there is no Law in England; for it is a Method to have Authorities questioned, not in *Westminster-Hall* by the Rules of Law and Justice, but decided by Noise and Rabble, and going together by the Ears. My Lord, this Surrender of the old Charter, and the sending down of a new one, was not secret, but well known, and that occasioned the great Congregation of these Gentlemen that had nothing to do in the Town, and so it was a premeditated Design to give a Disturbance in the Place, in Opposition and Affront to his Majesty's Charter. My Lord, I do suppose they very well knew that Matters of that nature were properly determinable in a way of Law; and if the Mayor had no Authority by the new Charter to do what he did, they knew very well how to question him, and them that joined with him, for it: But they did not think that so effectual for their Purpose; they did not think fit to take that Course, but rather chose to proceed in the Methods of Disturbance, and

that occasioned all that Mr. Serjeant has opened. The first Step they made, my Lord, was to appear in the Town-Hall, there to make an Election of their own, and there to cry up a Mayor of their own choosing, without the Authority of the present Mayor; which was all irregular from the beginning to the end. When they had done that, then this Mayor must be proclaimed up and down the Town upon Market-days, when the Country came in, with great Noise and great Rabble. We shall call those that were present, who will give you an Account of the Proceedings of all this Matter, and shew it to be a thing so enormous, that there has not been the like, nor can be paralleled by any thing, unless by that not far off the Common-Hall at London.

*Mr. Jones.* My Lord, if the Persons that had been concerned in Election (for the Town of Nottingham consists of particular Persons that are to come and act in this Matter of the Election of the Mayor) had been the only Persons that were met in this Assembly, possibly it might have had some sort of Mitigation and Excuse; but, my Lord, here are mere Foreigners, People that have nothing to do in the matter nor in the Corporation, but Gentlemen that come out of the Country with an armed Multitude, and for them to come where they had nothing to do, and make such a Riot, in such an outrageous tumultuous manner, is the next Act I know to the highest Rebellion. For they knew very well what the Matter was, by the Cries of a *Greaves*, a *Greaves*, no *Toplady*, no *Toplady*, no new Charter, and you see who were the Abettors. In truth, the Insurrection spread so far, that if the Duke of Newcastle, who is Lord Lieutenant of the County, had not come with Force, they had gone downright to Blows, and been all in Blood. And if such Proceedings be not publicly punished, the King's Authority, and the Peace of Corporations can never be preserved. We shall call our Witnesses to prove it; *Sacheverell* was the Captain of them, and we shall begin with him.

*Mr. Powis.* My Lord, we shall make it short, for we shall shew without meddling with the old Charter or the new Charter, it was a Riot.

*Mr. Recorder.* Swear Mr. Wild, Mr. Edge, and Mr. *Hall.* *Sir Thomas Jenner.*

*Mr. Pollexfen.* There will be one thing necessary to be settled in this case, my Lord, concerning the Witnesses; they call *Wild* and other Persons, they are Members of the new Corporation, and we object against them as being Witnesses in this Case, and our Objection, my Lord, arises thus: It will appear in this Case, that there is a Controversy betwixt the old Charter and Corporation, and this, that the Information is brought upon the new Corporation, whether the old Corporation be still in being, or was at this time in being; and whether this new Charter be a good Charter in Law: The Matter depends both in this Court and in Chancery; a *Scire Facias* is there brought against the new Charter, and a *Quo Warranto* here against the old. Now, my Lord, it will so fall out, that if so be the new Charter, upon which this Information is founded, be not good in Law, we think it goes with the Defendants. So now they call the Members that claim under the new Corporation to be Witnesses, and thereby they would have a Privilege by their own Testimony, to maintain their Interest in the new Charter, which we think by Law they ought not to do.

*L. C. J.* Look you, Mr. *Pollexfen*, though it is not fit for us to interrupt Gentlemen when they are making Harangues, yet we must tell you, we do not take notice much one way or other of the difference between the old Charter and the new, for our Business is to mind that which is before us upon the Information, and we must set by all things that are not before us, and not take notice of them one way or other. Do you think we intend to try the new Charter or the old Charter upon an Information for a Riot? If in case there were a Doubt whether the old one be gone or still in being, take the proper way for the determining those things. You shall not think to be let in upon the Business of a Riot, to try the validity of your Charter; if you have a *Scire Facias* to repeal the new Charter, or if you have a *Quo Warranto* against the old Charter, in God's name go on in a regular way. But do you tell me that supposing the new Charter is an ill Charter, and the old one a good one, that right or wrong is to be tried by Rabble and Noise? No, the business we are to try whether here were a Riot Committed by these Defendants against the Public Peace or no.

*Mr. Holt.* My Lord, we are upon the point of Exception to the Witnesses; and they open it themselves that there is such a Controversy in the Town.

*L. C. J.\** We will not try that Controversy here at this Time. *Sir George Jeffries.*

*Mr. Holt.* My Lord, the Information is Special, it is grounded upon the new Charter, and sets forth that this *Wild* being Mayor by virtue of this new Charter—

*L. C. J.* He was Mayor *de facto*, and I do not know but he was *de jure*. But suppose a man do take upon himself to be Mayor, and it may be according to the Rules of Law he is not Mayor, the way to know whether he be Mayor or no by Law, is to take the Methods and Proceedings that the Law has appointed; but not by Tumults and Riots, we must have none of those Things to decide Controversies, there must be nothing of plucking out one another's Throats.

*Mr. Just. Wilm.* Pray, Mr. Holt, If the King sends down a Charter to make a Corporation, shall all the People rise in a Body against it? No, satisfy yourself for that; if the King sends down his Charter, the People shan't fly in the Face of them that bring it. It is not come to that yet, nor I hope never shall.

*L. C. J.* No, no, for the Matter of Right, we are not upon this Information to determine whether the old Charter be in being, or the new one be in being; but for that you must go according to the Rules of Law, and take your regular Course; and I'll tell you by the way, it is not he that has the most Company, that has always the greatest Right: We all know very well, and I have been in a place that has been hinted at the Bar, and there indeed he that had most Noise, had always most Right, as they thought.

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thought; but we will have none of these things, go on for your Right in a regular Way in God's Name; we must keep to the Business before us, this Riot.

Mr. Pollexfen. My Lord, we are in a Place now where we hope such things will not be, and we desire to have Right settled by Law.

Mr. Recorder. Swear Mr. Wild. [Which was done.] Pray give my Lord and the Jury an Account what happened at Nottingham upon Michaelmas-Day (82.) Tell the whole Matter of it.

Wild. My Lord, and you Gentlemen of the Jury, I was then Mayor when this Business happened: When the King's New Charter came down, as soon as it came to my hands, I went straight to the Town-Hall, thinking to be sworn by the New Charter, that so I might be capable of swearing others in their rooms that were turned out. When I came there, I desired Alderman Parker and Rippon to go for Alderman Edge, who was at the Church, that we might be sworn regularly, he being Town-Clerk, who sent me word that he would not come; but in some little time afterwards he came, with a great many Persons with him, as Mr. Sacheverell, and a great many others that had no business there.

Mr. Recorder. Pray name as many of them as you can.

Wild. Mr. Sacheverell, Mr. Hutchinson, Mr. Plumtree, Mr. George Gregory, Mr. Green, Mr. Sherwin, Sir Thomas Parkyns.

Mr. Pollexfen. He is not named here.

Mr. Recorder. Don't disturb him, pray let him go on.

Mr. Pollexfen. We only take notice he names some that are not down in the Information.

L. C. J. Can't you be contented, what if he does name others that are not there, What hurt is that to you?

Wild. There were several others, but these Gentlemen did not belong to the Town, nor had no Business there; some of them were no Burgesses, and they that were Burgesses had no Votes there. Sir, as soon as these Gentlemen came into Court, I was a little amazed to see so many Gentlemen; I took the King's New Charter out of the Box, and Alderman Rippon took it by one side and I by the other. Gentlemen, said I here is the King's New Charter, which he has been pleased to grant to the Town of Nottingham; and said I, Mr. Serjeant Bigland, will you be pleased to cast your Eye upon it, and satisfy these Gentlemen whether it be a New Charter, and what are the Contents of it? Sir, says he, do you ask my Opinion as Recorder, or as a Counsel? Says I, I ask your Opinion as a Friend. Then says he, I won't give you my Opinion. Then said I, Mr. Alderman Edge, will you look upon it, and give your Opinion, it is your Duty to read it as Town-Clerk. Sir, says he, I know what I was by the Old Charter, but I don't know what I am by the New. Says I, it is your Duty so to do. No, says he, I will not; so, my Lord, and Gentlemen of the Jury, the rest of the People that were in the Room, cried out, No New Charter, No New Charter. Then spoke Mr. Sacheverell, Sir, says he, this is not our Business here now, we come here for the Election of a Mayor by the Old Charter. Sir, said I, I know not any Business you have here, nor a great many Gentlemen that are here; it would better become you to be in another place. Sir, says he, Will you proceed to Election or no? Sir, says I, I have a great deal more to do before I can proceed to Election; I was to be sworn myself, and to swear half a dozen, before I could proceed to Election, in the room of those that were turned out, to make them capable of electing. And so they cried, No New Charter, No New Charter, a Greaves Mayor, a Greaves Mayor. Then they cried, Mr. Alderman Edge, take your Book, and proceed to Election. Who are you for, Mr. Mayor? Said I, you cannot proceed to any Election without my Consent, and I disclaim it; and so, Gentlemen, farewell. My Lord, that was in the Council-House next to the Guildhall.

L. C. J. What Day was that?

Wild. It was Friday, Michaelmas-Day, (82.)

L. C. J. Well, go on.

Wild. So, my Lord, I adjourn'd the Court into the Guildhall, which was a Room adjoining to that where this Matter happened, and we sat a while upon the Bench, and made a little Speech to the Burgesses of the Town, and told them the King had granted a New Charter, and if they pleased to be silent, they should hear it read. This was after I was sworn; for as soon as I came there, they gave me my Oath, and swore me Mayor by the New Charter. We commanded Silence there several times, but the Burgesses were very tumultuous, and it was occasioned, as I believe, my Lord, by the coming in of two Gentlemen, Mr. Gregory and Mr. Hutchinson, who came to tell me, the Gentlemen in the other Room had elected Mr. Greaves Mayor, and desired me to come and hear him sworn. Said I, they can't elect without my Consent, and I disclaim it, I will have nothing to do in the Business. With that the Burgesses began to be so extraordinary tumultuous and outrageous, and keep such a Noise and a Stir, that we were afraid they would have plucked us off the Bench; in-somuch, as one that was by, my Brother Parker, whispered me in the Ear, says he, Will you stay here to be knocked on the Head? I told him, I hoped there was no Danger of that. We commanded Silence again and again, for the reading of the New Charter; and there was an honest Gentleman in Court, one Mr. Bawd, a Barrister at Law, that took it and read it very distinctly to the Burgesses and the Company, as far as they would give him leave. I made Proclamation for Silence, and keeping the Peace divers times, and for all, that had no Business there, to depart; but they were so outrageous, that Alderman Parker went away: He was afraid of his Life, as he told me. I staid some little time after Alderman Parker went away; but finding there was nothing to be done for the Noise, I adjourned the Court to my own House, and did all the rest of the Business there, electing and swearing the Mayor and other Officers. My Lord, presently after I was come to my own House, comes Mr. Charles Hutchinson, Mr. George Gregory, Mr. Samuel Richards, and Mr. Arthur Riccards; and they came very impudently and saucily to demand the Mace. They said they were sent to demand the Mace: Said I, I think you have nothing to do with it.

L. C. J. Were they concerned in the Election by the Old Charter?

Wild. No, my Lord, they were not by the Old nor New, nor none at all. Said they, Will you please to give us your Answer, whether you

VOL. III.

will give us the Mace or no? Said I, I received it from a very good Authority; I received it by the King's Authority, and to the King's Authority I will give it again. Said they, Is that all the Answer you will give us? Yes, said I, that is my Answer: So they went away. After we had sworn all the Men that were in the New Charter, we went to the Election of a New Mayor, and we chose Mr. Toplady; and when we had chose him, we went to proclaim him, as the usual Manner was, and proclaim'd him at the Market-Cross, the Week-Day-Cross, as we call it; and as we were proclaiming our New Mayor, there comes Sherwin and Green, with a great many more, about forty I believe, or thereabouts; and as it grew towards Night, they shouted and threw up their Hats, and we thought they would have run in upon us, and they cried out, No New Charter; No New Charter, a Greaves Mayor, a Greaves Mayor.

Mr. North. What became of the Mace?—Wild. I kept it.

L. C. J. What is this Gentleman's Name?

Mr. North. Mr. Wild: He was Mayor then. Have you no more to say, Sir?

Mr. Just. Withins. Pray who was at the Head of all this Rabble? Who was the Chief of them?

Wild. I believe if Mr. Sacheverell had not been there, and those other Gentlemen, we had had no Disturbance.

Mr. Pollexfen. Pray, Sir, let me ask you, had these Gentlemen their Swords on?—Wild. Yes.

Mr. Just. Withins. Did they abet and countenance the Tumult?

Wild. Yes, they did abet it.

Mr. North. Did any Body strike or threaten?—Wild. There are some in Court can tell you something of that, I know nothing of it.

L. C. J. I would know of you how many Persons were present at this time when this Tumult was. Pray name as many of them as you can. You have named Sacheverell, Gregory, and Hutchinson for the first Part: You have named about the Business of the Mace, Samuel Richards and Arthur Riccards.

Wild. And Mr. Green and Mr. Sherwin were there at the Market-Cross.

L. C. J. Who else?

Mr. Powis. Was Mr. John Greaves there?—Wild. Yes.

Mr. Powis. Was William Greaves there?—Wild. Yes.

Mr. Powis. Was Ralph Bennet there?—Wild. He was there.

Mr. Powis. Was William Wilson there?

Wild. I can say nothing to him.

L. C. J. Was Samuel Smith there?—Wild. Yes.

L. C. J. Was Thomas Trig there?—Wild. Yes.

L. C. J. Was Richard Smith there?—Wild. Yes, He was there too.

L. C. J. Was John Hoe there?—Wild. Yes.

L. C. J. Was William Smith there?—Wild. Yes.

L. C. J. Was Joseph Turpin there?

Wild. He was in the Hall throwing up his Hat, but I did not see him in the Council-House.

L. C. J. Did he abet the Tumult?

Wild. Yes, he cried out, No New Charter, No New Charter, a Greaves Mayor, a Greaves Mayor.

L. C. J. Was Nathaniel Charnell there?—Wild. Yes.

L. C. J. Was Humphry Barker there?

Wild. I can say nothing to him.

L. C. J. Was Joseph Astlin there?

Wild. I can say nothing to him neither.

L. C. J. Then these Three you say nothing to; William Wilson, Humphry Barker, and Joseph Astlin.

Mr. North. Pray, Sir, favour me with one Word; I would ask you this Question: Was there any Proclamation made by your Order to have those depart that had no Business?

Wild. My Lord, I did order it so; and I think the Serjeant is in Court; I sent him into the other Room, and did order him to make Proclamation; he will give you an Account of that.

Mr. Recorder. How came it about they were got to Church before you came from your own House? Pray tell us what you said to them before they went to Church. Were there any of them before that at your House that Morning, and what did you say to them?

Wild. May it please your Lordship, my Lord, and Gentlemen of the Jury, the New Charter was not come till something late in the Day; they had been at my House about Eight or Nine of the Clock, to have me go with them to Church, and they were impatient of staying, but I persuaded them to stay; for, said I, we shall have a New Charter by and by. Some of them were my Friends, and I spake to them to persuade the rest to stay. I did persuade them to stay a great while, and went out from them, and came to them again. At last News was brought me, that the New Charter was within the Limits of the Town, (for we had a Spy at the Top of the Houses) and that half a score were come with it; so I went to Alderman Edge, and told that now the New Charter was come within the Bounds of the Town. When they heard me say so, they cried, Away, away, let us go to Church, and they said Mr. Sacheverell was in the Street, and so they followed him to Church. Away they went from my House; but a little before they went, I said to them, Gentlemen, if you will give but a little time, the Charter will be here in a Quarter of an Hour or less, therefore pray be pleased to stay and see it before you go, for I tell you I must act by the New Charter, and not by the Old.

Mr. Just. Withins. When you ordered them to make Proclamation of Silence, how did they behave themselves?

Wild. They were as tumultuous as ever they were.

Mr. Just. Holloway. If you have any thing more, speak your full Knowledge of it.

Wild. My Lord, I did perceive a great deal of Danger there was; I knew not how it would be the next Day, we were afraid of being knock'd on the Head, so I dispatched a Messenger on Saturday to my Lord Duke of Newcastle, that he would please to come to us and assist us, for I believed we were in a great deal of Danger. My Lord came to us on Saturday Night, and staid there till we were pretty quiet again.

Mr. Recorder. What did they do on Saturday, the next Day?

Wild. It was the Day of proclaiming the Mayor at the other Cross, the



the Malt-Cross, it being upon the Market-Day, when the Country People came in, that so they may be satisfied who is Mayor of the Town.

Mr. Recorder. Did they proclaim their Mayor that Day?—Wild. Yes.

Mr. Recorder. Pray speak out, and tell how that was?

Mr. Just. Holloway. Pray, Mr. Mayor, by the Custom and Usage of your Corporation, is the Mayor proclaimed any other Day than when he is elected?

Wild. Yes, the next Day after, to satisfy the Country who are Mayor and Sheriffs of the Town.

L. C. J. Were both the Mayors proclaim'd that Day?

Wild. Yes, after we had proclaim'd our Mayor, presently there came a great many Gentlemen, and proclaimed their Mayor.

L. C. J. Name them who they were?

Wild. My Lord, I was not so near them, as to tell particularly who they were; but they threw up their Hats, and made a great Noise: There are enough in Court can tell who they were.

Mr. Lovell. Pray, Mr. Mayor, will you tell us by whose Authority and Direction this Assembly was called?

Mr. Thompson. Sir, he ask'd you a plain Question, pray answer it; by whose Direction was the Assembly called?

Wild. Sir, I do not know; they had no Summons from me.

Mr. Holt. Is it not usual to meet of course, without Summons, on the Day of Election?

Wild. Never that I knew of without Summons; but our New Charter not being come, I durst not give any Summons.

Mr. Lovell. Is it not usual for the Burgesses to go and wait upon the Mayor to Church?

Wild. Yes, those that are summoned; but not without Summons.

Mr. Just. Withens. Is it usual that the Multitude should make the Mayor go to Church before he has a mind to it?

Mr. Lovell. Did you make any Summons at all for that Meeting?

Wild. I sent no Summons.

Mr. Pollexfen. 'Tis all laid in your Information, that the Assembly was summoned by you.

Wild. All that I ever sent for, as I know, was Mr. Serjeant Bigland. There were two or three Gentlemen at my House that ask'd me to send for him, he having been Recorder by the Old Charter. Said I, if Mr. Serjeant Bigland has a mind to come, he may come if he will; so I sent for him; but there were none of those Gentlemen that I nam'd before, that I sent for.

Mr. Pollexfen. I think you say that you went from the Council-House, and afterwards went into the Hall, and there you were sworn, and then you did proceed to read the Charter; pray, were any of the Defendants, or which of them, in the Hall?

Wild. Sir, I told you that Mr. Gregory and Mr. Hutchinson came into the Hall, and Mr. Charnell, and Mr. Turpin were there in particular.

Mr. Pollexfen. What did Mr. Gregory and Mr. Hutchinson do there?

Wild. They came, Sir, to desire me to go into the Council-House, for the Gentlemen had chosen Greaves Mayor, and desir'd me to hear him sworn.

Mr. Pollexfen. Was Mr. Sacheverell, or any there, but those that you say came to tell you what they had done in the Council-House?

Mr. Holt. Who staid behind in the Council-House?

Wild. All but those that came out with me.

Mr. Jones. Pray, to satisfy them, tell them how far the Council-House and the Hall stand at a distance: How far asunder are they?

Wild. But just over the Door-Threshold from one another.

Mr. Jones. Are they contiguous to one another?—Wild. Yes, Sir.

Mr. Jones. Can they come into the Council-House, but they must go thro' the Hall?

Wild. No, no, they must come from the Hall first, and so go into the Council-House.

Mr. Pollexfen. You were speaking of some of the Company that had Swords by their Sides.

Wild. Yes, the Gentleman had.

Mr. Stanhope. Did you observe Mr. Sacheverell and Mr. Gregory had their Swords by their Sides?

Wild. Yes, to the best of my knowledge they had.

Mr. Stanhope. To the best of your knowledge; do you swear they had or no?

Mr. Recorder. Would you have him swear beyond his knowledge?

Mr. Stanhope. Had Mr. Plumptre a Sword when he came from Church to the Hall?

Wild. I see his Face among the rest, but they were so many, I can't speak particularly who had their Swords on, and who not; I believe they might have all their Swords on.

L. C. J. Pray, Sir, what do you mean by that Question? Plumptre is not here before us.

Mr. Stanhope. He is in the Information.

L. C. J. You had as good ask if Mr. Peartree was there.

Mr. Stanhope. My Lord, he said he was there, and his Name is in the Information.

L. C. J. You had best ask us, whether every Man in the Town had his Sword on. Let us keep to the thing before us, and not ask such impertinent idle Questions of People we have nothing to do with.

Mr. Stanhope. Is Mr. Sacheverell a Burgess of the Town?

Wild. Yes, he was a Burgess by the Old Charter; but tho' he was a Burgess, he was not one of the Electors. He had nothing to do there, nor Mr. Gregory, nor Mr. Plumptre.

Mr. Fuller. Who are the Electors?

Wild. The Electors are the Mayor, Aldermen, Coroners, and the rest of the Council, by both Charters, and so he had nothing to do there.

Mr. Just. Withens. He was not concerned in the Corporation, but only a Gentleman-Burgess.

L. C. J. How long have you been of the Council of that Town?

Wild. I have been there a great while, a dozen or sixteen Years.

L. C. J. Have you been present at the Election of Mayors before that time?—Wild. Every Year.

L. C. J. Who were the Persons that used to come to elect Mayors before that time?

Wild. The Old Mayor, the Aldermen, the Council, the Coroners, and the Sheriffs, and those that have been Sheriffs.

L. C. J. Did the other Burgesses use to come?—Wild. No.

L. C. J. Did Mr. Sacheverell and Mr. Gregory use to appear for the Election of Mayors before that time?

Wild. No, my Lord, they had no business there.

Mr. Recorder. At this time they had, it seems.

Wild. They made themselves Business.

Mr. North. Pray swear John Malin. [Which was done.]

Mr. Stanhope. Mr. Wild, Pray be pleas'd to tell the Court how Mr. Hutchinson express'd his Sauciness, for you are pleas'd to say, he and Mr. Gregory came saucily to you?

Wild. So he did, Sir, he came saucily to demand the Mace, which he had nothing to do withal.

L. C. J. Is Mr. Hutchinson here?

Mr. Stanhope. Yes, he is: Did he demand it himself, pray, or did he tell you the other Mayor demanded it?

Wild. He came to demand it.

Mr. Stanhope. Did he tell you from whom he came?

Wild. He said he came from Mr. Greaves.

Mr. Stanhope. Then he did not demand it for himself?

L. C. J. And if Mr. Greaves had demanded it, he had talked saucily; for it was not in his Power to demand it. If he had any right to it, there was a proper Place for him to apply to, if it were detained from him.

Mr. Stanhope. My Lord, with Submission, I understand no such great Sauciness in it, to make a demand of an Ensign of Office.

L. C. J. But I say it was saucy, and I tell you you had been saucy if you had done it; for every Man that meddles out of his Province is saucy: You may carry that away with you among your other Observations. Every little prick'd Fellow, I will warrant you, must go to dispose of the Government. Let Mr. Hutchinson and Mr. Gregory be as good Men as they will, they had better have studied to have been quiet, and meddled with their own Business. And I will tell Mr. Gregory ad

Concilium ne accedas antequam voceris, is a Rule, and ought to be observed: But we are wonderfully afraid, forsooth, to tell our Minds: No, I tell you it was saucy, and if you had gone upon that Errand, you had been saucy.

Mr. Stanhope. It may be I should have known better than to have gone on such an Errand.

L. C. J. So you would done well to do, and you should know better than to ask such insignificant impertinent Questions as you do. It was very saucy, I tell you; and if the best Man of your Party had gone, it had been saucy. You shall know our Minds, if you put us upon it, because you are so big of it. We are come to a fine pass, that every little prick'd Fellow must come to demand Maces that are the Badges of Authority, and they must not be told, forsooth, that they are saucy.

Mr. North. Pray, Mr. Malin, will you give an Account what you know of this Matter?

L. C. J. We are trying People's Rights by Club-Law: but by Grace of God it shall not be so, so long as I sit here.

Malin. I was then Sheriff at that time.

L. C. J. What time?

Malin. The time of the Riot, on Michaelmas-Day. I then being Sheriff went out to meet the Charter that was coming at that time, and I went as far as Leicester, and came back with it about Eleven of the Clock, as near as I can guess. I came with the Charter on the one side of him that brought it, and another that is concerned with us that we left behind, on the other side: I met these Gentlemen that stand in this Cause, I'll name them, if you please.

L. C. J. Do so.

Malin. Mr. Sacheverell, Mr. Gregory, Mr. Hutchinson, Mr. John Greaves, Mr. William Greaves, Samuel Richards, Robert Green, Francis Salmon, Arthur Riccards, Ralph Bennet, John Sherwin, Samuel Smith, Thomas Trig, William Smith, Joseph Astlin, and Nathaniel Charnell, I met these Men.

L. C. J. Where did you meet these Men?

Malin. At the Gate called Rye-Smith-Gate. They were a-coming with a great many more, and I suppose they went before; for I went forward to Mr. Mayor by the New Charter and by the Old Charter too, and I met him, and delivered the Charter to him, and staid there, and the rest of the Gentlemen that were concerned of our Party by the King's New Charter, and we went from thence to the Guildhall, and from thence we went into the Council-House, and when we were in the Council-House, Mr. Mayor sent for Mr. Edge as Town-Clerk. They were gone then to Church, I was one that went. He was concerned in the New Charter both as Alderman and Town-Clerk. I went for him to come to see the Charter read, and that was all. I see them fit in Order, in that Manner and Form as they had used to do before in former times, ready to go to the Election in the Vestry after the way it used to be in, by the Old Charter, for I have been concern'd in Elections the former Way six or seven Years; but I never saw any Gentlemen in all that time appear there. There used to be none but the Mayor, the Aldermen, and the Clothing. There were none of these Gentlemen, as ever I saw, and I am of seven Years standing, six I am sure, I suppose seven, but only one Gentleman once, which was a Gentleman that Alderman Edge brought in to see the Formality, a Gentleman of the Six-Clerks Office, as I remember. This being done, I acquainted Mr. Alderman Edge with our Errand, but he did not come to us; but some time after we had sat there in the Council-House, these Gentlemen came with a great many, I know not how many Hundred came there, and when they saw the Mayor was going to read the New Charter, these Gentlemen began to stir; and when they came in, we wonder'd to see such a Buffle of those that had nothing to do there: And the first thing that was said, was spoke by Mr. Sacheverell, as I do remember, for I saw him there; We come here for to elect a Mayor by the Old Charter. Says Mr. Mayor then to them, I know no Business you have here Gentlemen, any of you; and upon that he made Proclamation



clamation, and told them they had nothing to do there, and he would have nothing to do with them. So then they called out for a Poll, and did proceed on as far as their Party went, and one or two of those that were concerned in the new Charter, but not as to any of their Party. There was one of them, Mr. *Hardy*, that gave a Vote for Mr. *Edge*, and this was all. But they would not depart at all; but Mr. Mayor told them they had no business there, and he had nothing to say to them: And with that he took up the Mace, and went with some of the Aldermen into Guild-hall. And when they saw him going away, they began to cry out, and he had much-ado to escape, they were so busy to keep him in there. And as they laid their Hands upon the Mace to stop it, the Serjeant got away with it, and went out with the Mayor. Then says Mr. *Sacheverell*, Stop the Books, stop the Books, two or three several times. With that there was one of the Coroners, Mr. *Woolhouse*, laid hold on one of the Books; and whether there was any pulling or tugging, I cannot tell; but I suppose some of the Books were stopped.

Mr. *Powis*. Then what was done as to the Mace that belonged to you as Sheriff?

Malin. I was crowded out, and I could not lay hands on my Mace; but the Mace lay upon the Board, and was left there among them: And I was crowded out, and followed Mr. Mayor, for there was no Quietness there, unless you would stay to be knocked on the Head.

Mr. *Powis*. What became of the Mace?

Malin. I sent the Serjeant for it, and he told me he demanded it, and they would not let him have it.

L. C. J. But speak your own Knowledge, not what another told you.

Malin. I came in afterwards there; when he told me he had been there, and laid his Hand upon it, and they rescued it from him, and he could not have it, I went in myself, and demanded the Mace of the Gentlemen. There was Mr. *Salmon*, Mr. *Richards*, Mr. *Arthur Riccards*; there were four of them that told me they had as much right to the Mace as I had. Gentlemen, says I, that is strange, I am by your Charter Sheriff still, there is nobody elected in my room, and our usual Way is to deliver our Maces, you know, in another Place, and not to rescue them away, and detain them by Violence. Likewise the Mace was a thing that I paid for; I was so much Money out of Pocket upon it; for that is our usual Way, it being bought lately, every Sheriff lays down such a Sum, and loses Ten Shillings by it at the Year's end. I told them then too I was Sheriff by the King's new Grant, and therefore the Mace belonged to me.

Mr. *Powis*. What is that *Arthur Riccards*?

Malin. An Attorney at Law.

Mr. *Powis*. He is none of the Aldermen, is he?—Malin. No, no.

Mr. *Powis*. What is *Salmon*?

Malin. He is a Feltmonger, or a Glover; he makes Gloves.

Mr. *Powis*. What had he to do there? Was he one of the Aldermen?

Malin. He was one of the old Council. And there was one *Bennet* too.

Mr. *Powis*. What is *Richards*?

Malin. He is a Bookbinder. He was one of the old Council. He was Coroner.

Mr. *Powis*. What did you say of *Bennet*?

Malin. *Ralph Bennet* was one that told me he had as much Right to the Mace as I.

Mr. *Recorder*. Well, go on to what was done the next Day, the Market-Day, Saturday.

Malin. I can't say much to that; for I was with Mr. Mayor making Proclamation of those of that were by the new Charter, but I did not see them proclaim any thing.

Mr. *Recorder*. Was you by when Proclamation was made?

Malin. I was by when we were all proclaimed, but not when they were; but then—

L. C. J. Brother, let him go on to tell us what happened on the Friday.

Malin. Then Mr. Alderman *Wild*, who was the Mayor, when he came out thence, went into the Guildhall, where there were Abundance of Burgesses gathered together; and seeing them so unquiet, he was satisfying them as far as he could; says he, if you will hear, you shall have the Charter read, either into *English*, or as it is in *Latin*, and then you will see that none of your Privileges are diminished from you, but increased rather: And he was about to read it, and shewed the Broad Seal to them; when in comes Mr. *Hutchinson* and Mr. *Gregory*, to desire, or request, or command, or something, Mr. Mayor to come into the Council-House; they told him they had chosen *Greaves* Mayor, and he was to come to hear him sworn. With that the Burgesses that had been quieted before, and was so civil as to hearken, and were about to hear the new Charter read, flung up their Hats, and cried out, No new Charter, a *Greaves* Mayor, a *Greaves* Mayor. Then Alderman *Parker* durst not stay any longer; says he, I won't stay to be knocked on the head. Then every one was frightened, and the Mayor took up the Mace and ran away.

Mr. *Recorder*. How many might there be in the Hall?

Malin. I believe three or four hundred.

Mr. *Recorder*. Did they restore the Mace to you?

Malin. They came the next Day, and would have tender'd me Money for the Mace.

Mr. *Recorder*. What did you say to them?

Malin. I told them, I knew no right they had to the Mace, and I would take no Money for it. It was one *Rayner* that came and tender'd me Money for it.

Mr. *Jutt. Holloway*. Pray, Sir, let me ask you, in the electing of your Sheriffs, do the Sheriffs return the Mace; or can any body require the Mace before the Goal is turned over?

Malin. Yes, my Lord, the Goal may not be turned over in a Month; but the Ensigns of Authority are delivered to them presently after they are sworn.

Mr. *Holt*. Pray, Mr. *Malin*, do you know which of these Defendants were there at that time when there was tossing and throwing up of their Caps, as you say?

Malin. A great many of them were in the Council-House; they had taken that Room to themselves, and thrust us out, and none of them came into the Hall but Mr. *Hutchinson* and Mr. *Gregory*; and the Burgesses

were very quiet till they came and demanded Mr. *Wild* to come and hear their Mayor sworn.

Mr. *Holt*. How long did Mr. *Gregory* and Mr. *Hutchinson* stay in the Hall?

Malin. I do not know; they staid so long as as to demand the Mayor to come.

Mr. *Holt*. Did they carry themselves peaceably and civilly while they were there?

L. C. J. What had they to do there? I ask you that, Mr. *Holt*; and in case you have a mind to have some Questions asked and answered, I'll put you in mind of a Cafe of a parcel of Apprentices in *London*, that were met together about pulling down some Houses in *Moorfields*: And in case you ask me another Question, I can tell you the Resolution and Opinion of all the Judges about that Cafe. There is Law for recovering every Man's Right, but Club-Law is not the way to determine Right.

Mr. *Recorder*. Swear Mr. *Rippon*.

[Which was done.]

L. C. J. You know what became of some of those Apprentices, Mr. *Holt*.

Mr. *Jennings*. Mr. *Rippon*, pray will you tell the Court what you know of this Riot at *Nottingham*?

Rippon. Upon *Michaelmas-Day*, (82,) about Eleven of the Clock, the Charter came to Town; I was then with Mr. Mayor, Mr. *Wild*, so we went straight away to the Hall forthwith, and we desired that he would be sworn by Mr. *Beverley* that was Steward. No, says he, I have no mind to it, till Mr. *Edge*, that was Town-Clerk, came to do it according to his Office; so he desired me and Alderman *Parker* to go to the Church to desire him to come and do his Office. We did so, and spake to Mr. *Edge*: Says he, if they will please to come hither, well and good, I shall not concern myself any further: Then, said we, will you give us the Books that concern us; they are there, said he, what would you have more? Nay, said I, I am satisfied; so we came away. As soon as we came back to the Hall, we told him the Message that Mr. *Edge* had sent; so Mr. *Wymondsell* that was Deputy-Recorder, was reading the Charter. Says Mr. Mayor, if you please, I will be sworn, and proceed to Election. Presently comes a great Company, Mr. *Sacheverell*, Mr. *Hutchinson*, and a great many; if you please to give me leave to look upon my Paper I can tell you; there was *William Sacheverell*, Esq; *George Gregory*, Esq; *Charles Hutchinson*, Esq; *John Greaves*, Gent. *William Greaves*, Gent. *Samuel Richards*, Gent. *Robert Green*, Gent. *Francis Salmon*, Gent. *Arthur Riccards*, Gent. *Ralph Bennet*, Gent. *John Sherwin*, Gent. *William Wilson*; I don't know, I must beg your Pardon, I cannot speak particularly to him; *Samuel Smith*, *Thomas Trigg*, *Richard Smith*, *John Hoe*, *William Smith*, *Joseph Turpin*, Gent. *Nath. Charnell*: I cannot say any thing of *Humphry Barker*, but there was *Joseph Astlin*, Taylor. These Gentlemen came in with Swords by their Sides, several of them really to the terrifying of those that were there; I was very much afraid myself. So Mr. Mayor looked upon Mr. *Edge*, and says he, Mr. Alderman *Edge*, will you take the Charter, and read it, for the satisfaction of yourself and these Gentlemen? Says Mr. *Edge*, I do not know what I am by that Charter, whether I am any thing or not; I know what I am by the old Charter. Says Mr. *Sacheverell*, that is not our Business at present, we come to elect a Mayor by the old Charter; and very hot they were, and called out to Election, to Election, *Salmon* and these Fellows; so that Mr. Mayor could not be heard, and to Election they went; and I asked Mr. *Wild*, who was then Mayor, who he was for? Says he, I do not understand by what Authority some of these Gentlemen come here: they are excluded by the old Charter, and I think it were better for you to be elsewhere: They then asked who he was for? Says he, I am for none: Then they asked Alderman *Parker*, and he said the same; and when we see they would have nothing done but that, we withdrew into the Hall, and fell upon swearing the Mayor. We swore him, and just finished the Oath, and the People were very silent, and he drew out the Charter, and shewed the Broad-Seal, and said, Here is the King's New Charter, I am very confident none of your Immunities and your Privileges you are deprived of: and there being some little stir, said I, Pray be quiet and silent, while you hear it read; at last they were very silent and quiet, and we thought it would have been a very fair Business; when in comes Mr. *Hutchinson* and Mr. *Gregory*, to tell Mr. Mayor that they desired his Company, as the Custom was, to be at the Swearing of Mr. *Greaves* Mayor, for so the old Mayor ought to be, or else he is no Mayor, unless he be sworn by the preceding Mayor. Says he, I have nothing to say to him, I know no Mayor that he is; we are about our own Business, obeying the King's Authority and his Charter. This was no sooner said, but they had animated the Multitude of People that were there, that they flung up their Hats in a very irreverent Posture, as I never saw the like, shouting and crying out, No New Charter, a *Greaves* Mayor. I was fain to secure the Charter; and a farrendine Waistcoat that I had on, was all rubbed to pieces to save the Charter, and I had much-ado to save it. My Brother *Parker* he was so afraid, he got off the Bench; *Prithee*, said I, stay; for certainly they dare not do these things; says he, I am afraid of my Life, and fare you well. Mr. Mayor and I sat a-while, for we knew not which way to take, but at last we got away thro' them: But if I touch'd Ground, I wish I might never see my Wife again.

L. C. J. Now whether that be a Curse that thou layest upon thyself or no, I can't tell.

Rippon. Had you been there, Sir, you would have been afraid too.

Mr. *Recorder*. Pray speak that again.

Rippon. I say again, when I went away down with Mr. Mayor, I did not touch the Ground for eight or nine Yards together; for they would not make way, and they pulled me by the Gown, several of them; and if any body else had been there, he would have been affrighted.

Mr. *Powis*. How long did they continue the Rabble up?

Rippon. So, Sir, we got straight away to Mr. *Wild*'s House, that was then Mayor, and we did swear him accordingly as the usual way was: For the Charter impower'd us, as Mr. *Wymondsell* told us, that we might elect any where; so we fell to the Business of the Day, and by that time we had three parts done, they had done, and proclaimed their Mayor: But then they come and send Mr. *Hutchinson*, and Mr. *Gregory*, *Samuel Richards*, and *Arthur Riccards*, to demand the Great Mace for Mr. *Greaves*,



*Greaves*, as he was Mayor: Said *Mr. Wild*, what shall I do? Why, said I, go down and give them their Answer; tell them they are saucy Fellows to do any such thing: Says he, they are Gentlemen; why then, said I, tell them they might know better than to do so. So he went down and told them; said he, I receiv'd it by good Authority, and will never part with it, but to as good an Authority as I receiv'd it. So we staid, and went on and did the Business of the Day; and afterwards, between five and six of the Clock, we went to the Cross, and there proclaim'd the Mayor by the New Charter, according to the Custom, and return'd every one to our own Houses. The next Day we were afraid of making a Disturbance; but about Nine of the Clock we went and proclaim'd the Mayor, and about Eleven there came all these Gentlemen, and there they proclaim'd *Mr. Greaves* Mayor, which was upon the *Saturday*, accompanied by all these Persons, as near as I can say.

*Mr. Powis*. Was *Mr. Sacheverell* there then?—*Rippon*. Yes..

*Mr. Powis*. Were all the rest there?

*Rippon*. To the best of my Knowledge they were.

*Mr. Holt*. Can you say *Mr. Sacheverell* was there?

*Rippon*. Yes, he was.

*Mr. Holt*. Who was there?—*Rippon*. There was the two *Greaves's*, and *Green*, and *Richards*, and *Bennet*.

*Mr. Holt*. Did you see them there?—*Rippon*. Yes I did.

*Mr. Recorder*. *Rippon*, Pray will you recollect yourself, and tell the Court who was there on the *Saturday*?

*Rippon*. *Mr. Sacheverell*, *William Greaves*, *John Greaves*, *Samuel Richards*, *Salmon*, *Arthur Richards*, *Ralph Bennet*, *John Sherwin*, *William Wilson*.

*Mr. Recorder*. Was *Wilson* there?—*Rippon*. Yes, I see him myself.

*Mr. Recorder*. What, rejoicing?

*Rippon*. Yes, he was rejoicing as the rest did, to the terrifying of us all.

*Mr. Recorder*. Was he in the Croud?—*Rippon*. Yes.

*Mr. North*. Will you ask him any thing, Gentlemen?

*Rippon*. I know nothing, if it please your Lordship.

*Mr. Holt*. Pray, Sir, this; Can you say that *Mr. Sacheverell* had his Sword on, on *Michaelmas-Day*?—*Rippon*. Yes, certainly he had one on.

*Mr. Holt*. Can you take it upon your Oath he had?

*Rippon*. Nay, there will be several that will swear it, I will warrant you; and I am sure you would have been afraid if you had been there.

*L. C. J.* Were *Mr. Hutchinson*, or *Mr. Gregory*, Burgesses, either by the New or Old Charter?—*Rippon*. No, they were not.

*L. C. J.* Were *Mr. Sacheverell*, and any of these Gentlemen ever present at any other Election?

*Rippon*. It is possible, after the Election is over, they might invite Gentlemen to feast at their Houses, but never to have any Concern in the Election in the least.

*L. C. J.* How many Elections have you been present at?

*Rippon*. I came into the Council at the King's Coming-in, and I have been Alderman five or six Years.

*Mr. Powis*. He came in by the Regulation.

*Mr. Pollexfen*. Pray whereabouts was it the Mayor was sworn?

*Rippon*. At his own House.

*Mr. Pollexfen*. Whereabouts were the Sheriffs sworn?

*Rippon*. What Sheriffs?

*Mr. Pollexfen*. *Malin*, the Witness that was before.

*L. C. J.* He was the Old Sheriff.

*Mr. Holt*. And where were the New Sheriffs sworn?

*Rippon*. At the Mayor's House.

*Mr. Pollexfen*. Was *Mr. Malin* Sheriff by the New Charter?

*Mr. Holt*. Was it before the Election of *Mr. Greaves* Mayor, or after?

*Rippon*. After.

*Mr. Pollexfen*. Was *Mr. Malin* by the Old Charter, or by the New, Sheriff?—*Rippon*. By the Old.

*Mr. Pollexfen*. And not by the New?—*Rippon*. No.

*Mr. Pollexfen*. He says he was, and you say he was not.

*Rippon*. For that Day he was so, but then he went out.

*Mr. Pollexfen*. Did the Mayor return to the Hall after he was sworn, or after you left the Hall in the Fright?—*Rippon*. We went straight to *Mr. Wild's* before he was sworn, and then we swore him there.

*Mr. Pollexfen*. But the Question ask'd you is, Did *Mr. Wild* return back to the Hall after he had taken his Oath; and was sworn in his House?

*Rippon*. No, He staid in his House; it is not usual for the Mayor to go back to the Hall.

*Mr. Pollexfen*. Did he go to the Cross afterwards?—*Rippon*. Yes.

*L. C. J.* It was on *Michaelmas-Day* that he was sworn; and it was by their Proclamation made at the Cross, that he was sworn Mayor that Day?

*Rippon*. Yes, my Lord.

*L. C. J.* And was it the Day after that they proclaim'd *Greaves* to be Mayor?

*Rippon*. Yes, my Lord; 'tis true, to the Terror of us all: I will assure you it was a wonder there was no more Mischief done.

*Mr. Pollexfen*. These Gentlemen were not in Town that Day.

*L. C. J.* Take you your Liberty to make your Defence afterwards; but you must distinguish, there are two Days, and some People were one Day, and some the other; some People were at the Time of the Election, that were not at the Market-Place; and some were at the Market-Place, that were not at the Election.

*Mr. Just. Holloway*. That Day *Greaves* was thus chosen Mayor in that tumultuous Manner, did any of these Persons take upon 'em to swear *Greaves*, when they had thus chosen him?

*Rippon*. We went out into the Hall, and in that time they did swear him.

*Mr. Recorder*. Was *Mr. Greaves* sworn that Day by the pretended Election, *Malin*?—*Malin*. Yes, by the Coroner.

*L. C. J.* But I perceive by their Old Charter, there was no Mayor to be sworn, but by the Old Mayor that went out.

*Mr. Stanhope*. Did not the Coroner use to swear the Mayor by the Old Charter?

*Rippon*. Yes, but in the Presence of the New Mayor; he was by always.

*L. C. J.* What do you mean by swearing of him by the Coroner? Hark you, upon your Oath, was there ever any Mayor of *Nottingham*, in your Time, sworn but in the Presence of the Old Mayor?

*Rippon*. No, never, my Lord.

*L. C. J.* Do you call that Swearing, because he reads the Oath to him? *Mr. Holt*. The Coroner has Authority so to do, as we shall shew you by and by.

*Mr. Powis*. Then swear *Reynolds*.

*Reynolds*. I brought down the Charter, my Lord.

*Mr. Recorder*. I would ask *Rippon* a Question before he goes out: Let us know of you where the Old Mayor was sworn by virtue of the New Charter?

*Rippon*. I can't tell that; the New Mayor was sworn by the New Charter, at the Old Mayor's House.

*Mr. Recorder*. The other two Witnesses did swear, That the Old Mayor was sworn in the Hall; but he says he was by, when the New Mayor was sworn in the Old Mayor's House.

*L. C. J.* It is understood upon the Receipt of the Charter, *Wild*, who was the present Mayor, was sworn in the Hall; but afterwards, by reason of the Hurly-Burly, and Noise, they went away, and chose the New Mayor at *Wild's* House; that is the Fact that is sworn.

*Mr. Recorder*. It is right, my Lord.

*Mr. Powis*. Pray, *Reynolds*, will you tell my Lord the whole Story; for you it seems brought the Charter down.

*Reynolds*. My Lord, I brought the Charter from *London*; and when I brought the Charter, I was sent by *Mr. Mayor*, to acquaint *Mr. Edge*, that the Charter was come, and the Mayor desir'd him to come and hear it read; *Mr. Edge* ask'd if the Mayor would not come to Church; I told him he was at the Town-Hall. When we came to the Council-House, proceeding to have the Charter read, and all those things, *Mr. Sacheverell*, and a great many others, came to the Council-House; and there the Mayor offer'd to *Mr. Bigland* the New Charter, that if he would, he might read it. *Mr. Sacheverell*, after some little Discourse, told him that was not their Business, they were come to elect a Mayor by the Old Charter: Says *Mr. Mayor*, I do not know any Authority you have to elect a Mayor: Says he to me, make your Proclamation for all those to depart that have no Business; which accordingly I did; and then came along, and catch'd up the Mace; and *Mr. Alderman Rippon*, and *Mr. Mayor*, came into the Common-Hall; and there told the Burgesses that were met, that the King had granted them a New Charter, and there was none of their Privileges diminish'd; and if they would, they should have it read in English or in Latin. Then they went to swear *Mr. Alderman Wild*, according to the New Grant: Presently *Mr. Hutchinson* and *Mr. Gregory* came in, and told him they had elected *Mr. Greaves* Mayor, and if he would, he might come and hear him sworn: He said, he knew no Authority they had for it, and denied any such Election. Then there were such Shouts, as soon as ever the Mayor had given him that Answer, No New Charter, No New Charter, a *Greaves* Mayor, a *Greaves* Mayor; that tho' Silence was proclaim'd divers times, yet there was no hearing him speak: Whereupon he adjourn'd the Court, and we went to the Mayor's House, and there they chose the New Mayor, *Mr. Toplady*, and he was sworn; and then we came to the Cross, where they us'd to proclaim the New Mayor, and then came down *Mr. Sherwin* and *Green*, with a great many others, shouting, No New Charter, No New Charter, a *Greaves* Mayor, a *Greaves* Mayor. The next *Saturday* following, a great many of them went to proclaim him at the Cross again, among the rest *Mr. Pierpont*.

*Mr. Recorder*. Was *Gregory* there too?—*Reynolds*. Yes, I think so.

*Mr. Jones*. Did you make Proclamation at the Common-Hall, for all to depart that had no Business?

*Reynolds*. At the Council-House I did, before we came to the Common-Hall.

*Mr. Jones*. Do you remember who was there?

*Reynolds*. *Mr. Sacheverell* and *Gregory*, and others.

*Mr. Jones*. Did they continue there?—*Reynolds*. Yes.

*Mr. Pollexfen*. Did *Mr. Sacheverell* make any Noise there?

*Reynolds*. There was a great Noise in the Hall.

*Mr. S. Ward*. Did you hear any thing concerning the stopping of the Books?

*Reynolds*. I heard *Mr. Sacheverell* cry out, Stay the Books, stay the Books.

*Mr. Fuller*. What Books did he mean?

*Mr. Reynolds*. They were some of the Books that belonged to the Town.

*Mr. Stanhope*. Were they the Poll-Books?

*L. C. J.* What do you mean by Poll-Books? There was no need of a Poll that I can hear of.

*Mr. Powis*. What do you know about their coming to demand the Mace?

*Reynolds*. Yes, there was *Mr. Gregory*, and *Mr. Hutchinson* came to the Mayor's to demand the Mace, and he ask'd them who sent them; they said, *Mr. Greaves*, the Mayor that was chosen, had sent them.

*Mr. Holt*. You speak of a Proclamation, where was it?

*Reynolds*. Yes, I did make Proclamation in the Council-House, to bid all depart that had no Business.

*Mr. Just. Withins*. How came you to make that Proclamation?

*Reynolds*. The Mayor bid me, and I did it.

*Mr. Holt*. Was the Mayor sworn then?

*Reynolds*. It was before any thing was done.

*Mr. Holt*. Was it before he was sworn upon the New Charter, upon your Oath?—*Reynolds*. It was in the Council-House.

*Mr. Recorder*. It was when you were crying up your *Greaves* Mayor.

*Mr. Powis*. Afterwards, did you observe they headed the Rabble at any time afterwards?

*Mr. Recorder*. Swear Alderman *Parker*.

[Which was done.]

*Mr. Jones*. Are you sworn, Sir?—*Parker*. Yes.

*Mr. Jones*. Why then will you please to give my Lord and Jury an Account of what you know of this Matter?

*Parker*.

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*Parker.* At Michaelmas-Day was Twelve-month, I came to Mr. *Gerwas Wild's* House who was then Mayor. It was about Eleven of the Clock that I was there. There were a great many met that used to meet that Day, in order to the choosing of a New Mayor, and there were a great many others that the Mayor did not know of their coming there; for he gave no order, he said, for several of them that came, to appear there. They did importune him very much to be gone, in order to the Election of a Mayor. Said I to the Mayor, We do expect a Charter, and if we should go on to the choosing of a Mayor, we should be all in Confusion. So after a while, the Dissenting Party withdrew out of the House. Some Gentlemen it seems met with them, and went forward towards St. Mary's Church. Immediately after came the Charter down by him that was last sworn. We were sent up to the Church to desire Alderman *Edge*, that was the Town-Clerk, to come and read the Charter, and to let us know how we were to proceed in relation to the Work of the Day. He said he would not come. Afterwards we went to the Town-Hall, into the Council-Chamber; and after some little time, says Mr. Mayor to me, Brother *Parker*, I would desire you, and Mr. *Rippon*, and Mr. Sheriff *Malin*, to go up to the Church, and desire and command my Brother *Edge* to come down, and assist us in this Business; so we did go up and spake to my Brother *Edge*; said I, Mr. Mayor desires you to come down, the Charter is come, and he would have you come and read it; and said I, if Mr. Serjeant *Bigland*, and Mr. Alderman *Greaves* will come down, they may be satisfied there is a Charter, and we cannot act otherwise than by that Charter. Alderman *Edge* said, He knew there was an Old Charter, and what he was by that Charter; he did not know of any New One, and would act by the Old Charter, and not by the New One. When we came down to Mr. Mayor, said I, my Brother *Edge* will not come down among you; here is a special Commission in the Charter directed to four of us, or any two of them, to swear you Mayor; we must do that the first thing we do, and go forward in that, for we can do nothing till you are sworn Mayor. By and by comes down a great many Persons, Mr. *William Greaves*, my Brother *Edge*, Mr. *Sacheverell*: If you please, I will look in my Paper, and read their Names, that I may be more certain.

*L. C. J.* Ay, look upon your Paper, to refresh your Memory.

*Parker.* There was *Sacheverell*, *Gregory*, *Hutchinson*, the two *Greaves's*, *Samuel Richards*, *Robert Green*, *Salmon*, *Arthur Riccards*, *John Sherwin*, *Ralph Bennet*, and *Wilson* the Rector of St. Peter's—

*Mr. Recorder.* Was he there?

*Parker.* Yes, *Samuel Smith*, *Richard Smith*, *Trigg*, *Hoe*, *Barker*, *Charnell*.

*L. C. J.* Was *Barker* there?

*Parker.* Yes, I have his Name down in this Note.

*L. C. J.* Well, go on.

*Parker.* First they forced into the Council-House, and forced us out: So I told Mr. *Sacheverell*, said I, you have nothing to do here.

*Mr. Recorder.* What said he?

*Parker.* Said he, I have to do here, I am concerned if I am a Burgefs. Said I, no Burgefs acts here but a Gown-Man; for it is only the Mayor, Aldermen, and Clothing that are concerned in the Election, and we never have any Gentlemen among us.

*Mr. Powis.* Did they behave themselves so, as that you were afraid of Mischief?

*Parker.* Said I to some of our Friends, Gentlemen, take the Mayor's Mace into your Hands, for they were for seizing the great Mace that belongs to the Mayor. And, said I, take care of the Books. Said Mr. *Sacheverell*, Stop the Books. There was Coroner *Woolhouse* taking them in his Hands. Said I, take notice who dares take the Books; and said I to Mr. *Sacheverell*, you have nothing to do with the Books, the Books belong to us. Says he, take notice, I will—in a menacing way, and then held his Tongue. Said I, I am sorry to see things here this Day: I have been a Member of the Corporation, and been present at these Elections for Eighteen Years, and I never see such a thing as this; and said I, I profess I could almost cry to see these Dissentions made among us. Said I, I must go, being one of those that was in Commission to swear the Mayor, my Brother *Hall* is not here, and my Brother *Edge* is with them; if they keep me here, the Mayor cannot be sworn; so I pulled off my Gown, and at last when they see I was resolved to go, with shoving and crouding I got through. But when the Mayor was sworn, said I, you must now act as Mayor, and give order for the People to depart: So he did. Says he, will you stay: No, said I, I dare stay no longer; the Rabble are buoyed up to that Height, that I am afraid we shall be knocked on the Head. So I went to my Brother *Hall's*, and I said to his wife, Sister, either give me a Glas of Wine or Sack, for I am e'en spent.

*L. C. J.* That was to recover his Heart again that was sinking; for an Alderman's Heart generally sinks in such a Fright.

*Parker.* We did proceed on then, and I went back again: Said I, if they must be knocked on the Head, I will go and be knocked on the Head with them.

*L. C. J.* Ay, his Courage came to him again, when he had a Glas of Wine.

*Parker.* I met them half way: Said I to the Mayor, let us go to your House now, and let us proceed on to choose a Mayor, and swear him, and all other Officers. But, said I, we have nobody to assist us, we must do as well as we can. And we went thither, and proceeded to choose a New Mayor, and then New Sheriffs, and Coroner, and Chamberlain, and we gave them their Oaths. And after all this, we went, according to the ancient Custom, to the Week-Day-Cross, and there we gave Orders for Proclamation to be made, to give notice to the Corporation who was then Mayor, who were then Aldermen, who were then Sheriffs, who were then Coroners, and who was then Chamberlain for the Year ensuing. Whilst this was doing, Mr. *Sherwin*, Mr. *Green*, and a great many of them came down hollowing and shouting, No New Charter, No New Charter; they car'd not for the New Charter, it was not worth a Groat.

*L. C. J.* Who said that?

*Parker.* *Sherwin*, a Man of a good Estate. They were going fast away: No, said I, pray go on the old rate, we are in a good Cause, and we don't fear them a Pin; if they do lay on, it will be to their cost.

VOL. III.

*L. C. J.* Well said, thou had'st drank a good Glas of Sack, I perceive, for thou wert in a horrid Fright before.

*Parker.* The next Day they could command all the Counsel in the Town to attend them with their New Mayor, *Greaves*. There was *Ralph Edge*, *John Sherwin*, and a great many Gentlemen, with Swords by their Sides, walked to the Market-Cross, and made Proclamation. And after that was done, they continued this on Sunday; for on Sunday Mr. *Greaves*, the Mayor, came with abundance of People at his Heels; not Gentlemen, but Gown-Men, those that were of that Party, and offered to come into the Seat were the Mayor was; and we were so fearful of Disturbance, that we were forced to have a Guard to preserve the Mace, and to secure it from being taken away by Violence; and we writ a Letter to London to my Brother *Hall* to acquaint him with it, and sent Post to my Lord Duke of Newcastle, to let him know how it was, that we were afraid of being knock'd on the Head; and his Grace was so kind, that he immediately came to us, and was there about four or five of the Clock, and then we begun to be a little in hope.

*L. C. J.* Then you began to be in heart again?

*Mr. Recorder.* How have they behaved themselves since?

*Parker.* They have had such Cabals, and Meetings, and Clubs, that we have often been afraid of them.

*Mr. Holt.* I suppose they can drink Sack as well as you.

*Mr. Jennings.* Pray, Sir, had the Burgeses at large any thing to do with the Election by the Old Charter?

*Parker.* No.

*Mr. Powis.* Mr. Alderman, you have been a long time in that Town.

*Parker.* My Grandfather was an Alderman of the Town.

*Mr. Powis.* Did you ever know in your Life, that these Gentlemen ever used to interpose themselves, or concern themselves in the Election?

*Parker.* No, we always went into the Council-House, and were called one by one, and the Gentlemen never came in among us, but only one Gentleman that my Brother *Edge* brought in out of Curiosity, to shew him the Formality; but never any Burges came, but those that were of the Council, or Clothings, as we call them. I never saw it otherwise, and I have known a great many.

*Mr. Jennings.* Did not Mr. *Sacheverell*, nor none of the Out-Burgeses, use to come in?

*Parker.* No, I told them, says I, this Charter cuts you off, you have nothing to do.

*Mr. Jennings.* Did Mr. *Hutchinson* and Mr. *Gregory* use to come?

*Parker.* No, they were no Burgeses. But now you talk of that if you please, I would speak to that: Mr. *Hutchinson*, Mr. *Gregory*, *Arthur Riccards* and *Samuel Richards* came up to my Brother *Wild's*, the Old Mayor, and demanded our Mace. Said I, what have you to do with the Mace? They said, Mr. *Greaves* the Mayor had sent for it. Said I, if the Mayor took a little Spirit upon him, he would do well to secure you, to ask such a thing, for this requires the good Behaviour; said I, and if I was Mayor, I would secure them, and let them take their Advantage against me; I would try it with these Gentlemen.

*Mr. Lovell.* You speak of something that was done at the Cross the next Day after the Election; was Mr. *Sacheverell* there?

*Parker.* I believe he was.

*Mr. Lovell.* Did you see him?

*Parker.* I was in my Chamber, but I cannot say positively he was there?

*Mr. Lovell.* What, at the Cross?

*Parker.* There were all those that I named, there: And I tell you, Sir, the Riot continued there on Sunday; for all that bore Office on their Side, came and attended Mr. *Greaves* to Church, and Mr. *Greaves* clapp'd his Hand on the Mayor's Seat: Said I, Mr. Mayor, keep your Seat, and do not stir out; and he did not.

*Mr. Blencow.* Pray, tell which of the Defendants were at the Cross on Saturday, or at Church on Sunday.

*Parker.* There was Mr. *Gregory* and Esquire *Thynn*, his Brother, and *William Greaves*, and *John Greaves*, and *Samuel Richards*, and *Arthur Riccards*, and the *Smiths* and *Sherwin*.

*Lovell.* Were all these at Church?—*Parker.* Yes.

*Mr. Recorder.* Did they use to come to Church before?

*Parker.* Sir, it is a Custom to wait upon the Mayor the next Sunday, and they waited upon him in their Formality.

*Mr. Holt.* Did not you give your Vote for electing a Mayor according to the Old Charter, upon your Oath?

*Parker.* I will tell you what I did; when they called to the Election, and to the Poll, and ask'd who I was for, I told them there was no Man capable of being voted for, unless it were *Ralph Edge*.

*Mr. Holt.* But did you give a Vote for such an Election, or no?

*Parker.* I tell you, I said there was no Man capable of a Vote but him, and I could give my Vote for none but *Ralph Edge*: And said I, if you will have it, I will give my Vote for *Ralph Edge*.

*Mr. Lovell.* Was there an Election for Mr. *Greaves*, and Poll taken, pray?

*Parker.* I cannot tell that, but I was by almost to the latter End; for I could not get out, the Croud was too great, till I had pulled off my Gown and crouded out.

*Mr. Lovell.* Who took the Poll?

*Parker.* Mr. Alderman *Edge*.

*Mr. Lovell.* Was Mr. *Turpin* in the Council-Chamber at that time, or not?

*Parker.* Yes, he was.

*Lovell.* Are you sure of that?—*Parker.* Yes, indeed am I.

*Mr. Lovell.* Was *Barker* there?

*Parker.* Yes, he was in the Hall, 'tis all under one Roof.

*Mr. Recorder.* The Books that you speak of, that Mr. *Sacheverell* would have secured, what Books were they?

*Parker.* My Brother *Edge* can give a better Account of that than I; for he kept them.

*Mr. Recorder.* You can tell what they were?

*Parker.* They were Books that belonged to the Mayor.

*Mr. Stanhope.* Mr. *Parker*, You say Mr. *Wilson* was there?

*Parker.* He was in the Hall.







cording to the Old Charter, to make an Election, to swear their Mayor, to go and demand the Old Mayor to swear him, and to demand the Mace must be regular, if so be that be true, that the Old Charter was still in force. To go afterwards to the Cross the other Day to proclaim him, was also lawful, if that be so. And if there were nothing but what is usual in Matters of this Nature, and according to Custom, then there is no Offence, no Violence nor Force, nor any thing offered by any of these Defendants: And that which they speak of the crying, A *Greaves* Mayor, a *Greaves* Mayor, is but a sort of an Applause which in Elections is very usual; why then if there are but orderly Proceedings, such as are usual in things of this Nature, I hope it will not be construed to be any Riot, or Breach of the Peace, or Offence in us. My Lord, the Questions that will arise upon this Information, are those that I have mentioned; for if so be this Mace was not *Malin's* Mace, then they having laid it in the Information that we did take away from *Malin*, then Sheriff, a Mace that belonged to him as the Ensign of his Office, if he were not then Sheriff, they are quite out in their Information. That he could not be Sheriff by the Old Charter, that will be pretty plain; for the Old Charter they say was surrendered. That he could not be Sheriff by the New, is as plain, for he was not named Sheriff in it. But if he were Sheriff by the New Charter, yet at this Time he had not the Authority of Sheriff, for he had not taken upon him the Office by the New Charter, nor was not sworn. And there is an express Clause in it, that neither the Sheriff, nor any other Officer, shall take upon him their Office, till they have taken their Oaths. Now all that was done in the Council-Chamber, of which this about the Mace is part, was before these Men had taken their Oaths, and the Oath was taken in the Hall by the Mayor, and where the rest took them, *non constat*: But they were not to act till then, nor could act by their New Charter, and so their Information falls short as to whatsoever was done in the Council-Chamber, and we proceeded right upon the Old Charter. For it is expressly said in the Information, that the Assembly was duly summoned by *Gervas Wild*, then Mayor of the Town, for the electing and swearing a Mayor of that Town, for the executing the Office of Mayor of the Town for the Year ensuing, according to the Effect and Tenor of certain Letters Patents, on that behalf granted, by our Sovereign Lord the King that now is. Then, if so be whatever was done, was before he was sworn as Mayor, then it could not be an Assembly duly summoned by him, he having till then no Authority to summon it; nor could what the Defendants did, be in Hindrance or Disturbance of him in the exercising of his Office; and so their Information is quite varying from the Fact. Then there is this further besides, my Lord, the assembling and meeting, and going on according to the Old Charter, was on the Twenty-Ninth of September, the New Charter bears Date the Twenty-Eighth of September, and comes down as you see the next Day, which was *Michaelmas-Day*, at Eleven of the Clock. And we have it in Proof, that the Surrender of the Old Charter, which they pretend, was not enrolled till the Seventh of October after; and under favour, my Lord, the Old Charter could not be determined, till the Surrender was enrolled, which was not till the Seventh Day of October; and till that Time the Old Charter continuing in Force, it was fit for them to act under it, as it did so continue; and if they had omitted their Election on that Day, they had been faulty, in not proceeding according to the Old Charter. My Lord, we will call our Evidence, and make out our Fact.

L. C. J. But, Mr. Pollexfen, as to that you talk of about *Malin*; Was he Sheriff, or was he not Sheriff?

Mr. Pollexfen. He was not Sheriff according to this Information.

L. C. J. But was he Sheriff, or not Sheriff?

Mr. Thompson. Not Sheriff by the New Charter, say we.

L. C. J. But I pray answer me, Was he Sheriff, or not Sheriff?

Mr. Pollexfen. I believe he was Sheriff by the Old Charter.

L. C. J. What had you then to do with the Mace?

Mr. Pollexfen. Yet say we, you are mistaken in your Information; for if so be you lay it to be an Offence, the taking away the Mace from *Malin*, that was Sheriff by such a Charter, and he is not so, then the Information is mistaken.

L. C. J. There is no such thing as his being Sheriff by such a Charter.

Mr. Lovell. My Lord, we do come here to justify----

L. C. J. Ay, but let him come here first, and answer the Objection.

Mr. Pollexfen. My Lord, it is expressly said in the beginning of the Information, that *Wild* was Mayor, and that he had summoned an Assembly to choose a Mayor, according to the Charter granted by this King; that the Defendants did disturb that Meeting, and that Election; and that they did take away the Mace, being the Ensign of Office, to the said Sheriffs of the County aforesaid belonging, from one *John Malin*, being then one of the Sheriffs of the County of the Town of Nottingham.

L. C. J. All that is true.

Mr. Pollexfen. Then they must make it to be by one or t'other Charter. We say he was not by the New; they deny the Old to be in being, and speak only of the New.

L. C. J. Ay, but I would fain know of you whether he was Sheriff, or not Sheriff?

Mr. Pollexfen. I think they that will charge us with an Offence, ought to make out that Charge.

L. C. J. They say he is Sheriff, and you say he is Sheriff yourselves.

Mr. Pollexfen. That cannot consist with this particular Question, as I conceive.

L. C. J. Why now then let us come yet a little further; it is said, that such a one being Mayor, and so he was, take it which way you will; for if the New Charter have no Effect till the Surrender of the Old be enrolled, then *Wild* was Mayor by the Old Charter; and if he was Mayor, it was enough: And then he was met to choose a New Mayor by virtue of the second Charter; it is true it is so said, though perhaps, according to Strictness, it could not take Effect till the Enrollment of the Surrender; yet what is that to this Offence? I would fain

know of you, is it not true in Fact, that he was then Mayor, and met in an Assembly for the Election of a new Mayor?

Mr. Pollexfen. It is true; but that we conceive will not support this Information.

L. C. J. Then I desire to know, how comes Mr. *Sacheverell*, and these sort of People to meddle in it?

Mr. Pollexfen. If it be insisted upon that he was Mayor by the Old Charter, then we hope we have done nothing but what by the Old Charter we may justify.

L. C. J. What had Mr. *Sacheverell*, Mr. *Hutchinson*, and my Parson *Wilson* to do there?

Mr. Pollexfen. By the Old Charter Mr. *Sacheverell* was a Burgess.

L. C. J. If he were, was he capable of Electing?

Mr. Pollexfen. He might be present at an Election, and was concerned as a Burgess.

L. C. J. But could he meddle with the Election?

Mr. Pollexfen. Then, good my Lord, what have we done----

L. C. J. Wonderfully done! those things you can never answer: In London, for the purpose, it was not an Offence for any Freeman to be present at the Election of the Mayor; but if a Parcel of Freeman come that are not Livery-men, and run themselves into the Business to give Voices, and give Direction about that they have nothing to do with, and cry out, pray stop the Books, and pray, good Sir, deliver the Mace; then they had concerned themselves, and meddled with an Authority to which they had no Pretence, which is an Offence; and if Men will busy themselves in that which does not concern them, they must suffer for it. Mr. *Sacheverell*, and the rest, were as capable of giving them Advice about an Election, seven Years before as now; What Reason had they now to come and make this Hubbub? But some Men will shew themselves such wonderful Advisers before their Advice is asked or needed.

Mr. Lovell. Will your Lordship please to spare me one Word----

Mr. Pollexfen. Prithce give me leave: My Lord, when you see how the Fact does appear upon the Evidence, I suppose we shall not be thought guilty of any Disorder.

L. C. J. It doth appear very plain, Man, it has been very fully sworn; it has indeed.

Mr. Pollexfen. We hope to satisfy you otherwise by our Evidence, as to the Fact.

Mr. Lovell. Your Lordship is pleased to object that upon us, which doth lie upon us, and requires an Answer----

L. C. J. It does indeed.

Mr. Lovell. As to *Malin's* being Sheriff. But, my Lord, I conceive he was not Sheriff; for if the Old Charter was in force, then he was not Sheriff; for there was a New Sheriff chosen and sworn, before the Mace was requited of him: If the New Charter were in force then he was not Sheriff; for he was not named Sheriff in it.

L. C. J. Who chose the New Sheriff?

Mr. Lovell. He was not chosen by any body, he was named in the Charter.

L. C. J. *Malin* was Sheriff before that time, and was indeed Sheriff till a New One was chosen in his Place; and therefore the detaining the Mace was unlawful, that is our Opinion; and if your Opinion be otherwise, it is as idle as the Opinion of the New Charter.

Mr. Holt. Will your Lordship please to spare me a Word for the Defendants? My Lord, the Information doth consist of two Matters; the first is, the disturbing the Election that was appointed by the Mayor, by virtue of the New Charter; the next is, the taking away the Mace, being the Ensign of Office of *Malin* the Sheriff. Now, with Submission, my Lord, I think they have failed in the first Part of the Information; for they have laid it special, that *Wild* being Mayor, he had at that time, when these Defendants did thus assemble themselves, appointed an Election by virtue of the Letters Patents of this King; and after he had so appointed it, these Defendants did assemble themselves in disturbance of that Election, and after Proclamation made, continued their Disturbance. Now if this *Gervas Wild* had no Authority to make or appoint this Election by virtue of any Charter, then had he no Authority to make this Proclamation; and then these Defendants are not guilty of this Information, supposing what they did was not justifiable in the main, yet as here laid, they are not guilty; for it is not, nor can be to the Disturbance of the Election, or Contempt of his Authority.

L. C. J. Come, that has been said, and answered over and over again. Call your Witnesses.

Mr. Holt. As to this Business of *Malin*, and the Mace, we did say it did not belong to him; and it is an Usurpation upon the King, without Authority by any Charter or Grant, and a Novelty. No Man can have any Ensign of Authority, but by Grant from the King.

L. C. J. What is that to you? Why did you take it away? What Authority had you for that?

Mr. Holt. This is laid to be an Affront to the King's Authority, and it was not, for the very Mace was an Usurpation.

L. C. J. He was in Possession of it, and that is the same thing as to you, whether it be of right or not? You never pretended to keep it for the King.

Mr. Holt. If so be they among themselves----

L. C. J. Pray go on to your Witnesses, and don't spend our Time in such trivial Stuff; for this is all Stuff, meer Stuff.

Mr. Holt. My Lord, we would make out our Defence----

L. C. J. Do so if you can, call your Witnesses; we must not give Liberty to every one of the Counsel to make Speeches of the same thing, over and over again, and all to no purpose.

Mr. Holt. This Mace did not belong to *Malin*.

L. C. J. How do you know that? Can you tell whether the King had not given them such Power?

Mr. Holt. It was never given by the King.

L. C. J. Does the King question them for it?

Mr. Holt.



Mr. Holt. We will prove it an Usurpation, and shew the Time when it was first usurp'd.

L. C. J. This way of Behaviour by Riots, looks more like the Times of Usurpation, when Rabbles meet to meddle with Government.

Mr. —. My Lord, I desire to offer only one Word that has not been yet said.

L. C. J. No, I will hear no more Speeches; call your Witnesses, if you have any: Sure you take yourselves to be in your Common-Halls, and Council-Houses, making Speeches.

Mr. Holt. Call Edward Higley and Sir Thomas Parkyns.

Mr. Pollexfen. May we read the Old Charter, my Lord?

L. C. J. Ay, read what you will, and offer what you will in Evidence for yourselves; but let us not have such Doctrines preach'd among us, as settling Governments, and trying Rights, by Club-Law.

Mr. Pollexfen. God forbid, my Lord, I am sure nobody here desires any such thing.

Mr. Holt. Swear Edward Higley.

[Which was done.]

L. C. J. Well, what do you ask this Man?

Mr. Holt. [Shewing him a Paper-Book.] Is that a true Copy of the Old Charter?

Higley. Yes, it is.

Mr. Pollexfen. We desire it may be read.

L. C. J. What would you read it for?

Mr. Pollexfen. By that it will appear the Election was regular, according to the Old Charter, which we say is still in force, and so we in no fault.

L. C. J. Shall we enter into a Question of that Nature here, Which is in force? No, we will not. Why did you commit this Riot? answer that.

Mr. Pollexfen. By the Old Charter, my Lord, the Mayor and Burgesses are to elect.

L. C. J. Ay, Mr. Pollexfen, and you know the Old Charter of London, was to the Mayor, Commonalty, and Citizens of London, to choose a Mayor; and we know that the Mayor, Commonalty, and Citizens of London, have not chosen a Mayor this many hundred of Years. We know very well, that that Election is made by Livery-Men: Now you come and say, pray let us see how it is by the Charter; why as well may not all the Citizens of London claim to be at the Election of the Lord Mayor? If you can shew me that heretofore, before this time, that there were other Persons that us'd to be present at Elections, you say somewhat: But if you have only an antient Right to be present, and they have ravished this Right from you, you had done exceeding well to have asserted your Right in a legal Course. But do you think you are to regain your Right by Club-Law, and throwing up your Hats, and Noise, and Riots, and opposing the King's Authority?

Mr. Pollexfen. My Lord, we were never for opposing the King's Authority; we never were against the King?

Mr. Just. Withins. Who was that against, I pray, When you said, No New Charter, No New Charter? Was not that against the King?

Mr. Lovell. That was none of us who cried out so.

L. C. J. Who knows in a Crowd, what Person in particular makes a Noise, or does not? you were where you should not have been.

Mr. Pollexfen. My Lord, we pray the Charter made to this Town, in the Reign of Henry VI. which provides, that the Mayor shall be chosen by the Burgesses, and sworn by the preceeding Mayor; but if he was not present, he should be sworn by the Coroner. Your Lordship objects the Case of the Livery-Men by the City of London; that is by Virtue of a particular By-Law: But in our Case, the Old Charter having prescribed this Method, you will not take it out of that Method, without their producing some By-Law for it.

L. C. J. Yes, yes, we shall go according to the constant Usage within Memory, because we will not, upon this Information, try the Right one way or other. Shew us by the Usage that there was a Pretence for such Persons as Mr. Sacheverell, and the others here, to be present at the Elections.

Mr. Just. Withins. In this Case it shall be presum'd there was a By-Law.

Mr. Pollexfen. I hope you will presume nothing to make us guilty of a Crime; they ought to shew the By-Law if they have any.

L. C. J. I think we need not trouble ourselves about that, what By-Laws have been made; but we find these Persons in Possession of this Usage, and so they have been for these eighteen Years past.

Mr. Pollexfen. My Lord, that will not make them a Title.

L. C. J. We will not allow the Right to be try'd upon this Information.

Mr. Just. Withins. Mr. Pollexfen, What do you speak of Swearing by the Coroner? That could not be in this Case, for the Old Mayor was there.

Mr. Pollexfen. Not at the Swearing of Greaves.

Mr. Farwell. My Lord, I would only observe one thing; the Crime charg'd upon us, is for not departing after the Proclamation made; now I do not observe that they prove that Mr. Sacheverell was ever there after the Proclamation.

L. C. J. I thought indeed you were very full, you were so eager to speak; but your Observation is very much in the wrong, for the Proof is positive that Mr. Sacheverell and the rest of the Company staid after; but because you shall observe it better, call Reynolds again; you were so full, you could not let it alone till you were tapt. Reynolds, upon your Oath, did you make Proclamation that all Persons that were not summoned, or were unconcern'd in the Election, should depart?

Reynolds. Yes, my Lord, I did.

L. C. J. Did Mr. Sacheverell, and the rest, stay there afterwards?

Reynolds. Yes.

Mr. Stanhope. My Lord, the Mayor I think swears he did not summons any one: The Information is laid, that there was an Assembly duly summoned and called before him.

L. C. J. He told you he sent to Alderman Parker, and Edge, and two or three more, to come away and hear the Charter read; and he spoke to Serjeant Bigland, and he was huffish, and did not reckon himself concerned in the New Charter: for it seems he was not continued in his

Place of Recorder by it. He tells you that the Charter was read to them, and with much ado, he that read it, did go through with it: But he was mightily interrupted by the Noise that was made by the Defendants and their Rabble; this prov'd that there was an Assembly summon'd before him, sure.

Mr. Just. Withins. Mr. Stanhope, don't you observe too, that he sent to Church to summon them to come to him, and they would not come when he sent for them?

Mr. Pollexfen. My Lord, they should produce their New Charter, I humbly conceive.

L. C. J. I tell you before-hand, we are not trying the Validity of the New Charter, or the Old, but whether you are guilty of a Riot, or no?

Mr. Holt. My Lord, if they were in Possession of Government by their New Charter, they should shew that New Charter: We shall shew you an Old Charter to the Mayor and Burgesses there----

L. C. J. Can you shew a Charter that the Defendants were Mayor, Aldermen, and Burgesses?

Mr. Holt. Swear Luke Oldham. [Which was done.] Look over that Book, Mr. Oldham, is that a true Copy?

Oldham. This is a true Copy of the Charter that I examined at the Tower.

Mr. Recorder. When did you examine it?

Oldham. I can't tell you the particular Day, Sir.

Mr. Recorder. How long ago is it that you examin'd it?

Oldham. 'Tis about a Twelve-month ago.

Mr. Holt. Upon your Oath, is it a true Copy?

Oldham. Yes, I read it over three Days ago.

Clerk reads. This is dated ---- of H. 6th.

Mr. Just. Withins. Where would you have it read?

Mr. Pollexfen. We desire he may read that part of the Incorporating the Town, and the Power of choosing the Mayor.

Clerk. Whereabouts is it, Sir?

Mr. Pollexfen. Folio 81.

[Which was read.]

Mr. Holt. Call Sir Thomas Parkyns. [Who appear'd, and was sworn.]

L. C. J. What do you ask this Gentleman?

Mr. Holt. Pray, Sir, were you by in the Council-Chamber at Nottingham on Michaelmas-Day was Twelve-month?

Mr. Recorder. Pray, Sir Thomas Parkyns, let me ask you one Question; Have not you laid out any Money in this Cause?

Sir Tho. Parkyns. No, Sir, not that I know of.

Mr. Stanhope. Pray, Sir, were you present in the Council-Chamber, when Mr. Wild, the Mayor, was there; and did you see Mr. Sacheverell, and Mr. Hutchinson come in?

Sir Tho. Parkyns. Yes, I was there.

Mr. Stanhope. Pray, how did they demean themselves there?

Sir Thomas Parkyns. Very civilly, for any thing I did perceive, without any disturbance to the Court, or any body else.

Mr. Stanhope. Did they use any Gestures, or Behaviours, to occasion the Mayor to go away?

Sir Tho. Parkyns. Not as I know of at all, Sir.

Mr. Stanhope. Pray, Sir, will you tell all your Knowledge how the thing pass'd?

Sir Thomas Parkyns. I understanding there was to be an Election of a Mayor for the Town of Nottingham, upon Michaelmas-Day, as has been accusum'd Time out of mind, a very long while, as I have been inform'd at the Church, I was there, and went to the usual Place in the Chancel, and there we staid some time till after Prayer; and after Prayer, there they thought to have gone to a new Election of a Mayor: There was Notice of a New Charter coming, but then I believe it was not come; but, as they were called, the Old Charter-Men, Alderman Greaves, and the Recorder, Serjeant Bigland, and Alderman Edge, and several others, forty, I believe I could name, did send to Mr. Wild, the Mayor that then was, and Mr. Rippon, and others, who were then at the Town-Hall, and desir'd them to come up to the Chancel, as I am inform'd, in order to an Election of a New Mayor; but they did not come: But, as I heard, they sent Word back again, to desire Alderman Greaves, and the rest, to come down to the Town-Hall, which accordingly was done.

Mr. Pollexfen. And what happen'd there?

Sir Thomas Parkyns. I was there along with them, and went into the Town-Hall, and so into a Room, which I conceive they call the Council-Chamber; and there upon several Discourses, there were some were for going to voting for a New Mayor, and there were some that did say, they had a New Charter, and they must have a Mayor according to that New Charter; whereupon they desir'd it might be read, but there was no Answer, I think, made to that: I did see the Thing they said was the New Charter in a Box: I think it was so, but I did not see it out.

Mr. Combs. Then it was not read while you were there?

Sir Thomas Parkyns. I did not hear a Word of it read; but I think there was Alderman Edge did say, I do not know how I am to act by the New Charter; but I understand what I have to do by the Old Charter very well, therefore we will proceed to the Election of a New Mayor; and then upon that Account they did go to voting, and several Votes there were for several Persons, as particularly for Mr. Edge himself, and some for Mr. Toplady, but the most for Alderman Greaves; and when they did understand, as I conceive, that Alderman Greaves had the Majority of Votes, then they did rise up, and went away.

Mr. Pollexfen. Who did?

Sir Tho. Parkyns. The Mayor Mr. Wild, and Alderman Rippon.

Mr. Stanhope. Pray, Sir, did the Mayor stay all the while the Poll was?

Sir Tho. Parkyns. He was there, I am sure while they voted; that I am certain he was; I cannot say he was there all the time.

Mr. Pollexfen. Did he oppose the Election?—Sir Tho. Parkyns. No.

Mr. Pollexfen. Was there any Proclamation made for any-body to depart?

Sir Tho. Parkyns. None that I heard of.

Mr. Holt. When the New Charter was produc'd, was it desir'd by any-body there, that it might be read?



Sir Tho. Parkyns. Yes, Sir, there was some that desir'd it might be read.  
 Mr. Lovell. Why was it not read?  
 Sir Tho. Parkyns. I can't tell that; but I did hear they should shew Mr. Edge his Name in the New Charter; and they did believe he was continued in his Place; and I think Mr. Edge replied, he had his Place by the Old Charter during Life; and by that Charter he knew how to act; he could not tell what he was in the New Charter.  
 Mr. Farewell. Pray, Sir, did any of the Old Charter-Men oppose the reading of the New Charter?  
 Sir Tho. Parkyns. No, indeed, Sir, not that I know of.  
 L. C. J. Pray, Sir, let me ask you a Question or two, you are a Burges of this Town, are you not?  
 Sir Tho. Parkyns. Yes, my Lord.  
 L. C. J. How many Years have you been a Burges?  
 Sir Tho. Parkyns. Several Years.  
 L. C. J. Were you ever at an Election before?  
 Sir Tho. Parkyns. No, but I have been at several of their Meetings.  
 L. C. J. How came you to be there at this time?  
 Sir Tho. Parkyns. Upon no Invitation by any body, but upon my own accord.  
 L. C. J. How came you to accord upon that time more than upon another?  
 Sir Tho. Parkyns. Truly, my Lord, I cannot answer you to that.  
 L. C. J. No, I believe not; but let me ask you another Question: Who gave their Votes there?  
 Sir Tho. Parkyns. Several gave their Votes.  
 L. C. J. Did you give any Vote?  
 Sir Tho. Parkyns. No, my Lord, I gave no Vote.  
 L. C. J. What did you do there?  
 Sir Tho. Parkyns. There were several other Gentlemen of the Country there besides me.  
 L. C. J. Ay, there were several there that had nothing to do there, and which should not have been there: Did not you hear any Proclamation made at all?  
 Sir Tho. Parkyns. No, my Lord, I did not.  
 L. C. J. Did you hear no crying out in the Council-Chamber, A Greaves Mayor, A Greaves Mayor, No New Charter, No New Charter?  
 Sir Tho. Parkyns. I did not hear any Outcry at all.  
 L. C. J. Did you hear nothing said, Pray stay the Books, Pray stay the Books?  
 Sir Tho. Parkyns. No, my Lord, I did not.  
 L. C. J. Pray, did you observe anything in the World about the Mace there?  
 Sir Tho. Parkyns. Yes, I did.  
 L. C. J. Pray let us hear that, for I see you did not hear a great deal, nor any thing indeed that other People heard; now let us know what you did see?  
 Sir Tho. Parkyns. The Old Mayor went away with two of the Maces, I think, and one was left behind; and presently after comes back Mr. Malin, and demanded the other Mace.  
 L. C. J. Of whom?—Sir Tho. Parkyns. Indeed, I can't tell, my Lord.  
 Mr. Just. Withens. What Answer was given?  
 Sir Tho. Parkyns. There were several, I can't tell the particular Names, that said they had as much Interest in it, as Malin in the Mace; and the Reason was this, it was bought by several Contributors.  
 L. C. J. Who was that said so?  
 Sir Tho. Parkyns. Indeed, my Lord, I can't tell particularly.  
 L. C. J. Alack-a-day! now we have forgot all again; pray did not you see the Thing call'd The New Charter, as you express'd it?  
 Sir Tho. Parkyns. No, I did not see it out of the Box.  
 L. C. J. Did you observe when Mr. Edge called to read the Charter?  
 Sir Tho. Parkyns. No, my Lord, I did not.  
 L. C. J. I mean, when he spoke to my Brother Bigland to read it.  
 Sir Tho. Parkyns. My Lord, I was there from the beginning to the end. If you please to hear me, my Lord, I will answer you to what you ask me: I think the Mayor, Mr. Wild, did speak to Serjeant Bigland, and ask'd him something of Advice, but what it was I cannot tell; it was something concerning the New and the Old Charter; and Serjeant Bigland answered him, Do you ask me as Recorder, or as Counsel? Truly, I forgot what Reply was made.  
 Mr. Pollexfen. This Gentleman, my Lord, was not in the Hall.  
 Mr. Recorder. Did you see any Struggling about getting the Mace away?  
 Sir Tho. Parkyns. No, I did not, Sir.  
 Mr. Recorder. How came Somner to leave the Mace behind him?  
 Sir Tho. Parkyns. I don't know, I can't tell.  
 Mr. Recorder. Did you hear any thing said by Mr. Sacheverell?  
 Sir Tho. Parkyns. No, I did not.  
 Mr. Just. Withens. Did not he say, Hold the Books, Stop the Books?  
 Sir Tho. Parkyns. No, I don't remember it.  
 Mr. Holt. Pray did you stay as long as Mr. Sacheverell staid?  
 Sir Tho. Parkyns. I staid as long as they all staid.  
 Mr. Just. Holloway. Did you observe no Noise nor Uproar?  
 Sir Tho. Parkyns. No, by my Soul, not I.  
 Mr. Just. Holloway. That is strange.  
 Mr. Holt. He was not in the Hall where the Noise was.  
 L. C. J. But could he be in the next Room, and not hear the Hubbub?  
 Sir Tho. Parkyns. My Lord, I said I was in the Place called the Council-House, and I did not stir till they all went out together.  
 Mr. Recorder. Was not you at the Proclamation at the Market-Place? and was there no throwing up of Hats?  
 Sir Tho. Parkyns. Yes, they did, when they said God save the King, the People said Amen, and threw up their Hats.  
 Mr. Stanhope. Pray did you hear Mr. Sacheverell desire them to be quiet and peaceable?  
 Sir Tho. Parkyns. Yes, I did so.  
 L. C. J. Did you hear Mr. Sacheverell when he spoke to the Mayor in the Hall?  
 Sir Tho. Parkyns. No, I was not in the Hall at all.  
 L. C. J. Did you hear him when he spoke to the Mayor in the Council-Chamber?  
 Sir Tho. Parkyns. No, not that I do remember.  
 Mr. Just. Holloway. You say you heard Mr. Sacheverell speak to them to be quiet and peaceable?

Sir Tho. Parkyns. No, not there, but it was at Mr. Greaves's own House.  
 Mr. Just. Holloway. was there any Uproar then there?  
 Sir Tho. Parkyns. No, my Lord, but I'll tell you there was a Multitude of People there, and a great deal of Rabble like to be, and Mr. Sacheverell desir'd the People to do their Business with all Modesty; and I think there never was so great a Number of People that ever carried themselves more civilly than they did. I did not hear, by the Oath I have taken, one angry passionate Word, or any thing of that kind.  
 Mr. Recorder. They were all of a side then.  
 Mr. Stanhope. Were you by when Mr. Hutchinson was sent with Mr. Gregory? What was he sent for?  
 Sir Tho. Parkyns. I can't tell that, but I did hear they did go.  
 Mr. Stanhope. Was he sent to demand, or desire the Mace?  
 Sir Tho. Parkyns. Indeed I can't tell how it was.  
 L. C. J. He can tell nothing.  
 Mr. Recorder. I believe he was worse frightened than Alderman Parker, he has forgot all.  
 Mr. Pollexfen. Swear Mr. John Thinn. [Which was done.] Pray, Sir, were you present on Michaelmas-Day, at the Election of the Mayor of Nottingham?  
 Thinn. My Lord, I hear there are several Gentlemen indicted for a Riot at that Time, I hope I shall receive no Prejudice for giving my Information here.  
 L. C. J. What do you mean, Mr. Thinn?  
 Thinn. My Lord, I understand by some Persons, that there is like to be an Information brought against me, if I give my Evidence here.  
 L. C. J. Prithee, Man, we know nothing at all of the Evidence or Information; if you will evidence, you may.  
 Mr. Pollexfen. Pray, Sir, were you present when this Matter was transacting on Michaelmas-Day?  
 Thinn. I happen'd to be in the Country at that time, about a Business between Mr. Edge and myself; we are Copartners in an Estate, and we were then upon a Partition; and on Michaelmas-Day I went to Church, and being at Church, and seeing a great deal of Company in the Chancel, I went to see the usual Ceremony of choosing the Mayor, and so forth. I was there then, and while I was there in the Church, I staid there near an Hour, I believe, after Prayer was done, and there was an Expectation of the Old Mayor, and others, to meet together upon the Election, but nobody came; but at last there was some Messager came down, I know not by whom, nor from whom, but the general Vogue was, that it came from Mr. Wild, the Old Mayor, and that he had sent down to desire the Company to come down to the Hall, but I can't say who brought the Messager; and upon this, all the Company went from the Church, up to the Hall, and I went with Alderman Edge, who was the Person I had Business with; we went thro' a great Room, the Town-Hall, and then there is a little Room within, I think they call the Council-Chamber, and a great Table within a Rail, as this may be; and I remember I sat down behind the Alderman: I could observe nothing of Heat among them at all, nor the least Word that I observ'd, of Jangling. There was a Box upon the Table, which they said was the New Charter, but it was not read; but Mr. Edge was offer'd to read his own Name, to shew that he had Power to act in it; but he did not know how far he might act by that, and therefore he was proceeding to swear the Officer according to the Old one.  
 Mr. Pollexfen. Was there any Cry, or any Noise there?  
 Thinn. I don't know that I heard any one say any harsh or ill Word; there was not so much as a shout.  
 L. C. J. Did you hear any Hubbub, or Tumult?  
 Thinn. No, my Lord, not in the Room where we were.  
 L. C. J. Did you in any other Room?  
 Thinn. I can't tell that, there was a great many People about the Window.  
 Mr. Holt. Did the Old Mayor, Wild, stay there while they elected Mr. Greaves?  
 Thinn. He staid there some of the time.  
 Mr. Stanhope. Was he there all the while?  
 Thinn. I cannot say but that some of the Aldermen staid all the time, and some of them gave their Votes for Mr. Greaves.  
 Mr. Lovell. What did Edge do?  
 Thinn. He took the Poll, and to the best of my Remembrance, Alderman Parker, that is one of the Aldermen that has been here, gave his Vote for Mr. Edge.  
 Mr. Lovell. Did the Mayor, Wild, stay till the Poll was cast up?  
 L. C. J. Poll, we hear nothing of a Poll; Who gave you Authority to poll?  
 Mr. Lovell. He that was in the New Charter appointed Mayor, yet staid to see the Election, and then went away.  
 Mr. Pollexfen. Sir did you hear any Proclamation made in the Council-Chamber?  
 Thinn. No, Sir; I came from Church with Mr. Edge, and the rest of the Gentlemen.  
 L. C. J. Were you there when Greaves was sworn?  
 Thinn. Truly, my Lord, I don't remember that I was.  
 L. C. J. I desire to know by what Authority Mr. Edge swore him; let him look upon the Statute of *Præmunire*, and consider with himself about it a little.  
 Mr. Just. Withens. As far as I find, this Gentleman was not much concern'd, and did not mind what was done.  
 Thinn. No truly, Sir, not I, much.  
 Mr. Holt. Did Mr. Sacheverell go with you, or stay behind?  
 Thinn. We went all together.  
 Mr. Blencow. Pray swear Mr. Pole. [Which was done.]  
 Mr. Stanhope. Pray, Sir, were you in the Council-Chamber at Nottingham on Michaelmas-Day was Twelve-month? Pray tell us what happened there.  
 Pole. I have lived in Nottingham about twelve Years. I used to go and see the Mayor and other Officers sworn: Upon this Day I was at Church, and they went to Prayers, and after Prayers were ended, I think there was Mr. Gregory and Mr. Hutchinson, as I take it, sent by some to desire the Mayor, that was Wild, to come to Church, that they might proceed to an Election according to the Old Charter; but what Answer was



returned I cannot say: but after that, as I take it, there was Alderman Parker and Alderman Rippon did come and speak to the Company, and said, the Mayor desired them to come down, for they had the New Charter, and he was to have their Advice how to proceed upon it. While they sat there, I walked from the Church to the Town-Hall; and in a little while the Company from Church came to the Town-Hall: When they were there, the Mayor desired Serjeant Bigland's Advice how to proceed upon the New Charter; says he, do you desire my Advice as Recorder, or as Counsel? and I think as to that he gave no Answer. The like Question he put to Mr. Edge; and Mr. Edge referred it to Serjeant Bigland's Answer, and I think it was a very good one. After a while, some of the Company that used to be the Electors of Mayors and Sheriffs, being of the Clothing, cried, let us go to the Poll; and I think Mr. Edge began to take the Poll, and there was several that did vote, but that was the general Cry of those that were inclined to the New and to the Old Charters. Some that were in the New Charter, gave their Votes, but not for Greaves; I do not remember any one did when the Poll was taking.

L. C. J. Who directed the Poll, pray?

Pole. I think it was some that were for the Old Charter; but I think it was the general Desire to go to the Poll.

L. C. J. Who took the Poll?—Pole. Mr. Edge took it.

Mr. Holt. Did the Old Mayor propose the Election, or the New Mayor, or no?

Pole. No, I don't know he proposed it, but it was put to him.

Mr. Stanhope. Was he present at the Election?

Pole. Yes, he was.

Mr. Stanhope. Was he present when the Poll was taken?

Pole. Yes, he was.

Mr. Stanhope. Did he contradict it?

Pole. I cannot say he did contradict it.

L. C. J. How many of these Elections have you been at before?

Pole. I was not by at the Nomination; that I could not be, for they excluded all but those that had Votes.

L. C. J. How came you to be so busy as to be there at this time?

Pole. I went of my own accord, I was not desired by any body, any more now than other Years, but used as much as I could to endeavour to be at the swearing of them; for they excluded all People usually out of the Chancel, where the Election used to be, if they were not of the Clothing.

Mr. Stanhope. Who gave the Oath to the Person elected usually?

Pole. The Coroner used to give the Mayor his Oath.

Mr. Lovell. Who used to take the Poll at other Elections?

Pole. I can't say who took it, because we were excluded the Chancel; but it has been reputed that Mr. Edge used to take it.

Mr. Blencow. Who came to fetch you from Church?

Pole. I think Alderman Rippon and Alderman Parker did desire them to come to the Town-Hall, and I think Malin was there, but I cannot tell what he said.

Mr. Blencow. Who was at Church then?

L. C. J. Pray were you desired to come?—Pole. No, I was not.

L. C. J. Was Mr. Sacheverell?

Pole. No, I don't know that he was?

Mr. Stanhope. When these Gentlemen came, did they behave themselves civilly?

Pole. Yes; I saw nothing but civil Behaviour: There was a great Concour of People, I believe most of the Well-Wishers to the Old and New Charter were there that Day.

L. C. J. Can you say you did not hear a great deal of Noise and Hub-bub?—Pole. I cannot say so, nor truly can I say I did.

L. C. J. Do you believe you did or not?

Pole. But I believe I might hear some Noise; but I was in the Council-Chamber, not in the Hall.

Mr. Just. Holloway. Was Sir Thomas Parkyns there?—Pole. Yes, he was.

L. C. J. Was Mr. Thinn there?

Pole. Yes, I think I sat next him when they came from Church: I did desire to see the Proceedings of the Day, and I think I dined with the Company, and went in with the first.

L. C. J. Did you see any thing about a Mace?

Pole. Yes, I think I did see something about a Mace.

L. C. J. Why then prithee tell me, as near as thee can guess, what thee didst see about the Mace.

Pole. When they went out, Wild and his Company, the Room was full of Company; and, as I take it, Mr. Malin, or whoever it was that was to take it, did forget the Mace behind him; and somebody coming for the Mace, I think there was one of the Gentlemen of the Council did put it from him, and would not let him have it.

L. C. J. Ay, come, who was that one Gentleman of the Council?

Pole. I can't be positive, I believe it might be Mr. Salmon, or Mr. B—.

L. C. J. But, prithee, wilt thou tell me that there was no Shouting, nor Noise, nor Hubbub?

Pole. In the Council-Chamber, I am satisfy'd as to myself, I heard none and believe there was none; I won't say there was not in the Hall, for I was not there.

Mr. Just. Holloway. Did you hear any one cry, stop the Books?

Pole. I think there was at that time a Dispute about the Books.

L. C. J. Ay, tell me now who that Dispute was between?

Pole. I think it was among the Gownmen that were of the Council.

L. C. J. You say well, name me some of them now.

Pole. I cannot indeed, my Lord, name any particular Person.

Mr. Just. Holloway. Did you hear Mr. Sacheverell speak any thing about the Books?

Pole. I think I did not, I believe it was one of the Clothing.

L. C. J. Prithee, canst thee not guess who that Man of the Clothing was?

Pole. If I do guess, my Lord, I cannot speak positively.

L. C. J. Prithee don't say so, I know thee canst if thou wilt, come, recollect thy Memory.

Pole. My Lord, I would remember it, and fix the Person, if I could, but I cannot.

L. C. J. But as near as thee canst guess, I know thee hast a good Guess with thee.

Pole. Indeed, my Lord, I cannot.

Mr. Powis. Did you observe that he did any ways concern himself about the Election, Mr. Sacheverell I mean?

L. C. J. What did he do there, Mr. Powis? he was present there.

Mr. Recorder. Was not he the Head of the Old Charter Party?

Pole. The Old Charter People took it that the Surrender had been surreptitiously obtain'd, and I think he might say they had a good Right to insist upon the Old Charter.

L. C. J. Who said so? Mr. Sacheverell?

Pole. I believe I did hear him say something to that purpose, but I cannot positively say what; I dare not undertake to say what particular Persons spoke that Day.

Mr. Recorder. Was not he for reading of the New Charter, upon your Oath?

Pole. I cannot tell whether he was or no.

Mr. Recorder. Did he not bid the People be quiet?

Pole. I can't say I heard any such thing.

Mr. Ward. Did not you hear him say any thing to the Mayor when he came into the Council-House?

Pole. No, I did not.

Mr. Ward. Did not you hear the Serjeant make Proclamation for all People to depart that had no Business there?—Pole. I did not.

L. C. J. What say you, Reynolds, did you make Proclamation in the Council House by the Mayor's Direction?—Reynolds. Yes, I did.

L. C. J. And yet you said you staid there all the Time.

Mr. Blencow. When the Shout was in the Hall, pray, where was Mr. Sacheverell?

Pole. He was in the Council-Chamber: The Occasion of the Shout to be in the Hall was this, when the Poll was taken, and the Majority appeared to be for Greaves, Mr. Hutchinson was sent to acquaint the Mayor with it, and to desire him to come, and be present at the swearing of him.

L. C. J. Who sent him?

Pole. Mr. Hutchinson and they can tell themselves.

L. C. J. But who do you say sent him?

Pole. I can't tell particularly, they can best tell.

L. C. J. But who told you so? or did any body tell you so?

Pole. I was told so by several Persons that they were sent.

L. C. J. Prithee, who told thee?

Pole. I believe I may have heard it from himself, that he was sent.

L. C. J. Who did he tell you sent him?

Pole. He did not tell me who particularly.

Mr. Farewell. My Lord, I desire to ask Reynolds this Question; Who was there besides that heard you make the Proclamation?

Reynolds. The Mayor was there.

Mr. Just. Holloway. They made such a Noise, that perhaps every body could not hear it.

Mr. Pollexfen. Pray swear Mr. Slater.

[Which was done.]

Mr. Holt. Were you in the Council-Chamber on Michaelmas-Day was Twelve-month in Nottingham?—Slater. Yes, I was.

Mr. Holt. Pray, give me an Account of what passed there, and what you observed.

Slater. I was at St. Mary's Church with them, and came down from the Church with them to the Council-House; and when they came, they went into the Council-House to the Mayor that was then, Alderman Wild, and there they went and staid some small time; and then the Mayor and Aldermen came out, and came to the Common-Hall, and staid a pretty considerable time; and then came Mr. Hutchinson and Mr. Gregory to his Worship, and told him, And it please your Worship, the Council desires you to come and hear Mr. Greaves sworn Mayor; and at that Word, the Mayor replied to them, that he would come to them presently, if they should have done there: So presently after, some cry'd out, A Greaves Mayor, a Greaves Mayor; and Alderman Rippon and others bid them hold their Tongues, or it should be worse for them; but still they cry'd, A Greaves, a Greaves.

L. C. J. Where was that?—Slater. In the Common-Hall.

Mr. Pollexfen. What, the Burgesses cry'd out so, did they?

Slater. The People in the Hall.

Mr. Recorder. Was not you one of the Shouters?

Slater. No, I did not shout.

L. C. J. Were you one of the Clothing, one of the Council of the Town?—Slater. No, my Lord, I was not.

L. C. J. What Business had you there?

Slater. I went to see, as others did.

Mr. Just. Withins. What Trade are you?—Slater. I am a Taylor.

Mr. Just. Withins. Do you use to go to Church?—Slater. Yes, Sir.

L. C. J. You say the People did shout, A Greaves Mayor; did you hear them among that Shout, cry, No New Charter, No New Charter?

Slater. I can't say any thing of that.

L. C. J. Canst thee say thou didst not hear any such Shout?

Slater. For my part, I can safely say I heard nothing of it. Then I see Alderman Wild take a Book in his Hand, as to take an Oath, and then there was a Shout, A Greaves Mayor; and Alderman Parker went off from the Bench, and said, A Riot, a Riot.

Mr. Pollexfen. Swear Roger Ryley.

[Which was done.]

Mr. Holt. Pray, were you at the Election of a New Mayor at Michaelmas-Day was Twelve-Month?

Ryley. I was at the first Nomination, which was the 14th of August.

Mr. Holt. Who was named then?—Ryley. Mr. Greaves.

Mr. Holt. Is that the Custom of the Town to nominate him before?

Ryley. Yes, it is.

Mr. Holt. Were you there on Michaelmas-Day?

Ryley. Upon Michaelmas-Day I was summoned in upon the Clothing, and there the New Mayor went to the Old Mayor, and waited there



a long time to go with him to Church; at last the Old Mayor would not go, but staid waiting for a New Charter; so we went to Church, and heard the Prayers, and from the Church we went to the Hall according to Custom; and there was the New Mayor there, Mr. Greaves, and he was sworn Mayor there.

L. C. J. Who swore him?-----Ryley. Alderman Edge.

L. C. J. Did you ever know him swear a Mayor before?

Mr. Just. Holloway. Did you ever know a Mayor sworn before in the absence of the Old Mayor?

Ryley. I have known many, I have been of the Council these Eighteen Years.

L. C. J. You say you have been of the Council these Eighteen Years?

Ryley. Yes, I have so, Sir.

L. C. J. And have you been present when the New Mayor has been sworn?-----Ryley. Yes, I have.

L. C. J. And do you know that the New Mayor was sworn when the Old Mayor was not there?

Ryley. I have known many sworn, I say, but I cannot tell whether I ever knew but that the New Mayor was sworn before the Old Mayor.

L. C. J. Then when Edge gave Greaves the Oath, was the Old Mayor there?

Ryley. He was in the Room when he was chosen.

L. C. J. Was he there when he was sworn, or when he was going to be sworn?

Ryley. They would not abide the Place, but went away.

L. C. J. But, prithee Friend, don't dally, thou art upon thy Oath; was Wild, the old Mayor there, when they gave Greaves the Oath?

Ryley. I don't know exactly the Moment when he went away, but he was there when they voted him.

L. C. J. Thou art a prevaricating shuffling Fellow.

Ryley. If it please you, my Lord, I won't forswear myself for all the Town and Country.

L. C. J. Speak the Truth, Man, and answer my Question.

Ryley. He was there all the while they were voting, and how he went away I don't know.

L. C. J. Was he there when Greaves was sworn?

Ryley. I can't tell that, if it please your Honour.

Mr. Farewell. My Lord, I desire to ask him one Question.

L. C. J. But the Man won't answer a Question fairly.

Mr. Just. Holloway. I swear, I think both Sides are very careful of answering Questions.

Mr. Farewell. My Lord, I desire to ask him what was the Behaviour of the Company all the time they were there in the Council-House; was there any Disturbance there?

Ryley. None, that I saw.

L. C. J. I ask you again, was there no Proclamation made?

Ryley. I heard none.

Mr. Farewell. Did you take notice of Reynolds to be there?

Ryley. He might be there, for ought I know.

Mr. Farewell. Do you believe he could make a Proclamation, and you not hear it?

Ryley. No, I don't know how he should.

Mr. Pollexfen. Call Thomas Muxlow and John Peak.

Mr. Just. Withins. Have you any more Witnesses, Mr. Pollexfen?

Mr. Pollexfen. We have more, my Lord, if we can get them but in. Swear Thomas Muxlow. [Which was done.]

Mr. Lovell. Were you at the Election of a Mayor at the Town of Nottingham Michaelmas-Day was Twelve-month?

Muxlow. I went to the Church, as the Custom was; after Prayer we expected to go to the Election.

L. C. J. Ay, prithee speak out as if thou wast at an Election; you would have shouted then, I warrant you.

Muxlow. When we were at the Church, we waited there, expecting to have Mr. Wild and the rest of the Company, to nominate the Mayor, according to the ancient Custom.

Mr. Holt. You say you were at the Election on Michaelmas-Day was Twelve-month; pray speak how Things were carried there?

Muxlow. Yes, I was there, and it came to an Election, and it came to a Poll.

Mr. Just. Holloway. Who proposed the Election?

Mr. Recorder. Were you an Elector?

Mr. Holt. Answer the Gentleman's Question, were you one of the Clothing?

Muxlow. I was one that had a Vote there.

Mr. Holt. Do you know any thing of this Matter?

Muxlow. I know there was a fair Election according to Custom.

Mr. Stanhope. Was it peaceable and quiet?

Muxlow. Yes, there was no Disturbance at all.

Mr. Stanhope. Was there no Shouting?

Muxlow. No Shouting that I heard.

Mr. Holt. You were in the Inner Room, were not you?

Muxlow. I was in the Council-House.

Mr. Holt. Were you not in the Hall?

Muxlow. I was in the Hall, as we went out.

L. C. J. Did you hear nothing of crying out, A Greaves, a Greaves?

Muxlow. No, I can't remember that.

L. C. J. Were you there when Greaves was sworn?

Muxlow. Yes, I was, when Alderman Greaves was sworn.

L. C. J. Was you there when the Mace was taken away?

Muxlow. No, my Lord, I was not.

L. C. J. Who swore the Mayor?

Muxlow. One of the Coroners.

L. C. J. Was the Old Mayor there when the New Mayor was sworn?

Muxlow. I can't tell that.

Mr. Just. Withins. None of them can tell that, or will tell it.

Mr. Pollexfen. Swear Burroughs and Parker. [Which was done.]

Mr. Lovell. What is your Name?

Burroughs. My Name is Burroughs.

Mr. Lovell. Were you present on Michaelmas-Day at the Election of a Mayor of Nottingham?

Burroughs. I was one of them that were at the Hall; when I was in the Hall, there came a Gentleman, one of the Council-House, and acquainted Mr. Wild, the present Mayor, that the Burgeses had elected Mr. Greaves Mayor, and the Coroners were proceeding to swear him, and asked him to come and hear him sworn; and he said he could not come presently, they must wait a-while: he was asked how long, he told them by and by; with that, some body cried out, A Greaves, A Greaves, and there was a great Shout.

L. C. J. Where was that Shout?

Burroughs. In the Hall; but then the Gentlemen were in the Council-House.

Mr. Blencow. Where was Mr. Sacheverell then?

Burroughs. He was in the Council-House.

L. C. J. Well said: now you have made this Fellow swear thro' a Wall, that your other Witnesses could not hear thro'. Prithee, Friend, wert thou one of the Clothing?

Burroughs. No, my Lord, but I was a Burges.

L. C. J. What did you do there?

Burroughs. There were other Burgeses not of the Clothing besides me.

Mr. Holt. Come then, our next Witness is John Parker.

L. C. J. Reynolds, did you see this Fellow there, was he one of the Shouters?

Reynolds. Yes, and he flung up his Hat thus.

L. C. J. Were you one of the Shouters?

Burroughs. I cannot say I did not shout.

L. C. J. Did you fling up your Hat?-----Burroughs. No, I did not.

L. C. J. Did you do it over your Head?

Burroughs. It may be I might.

Mr. Just. Holloway. Were you by, when Greaves was sworn Mayor?

Burroughs. No, I was not.

Mr. Holt. Well, what say you to this Matter Parker?

Parker. Going by the Street, I met the New Charter coming down, Reynolds brought it; so I turned back again to the Mayor, and after he had received it, pray, says he, go up and tell Mr. Sacheverell, and some of them, that they will come up to the Church, and if they will but stay there a-while, we will come to them: So I, and another, and two or three more, went up to the Church, and told them the Mayor would come and wait upon them, and bring the New Charter; upon that Mr. Sacheverell looked upon his Watch, and staid a considerable while, and look'd again upon his Watch, and I heard him say he had staid above an Hour, and presently a Message came from the Mayor, desiring them to come down to the Town-Hall to wait upon the Mayor.

Mr. Stanhope. Who did the Messenger direct his Speech to?

Parker. I suppose it might be to Alderman Edge and Serjeant Bigland. Says Mr. Sacheverell, we'll go down, and see what they say to us: So they went down, and we went with them; they got many of them into the Council-House, but I could not; so I stood in the Hall, and waited all the while the Gentlemen were in the Council-House; then there came out Alderman Rippon, the Mayor, and Mr. Malin, and by and by after them, Alderman Parker, out of the Council-House, and sat down upon the Bench; Mr. Malin had not his Mace, and he was asked where it was, and they said they had it in the Council-House: So, said they, you had best have a care of your Staff; no, said he, before they take my Staff, I'll break it over their Pates; and by and by they proceeded to swear Wild Mayor, and they were about to give him some of the Oaths, I suppose of Allegiance and Supremacy; but before he said any thing, there came two of the Council-House, and told him, they had elected Mr. Greaves Mayor, and desired the Mayor, and the rest, that they would please to come and hear them swear the Mayor; he said, he could not come; but come, come, says he, we'll go on, and upon this they proceeded to give Mr. Alderman Wild the Oath, and when they had gone half way in the Oath, some body came and cried out, they were swearing Mr. Greaves Mayor, and upon that both Parties gave a Shout, and one cry'd, A Greaves, A Greaves, and another cry'd, A Wild, A Wild. And upon this, Alderman Rippon had the New Charter by him, and he took it out; look you, said he, we do nothing but by Authority, We have his Majesty's Order, and the Broad-Seal, and thereupon sat down again; but some body told him it was commonly reported they were deprived of their Privileges; he said, it was not so, if 'twas, he would forfeit his Head and his Estate: Upon that, they proceeded to swear Mr. Wild; the Burgeses gave another Shout, but not so big as the other; with that Alderman Parker went out, and I think, cry'd, a Riot, a Riot. They sat a little longer, and it was desired to send for Alderman Parker again, no, said they, he won't come: and so they whisper'd a little upon the Bench, and went all down the Street, and I went down the Hall with them, and in Street-Gate, they met with Alderman Parker; and he was coming to the Hall again, and he turned back to the Mayor's, and I went to the Council-House; but I could hear nothing, only that afterwards at the Mayor's they called the Gentlemen, and swore them according to the New Charter.

L. C. J. Were you one of the Electors?

Parker. No, not I; I was not concerned on any side.

Mr. Pollexfen. Were any of the Defendants, Mr. Sacheverell or Mr. Gregory at the Shouting in the Hall?

Parker. Not that I know of.

Mr. Farewell. He says, my Lord, that the Mayor sent to Mr. Sacheverell and them to come from Church.

L. C. J. How do you know the Mayor sent to Mr. Sacheverell?

Parker. My Lord, they directed their Speech to the Persons that were there, I can't justly say to whom in particular.

L. C. J. It has been sworn they directed their Speech to Alderman Edge and Serjeant Bigland.

Parker. They told it when Mr. Sacheverell was present, and so he went down with them.

Mr. Pollexfen. But this appears by the Evidence, that the Old Corporation is by the Name of Mayor and Burgeses, but we know there



there were Aldermen since, and so it is according to Truth, as it is laid in the Information; but let them put in their New Charter.

[Which was done and read.]

Mr. Pollexfen. Is there not a Proviso in it, that the Mayor should not act till he be sworn?

L. C. J. Admit it be so, what then?

Mr. Pollexfen. Then it follows that we must be not guilty.

L. C. J. How so?

Mr. Pollexfen. It is plain, my Lord, that this Man should not take upon him the Office of Mayor till he has taken the Oaths; then suppose they take it that the Old Charter is gone, by this there is no new Mayor till he be actually sworn; then all these things being done before he was sworn, it cannot be that this was such an Assembly as was laid in the Information.

L. C. J. You mistake yourselves sadly, the Proclamation was after the swearing.

Mr. Pollexfen. No, no, my Lord, I am not mistaken in that.

L. C. J. Reynolds, Was not the Proclamation made after he was sworn?

Reynolds. I can't tell, my Lord.

L. C. J. Where is the Mayor, Wild? Upon your Oath, were you sworn before you gave direction to make Proclamation to depart, or no?

Wild. I can't certainly tell, but I think the first Proclamation was made in the Council-House, that was before I was sworn; the Proclamation afterwards was after I was sworn.

Mr. Holt. Where was the Proclamation after you was sworn?

Wild. In the Hall.

L. C. J. Did Mr. Sacheverell continue there after you was sworn?

Mr. Pollexfen. Good, my Lord, this I think is the Fact upon the Evidence: In the Council-House Mr. Sacheverell, and the greatest part of these Defendants were, and then they went on to the Election of Greaves; and they sent out to tell Wild, the former Mayor, when he was in the Hall, that Greaves was elected, and did desire him to come in to swear him, but he refused; but when this was done, he was not sworn; but upon this, there was the Shout of the People, A Greaves, A Greaves: All this was, as I think, before he was sworn.

L. C. J. The Mayor himself says he was sworn.

Wild. My Lord, I was just come into the Hall before the Messenger came in; but I told them they could make no new Election without me, nor at all, because of the New Charter.

Mr. Pollexfen. Then as to the Business of the Mace, I hope the Information will not hold to charge us, because then he was not Mayor.

L. C. J. That does not affect the Mayor but the Sheriffs, the Mace does not.

Mr. Pollexfen. But, my Lord, as this Information is laid, he says he was Mayor, and called an Assembly, and it was held before him, and these things were done; but this cannot be true, for by this very New Charter he must be sworn before he can act, and this tumultuous Proceeding, as they call it, and seizing upon the Mace was before he was sworn, and this Information supposes all the Fact was done while he was Mayor.

Mr. Holt. I think it does appear by Wild's own Oath, that he was not sworn when Proclamation was made in the Council-Chamber; and I think there was but one Proclamation made there, the next was made after, and that was in the Hall: Now, with Submission, that does not affect those that were in the Council-Chamber, because they did not hear the Proclamation; now the Information is laid, that they continued after the Proclamation; therefore we must leave it to your Lordship and the Jury.

L. C. J. Well then, Gentlemen of the Jury, this Case has held long, but the Question is very short: Here is an Information exhibited by Mr. Attorney-General against the Defendants, which by particular Names are by some of the Witnesses sworn to be present when the Occasion of this Fact did arise.

Mr. Coombs. Pray, my Lord, give me your favour, here is one of the Defendants says, he has a Witness to prove he was not there; it's Mr. Turpin.

L. C. J. Reynolds, upon your Oath, did you see Turpin there?

Reynolds. Yes, I did.

Mr. Just. Withins. Mr. Mayor, did you see him there?

Wild. Yes, I saw him in the Hall.

Mr. Just. Withins. Was he busy in the Hall?

Reynolds. Yes, he was shaking his Hat, and shouting.

L. C. J. Well, now where is your Witness?

Mr. Pollexfen. Swear Mr. Flaits. [Which was done.] What say you, was Mr. Turpin there?

Flaits. He was in the Hall that Day, but not above a Quarter of an Hour.

L. C. J. You were there, it seems, pray had you a Vote there?

Flaits. I went to speak with Mr. Turpin.

Mr. Pollexfen. Was he in the Hall when the Mayor came into the Hall?

Flaits. I never saw him there while the Mayor was there.

Mr. Pollexfen. I pray swear Mr. Holt. [Which was done.] Pray was Mr. Barker either in the Hall, or in the Council-Chamber that Day.

Holt. No, I was at work with him that Day from six of the Clock in the Morning till eight at Night.

L. C. J. And he was not out all the time?—Holt. No, he was not.

L. C. J. Well, have you done, Gentlemen?

Mr. Sacheverell. My Lord here is Mr. Serjeant Bigland, I desire he may be examined.

L. C. J. Ay, with all my heart. Swear him. [Which was done.]

Mr. Pollexfen. Mr. Serj. Bigland, I think you were down at the Election of this Mayor upon Michaelmas was Twelve-month; will you be pleased to tell the Court and the Jury what was done then?

Serj. Bigland. I will give you as short an account as I can. I was in my House when the Mayor and Aldermen sent to me to desire me to give my Attendance: They sent the two Sheriffs to me, and I did attend, and staid an Hour or two, and went to Church, according to the usual Course; and when we had been there a-while, Aldermen Rippon came to me, and desired me that I would go down with them to the Hall; accordingly I did go down, and there was Mr. Wild and several Aldermen sat there; so then they proceeded to that that was done towards an Election.

Mr. Lovell. Pray, Sir, how was their Carriage during the time you was there?

Serj. Bigland. I sat then in the Council-Chamber, I think I sat next the Mayor, and Mr. Edge, I think, was next to me, and I saw nothing of Disorder at that time, that I took notice of.

Mr. Lovell. Was there any Proclamation made for People to depart?

Serj. Bigland. Upon the Oath that I have taken, I don't remember it.

L. C. J. Pray did the Mayor ask your Advice about any thing?

Serj. Bigland. Yes, my Lord, he did; and I said to him, In what capacity, Sir, do you desire my Counsel, as Recorder, or how? and so he said no more to that: But he said there was a New Charter, but whether, he desired me to read it or no, I can't tell.

L. C. J. Was it opened?—Serj. Bigland. Some part of it was opened.

L. C. J. Upon your Oath, did you hear Mr. Sacheverell speak to the Mayor?

Serj. Bigland. No, my Lord, I do not remember any such thing.

L. C. J. Pray let me ask you, you have been, before this, at Elections of Mayors of this Town?

Serj. Bigland. I was Deputy-Recorder in my Lord Marquis of Dorchester's time; as soon as he was dead, I was chosen Recorder, and then I was at one Election at another Day, when they do nominate, which is before Michaelmas.

Mr. Holt. Pray Sir, was there any Disturbance?

Serj. Bigland. None that I saw.

L. C. J. Was there any Shouting that you heard?

Serj. Bigland. I was not in the Hall, my Lord; in the Council-Chamber there was none.

Mr. Just. Holloway. Did you hear any body cry, A Greaves, A Greaves?

Serj. Bigland. I heard a Noise in the Hall, but what it was particularly, I can't say.

Mr. Holt. How long did you stay in the Council-Chamber?

Serj. Bigland. I believe I staid as long as most of the Company was there.

L. C. J. Did you stay while Greaves was sworn?

Serj. Bigland. My Lord, I believe I was there then.

L. C. J. Pray what Authority had you to swear Greaves?

Serj. Bigland. All that I know of it was, he was nominated at August according to Custom.

L. C. J. But what occasion had you to be present then, and what Authority had you to swear him? You are a Gentleman of the Long Robe, and should have known better.

Serj. Bigland. Truly, my Lord, he was chosen by those that had a Right to choose in August before.

L. C. J. But what Authority had you to swear him? Why did not you send for somebody out of the Street to swear him? I reckon it to be worse in those People that understand the Law, than in others, that they should be present at such things, and not advise People better. Here is Serjeant Bigland and Mr. Edge have mighty squeamish Stomachs as to the reading of the Charter, and nice Questions; Do you ask me as Recorder, or as Counsel? But they would have done well to advise People to meddle with their own Business; let my Brother take that along with him.

Mr. Pollexfen. Pray swear Mr. Edge. [Which was done.]

Mr. Edge. My Lord, I did not swear him.

Mr. Just. Holloway. Pray who took the Poll?

Mr. Edge. I took the Poll.

Mr. Just. Withins. Pray did you ever know a Mayor sworn when the Old Mayor was not by?

Mr. Edge. I did tell them so. Mr. Sacheverell and the other Gentlemen would have gotten me to poll in the Vestry in the Absence of the Mayor, but I told them I would not have any such thing done; and when the Old Mayor went out of the Council-Chamber, they would have had me read the Oath. Said I, Gentlemen, I will not swear him but in the Mayor's Presence.

Mr. Ward. Did not Mr. Sacheverell head them all the Day?

Mr. Edge. He was among us all the Day.

Mr. Ward. Did he peruse the Charter?—Mr. Edge. I can't tell that.

L. C. J. They that once begin first to trouble the Water, seldom catch the Fish.

Mr. Hutchinson. My Lord, I desire I may ask Mr. Edge one Question, Whether I was not sent to the Mayor, and did not go myself?

Mr. Edge. Upon the best of my knowledge I did not send you to the Mayor.

L. C. J. I thought, Mr. Hutchinson, you had been a Man of greater Quality than to go of his Errands. Have you done, Gentlemen?

Mr. Holt. Yes, my Lord.

L. C. J. Then, Gentlemen, as I said, this is an Information against several Persons, you shall have the Names of them deliver'd to you, and it is for a Riot, an unlawful Assembly in Nottingham; and tho' there are two times that have been spoken of, and two Places in the Evidence, yet I must tell you, That that Part that does affect these Persons is only that which does relate to Michaelmas-Day, and for the other part, about the Cross, is not compriz'd in this Information; and Persons that were put at the Cross, but that were not put at the Hall, are not concerned in this Information: But all, it appears, were concerned, except one, which is Humphry Barker; now tho' he was hopping and jumping upon the Cross, yet not being present upon Michaelmas-Day, he is not within this Information.

And now, Gentlemen, because the Cause has held something long, I shall be the shorter: Only, for Example sake, there are some things that ought to be taken notice of. The Right of the Charters, whether it be the New, or the Old Charter that is to prevail in point of Law, is not a Question; that is not to be determined in this Cause one way or another, for they have a methodical Way to have that Point determined, and should not have proceeded in the Way they went; and 'tis pretty well known they have proceeded in that Way too, for we know there are Scire Facias's and Quo Warranto's depending between them. They would have done well to have pursued the legal Course only; for I hope, we shall never live to see that Law prevail in England which is called Club-Law: Let the Right be never so much on their Side, they ought to take a rightful Way to observe it, and not by any unlawful Means.

Another



Another thing, Gentlemen, is this; they insist upon it, that they could not be guilty upon this Information, because the Mayor was not sworn. It is plain they are guilty of a very great Crime, because till another was chosen, he was Mayor. They say their Mayor was sworn regularly according to the Old Charter; but according as the Evidence has been given, they could not swear him by any Pretence whatsoever; and whosoever administer'd the Oath to him, were guilty of a very great Fault, as well as he that took it.

Now, Gentlemen, the Law is so direct in Point, that they needed not to have gathered themselves into an Assembly about this Matter; for if he that they pretend to be Mayor had been rightfully chosen Mayor, they had a regular Course to have brought him into this Office; for they might have come, and of right have demanded a *Mandamus* to admit and swear him into the Office, and so he must have been sworn Mayor, unless they had shew'd good Cause to the contrary.

Gentlemen, there is no Right but has a lawful Remedy, therefore it had been much better for these Gentlemen, if they have a Right, to have gone in a rightful way to obtain that Right.

Now this being premised, I must tell you, it is very unfortunate, concern it whom it will, and very strange to me, that Men in Matters of Government, where they have nothing to do, that are Country Gentlemen, that never came to interpose in any Election before, that they should come to busy themselves, and head People where they have nothing to do; nay, they have no pretence of Precedent, for it was never practised before.

If in case it was only to satisfy their Curiosity to see the manner of the Election, they had been only there, and patient and quiet, it had been something; but to be there, and to demand People to be sworn, and calling People to look to the Books, and heading the Mob, that does not become any Man, let him be as great as he pleases: The greater the Man, the greater his Name; and the greater his Influence, the greater is his Offence, and the greater ought to be his Punishment.

Then, Gentlemen, to have those other Persons to come there, Mr. *Hutchinson* and Mr. *Gregory*, and they must be demanding of the Mayor to come and swear; pray what have these People to do there?

Then, Gentlemen, you see the Consequences of it, it was come to that height in the midst of this great and populous Town of Nottingham, that nothing but flinging up Hats, and hollowing, and shouting, and making all the Disturbance and Interruption in the World; nay, inasmuch, that you may observe by one of the Witnesses for the King, the very Seal was broken off from the New Charter. Nay, to that Height they were grown, that whereas there was a Mace, that is an Ensign that doth belong to the Sheriff, they came and ravished it away, and force it from him, and take it away whether he would or no, and bid him go about his Business, he had nothing to do there: So that here are People without any Authority choose a Mayor, that Mayor must call and assemble together a Meeting of all sorts of People, and all sorts of Disorders must be committed under pretence of this Authority; which is setting up a kind of a Commonwealth, I can call it no better; and had it been such a general Assembly, not with an Intent for doing such one particular purpose, it had been High-Treason. For if People once think to obtain the Rights they pretend to in a mutinous manner, that in the general is High-Treason, or at least so near, I'll assure you it is pretty hard to distinguish between them.

Now, Gentlemen, as to the Evidence, I must tell you the Witnesses do swear, that all these Persons were present, Abettors, and Assistants in this Matter; the Man that headed the Party had no manner of Concern among them: And surely, after you have heard all this Matter; if ever there was a Riot prov'd in this World, this Riot is plainly prov'd upon every one of these Men except Barker.

But whereas they pretend on the other side, and they would have you to believe that the Sheriff was not Sheriff till he was sworn, surely he was Sheriff till another was sworn: and if you allow him to be Sheriff, then they ought not to take his Mace from him, if he was the Sheriff *de facto*, in Possession of the Ensign of this Office, that is enough; for the Right is not to be determin'd in such a way as this.

The next thing they pretend to is this, a-lack-a-day, there was no Proclamation made till after he was sworn Mayor by the New Charter, when before he came first into the Common-Council, the Hubbub was there begun, and the Mayor told them, Gentlemen, you have nothing here to do, pray go about your Business; and when Mr. *Sacheverell* press'd him, he ordered Proclamation for all Persons that had nothing to do, to

be gone. Then afterwards he comes into the Hall, there is sworn in the Hall, and takes his Oath according to the New Charter, and still after Proclamation made; then the same Persons continue still in the same Place, so that there is no Obedience given either to the Old Authority or the New; and instead of going away upon the Proclamation, that made them the more violent; for you find by Mr. *Edge*, the last Witness, that even to the time of the swearing, Mr. *Sacheverell* continued very earnest to have him sworn, though Mr. *Sacheverell* was shewn the New Charter, and they could not even by the Old one proceed to swear him in the Absence of the Old Mayor; and the Old Mayor was absent.

There are indeed several Gentlemen that are Witnesses for the Defendants, that happened to be there at that time; there is Sir *Thomas Parkyns*, and he being ask'd whether he heard any Noise at all, why truly he forgot that there was ever a Word spoken; and though other Persons, even some of their own Witnesses, did hear a Noise, yet he heard none, but all was a wonderful regular Thing; so that the Witnesses that they themselves call'd, interfere among themselves, some of them say they did hear a Noise and Shouting, yet such is the Unhappiness of some People, that they can't hear if they have no mind to it. Then here is Mr. *Thinn*, a Gentleman that came by accident, and he can give no good Account of the Matter: Some Noise he did hear, but he came but as a Stranger, and was not concern'd one way or other, as he says.

You have heard several other Witnesses, that give an Account there was a Noise, but they cannot tell whether the Charter was produc'd, or not produc'd; and they cannot tell one Word that was said of a *Greaves*, or no New Charter: And one particular Man, I have forgot his Name, he could not by any means remember any thing of the matter; tho' he was there all the while, he could not tell what Mr. *Sacheverell* said, he did hear him, but not what he said.

This, Gentlemen, is the Substance of the Evidence: I can only say this to you, you must believe all the Witnesses for the King actually perjur'd, unless you believe their Evidence; and for what others say, that they did not hear such and such things, yet all these other People did hear; and tho' the Witnesses for the Defendants did not see, the others did see; and you must find these Men without any Evidence that does appear, to be guilty of wilful Perjury, or else every Person that you have had in charge, except *Humphrey Barker*, is guilty of the Riot whereof they have been informed against.

*Then the Jury withdrew, and the Court broke up, and a private Verdict being deliver'd in the Night, the next Morning it was given in open Court, where they found Twenty of the Twenty One Defendants that were in the Issue, Guilty of the Offence and Misdemeanour in the Information; and the other Defendant, Humphrey Barker, Not Guilty.*

In Trinity-Term following, the Defendants, who had been found Guilty, were Sentenced, as follows:

<i>William Sacheverell</i> , fined	-	-	-	500 Marks.
<i>George Gregory</i> ,	-	-	-	300
<i>Charles Hutchinson</i> ,	-	-	-	200
<i>John Greaves</i> ,	-	-	-	20 Nobles.
<i>William Greaves</i> ,	-	-	-	20 Marks.
<i>Samuel Richards</i> ,	-	-	-	20
<i>Robert Green</i> ,	-	-	-	20
<i>Francis Salmon</i> ,	-	-	-	5 Nobles.
<i>Arthur Riccards</i> ,	-	-	-	20 Marks.
<i>Ralph Bennet</i> ,	-	-	-	20 Nobles.
<i>John Sherwin</i> ,	-	-	-	100 Marks.
<i>William Wilson</i> ,	-	-	-	100
<i>Samuel Smith</i> ,	-	-	-	20 Nobles.
<i>Thomas Trigg</i> ,	-	-	-	20 Marks.
<i>Richard Smith</i> ,	-	-	-	-
<i>John Hoe</i> ,	-	-	-	20 Nobles.
<i>William Smith</i> ,	-	-	-	20
<i>Joseph Turpin</i> ,	-	-	-	100 Marks.
<i>Nathaniel Charnel</i> ,	-	-	-	100
<i>Joseph Aslin</i> ,	-	-	-	5

And that the several Defendants do give Security for their Good Behaviour for a Twelvemonth.

### The CASE of the CORPORATION of Nottingham, as it was stated by the late William Sacheverell, of Barton, Esq.

THE Town of Nottingham hath always claimed to have been a Borough by Prescription: And it cannot well be doubted that it hath been so; for that it appears by *Doomsday-Book*, in the Time of King *William the First*, that the Burghesses of Nottingham then had divers Houses and Parcels of Land in Nottingham; and the Burghesses of that Town were One Hundred and Seventy-Three in Number in the Time of *Edward the Confessor*.

That Town hath also always claimed to have been a Corporation by Prescription: And it is hard to believe it otherwise; because no Charter of its first incorporating could yet be found; and the Charters granted to the Burghesses of that Town by King *Henry the Second* and King *John*, do imply them as a Body Corporate before those Times.

Yet it appears by the Charter of King *Edward the First*, that there was no Mayor of that Town before his Reign; for that he then was pleas'd to grant the Burghesses of that Town a Privilege, that they then after should choose a Mayor out of themselves annually; and some of their former Charters, as well as that, shew that for some time before they had only Bailiffs of that Town. From *Edward the First's* Time,

under Mayor and Bailiffs the Town continued till *Henry the Sixth's* Time, who was pleas'd to make it a County, and grant them Sheriff instead of Bailiffs, and the Privilege of choosing out of themselves Seven Aldermen, and one of them annually to be Mayor; and that the Aldermen (as long as they so continued) should be Justices of the Peace within that Town; and moreover, that the Burghesses of the Town of Nottingham should for ever be a Body Corporate by the Name of Mayor and Burghesses. Nor hath any Charter since, nor any By-Law that can be heard of, given the Aldermen any more Power than they had by that Charter, which was then nothing more than every Burghess of that Town had, except being Justices of the Peace, and wearing Gowns and Hoods. So that the Aldermen, though of late they have taken upon them to sit as Members of the Council of that Town, can neither prescribe to that Power, because there were no Aldermen in that Town before King *Henry the Sixth's* Days; nor can they claim to be of the Council of that Town by force of any Charter, for no Charter either in *Henry the Sixth's* Time, or since, hath granted them any such Authority, nor did they pretend to sit in that Council by virtue of any By-Law of that Town, or ever



shewed any such By-Law, tho' their Right of sitting and voting there hath been denied in the Council by Members thereof.

The Aldermen indeed in King James's Time began, tho' they had no Right so to do, to take upon them to be part of the Council, and to intermeddle in the Town's Concerns, and to encroach so far upon the Burgesses, without their Consent, as to pretend to have a Right in the setting and disposing of the Corporation-Lands, and of the Bridge-Lands, and School-Lands: But the Burgesses were so far from consenting to their having of any such Power or Authority, that they in the Year 1605, by their Petition to the Lords of the Council-Table, complained of the Encroachments of the Aldermen, and prayed Redress. Upon which the Lords of the Council referred the Examination of the Matters in Controversy to the Judges of Assize that went that Circuit, to the End they might be certified and better inform'd by the said Justices of such Course, as upon good Advice and Deliberation they should find in their Judgments agreeable to Law, and meet to be set down and ordered in that behalf. Who accordingly enter'd into Consideration of the Complaints on both sides, and advised with the rest of the Judges touching the Charter granted to that Corporation, and all other Matters meet to be considered of concerning the Matters in Controversy; and return'd Certificates of their Opinions of such Order of Agreement as they thought fit and convenient to be observed and established, according to Law and Justice, for the publick Good and Government of the said Town. Wherefore the Mayor and the Parties indifferently sent up to solicit a peaceful end of those Controversies, having taken knowledge, did consent thereto; and thereupon, by Consent of the said Parties, it was, amongst other things, order'd, That there should be a Council in that Town of Twenty Four Persons only, out of which the Aldermen for the Time being should always be excepted; and that the said Council, with the Mayor, or the greater part of them being at such Assembly, without any other of the said Corporation, should set and let the Town-Lands, Bridge-Lands, and School-Lands, taking unto them the Chamberlains, Bridge-Masters, and School-Wardens respectively, as their Places for the Lands within their several Offices should require, as by the said Order and Agreement, which the Burgesses have ready to produce when occasion shall require, will plainly appear. So that now all Pretence of the Aldermen being of the Council, or having any thing to do with the Corporation-Lands, the School-Lands, or the Bridge-Lands, was adjudged against both by the Judges and the Lords of the Privy-Council, and accordingly was wholly laid aside, till of late.

The Case standing thus, and the Mayor, Aldermen, and Burgesses of that Corporation being by their Burgess-Oath particularly obliged that the Franchises of the said Town they will maintain, sustain with their Bodies, their Goods, and their Chattels to their Power, and them not let neither for Love nor Dread, without Regard of any Man, but maintain the Laws, good Customs, and Franchises of that Town: and divers Burgesses of that Town being informed, about the beginning of Easter-Term last, that the Mayor and some of the Aldermen of that Town had a Design to surrender the Charters of that Corporation, it was scarce credited by any of the Burgesses, that the Mayor or almost any of the Aldermen would consent to do a thing so directly contrary to their Burgess-Oath. Yet divers Burgesses of the said Town considering they had taken the said Oath for preserving the Rights of the Town, thought it but convenient, for the Prevention of the ill Consequences which they well knew must befall that Town, if their Charters should be delivered up, and a New Charter taken without the Privy, Consent, or Hearing of the Burgesses of that Town, to order Four Caveats to be enter'd: And accordingly in Easter-Term ordered Two to be enter'd at the Lord Chancellor's, and Two at the Attorney-General's. One of which Caveats in each Place was against passing any New Charter to the Town of Nottingham without the Privy, Consent, or Hearing of the Burgesses of that Town; the other against the accepting of any Surrender of any Charter of that Town, without the like Privy, Consent, and Hearing. Which said Caveats were enter'd accordingly.

And so the Matter rested till the 25th of July last: But upon that Day the Mayor called a Council without giving Notice what the Business would be, unless it was to those of his own Party and Confederacy. But that he had Thoughts of surrendering when he came to the Hall, will be pretty manifest from what he did after the Question was put to the Vote, and the Poll taken: There appeared at the Hall the Mayor and Five Aldermen, and Two and Twenty of the Council, and Mr. William Toplady (who the last Year, by Order of Mr. Gervas Rippon, the then Mayor, was sworn in as an Alderman, though Mr. Sherwin, who stood in competition with Mr. Toplady, had near twice as many Votes; upon which Mr. Sherwin brought his Mandamus, and the Cause is yet undecided in the Court of King's-Bench). After some Business in the Hall was dispatch'd, the Mayor caused a Question to be put for surrendering of the Charters of that Town; and tho' it was declared by some of the Council, That the Aldermen had no Right to vote therein, yet the Mayor caused a Poll to be taken, and admitted them and Mr. Toplady as Voters, save only that Mr. Alderman Edge suspended his Vote, and gave it neither way. The rest voted as followeth, viz.

For Surrendering the Charter.

Gervas Willd, Mayor,  
Christopher Hall, Alderman,  
John Parker, Alderman,  
Gervas Rippon, Alderman,  
William Toplady, Alderman, *de facto*.  
William Mabbot,  
Edward Mabbot,  
William Petty,  
Robert Wortley,  
Hugh Walker,  
William Woolhouse,  
John Whitty,  
Thomas Lee,  
John Urwin.

Against Surrendering the Charter.

William Greaves, Alderman,  
John Greaves, } Coroners,  
Samuel Richards, }  
Robert Green, Sheriff,  
Huntingdon Eyre,  
Roger Ryley,  
Thomas Walker,  
Richard Smith,  
Francis Salmon,  
Ralph Bennet,  
John Sherwin,  
Samuel Smith,  
Thomas Trig,  
William Smith.

So that if the Aldermen should be admitted to have a Right to vote in the Council, yet here was no Majority for the Surrender. But on the contrary, the Aldermen having no Colour of Right, either by Prescription, or Charter, or otherwise, for the Reasons aforesaid, to be of the Council; it is plain, there was only the Mayor and Nine of the Council for the Surrender, and Thirteen of the Council against it; and consequently that the greater part of the Council voted against the Surrender. Nor can it be imagined that the Council of that Corporation (being neither settled by Prescription, nor vested in by Charter, but only brought in by consent and choice of all the Burgesses, only for the better Management of the Revenues of the Corporation, and Dispatch of some other ordinary Affairs, and not intrusted with many Rights of that Town,) can pretend to any Power of surrendering the Charters and Liberties of that Town, more than any small Number of Burgesses. So that how this Surrender of Fourteen Men against the Vote of the greater Number of the Council, and Will of almost all the Burgesses, should be good in Law, is not yet well understood. And if the putting of the Town-Seal to an Instrument without the Consent of the Body Corporate, should be said to be sufficient in Law to give away the Lands and Rights of any Body Corporate, then any Thief that can but steal the Corporation-Seal, will have it in his Power, tho' he be no Member of the Corporation, to give up the Lands and Liberties thereof; which indeed would be a strange Piece of Law and Justice to be owned in any Nation that pretends to Sense and Honesty. Yet Mr. Mayor, all this notwithstanding, did, as soon as the said Vote was over, pull out of his Pocket an Instrument in Writing, purporting a Surrender of their Charters, and caused the Town-Seal to be affixed thereto without any further Vote. The Draught of the Instrument, as it is commonly said, was first made at London, and thence transmitted to an Honourable Person in Nottinghamshire, and by his Order conveyed to Mr. Mayor. But this Report, if it were not for one thing, which it's believed will be proved if there be occasion, might seem not well grounded, because, as it afterwards will appear, this Surrender was not thought sufficient, and so another was sealed; which yet one of the Aldermen would have to be the very same, Word for Word, with that which was first sent up sealed to London; as if twice sealing would make that effectual, which was not so by being once sealed. But it is likely he had not heard what is commonly reported, and perhaps will be proved when time serves, that the first Instrument for surrendering that was sealed, was drawn so as to make a Surrender, by the Right Honourable the Earl of Halifax and Sir Leoline Jenkins.

After the said Vote touching the intended Surrender was over, many of the Burgesses of Nottingham, considering their Oath, and that there were many Customs and Privileges in reference to Trade, which the Burgesses of the Corporation held only by Custom and Prescription; and that as some of the Lands which that Corporation held was by Grant from some of his Majesty's Royal Predecessors, so most of their Town-Lands, (which are of great annual Value) were given by private Persons; thought fit to ask Advice of Counsel in several Points.

The first Question proposed to Counsel was, Whether if the Charters were surrender'd, and a New one taken, that New Grant would not preserve the Lands to the Corporation. To which Counsel replied, That if the Charters of any Body Corporate were lawfully surrender'd, then the Corporation that held by such Charters was dissolved; and that if they had any Lands which had been given to that Corporation, the Heirs of those that gave those Lands would, as soon as such Surrender was completed, be entitled to the Lands, and recover the same. And they said, Those Lands which had been given to such Corporation by any of his Majesty's Predecessors, his Majesty might, if he so pleased, grant them again to the Corporation; but no New Charter of his could, as they conceived, give the Corporation any Title to those Lands which had been given by private Persons, or enable the Corporation to keep them from the Heirs of those that gave them, in case such Surrender should be. And so, they say, it was resolved by the Judges when the Monasteries were surrender'd, or dissolv'd; and that therefore a special Act of Parliament was advised to be made, and accordingly was made, to vest those Lands in the King, there being no other way to hinder them from going to the Heirs of those that gave them, when by Surrender they had dissolved those Corporations.

The Second Question proposed was, Whether if the Mayor and Burgesses of a Corporation claim any Right of Common by Custom or Prescription upon other Men's Lands, as is in the Case of Stafford, Derby, Coventry, and Many other Corporations, they can surrender their Charters, and yet, by any New Charter to be obtained from his Majesty, or by any Means, preserve their Right of Common. To which it was answered, That if the Mayors and Burgesses of any Corporation claim such Common, and afterwards make such Surrender, and so dissolve the Body Corporate, their Prescription for Common is destroyed; and tho' his Majesty should please to incorporate them anew, yet their Title to the Common will, as they conceive, be totally lost.

The third Question was, Whether the Town of Nottingham, being one of the ancientest Corporations of England, and free of Tolls in most



most Places, should have the same Privilege if they surrender'd their Charters. To which it was answer'd, That if the Town of Nottingham surrender'd their Charters, and so dissolv'd their Corporation, then in all other Places that had formerly Tolls granted them, and kept their Old Charters, they should have Toll of Nottingham Men, and all such Corporations as shall so surrender, notwithstanding any New Charter that can be granted them.

The last Question propounded was, Whether if the Mayor, or any other Members of a Corporation do, without the Consent of the major Part of the Body Corporate, occasion the Surrender of the Charters of that Corporation, the particular Persons that received Damage by that Surrender, may not have an Action at Law for Recovery of their Damages? To which it was answered, That it was no question but that every particular Person that should be any ways damnified by such Surrender, might by Action at Common Law recover all his Damages of those Persons that occasioned the Surrender. Yet it was thought advisable, as the most proper Way for preventing the surrendering of the Charters, and of those Inconveniencies and Suits which might be occasioned thereby, or by taking of a New Charter, if obtained by the Mayor and a few of the Burgesses without the Privy, Consent, or Hearing of the rest, that the major part of the Burgesses should present Mr. Mayor with their Sense of his Proceedings, and declare their Dissent from any Surrender. And accordingly a Writing was drawn, and signed by betwixt Three and Four Hundred of the Burgesses; and then a fair Copy made and examined with the Original, and so with all the Burgesses Names to it that had subscribed, was by several of the Burgesses, and in Presence of several Gentlemen of Quality that were no Burgesses, presented to the Mayor upon the Fourth Day of August, as the Sense of most of the Burgesses of that Town. The Writing so presented was as followeth, viz.

To Mr. Gervas Wild, Mayor of Nottingham.

S I R,

WE whose Names are hereunto subscribed, being Burgesses of the Town of Nottingham, and knowing or understanding that you and Thirteen more of the Corporation have, without the Consent of the Burgesses of this Town, and against their Will, taken upon you to agree to the Surrender of the Charters, Liberties, and Franchises of this Corporation, and to cause the Corporation-Seal to be affixed to an Instrument for making of such Surrender; and being by our Burgesses-Oath obliged to preserve, as far as in us lies, all the Rights and Privileges of this Corporation; and considering what great Damage it must necessarily be to the Corporation in general, and to us and every other particular Burgesses of the Corporation, if the Charters, Liberties, and Franchises should be so surrender'd; have thought ourselves obliged, in order to prevent so great an Evil, to signify these our Thoughts of what you have done, and are about to do; and that many of your Liberties and Franchises, which are only held by Custom, and not by Charter, will certainly be lost, if you make such Surrender as you have agreed to. We do therefore hereby declare our Dissent from those your Proceedings; and that we neither do nor shall Consent, or have Consented, that any Surrender of any Charter, Liberty, Franchise, or Privilege of the Corporation of Nottingham should be made either by you, or any Members of this Corporation, or other Person or Persons whatsoever; and that we will by all lawful Ways and Means oppose and hinder the Surrendering or Vacating of any of the Charters, Rights, Liberties, or Privileges of this Corporation; and that in case you occasion the Surrender of any of the Charters, Rights, Liberties, or Privileges of this Corporation, we shall expect from you such Satisfaction as the Law will allow us.

The Burgesses were also advised to order, and accordingly did order Caveats in the Names of some particular Burgesses, on behalf of themselves and most of the Burgesses of the Town, to be entered at the Lord Chancellor's, the Lord Privy-Seal's and in the Signet-Office, against Surrendering of any of the Charters of that Town without the Privy, Consent, and Hearing of the said Burgesses, and against passing of any New Charter to that Town without like Privy, Consent, and Hearing. And the Burgesses have had an Account from their Agent at London, that he had entered such Caveats at the Lord Chancellor's, and in the Offices of the Lord Conway and Sir Leoline Jenkins, it being commonly reported that the Lord Privy-Seal had delivered up the Privy-Seal to the said Sir Leoline.

The Burgesses were further advised to petition the Lord Chancellor to be heard before any Surrender of their Charters should be accepted, or any New Charter to that Town should pass the Broad-Seal; and accordingly a Petition was drawn and Signed by above Three Hundred and Sixty Burgesses, and a Copy thereof fairly engrossed, with the Names of the Burgesses that had subscribed, was sent and presented to the Lord Chancellor at Bath on Thursday the Tenth of this Instant August. Which Petition was in these Words following, viz.

To the Right Honourable the Lord High Chancellor of England, the Humble Petition of the Burgesses of the Town of Nottingham, whose Names are hereunto subscribed, on behalf of themselves and most of the Burgesses of that Town,

Most humbly sheweth,

THAT the Town of Nottingham being a Borough by Prescription, and an ancient Corporation; and the Burgesses of that Town (who are a Body Corporate by the Name of Mayor and Burgesses) having many Liberties, Privileges, Rights, and Franchises, which they hold by Grant and Confirmation from his Majesty and his Royal Predecessors, and many other Rights, Liberties, and Privileges which they hold by Custom or Prescription; and divers Persons having given Lands to that Corporation of a very great annual Value: The present Mayor, with three or four of the Aldermen, and nine other Burgesses of that Corporation, have declared they design to take a New Charter, and have taken upon them, without the Consent of your Petitioners, and most of the Burgesses of that Town, to agree to the Surrender of the Charters of that Corporation; and have taken the Town-Seal, and affixed it to an Instrument, designing thereby to make an actual and absolute Surrender of all the said Charters; which if they have power to effect, it will (as your Petitioners are advised) not only dissolve the Corporation, deprive your Petitioners and other Burgesses of that Town of many Rights, Liberties, and Privileges which they held by Custom and Prescription, cause all the Lands given to that Corporation to revert to the Heirs of the Donors, and disinherit your Petitioners and other Burgesses of that Town of all the said Lands, Liberties, and Privileges, which both they and their Predecessors, as Burgesses of that Town, have inherited, and ought to enjoy, but also subject your Petitioners and their Freeholds against their Will to such Services, Damages, and great Inconveniencies, as may be brought upon them by the Contrivances of the said Mayor and Aldermen, in case they can obtain a New Charter to pass the Broad-seal without the Privy, Consent, or Hearing of your Petitioners.

Your Petitioners therefore humbly pray your Lordship to take into Consideration the aforeaid Mischiefs, Damages, and Inconveniencies that are like to befall your Petitioners and other Burgesses of that Town, in case such Surrender should be made and accepted, and a New Charter taken by the said Mayor and Aldermen: And that your Lordship would please, before such Surrender be accepted, or any New Charter for that Town be passed the Broad-Seal, to grant your Petitioners a Day of Hearing, and to order thereupon as shall be agreeable to Equity and Justice.

And your Petitioners shall ever pray, &c.

The Petition being delivered as aforeaid, and Mr. Mayor having been acquainted in manner aforeaid, by the Generality of the Burgesses, that they neither had consented, nor should consent to a Surrender of any of the Charters, Rights, or Liberties of the Town, and the Burgesses having been advised by Counsel that no Instrument for making a Surrender of the Charters to the Earl of Halifax and Sir Leoline Jenkins could be effectual in Law; it was hoped that there would not have been any further Progress in the Business, at least before the Burgesses were heard upon their Caveats or Petitions. And it was taken for granted, that no new Instrument in order to any Surrender could be made and sealed without calling together the Council of that Town; because, by Custom of that Town, the Town-Seal hath always used to be kept under the Custody of three Locks and Keys, and not taken out but in Council; and those three Keys kept by three several Persons, for better preventing of any indirect use of the Seal. But contrary to the Burgesses Expectation, and against all ancient Usage, Mr. Mayor (having, as he said, received Advice from London that the Instrument he had sent up for surrendering the Charters was not sufficient) did on Saturday the Twelfth of August require of the Senior Coroner to deliver him his Key; which the Coroner refusing to do, (unless, according to the Custom of the Town, a Council was called, and should order such Delivery) it seems Mr. Mayor found another way to come by the Seal, if that be true which was signified in the publick Prints that came down to Nottingham on the Nineteenth of August, viz. That upon the Fourteenth of August a Surrender of Nottingham Charters was made to his Majesty. And there is one thing which hath happened since, which gives a shrewd Light what Mr. Mayor did on that Twelfth of August, without so much as summoning a Council; for the Party who by Mr. Mayor's Command, as he saith, did that Day force open the Lock to which the Coroner's Key belonged, hath since confessed the Fact. So that now if it should hereafter appear to be true, as those Prints seem to intimate, that any Instrument for surrendering of Nottingham Charters to his Majesty, was presented to his Majesty on the Fourteenth of August, it will scarce be a Question, by what means, or how lawfully Mr. Mayor came by the Seal, or how valid such Surrender is like to be.

This is the true Case of the Burgesses of Nottingham, who are ready to make good every Matter of Fact, as herein stated, whenever there shall be occasion; and doubt not but to prove it, if they may either be heard upon their Petition or Caveats; and however question not but by the Assistance of the Courts of Justice they shall still preserve their Rights, notwithstanding all these Endeavours that have been used to give up their Charters and Liberties.



CXXVIII. Proceedings against Sir THOMAS ARMSTRONG \* in the King's-Bench, upon an Outlawry for High-Treason, June 14, 1684. Trin. 36 Car. II.

ON the 14th of June Sir Thomas Armstrong was brought to the Bar of the Court of King's-Bench at Westminster, by Virtue of a Writ of a Habeas Corpus, directed to the Keeper of the Goal of Newgate; which Writ was on his Majesty's behalf moved for on Thursday last by Mr. Attorney-General.

The Return of the Writ was read by the Clerk of the Crown, by which it appeared he was in the Custody of the Keeper of Newgate, by a Warrant from the Honourable Sidney Godolphin, Esq; one of His Majesty's Principal Secretaries of State; which Warrant followeth *in hæc verba*.

Sidney Godolphin, Esq; of His Majesty's most Honourable Privy-Council, and Principal Secretary of State.

THESE are in His Majesty's Name to Authorize and Require you to receive into your Custody, from on board His Majesty's Yatch the *Catharine*, Captain Davies Commander, the Person of Sir Thomas Armstrong, Kt. Outlawed for High-Treason, and him safely to keep in His Majesty's Prison of Newgate, till His Majesty's Pleasure be farther known. And for so doing, this shall be your Warrant. Given under my Hand and Seal at Whitehall, this 10th Day of June 1684. In the 36th Year of His Majesty's Reign.

S. Godolphin.

To Captain Richardson, Keeper of His Majesty's Prison of Newgate.

Sir George Jefferies L. C. J. What would you have, Mr. Attorney?

Sir Robert Sawyer. Mr. Att. Gen. Have you the Outlawry there?

Cl. of Cr. Yes, Sir, here it is.

Mr. Att. Gen. That which I humbly pray, my Lord, is an Award of Execution for the King against Sir Thomas Armstrong upon the Outlawry.

L. C. J. First, we must file this Return.

Mr. Att. Gen. I pray it may be filed.

L. C. J. Let it be filed: Now, what do you desire, Mr. Attorney?

Mr. Att. Gen. My Lord, I pray an Award of Execution upon the Outlawry.

L. C. J. Arraign him upon the Outlawry.

Cl. of Cr. Thomas Armstrong, Hold up thy Hand. [Which he did.]

Thou hast been indicted in London, by the Name of Thomas Armstrong, of London, Knight, of High-Treason, for Conspiring against the King's Majesty's Life, and the Government: For not appearing to Plead and Try that Indictment by due Process of Law issued against thee, upon that Indictment thou standest Outlawed, and thereby attainted of the same High-Treason. What hast thou to say for thyself, why Execution should not be awarded against thee upon that Attainder according to Law?

Sir Thomas Armstrong. My Lord, I was beyond Sea † at the Time of the Outlawry; I beg I may be tried.

L. C. J. That is not material at all to us; we have here a Record of an Outlawry against you, Sir Thomas.

Sir Thomas Armstrong. I desire to be put upon my Trial, my Lord.

L. C. J. We cannot allow any such thing; we have nothing to do upon this Record before us, but to award Execution. Captain Richardson, Which are your usual Days of Execution?

Captain Richardson. Wednesdays and Fridays, my Lord.

Mrs. Matthews. Here is a Statute, my Lord.

L. C. J. What is the matter with that Gentlewoman?

Sir Thomas Armstrong. Hold your Tongue. My Lord, there is a Statute made in the 6th Year of Edward the 6th, which I desire may be read.

L. C. J. To what Purpose would you have it read, Sir Thomas?

Sir Thomas Armstrong. It giveth the Prisoner, or Person outlawed for High-Treason, a Year's time to reverse the Outlawry, if he were beyond Sea. I desire it may be read.

L. C. J. Ay, let it be read. Where is it, do you say?

Sir Thomas Armstrong. It is in the 6th Year of Edward VI.

Mrs. Matthews. Here is a Copy of it—

[Shewing a Paper.]

L. C. J. Why, how now? We do not use to have Women plead in the Court of King's-Bench; pray be at quiet, Mistress.

Sir Thomas Armstrong. Pray, hold your Tongue. My Lord, I could not come to alledge this before, because I have been a close Prisoner, and no body permitted to come at me. I desire Counsel to be assigned me at this Bar.

L. C. J. For what, Sir Thomas?

Sir Thomas Armstrong. To argue whether this Outlawry ought not to be reversed.

L. C. J. Read the Statute he desires.

Mr. Att. Gen. Ay, let it be read. Sir Thomas will not find it to his Purpose.

Cl. of Cr. What Chapter is it? ‡

L. C. J. You may easily find it about Outlawries for Treason.

Cl. of Cr. Reads. 'Provided always, and be it Enacted by the Authority aforesaid, That if the Party—'

Mr. Att. Gen. Read the Clause before that, Sir Samuel.

Cl. of Cr. Reads. 'And that all Process of Outlawry hereafter to be made and had within this Realm, against any Offenders in Treason, being Resiant or Inhabitant out of the Limits of this Realm, or in any the Parts beyond the Sea, at the time of the Outlawry pronounced against them, shall be as good and effectual in the Law, to all Intents and Purposes, as if any such Offenders had been Resident and Dwelling within this Realm, at the time of such Process awarded and Outlawry pronounced.'

L. C. J. Read on the next Paragraph.

Cl. of Cr. Reads. 'Provided always, and be it Enacted by the Authority aforesaid, That if the Party so hereafter to be Outlawed, shall within one Year next after the said Outlawry pronounced, or Judgment given upon the said Outlawry, yield himself unto the Chief Justice of England for the time being, and offer to Traverse the Indictment or Appeal, whereupon the said Outlawry shall be pronounced as is aforesaid: That then he shall be received to the said Traverse, and being thereupon found not Guilty by the Verdict of Twelve Men, he shall be clearly acquitted and discharged of the said Outlawry, and of all Penalties and Forfeitures by reason of the same, in as large and ample manner and form, as though no such Outlawry had been made, any thing herein contained to the contrary in any wise notwithstanding.'

Mr. Att. Gen. Sir Thomas, I suppose, now will shew he yielded himself to your Lordship.

L. C. J. This is the first time I have seen Sir Thomas.

Sir Thomas Armstrong. My Lord, I have been a Prisoner, and the Year is not yet out; I now render myself.

Mr. Att. Gen. Before he went out of England he might have rendered himself, and been Tried, if he pleased.

Sir Thomas Armstrong. I am within the Benefit of the Statute, I conceive, my Lord.

L. C. J. We think otherwise, Sir Thomas.

Sir Thomas Armstrong. I think, my Lord, the Statute is plain in the Case.

L. C. J. We are of another opinion than you are; it doth not reach your Case.

Sir Thomas Armstrong. The Year is not yet out, and therefore I come time enough now; and here I am, and desire the Benefit of this Act.

L. C. J. Sir Thomas, you should have rendered yourself to me.

Sir Thomas Armstrong. I do it now, my Lord, and the Year is not yet out.

L. C. J. We cannot take notice of that; we have nothing but the Outlawry, and you did not render yourself according to that Act, but are brought as a Prisoner before us now.

Sir Thomas Armstrong. My Lord, I beg I may have Counsel ¶ to plead for me in this Case.

L. C. J. For what reason? We are of opinion it is not a matter of any doubt. For you must not go under the Apprehension that we deny you any thing that is right; there is no Doubt nor Difficulty at all in the Thing §.

Sir Thomas Armstrong. Methinks, my Lord, the Statute is plain.

L. C. J. So it is very plain that you can have no Advantage by it. Captain Richardson, you shall have a Rule for Execution on Friday next.

Sir Thomas Armstrong. I would only take notice of one thing, my Lord, may I speak?

L. C. J. Ay, Sir Thomas, very freely what you please.

Sir Thomas Armstrong. A little while ago there was one in this Place had the Benefit of a Trial offered him, if he would accept of it; that is the thing I desire now, and I thank God, my Case is quite another thing than his, I know my own Innocence; and I desire to make it appear by a Trial.

L. C. J. Sir Thomas Armstrong, You may go away with what Opinion you please, of your own Innocency: But you are here Attainted by Outlawry. That which was done to him you speak of, was the Grace and Mercy of the King, and he may, if he please, extend the same Grace and Favour to you; but that is not our Business: We are satisfied that according to Law we must award Execution upon this Outlawry.

Mrs. Matthews. My Lord, I hope you will not murder my Father; this is murdering a Man.

L. C. J. Who is this Woman? Marshal, take her into Custody. Why, How now? Because your Relation is attainted for High-Treason, must you take upon you to tax the Courts of Justice for Murder, when we grant the Execution according to Law. Take her away.

Mrs. Matthews. God Almighty's Judgments light upon you.

L. C. J. God Almighty's Judgments will light upon those that are Guilty of High-Treason.

Mrs. Matthews. Amen, I pray God.

L. C. J. So say I. But Clamours never prevail upon me at all; I thank God, I am Clamour Proof, and will never fear to do my Duty.

[Then she was carried away.]

\* Burnet's History of his own Times, Vol. I. p. 577. 3. Mod. Rep. 47.

† He was seized at Leiden in Holland by the Scout of that Place, who delivered him up to Chudleigh the King's Envoy for 5000 Guilders, which is something less than 500l.

‡ 5 and 6 Edw. 6. c. 11. Sect. 3. and 4.

§ Here the Prisoner was denied Counsel upon a Point of Law, in which case it was never pretended but he is intitled to it. King and Johnson, Mich. 2. Geo. II. B. R. the Prisoner was allowed to be within the Benefit of the Provision, and tho' he had escaped out of Prison, and was retaken in England, was admitted to prove himself beyond Sea at the time of the Outlawry; and upon proving that he was then at Middleburgh in Zealand, his Outlawry was reversed, and he was admitted to a Trial, and acquitted: Armstrong's Case was declared a Precedent not fit to be followed.



*Mr. Att. Gen.* My Lord, I would only acquaint you with one Thing, in reference to what *Sir Thomas Armstrong* has said: The King did indulge *Holloway*, that he speaks of, it is true, so far as to offer him a Trial, and his Majesty, perhaps might have some reason for it, but the Prisoner truly deserves no sort of Indulgence or Mercy from the King. For it has appeared by the Evidence that has been given of this late horrid Conspiracy, that after the Disappointment that was given by the Providence of God, by the Fire at *New-Market*, to the Meeting at the *Rye*; this Gentleman was one of the Persons that actually engaged to go upon the King's hasty coming to Town, and to destroy him by the Way as he came to Town. And this appears upon a full and clear Evidence, as positively testified as any Thing can be.\* And when he was taken beyond Seas, Letters of Communication with foreign Ministers and other People were taken about him, and will be —

*L. C. J.* We are not to meddle at all with the Evidence, *Mr. Attorney*; that is not our Business: here is an Outlawry; upon this Outlawry he is attainted; we have nothing more to do, but to do the Duty of the Court upon this Record before us, to award Execution upon that Attainder, and we must give a Rule for it. If the King will be pleased to do for *Sir Thomas Armstrong* what he did for *Holloway*, and indulge him a Trial, and wave the Outlawry, with all our Hearts. We are not Disposers of his Grace and Favour, but the Ministers of his Justice. If the King will pardon him, he may; that is not our Business; but all we have to do upon what is before us, is to consider the Record, and what the Prisoner says against our awarding of Execution. We have considered whether this be a yielding within the Proviso of this Statute, and we think it is not, nor can be, by any Means.

*Sir Thomas Armstrong.* My Lord, I am within the Statute. I was outlawed while I was beyond Sea, and I come now here within the Twelve-month. That is all I know, or have to say in this Matter.

*L. C. J.* We think quite the contrary, *Sir Thomas*.

*Sir Thomas Armstrong.* When I was before the Council, my Lord, they ordered that I should have Counsel allotted me, but I could have no Benefit by that Order; for when I was taken, I was robbed of all the Money I had, and have not had one Penny restored to me, nor any Money since; I know not whether the Law allows Persons in my Condition to be robbed and stripped.

*L. C. J.* I know nothing at all of that Matter, *Sir Thomas*.

*Sir Thomas Armstrong.* My Lord, I know Lawyers will not plead without Money, and being robbed, I could not have wherewithal to Fee them.

*L. C. J.* *Sir Thomas Armstrong*, You take the Liberty of saying what you please; you talk of being robbed, no-body has robbed you that I know of.

*Sir Thomas Armstrong.* No-body says you do know of it; but so it is.

*L. C. J.* Nay, be as angry as you will, *Sir Thomas*, we are not concerned at your Anger. We will undoubtedly do our Duty.

*Sir Thomas Armstrong.* I ought to have the Benefit of the Law, and I demand no more.

*L. C. J.* That you shall have by the Grace of God. See that Execution be done on Friday next, according to Law. You shall have the full Benefit of the Law.

Then the Prisoner was carried back to Newgate, and afterwards, upon a Petition, the COURT ordered *Mrs. Matthews* to be released out of Custody without Fees.

THE Sheriffs of London and Middlesex, about Nine o'Clock in the Morning, coming to Newgate, and demanding their Prisoner, he was forthwith delivered to them, and put into a Sledge, and drawn to the Place of Execution, attended by a numerous Guard, and as great a Number of Spectators, of all Degrees and Qualities, as have been seen on such Occasions.

He employed the Time he was drawing to Tyburn in reading *The Whole Duty of Man*, till he came within Sight of the Gallows, and then he laid it by, and with lifted up Hands and Eyes, addressed himself to Heaven, till he came beneath the Tree, where he remained about a quarter of an Hour in the Sledge; before he ascended the Cart that stood ready for him, he desired the Sheriff to admit *Dr. Tenison* to come to him: and having delivered a Paper to the Sheriff, the Doctor knelt down with the Prisoner, and prayed with him about a quarter of an Hour, during all which Time the Prisoner preserved a becoming and heroic Countenance, little daunted with the Terror of that Fate he was in View of; but rising from his Devotions, he pulled off his Cravat and Hat, which he gave to his Servant who attended him, and had follow'd him by the Sledge-side, when kneeling down himself, he pray'd for a short Time with Fervency and Devotion, begging Pardon of his God for those manifold and crying Sins he had been too often guilty of, and concluded with a Resignation of himself to the God of Heaven and Earth, before whose Judgment Seat he was forthwith to appear, desiring that the whole World would forgive him, with whom he hoped he died in Peace and Charity. Having thus ended these Devotions, he again stood up, and putting off his Periwig, he had a white Cap deliver'd to him, which he put on; and being soon after tied up, the chief of his Discourse was addressed to a Gentleman who stood by him; and after a short Space, holding up his Hands, he again renew'd his Prayers; his Visage little changing all the Time, till the very Moment the Cart drew away; the Executioner having pull'd the Cap over his Eyes, he continued his Prayers all the Time, and even whilst he hung, as long as Life was in him, and he had the Command of his Lips; after he had hung about half an Hour, and the Executioner had divested him of his Apparel, he was cut down according to his Sentence, his privy Members burnt, his Head cut off, and shew'd to the People as that of a Traitor, his Heart and Bowels taken out, and committed to the Flames,

and his Body quarter'd into Four Parts, which with his Head, was convey'd back to Newgate, to be dispos'd of according to his Majesty's Pleasure; and were afterwards publicly expos'd:

The Substance of the Paper deliver'd to the Sheriff was, *That he thanked Almighty God, he found himself prepared for Death, his Thoughts set upon another World, and weaned from this; yet he could not but give so much of his little Time as to answer some Calumnies, and particularly what Mr. Attorney accused him of at the Bar.*

*That he prayed to be allowed a Trial for his Life*, according to the Laws of the Land, and urged the Statute of *Edward VI.* which was expressly for it; but it signified nothing, and he was with an extraordinary Roughness condemned and made a Precedent; tho' *Holloway* had it offered him, and he could not but think all the World would conclude his Case very different; else why was it refused to him?

That *Mr. Attorney* charged him for being one of those that were to kill the King, *He took God to witness, that he never had a Thought to take away the King's Life, and that no Man ever had the Impudence to propose so barbarous and base a Thing to him; and that he never was in any Design to alter the Government.*

That if he had been try'd, he could have proved the Lord *Howard's* base Reflections upon him, to be notoriously false——He concluded, That he had lived, and now died of the Reformed Religion, a Protestant in the Communion of the Church of England, and he heartily wish'd he had lived more strictly up to the Religion he believed: That he had found the great Comfort of the Love and Mercy of God, in and through his Blessed Redeemer, in whom he only trusted, and verily hoped that he was going to partake of that Fullness of Joy which is in his Presence, the Hopes whereof infinitely pleased him. He thanked God he had no repining, but cheerfully submitted to the Punishment of his Sins: He freely forgave all the World, even those concerned in taking away his Life, though he could not but think his Sentence very hard, he being denied the Laws of the Land.†

These Proceedings were afterwards enquir'd into, and censur'd as illegal by the House of Commons in 1689.

Martis, 12. November, 1689.

A Petition of the *Lady Armstrong* and her Daughters, was Read; Whereupon a Committee was appointed to examine the Matter, and make their Report to the House.

Resolved,

That it be an Instruction to the Committee, That they examine who were the Judges that gave the Sentence against *Sir Thomas Armstrong*, and who were the Prosecutors of him; and who had his Estate; and how the Petitioners may have Reparation: And also to examine what Proceedings were in order to a Writ of Error by him desired, and how it came to be denied, and by whom: And they are to make their Report with all convenient Speed.

Martis, 19 November, 1689.

*Mr. Christy* reported from the Committee to whom the Petition of the *Lady Armstrong*, and the Daughters of *Sir Thomas Armstrong* was referred; an Account of the whole Proceedings against him; and that thereupon they had come to these Resolves,

1. That *Sir Thomas Armstrong's* Plea ought to have been admitted, according to the Statute of *Edward VI.* and that the Execution of him upon the Attainder by Outlawry, was illegal, and a Murder, by Pretence of Justice.

2. That the Executors and Heirs of *Sir Thomas Armstrong*, ought to have a Reparation of their Losses out of the Estates of those that were his Judges and Prosecutors.

3. That a Writ of Error for the Reversal of a Judgment in Felony or Treason, is the Right of the Subject, and ought to be granted at his Desire, and is not an Act of Grace or Favour; which may be denied or granted at Pleasure.‡

To all which Resolves the House agreed.

Resolved,

That Leave be given to bring in a Bill to Reverse the Attainder of *Sir Thomas Armstrong*, and to make Reparation to his Widow and Children, out of the Estates of the Judges and Prosecutors: And the same to be without Fees.

Monday the 20th of January, 1689.

*Mr. Christy* reported from the Committee, to whom the Bill for the annulling the Attainder of *Sir Thomas Armstrong* was recommitted; some Amendments to the Bill; as also who were his Prosecutors; and also what Losses *Sir Thomas Armstrong's* Family had sustained, by Reason of the Attainder; and thereupon it was Resolved,

That *Sir Richard Holloway*, *Sir Francis Wythins*, the Executors of the late Lord *Jefferies*, and of the late Justice *Walcot*, *Mr. Graham* and *Mr. Burton*, do attend the House on Saturday Morning next, to answer to such Matters, as are charged against them touching the Proceedings against *Sir Thomas Armstrong*.

Then *Mrs. Matthews*, *Sir Thomas Armstrong's* Daughter, was called in, and examined what she knew of the Prosecution against her Father; And *Sir Robert Sawyer* (then Attorney-General) being named by her, as one of the Prosecutors; after she was withdrawn, he was heard in his Place to what was objected against him, and then he withdrew, and upon Debate of the Matter, it was Resolved, That *Sir Robert Sawyer's* Name be put into the Bill, as one of the Prosecutors of *Sir Thomas Armstrong*.

Resolved,

That *Sir Robert Sawyer* be expelled the House for the same.

Saturday the 25th of January, 1689.

The House being acquainted, That according to their Order, *Sir Francis Wythins*, *Sir Richard Holloway*, *Mr. Graham*, and *Mr. Burton*, attended at the Door, they were severally called in, and examined, touching the Prosecution and Proceedings against *Sir Thomas Armstrong*.

\* If this had been so evidently clear, it can scarce be imagin'd they would have been so backward to have wav'd the Outlawry, and let him have his Trial; nothing but a Consciousness of the contrary could, probably, have prevailed to put so strained a Sense on the Statute, in order to deprive him of a Trial.

† See the Paper *Lady Armstrong* deliver'd to Lord Keeper North, Lord Chief Justice *Jefferies*, and the Attorney-General; also *Sir Thomas's* Paper he deliver'd to the Sheriffs: In State-Trials, Vol. VIII. p. 454, 455, 470, 471.

‡ See Salk. 504.

Vol. III.



And also the *Executors* of the late Lord *Jefferies*, that were attending at the Door were likewise called in, and asked what they had to say, why Reparation should not be made out of the Lord *Jefferies*'s Estate, to the said Sir *Thomas Armstrong*'s Family.

No Persons appearing as *Executors* to the late Justice *Walcot*; the House was acquainted that he died *Intestate*, and had not left an Estate sufficient to pay his Debts.

After the Persons before-mentioned were heard and withdrawn, Mr. *Blaney* was called in, who gave the House an Account of the Proceedings in the Court of King's-Bench, upon the awarding Execution against Sir *Thomas Armstrong*.

And then the House proceeded upon the Amendments made by the Committee to the Bill, for annulling the Attainder of Sir *Thomas Armstrong*:

And after having inserted the Name of Sir *Robert Sawyer*, as a Prosecutor, and Resolved, That the Sum of Five Thousand Pounds should be paid by the Judges and Prosecutors, to Sir *Thomas Armstrong*'s Lady, and Children, as a Recompence of the Losses they had sustained by Reason of his Attainder, the Bill was recommitted (upon the Debate of the House) to the same Committee.

This Bill not passing, the Attainder stood in Force till 6 *William and Mary*, when it was reversed upon a Writ of Error in the King's-Bench; for that the Record did not mention where the Court of *Hustings* were held, the Words *pro Civitate London* being omitted. 4 *Mod. Rep.* 366.

CXXIX. Proceedings on a Writ of Inquiry of Damages between His Royal Highness JAMES Duke of YORK, in an Action upon the Statute de Scandalis Magnatum, and Titus Oates, in the King's-Bench, June 18, 1684. Trin. 36 Car. II.

HIS Royal Highness the Duke of York, having brought an Action against *Titus Oates*, grounded upon the Statute de Scandalis Magnatum, for very Slanderous and Opprobrious Words, the Defendant suffered Judgment to go against him by Default, and thereupon a Writ of Inquiry was taken out directed to the Sheriff of the County of *Middlesex*, to enquire by a Jury of that County, what Damages the Plaintiff had sustained thereby, and upon a Motion made at the Court of King's-Bench, a Day was given to the Defendant, to shew Cause why that Writ of Inquiry should not be Executed at the Bar of that Court, which he not doing, it was ordered, That it should be Executed at the Bar on this Day, and that the High Sheriff should appear and attend the Execution of the Writ in Person. Accordingly this Day Sir *Peter Daniel*, Kt. and *Samuel Dashwood*, Esq; the then Sheriffs of the County of *Middlesex*, came into this Court, and being placed at the Table at the Judges Feet, were, during the Execution of the Writ, covered. Mr. *Thomas Rous* the then Under-Sheriff managed it, and proceeded in this manner.

Mr. Under-Sheriff. Crier, Call Sir *Charles Lee*.  
Crier. Vous avez Sir *Charles Lee*.

[Who was sworn thus.

Mr. Under-Sheriff. You shall well and truly enquire of Damages, between the most Illustrious Prince JAMES Duke of York and Albany Plaintiff, and *Titus Oates* Defendant, and therein a true Verdict give according to your Evidence. So help you God.

The rest were sworn thus.

Mr. Under-Sheriff. Sir *William Hill*, Sir *Richard Downton*, and Sir *John Berry*; the same Oath your Foreman hath for his Part taken, you and every of you for your Parts, shall well and truly keep. So help you God.

Mr. Under-Sheriff. *Thomas Harriot*, *Thomas Row*, and *Walter Brydall*; the same Oath, &c. *Edward Guise*, *Thomas Done*, and *William Wood*; the same Oath, &c. *John Sharp*, and *Nehemiah Arnold*; the same Oath, &c.

Will you please to have any more than Twelve sworn?

Sir George L. C. J. How many do you use to have? Pray swear an odd *Jefferies*. Number as you used to do.

Mr. Under-Sheriff. Then I will swear Three more, and that will be just Fifteen.

*Francis Stevens*, *Nicholas Baxter*, and *John Kirk*. The same OATH, &c.

The NAMES of them that were upon the INQUIRY.

Sir <i>Charles Lee</i> , Kt.	<i>Thomas Done</i> , Esq;
Sir <i>William Hill</i> , Kt.	<i>William Wood</i> , Esq;
Sir <i>Richard Downton</i> , Kt.	<i>John Sharp</i> , Esq;
Sir <i>John Berry</i> , Kt.	<i>Nehemiah Arnold</i> , Esq;
<i>Thomas Harriot</i> , Esq;	<i>Francis Stevens</i> , Esq;
<i>Thomas Row</i> , Esq;	<i>Nicholas Baxter</i> , Esq;
<i>Walter Brydall</i> , Esq;	<i>John Kirk</i> , Gent.
<i>Edward Guise</i> , Esq;	

Mr. Under Sheriff. Gentlemen, You are sworn, hear the King's Writ.

L. C. J. Ay, read it to them.

Mr. Under-Sheriff. CHARLES II. by the Grace of God, of England, Scotland, France and Ireland King, Defender of the Faith, &c. to the Sheriff of *Middlesex*, Greeting; Whereas the most Illustrious Prince JAMES Duke of York and Albany, one of the Nobles and Peers of England, our most dear and only Brother, who as well, &c. lately in our Court before Us at *Westminster*, by Bill without our Writ impleaded *Titus Oates*, then in the Custody of the Marshal of our *Marshalsea*, before us being: For that whereas in a Statute made in the Parliament of *Richard II.* late King of England after the Conquest, held at *Gloucester* in the Second Year of his Reign, amongst other Things: It is Ordained and strictly Prohibited, That from thence none should be so hardy to devise, tell or relate of the Prelates, Dukes, Earls, Barons, and other Nobles and Great Men of England, nor of the Chancellor, Treasurer, or Clerk of the Privy Seal, Steward of the King's Household, Justices of the one or the other Bench, nor of other great Officers of the Kingdom aforesaid, any false News, Lies, or any such false Things, whereby Scandal or Discord within the said Kingdom might arise; and whosoever should do this, should incur and have the Penalty otherwise thereon ordained by the

Statute of *Westminster* the First, as in the Statute aforesaid is more fully contained. And whereas the 4th Day of December in the Five and Thirtieth Year of our Reign, and long before the Yearly Rents, Issues and Profits arising, or due and payable for or by Reason of the General Post-Office within this Kingdom of England, for the Carriage of Letters, before were erected and yet are established upon the said most Illustrious Prince JAMES Duke of York and Albany. The aforesaid *Titus Oates* the Statute aforesaid not considering, but the good Name, State, Credit, Dignity, and Honour of the said JAMES Duke of York and Albany, our Brother, devising and maliciously intending to hurt and detract, and Him the said JAMES Duke of York and Albany, our Brother, into the great Displeasure and Hatred of Us, and of the Peers of this Kingdom of England, and also divers other venerable Persons our Subjects, to bring, out of his meer Malice and Envy had and forethought, the aforesaid 4th Day of December, in the Year of our Reign the Five and Thirtieth, at the Parish of St. Martin in the Fields in the County of *Middlesex* aforesaid, upon a certain Discourse then had and moved by and between the aforesaid *Titus Oates* and divers of our Liege People, of and concerning the aforesaid JAMES Duke of York and Albany, our Brother, and of and concerning a certain Letter in the Hand of the aforesaid *Titus Oates* at that Time being, divers false News and horrible Lies of the aforesaid JAMES Duke of York and Albany, our Brother at that Time, and yet being of the Peers and Nobles of this Kingdom, in the Presence and Hearing of divers venerable Persons, Publicly, Falsly, Maliciously, and Scandalously said and related; and with a loud Voice Published in these English Words following, viz. This Letter (the Letter aforesaid, so in the Hands of the aforesaid *Titus Oates* as is before said being, meaning) cost me (the said *Titus Oates*, meaning) Nine Pence, and might have been brought for a Penny, I (himself the aforesaid *Titus Oates* meaning) know nobody is the better for it, but that Traitor JAMES Duke of York (the aforesaid JAMES Duke of York and Albany our only Brother meaning.) And the aforesaid *Titus* further devising and maliciously intending the aforesaid JAMES Duke of York and Albany, our Brother, into the Hatred of Us, and the Peers of this Kingdom of England, and also of divers other venerable Persons, and our Subjects to bring; out of his meer Malice and Envy, had and forethought, the 4th Day of December, the Year above said, at the Parish of St. Martin in the Fields aforesaid, in the County of *Middlesex* aforesaid, upon a certain other Discourse then had and moved by and between the aforesaid *Titus Oates* and several of our Liege People of and concerning the aforesaid JAMES Duke of York and Albany, our Brother, and of and concerning a certain Letter in the Hands of the aforesaid *Titus Oates*, at that Time being, divers other false News and horrible Lies of the aforesaid JAMES Duke of York and Albany, our Brother at that Time, and yet being one of the Nobles and Peers of this Kingdom of England, and our only Brother, in the Presence and Hearing of several venerable Persons, Publicly, Falsly, Maliciously and Scandalously said, related, and with a loud Voice Published, viz. This Letter (the aforesaid Letter so in the Hands of the aforesaid *Titus Oates*, as is before said being, meaning) cost me (the aforesaid *Titus Oates* meaning) Nine Pence, and might have been afforded for a Penny, I (himself the aforesaid *Titus Oates* meaning) know no body is the better for it, but that Traitor JAMES Duke of York (the aforesaid JAMES Duke of York our only Brother meaning.) And afterwards, to Wit, the 5th Day of December in the Thirty Fifth Year above said; the aforesaid *Titus Oates* further devising and maliciously intending the said JAMES Duke of York and Albany our Brother to Scandalize, and into the further Displeasure and Hatred of Us, and of the Great Men of this Kingdom of England, out of his meer Malice and Envy, had and forethought, at the Parish of St. Martin, in the Fields aforesaid, in the County of *Middlesex* aforesaid, the said 5th Day of December, in the Year above said, upon certain other Discourse of the said JAMES Duke of York and Albany, divers false News and horrible Lies of the aforesaid JAMES Duke of York and Albany, Publicly, Falsly, and Maliciously said, related, and with a loud Voice published, to Wit, that the Letter in the Hands of the aforesaid *Titus* at that Time being, cost him the aforesaid *Titus* Nine Pence, but might have been brought for One Penny, and that he knew no body to be the better for it, but that Traitor JAMES Duke of York. And the aforesaid *Titus Oates* further contriving and maliciously intending the aforesaid JAMES Duke of York and Albany, our only Brother, into the further



‘further Displeasure and Hatred of us, and of the Great Men of this Kingdom of England, and also of divers other venerable Persons, and our Subjects, to bring, out of his meer Malice and Envy, had and forethought the 6th Day of December, in the Five and Thirtieth Year above said, at the Parish of St. Martin in the Fields afore said, in the County of Middlesex afore said, upon a certain Discourse at that Time had and moved by and between the afore said Titus Oates and several of our Liege People, of and concerning the afore said JAMES Duke of York and Albany, our Brother, divers other false News and horrible Lies of the afore said JAMES Duke our only Brother, at that Time, and yet being one of the Nobles and Peers of this Kingdom of England, in the Presence and Hearing of divers venerable Persons, Publickly, Falsly, Maliciously and Scandalously said, related, and with a loud Voice published in these English Words following, to Wit, *The Duke of York (the afore said JAMES Duke of York and Albany, our only Brother, meaning) is a Traitor.* And the afore said Titus Oates further contriving, and Maliciously intending the said JAMES Duke of York our Brother, into the Hatred of us, and of the Great Men of this Kingdom of England, and also of divers other venerable Persons, and our Subjects, to bring, out of his meer Malice and Envy, had and forethought the afore said 6th Day of December the Year above said, at the Parish of St. Martin in the Fields, in the County of Middlesex afore said, upon certain other Discourse at that Time had and moved by and between the afore said Titus Oates and divers of our Liege People, of and concerning the afore said JAMES Duke of York and Albany, our only Brother, divers other false News and horrible Lies of the afore said JAMES Duke of York and Albany, our only Brother, and at that Time and yet being one of the Nobles and Peers of this Kingdom of England, in the Presence and Hearing of divers venerable Persons, Publickly, Falsly and Maliciously said, related, and with a loud Voice published; to Wit, *That the said Duke of York was a Traitor.* By reason whereof the said JAMES Duke of York and Albany, our only Brother, in his Reputation, Honour and Dignity is very much hurt and scandaliz’d. And the said JAMES Duke of York and Albany, the Grace, good Opinion and Esteem which we and others the Great Men of this Kingdom of England before towards him JAMES Duke of York and Albany, did bear, utterly lost, and divers Rumours and Scandals between very many Nobles and Peers of this Kingdom of England, and other our Subjects, by the Occasions afore said, within this Kingdom of England, are arisen and divulged, and great Scandals and Discords by Occasion of the Premises between him the afore said JAMES Duke of York and Albany, and divers Nobles and Great Men, and other Subjects of this Kingdom of England, are arisen; and Daily more and more in the like may arise, to the great Disturbance of the Peace and publick Tranquillity of this Kingdom of England, and in Contempt of us and our Government of this Kingdom of England, and to the great Scandal and Grievance of him JAMES Duke of York and Albany, to the Damage of him the said JAMES Duke of York and Albany, our most dear Brother, a Hundred Thousand Pounds: As he then said, and thereupon in our Court before us it was so proceeded, That the afore said JAMES Duke of York and Albany, our only Brother, his Damages against the said Titus Oates by Occasion of the Premises ought to recover: But because it is not known to our Court before us, what Damages the afore said JAMES Duke of York and Albany, our Brother, hath sustained, as well by Occasion of the Premises, as for his Costs and Charges by him about his Suit in this Behalf expended. Therefore We command you, that by the Oaths of good and lawful Men of your Bailiwick, you diligently enquire what Damages the afore said JAMES Duke of York and Albany hath sustained, as well by Occasion of the Premises, as for his Costs and Charges by him about his Suit in this Behalf expended, and the Inquisition which thereupon you shall take, you shall have before Us at Westminster on Wednesday next after Three Weeks of the Holy Trinity, under your Seal, and the Seals of them by whose Oath you take that Inquisition, distinctly and openly you send, and this Writ. *Teste Sir George Jefferies, Knight and Baronet, at Westminster, the Thirtieth Day of May, in the Year of our Reign the Six and Thirtieth.*

Ri. Swift.

Henley.

You are to enquire what Damage his Royal Highness the Plaintiff has sustained, by means of the Premises; as also, what Costs he has been at in this Suit.

Mr. Hanfes. May it please your Lordship, you Mr. Sheriffs, and Gentlemen of the Jury, His Royal Highness the Duke of York is Plaintiff, and Titus Oates is the Defendant: And this is, in an Action of Trespas and Contempt, grounded upon the Statute of *Scandalum Magnatum*, wherein His Royal Highness sets forth, That whereas such a Statute was made, prohibiting the Slandering the Great Men and Peers of the Kingdom, and the Plaintiff being the King’s only Brother, and a Peer, the Defendant upon a Discourse between him the Defendant and some other Persons, about a Letter that the Defendant had then in his Hands, Publickly, Falsly, and with an Intent to Scandalize the Plaintiff, spoke these English Words:

*This Letter (meaning the Letter then in the Defendant’s Hands) cost me (meaning the Defendant) Nine Pence, and might have been brought for a Penny; I (meaning the Defendant) know nobody is the better for it, but that Traitor JAMES Duke of YORK, meaning the Plaintiff.*

Gentlemen, This is not all, the Declaration goes on further, and says, That the Defendant intending further to Scandalize the Plaintiff, the Sixth of December in the Thirty Fifth Year of this King upon a Discourse had and moved by and between him the Defendant and some other Persons, in the Presence of divers venerable Persons, said these Words of the Plaintiff:

*The Duke of York (meaning the Plaintiff) is a Traitor: And this is laid to the Plaintiff’s Damage of One Hundred Thousand Pounds: The*

Defendant has not pleaded, and the Plaintiff has signed his Judgment; and now you, Gentlemen are to enquire of the Damages.

Mr. Att. Gen. You observe, Gentlemen, the Words are acknowledged by the Defendant’s Default, and not Pleading; so that they were spoken is owned by him, and you are to enquire only of the Damages: And, I think, there will need nothing to be said for the Aggravation of them, they are Words of the highest Nature, in Respect of Slander and Scandal, that can be spoken or thought of, accusing him of Treason. We shall only call you some Witnesses to prove this way of Discourse to be his constant Habit in all Places, and among all Persons and Company, inveighing against the Government, and particularly against His Royal Highness the Plaintiff; and then you will, I know, give such Damages as may be fit to repair the Plaintiff’s Honour.

Mr. Sol. Gen. We will call some Witnesses to give you an Account how he uses to treat the Plaintiff in all Companies, and we shall begin with Mr. Smith. And the Truth is, the proving of the Words, will demonstrate the Malice of them; and the Manner and Circumstances of speaking, will make them appear to be such, as need nothing to be said for their Aggravation at all. Swear Mr. James Smith.

Mr. Under-Sheriff. The Evidence that you shall give to the Sheriffs and the Jury, sworn about the Matter in Question, shall be the Truth, the whole Truth, and nothing but the Truth.

Mr. Sol. Gen. Mr. Smith, pray will you tell the Court and the Jury, what you have heard the Defendant Oates say of his Royal Highness.

Mr. Smith. At the last Westminster Parliament, as I was sitting in a Coffee-House, I saw Mr. Oates, he had a Letter in his Hand, and he said, *This Letter cost me Nine Pence, it might have been brought for a Penny, I know nobody that is the better for it but a Traitor, to the best of my Remembrance he said, the Duke of York.*

Mr. At. Gen. Swear Mr. Penniston Whaley. [Which was done.] What Words did you hear Mr. Oates say of His Royal Highness?

Mr. Whaley. The Time was either the Easter or Whitsuntide after Sir Thomas Gascoigne’s Trial.

Mr. Sol. Gen. What were the Words you then heard him say?

Mr. Whaley. It was at the Bishop of Ely’s Table at Ely House. I had received the Sacrament at the Chapel there that Day, and so had the Doctor too; it was upon Easter-day or Whitsunday, I suppose, because I never used to receive the Sacrament here in Town, but one of those two Times; and Dr. Oates and I were sitting there, and some Discourse happened about Sir Thomas Gascoigne’s Trial, and he fell very foul upon the Jury, and said, *They were a Company of profligate Villains (or some such Expressions as he was wont to use) and said, He would have them Attainted.* Then said I to him, Doctor, you are a good Man at a Matter of Fact, but, I doubt, you are not so at a Matter of Law. Upon that, we came to some high Words about that and other Things, and among the rest of the Discourse, he said, *The Duke of YORK was a Traitor.* Upon that I said to him, Doctor, you lie under a great Error in that, I suppose, by mistaking a Statute made against Popery; says he, *No matter for that, I say he is a Traitor.* Then there were some other Discourses happened afterwards, and I began to reply, and growing both of us pretty warm, the Doctor called to his two Men, his Myrmidons, that used to be always with him, and follow him up and down: Said I to him, Nay, Doctor, you need not call your Men to your Assistance, there is nobody here will hurt you: Do you think the Bishop of Ely’s Table is not a Protection good enough for any body that comes here?

L. C. J. Where was this, Sir, pray do you say?

Mr. Whaley. At the Bishop of Ely’s Table.

L. C. J. Was the Bishop there, then?

Mr. Whaley. He was at the Table, but at a great Distance from us, the Doctor and I sat at the lower End of the Table. Afterwards I begged the Bishop of Ely’s Pardon, for being so hot and loud at his Table; says the Bishop to me, *I thank you kindly for it, none of us dare talk with him.*

L. C. J. And this you say was at Dinner after the Sacrament was over?

Mr. Whaley. Yes, it was so.

Mr. North. Then swear Edward Johnson.

[Which was done.]

Mr. Att. Gen. Mr. Johnson, Pray will you give the Court and Jury an Account, what Discourse you have heard from the Defendant, Mr. Oates, against the Plaintiff.

Mr. Johnson. Upon the Three and Twentieth of August, 1680, I met Dr. Oates, and said, Good-morrow Doctor, all Things will go well now —

L. C. J. You mean him they call Dr. Oates, I suppose.

Mr. Johnson. Yes, they used to call him so; said I, Good-morrow Doctor, all Things will go well now, for there is a Parliament to meet in a little Time. No, said he, *not till YORK is either Banished or Hanged; but of the two, Hanging is the fittest for him.* Said I, Do not talk so, Doctor: Says he: *I speak nothing but what is true; he has a good Brother, but he takes all the Courses in the World to undo him: And then the Doctor and my Lord Howard went away together.*

Mr. Sol. Gen. Swear Randall Bowring.

[Which was done.]

What have you heard Mr. Oates say of the Duke of YORK?

Mr. Bowring. About the middle of October, 1679, there were several Persons at Dinner with the Doctor.

L. C. J. What Doctor, prithee?

Mr. Bowring. Mr. Oates.

L. C. J. Mr. Oates we know very well, but we do not so well know who this Doctor is.

Mr. Bowring. They used to call him Doctor, or I should not have taken upon me to give him the Title.

L. C. J. Well, go on: There were several Persons at Dinner with him, and what then?

Mr. Bowring. There happened some Discourse concerning His Royal Highness.

L. C. J.



L. C. J. Where was this?

Mr. Bowring. At his Lodgings at *Whitehall*: And a Gentleman that was there, said, In case His Royal Highness were a Papist, how should we be secured, that in Case he come to the Succession of the Crown, he would not bring in Popery among us? Then the Doctor replied, *I would not have you trouble yourself about that, for he shall be hanged before that Time.*

Mr. Att. Gen. What have you heard him say any where else; at *Foster-Lane*, or any other Place?

Mr. Bowring. After the Sermon he had preached there at *Foster-Lane Church*, the Church-Wardens, and some of the Parish, invited him into the Vestry to drink a Glass of Wine.

L. C. J. What? He made as if he would preach there?

Mr. Bowring. He did preach there, and then the Church-Wardens invited him to Dinner; but then he asked them, *If ever any of them had dined with JAMES Duke of YORK, at any of the Feasts of the City, where the Duke used to come sometimes?* To which none of them answering a Word, he replied, *He would not dine with any Man that had eat with the Devil.* And so would not go to dine with them, but went and dined at a private Brasier's by *London-Wall*.

L. C. J. An excellent Gospel-Preacher upon my Word.

Mr. Att. Gen. What Brasier was that?

Mr. Bowring. Truly I do not well know his Name.

Mr. Att. Gen. Where did he live?

Mr. Bowring. By *London-Wall*.

Mr. Sol. Gen. Then swear Mr. Fairfax.

[Which was done.]

Pray, Sir, tell my Lord and the Jury what Words you heard this Man speak of His Royal Highness.

Mr. Fairfax. May it please your Lordship, in August 1679, I happened to come into the Company of *Oates* the Defendant, upon the account of an Election that was to be of Parliament-Men for *Grinstead* in *Suffex*, by the means of one *Aukland*; *Oates* was to go down thither in my Lord *Wharton's* Coach, and then we came first to be acquainted, and afterwards we frequently did eat together, and became very well acquainted. And in my Lord *Scroggs's* Time, when he was Lord Chief Justice, there was some Presentment intended to be brought in by the Grand Jury here at the Term, against his Royal Highness for being a Papist, and not coming to Church, and this *Oates* was the main Prosecutor of it. He was used often to come up to me, and speak to me when he met me; and I was about that Time walking in the Court that was built up here for the Trial of the Lords in the *Tower*; it was after that Grand Jury were dismissed, which was done a Day or two before they used to be dismissed in the ordinary course, and walking there I met *Oates*, and said I to him, Doctor, Now you are Non-suited, what will you do now? Oh, says he, *We will do well enough; there will be a Sessions after the Term, and there we will at him again; and we will have no more Regard for him, than if he were Scavenger of Kent-Street.* And upon that he was called away from me, and he went away.

Mr. Sol. Gen. Swear Mr. Philips.

[Which was done.]

Mr. Att. Gen. Come, Mr. Philips, will you acquaint my Lord and the Jury, what you have heard *Oates* say of the Duke of *YORK*?

Mr. Philips. In or about January (78) may it please your Lordship, I was in the Company of one *Deacon*, at *Oates's* Lodgings at *Whitehall*, where Mr. *Oates* said, *He hoped to see your or our Master JAMES* (meaning the Duke of *YORK*, His Royal Highness I suppose) *at the Bar of the House of Commons; and it would be no Disparagement to him to appear there, for there were better Men Members of that House than he was.*

L. C. J. Pray what was the Occasion of this Discourse?

Mr. Philips. Truly it was a Discourse of his own; he ran it on, we talk'd but little to him.

L. C. J. Who did he apply himself to in that Discourse?

Mr. Philips. To us two, Mr. *Deacon* and I.

L. C. J. How came he to mention your Master *JAMES*, had you any Relation to the Service of his Royal Highness?

Mr. Philips. No, my Lord, we had not; but he said, either our Master, or your Master: He run on in such kind of Discourse as he used to do.

L. C. J. But do you think he intended his Royal Highness, when he named your Master *JAMES*?

Mr. Philips. I could not imagine he did mean any body else.

Mr. Att. Gen. Then swear *William Aphlock*.

[Which was done.]

Pray will you acquaint my Lord and the Jury, what Words you have heard him speak of his ROYAL HIGHNESS.

Mr. Aphlock. May it please your Lordship, in Easter-Term 1682, Dr. *Oates* —

Mr. Att. Gen. Mr. *Oates*, you mean.

Mr. Aphlock. Mr. *Oates* went out one Morning, with *Dolben* and *Robin Nichols*, two of his Men, from his Lodgings at *Whitehall*, and while he was dressing, he said he went out, in order to draw up a Bill of Indictment against the Duke of *York*; but he did not do it, because he was otherwise advised by some Persons, as I heard. Then at *Michaelmas*, 1682, when he was going to dress him, I held the Basin to him to wash, as he commonly had two or three every Day to wait upon him to dress him, there came in a Gentleman, that came newly out of *Suffex*, I cannot remember his Name: He asked him how all Friends did in *Suffex*, and then fell a talking about the Election of Sheriffs, and abusing them that were then chosen, and reflected very much upon Sir *John Moor*, and called him Rogue, and said he deserved to be hanged up as an Example. And afterwards, he said, the City of *London* was fired by the Duke of *YORK's* Order, and Sir *Thomas Bloodworth* had a Hand in it; and the Forces at *Black-Heath* were to have plundered the City, and killed all the honest Protestant Dissenters in *London*: And this he would prove, if ever they had a Parliament to their Mind that should sit. At another Time there was one *Starkey*, *Henry Starkey*, that was concerned in *Colledge's* Business at *Oxford*, and one Mr. *Paschall*, and, I think, Captain *Clare*, and some others that used to keep him Company, and Mr. *Oates* stepped up on a sudden, and said, *The Duke of York was a Son of a Whore, and he should*

live to see him hanged; and if they could but get a Parliament to their Mind, they would soon send the Duke and all his Gang out of England, for he must never expect to succeed to the Crown.

Mr. Sol. Gen. Pray who did he say was to head the Forces at *Black-Heath* that you talk of were to plunder the City?

Mr. Aphlock. The Duke of *YORK*; and *London* was fired by his Order; and this he would prove, if they could but get a Parliament to their Mind, And he said, *They should take away the Post-Office from the Duke of YORK, and give it to the Duke of Monmouth.*

Mr. Sol. Gen. Then call Captain *Cressett*, and swear him.

[Which was done.]

Mr. Att. Gen. Capt. *Cressett*. Pray do you remember what Discourse you had with *Oates*, when the Duke went into *Flanders*, what he said of his Royal Highness?

Capt. *Cressett*. It was the last Time the Duke went into *Scotland* with her Royal Highness, I think it was in October 1680. I was commanded over Night to wait at the Duke's Lodgings, till a Paper should be delivered me by my Lord *Rochester*; I stay'd there till Twelve o'Clock at Night, and not seeing my Lord come out, I went away, and came early next Morning. And when the Duke and Dutches went to take Water at the *Privy-Stairs*, I came down through the Guard-Chamber, and Dr. *Oates* was in the Gallery that leads betwixt that and the Gate; when he saw me, I bid him, Good-morrow Doctor, or he bid me, Good-morrow; one of the two, I cannot exactly tell which: Says he to me, *You will never leave till you have lost your Reputation.* Why, what is the Matter now, Doctor, said I, I hope my Reputation is not hung upon so slender a Thread, as to be lost for my going any where? Says he, *You have been with JAMES: Who do you mean by JAMES, said I? YORK, says he. Surely, said I, it might have been the Duke of YORK, or his Royal Highness: No, said he, he is a Rascal, a Papist, and a Traitor, and I hope to live to see him hanged.* Truly Doctor, said I, now let me give you a little Advice to govern your Tongue and your Passions. I assure you, they will do neither you nor your Cause good; it may do you a great deal of Hurt in Time, if you do not take Care.

Mr. Sol. Gen. Call Sir *William Jennings*.

Mr. Att. Gen. Truly, my Lord, I think we need call no more, though we have Multitudes of them, it is his daily Discourse.

L. C. J. Call whom you will, Mr. Attorney; for though it be the last Day of the Term, and it is an unusual Thing to have a Jury at the Bar on that Day, and more unusual to have them to Execute a *Writ of Enquiry* here; yet in Regard of the Greatness of the Person that is concerned, and the extraordinary Nature of the Cause, We have ordered it thus, *That all the World may see how His Royal Highness has been abused and scandalized by this Person.*

Mr. Att. Gen. The Defendant, My Lord, has been a Person pretty much talked of too.

L. C. J. Yes, truly, it is done with Regard to him too; for he has been an eminent Man in his Way.

Mr. Sol. Gen. Then swear Sir *William Jennings*.

[Which was done.]

Mr. Att. Gen. Now, Sir *William Jennings*, speak out, you hear the Question, What have you heard *Oates* say of the Duke of *YORK*?

Sir *William Jennings*. My Lord, at the Time of the Sitting of the Parliament at *Oxford*, I was in a Tavern there with Mr. *Cranfield*, one of the King's Gentlemen-Ushers, who seeing Mr. *Oates* going along by the Room, invites him to drink a Glass of Wine, there were a matter of some Eight or Nine at the Table; there was a little Partition-Curtain, it being a long Room, and there was some Company beyond that Curtain, somebody in that Company named *James Duke of YORK*, and the KING's Health being drank at our Table, Mr. *Cranfield* began a Health to the DUKE: Says Mr. *Oates*, *Do not you Drink YORK's Health.* Why should we not, says Mr. *Cranfield*, and a Gentleman or Two more in the Company: *Why*, says he, *he has ruined the Nation; and if the Devil has a Place in Hell more hot than others, I hope he will bestow it upon him.* Several Words past between Mr. *Cranfield* and him upon it, and the KING was told of it presently.

Mr. Att. Gen. Swear Justice *Warcup*.

[Which was done.]

Pray tell what you know of this Man's Discoursing concerning the Duke.

Mr. *Warcup*. My Lord, I went into the Company where Sir *William Jennings* was that he spoke last of, and being desired to drink a Glass of Wine with them, I did so, and they told me what Dr. *Oates* had said there.

L. C. J. Mr. *Oates*, *Titus Oates* you mean?

Mr. *Warcup*. Yes, my Lord, the Room had a Partition by a Hanging or Curtain, and I was first in the other Company beyond the Partition, and there somebody began a Health to His Royal Highness the Duke of *York*; this Health went round, and *Oates* was, it seems, in the next Room, and heard this Health I suppose: When I came into Sir *William Jennings's* Company, *Oates* was gone; the Company there told me what *Oates* had said, as Sir *William Jennings* had declared, they all agreed those to be the Words, *That he had ruined or betrayed the Nation; and if the Devil had a better place in Hell than other, he hoped he would bestow it upon him.* I met *Oates* afterwards, and asked him why he would speak such irreverent Words of the DUKE? His Answer was, *He was a Traitor, and was in the Plot; and he told me, I was a Yorkist, and he would remember me for it.*

Mr. Att. Gen. Did not that affright you, Mr. *Warcup*, to have him threaten you so?

Mr. *Warcup*. I had then an Impeachment against me, and truly I think I might well be afraid.

L. C. J. You say, he owned the Words they told you of?

Mr. *Warcup*. They did all agree those to be the Words; and I met him afterwards, and asked him why he would speak so irreverently of the Duke, considering he was the King's Brother, and as Virtuous a Prince as trod upon the Earth? Says he, *He is a Traitor, and in the Plot; and you are a Yorkist, and I will remember you for it.*

Mr. Sol. Gen. We shall only call one more, to shew in what Mind he continues to be, ever since this Action was brought. Swear Mr. *Charles Chapman*.

[Which was done.]

Pray, Sir, Tell what you know.

Mr.



Mr. Chapman. My Lord, I met Mr. Swift, the Duke of York's Attorney, when he was going over, as he told me, to demand a Plea of the Defendant Mr. Oates, and he desired me to go along with him, I did so; and when we came to him, Mr. Swift told Oates the Rules were out, and desired to know what he intended to do, whether he would plead or no. Oates asked him, *If he were the Duke's Attorney?* He answered him, Yes; Says he, *I do not value the Duke nor his Attorney neither, I will plead as I shall see Cause according to Law; I declare I neither Love the Duke, nor fear him:* And so turned his back, and was going away, and comes up again, and says to him, *It may be I may be in for One hundred thousand Pounds here, but if ever a Parliament sit, I do not question but to have somebody else in my place.* Mr. Swift asked him to explain himself who he meant, says he, *Do you come to Trepan me?* And away he went.

Mr. Att. Gen. My Lord, we have now done, if the Jury please to consider of it.

L. C. J. Is there any body here for Mr. Oates, to offer any thing to lessen the damages? *[To which no body answered.]*

Then, Gentlemen of the Jury, your Business now is to enquire what Damages you think fit to assess to His Royal Highness, by reason of the speaking of the Words mentioned in the Declaration, there being in this Action Judgment by Default obtained by His Royal Highness; and you have nothing now to do, but only to assess to the Plaintiff such Damages as you shall think fit.

Now, Gentlemen, tho' the Acknowledgment of this Judgment (for so it is in effect, it being by Default) be a sufficient Confession of the Words being spoken as they are laid in the Declaration, yet they have given you Proof of the very Words.

The Declaration is in an Action grounded upon the Statue *De Scandalis Magnatum*, taking notice that His Royal Highness is a great Peer of this Kingdom, and His Majesty's only Brother; and that Oates the Defendant knowing him to be so, to bring him under Reproach and Calumny, and to cause Discord to arise between the King and him, and between him and other Great Men, did speak the Words laid in the Declaration which you have heard read, and which are these.

The first are, *This Letter (Oates having a Letter in his Hand) cost me nine Pence, and might have been brought for a Penny; I know no body is the better for it, but that Traitor JAMES Duke of York.* This is laid over again with a very little Variation, *This Letter cost me nine Pence, and might have been afforded for a Penny I know no body is the better for it but that Traitor JAMES Duke of York;* which are Words of the same sound, and to the same purpose with the former; they differ only in some minute Circumstances, a Word or so, but import the same thing.

The next Words are these, *The Duke of York is a Traitor;* and these Words too are laid two several ways, differing but in very small Circumstances, *(Is a Traitor, and was a Traitor,)* the Substance of the Words is the same.

Now I say, Gentlemen, Tho' it is not your Business to enquire whether or no Oates spoke these Words, for by letting Judgment go against him by Default, he doth in Law confess the Words, but you are to enquire what Damages may be fit to be given to the Plaintiff by reason of these Words; yet in as much as this Cause is a Cause of an extraordinary Nature, Weight and Moment, having relation to so great a Prince, His Royal Highness the King's only Brother, requires this extraordinary Solemnity, it having not been usual heretofore, that is to have Writs of Enquiry executed at the Bar. But the Occasion is extraordinary, such as has not happened before this Age, this Corrupt Age, this Profligate Age, wherein we live, and wherein common ordinary Fellows, the meer Scum and Scoundrels of the Factious Party, have taken the Liberty to reproach and calumniate Magistracy and Government, and the greatest Personages concern'd in it, not sparing even Majesty itself, nor him, who is next in Degree to His Sacred Person, His only Dear and Royal Brother. And therefore as the Cause is extraordinary in its Nature, so ought the Example of it to be made as publick as can be, in order to satisfy all People what a sort of Fellow this Defendant is, who has been so much adored and looked upon with an Eye of Admiration, courted with so wonderful an Affection, and so, I had almost said, *Hojanna'd* among People that have been Factious and Tumultuous to the Government.

Such as he ought to be made publick Examples of; and therefore the King's Counsel have desired that this Cause might be canvassed here at the Bar, and the Defendant, as he has made himself eminent for some particular Qualifications, might be made a publick Example for this Offence.

Thus this Writ comes to be executed here. Now though the Words laid in this Declaration are Words that do import in themselves so much Scandal and Reproach, so much Malice and Venom, that they need no Aggravation besides themselves; and his suffering it to go by Default shews they are no way to be extenuated, but are thereby acknowledged: Yet, however, to satisfy all People that desire or have any Inclination to be satisfied, that this Prosecution is highly reasonable, nay absolutely necessary; they come here and give you an account that these in the Declaration are but a small Part of the scandalous and malicious Words that the Defendant useth concerning the Plaintiff. And indeed it doth plainly appear, that the Malice of the Defendant is attended with all the most unchristian and uncharitable, as well as disloyal and disobedient Circumstances that any thing can be, with design to traduce and disparage a Subject so Loyal, and a Person so Great and Illustrious as His Royal Highness.

As to the first Words, you have the first Witness Mr. Smith, and he gives you this Account, He was in a Coffee-House where he met the Defendant Oates; and the Defendant in a vain-glorious huffing sort of manner takes occasion, tho' none was offer'd him by any thing spoken to him by any body, but only on set purpose to express his Malice and Venom against the Plaintiff. He takes up a Letter that it seems came to him by the Post, and to gratify his own malicious Inclination, and to give it vent, he proclaims, *This Letter cost me Nine Pence, it might have been*

*brought or afforded for a Penny; and I know no body is the better for it but that Traitor JAMES Duke of York.*

So you see, Gentlemen, he takes hold of every little Occasion, if he can but happen upon an Opportunity, such as this was in an open Coffee-house, to wreck his Malice upon his Royal Highness. And sure there can be no greater Imputation of Scandal brought upon any Man than this upon the Plaintiff. That the first and greatest Subject of the King of England's should be taxed with the greatest Crime in the Law, Disloyalty and Treason to his Sovereign. And so at once not only chargeth him with being perfidious to his only Brother, against that Affection which by Nature he is obliged to pay him, and which all that know any thing, cannot but observe to have always been extraordinary; but also touches that which is much dearer to him than his Life, his Honour, by charging him with the foulest of Crimes, Treason and Breach of his Allegiance, which as a Subject he owes to his Sovereign. And thus besides the Defendant's Confession by this Judgment you have the very Words proved that are in the Declaration.

The next Witness is one Mr. Whaley, and he gives you an Account of another Passage which I cannot but take notice of by the way, to shew you what a wonderful Christian Temper this Man is endued with. Mr. Whaley says, That being at the Bishop of Ely's House upon a Publick Festival either of *Easter* or *Whitsuntide*, (and he is sure it was one of those two, *Because*, says he, *I never use to receive the Sacrament in London but upon one of those two Days; and therefore I take it upon me to say, it was one of those two Days that I heard these Words*) Oates having, it seems, received the Holy Sacrament at the Bishop of Ely's Chapel with Mr. Whaley that Day. When a body would have thought, that if Mr. Oates would have been believed to be so hearty and pious a Protestant as he pretends to be, he should have remember'd that he ought, according to the Protestant Doctrine, to have left behind him, at his Approach to the Altar, all Malice and Rancour, and Ill-will and Hatred to every body: But you see what kind of Deportment his was.

For after such time as he had been at the Sacrament, he takes occasion without any Provocation to fall foul immediately upon His Royal Highness, giving him the Name of a *Profligate Wretch*, and then particularly he comes to say, *The Duke of York was a Traitor.* This Gentleman being concerned, as every honest and loyal Man ought to be, and I hope every good Subject is, and ever will be, to hear so great a Prince, the King's only Brother, so traduced and vilified, reproved him for it; but so far was he from taking the Correction due to his extravagant Tongue in a becoming manner, that he presently (as the Gentleman phraseth it) calls for his Myrmidons, two Fellows that he had along with him, to come to him; upon which the Gentleman was pleased to say to him, *Nay, good Mr. Oates, you need not be in so very much Fear of yourself as to call for your Men, no body here intends you any harm.* Nay certainly, Mr. Oates did apprehend himself to be secure from all manner of Correction, or he would never have been so impudent to speak such Words.

But you will no doubt take notice, as all Men cannot but do, of what an excellent Gospel-Spirit, what a delicate Christian Temper the Man is of, after the receiving the Sacrament, that very Morning to come and belch out such extravagant Words of Calumny and Reproach.

And it seems this Person had obtained to make such a wonderful Figure in the World, that every body was afraid to speak to him; for you hear what the Witness says when he came to beg the Bishop of Ely's Pardon for being so loud and hot at his Table; the Bishop gave him Thanks for it, and told him, *None of us dared to speak to him.* Such a considerable Man hath he been, that he might rail against the King, and the Duke, and the Government without Controul. He was got into such a Post that no body durst meddle with him, but he must have liberty to say any thing of any body. To what an height of Corruption were we grown, that we could suffer such a Fellow's Insolence, at which no Man living, that has any spark of Modesty or Loyalty left in him, but must blush and tremble.

Then they produce to you one Mr. Johnson, who gives you an Account, that after some Discourse between him and the Defendant Oates, about the Duke of York, he immediately told Johnson, *That the Duke was either to be hanged or banished;* it seems he was so ill a Man in his Eye, *but of the two, hanging was the fitter for him.* So the Doctor sheweth what a wonderful kindness and Affection he has for the Duke, and what Thoughts he has of his great Deserts.

Mr. Bowring is the next Witness, and he comes and tells you, That the Doctor could not be prevailed with to dine with the Gentlemen of the Parish of *Foster-Lane*, because some of them had dined with the Duke, which he calls *Dining with the Devil.* It seems he made as tho' he would preach there to them, he got up into the Pulpit and took a Text, and pretended to preach, and if he would have preached according to the Duty of a Church of England Divine, he was by that to have preached not only Obedience and Submission to Authority; but Respect to Superiors, and Charity among all Subjects towards one another; and if he did preach it, it was worse in him not to practise it. But you see after he had performed his painful laborious Preachment, after he had taken such a wonderful deal of pains, as no doubt he did in instructing his Auditors, what his Language is in Answer to a Civil Invitation to Dinner by the Church-Wardens: *Have any of you dined with York at the City Feasts?* And they not answering; but being silently amazed at the impertinent Impudence of the Question, *why truly he would not dine with those that had dined with the Devil.* It seems His Royal Highness had been pleased to honour some Societies of Loyal Men in the City of London with his Company at some Entertainments they made, and that is a great Offence to the Defendant; and as for those that had received that Royal Favour from His Highness, he takes notice of them as such whom he would neither eat nor drink with, *for truly they had eaten and drank with the Devil;* but immediately the Doctor, in his great Zeal and wonderful Concern for the Protestant Religion,



broke up from the Company, would neither eat nor drink with them, but chose rather to dine at a private *Brasier's* by *London-Wall*; a properer Place in good Truth for him, than any such Conversation they offer'd him.

Then further to shew what mean Thoughts he had of the Plaintiff, Mr. *Fairfax* he comes and testifies, That there being some Talk of a Presentment or Indictment against the Duke of York by the Grand Jury here, but that meeting with a Disappointment, he met *Oates*, and asked him, *What he would do, for, says he, now you are N.n-suited?* That is, You have happened not to obtain the End that you designed: *Oh, says Oates, No matter for that, that is all one, we will at him next Sessions; and for my part, I will have no more regard to him than I would to a Scavenger.* Nay, and because they should see the very utmost of his Malice, and the low Thoughts he had of His Royal Highness, as if it had not been malicious enough to have compared him to a Scavenger of *London* or *Westminster*, no, that was a Station too honourable for him in his Thoughts, but he must necessarily be compared to a Scavenger of *Kent-street*; which we all know to be one of the meanest, filthiest, and most beggarly Parts of the Town.

The next piece of Evidence is, that which is given by one Mr. *Philips*; and when he came to him, he began to have some Reflections about the House of Commons and the Duke; and truly he did not doubt but he should see him at the Bar of the House of Commons; and it would be no Disparagement to him to come there, for there were a great many Members there that were as good Men or better than he. And even by this Fancy of his he would fain degrade His Royal Highness; for in case he had him in no other Consideration but as a Peer, he should know that no Peer of this Realm can be forced by any Vote or Order of the House of Commons to come to their Bar. But he had a mind to take off his very Privilege of Peerage, and it would be no lessening of his Greatness, since that House had in it many Members better Men than the Duke himself. I presume he meant some particular Friends of his own in that House.

The next Man is one Mr. *Aphlock*, and he tells you, That because he would engage all People into an Hatred of the Duke's Person, he must, as a thing of the greatest Consequence in order to it, make it be believed, that the Duke had a great Hand and Concern in the dismal Fire of *London* in Sixty-six, that thereby he might make him obnoxious to the Rancour and Malice of all that suffered in that dreadful Calamity. And with what handsome Expression he clothes it? *He fired the City of London, he is the Son of a Whore, and we will have him hanged or sent out of England for it, whenever a Parliament meets.*

So that here is not only a Personal Reflection, and Malicious Indignity done to His Royal Highness, but carries in it a great Reflection upon His Sacred Majesty himself in his Relations; and he is not contented only to belch out his Venom and Malice against those that are alive, but even against those that are dead too. For you see it is a most foul Imputation and Slander against Her late Majesty the Queen, Mother to our Sovereign and His Brother, by calling him the *Son of a Whore*; which is an Expression of that impudent and insolent Nature, as is not fit to be mentioned in a Civil Government.

These things I think myself obliged to take notice of for Example's sake, and to induce all People to consider to what a height of Corruption we were grown, when such Scoundrel Fellows as this dare to take such base Words into his Mouth, of the Royal Family.

Then comes Captain *Cressett*, and he gives you an Account, That when His Royal Highness and the Dutchess were going last to *Scotland*, as the Captain return'd from the Duke's Lodgings, he met with the Defendant, who fell upon him, *What, you have been with JAMES?* It seems he was one of his intimate Acquaintance, and very familiar he was with his Name. Indeed a Man would have thought, if in case he had spoke as one Man ought to speak of another, that he had been speaking of one of his Myrmidons, and it would have been a very hard matter to have known who else he meant by that familiar Appellation. Says the Captain, *What James? Why York.* And he was very kind that he gave him that Addition to let him know what JAMES he meant; but when the Captain chid him, and told him, *Sure you might either say the Duke of York, or His Royal Highness;* then immediately, instead of that, he flies out, *He is a Papist, he is a Traitor, and I hope to live to see him hang'd, and you will go near to lose your Reputation if you go so often thither.*

So that I perceive, if he will not be advised by this Gentleman, he should lose all his Credit; and yet I presume it is wonderfully for the Advantage of Mr. *Cressett*, to lose the Credit he could get by any Characters or Commendations such an one as he could give him.

Then Captain *Cressett* kindly advised him to take care of injuring his Party by his Passion and his indecent Behaviour, and told him, it would turn to his Prejudice at last. And truly now, I think, if all his Party were in his Condition, and made to smart for the Lavishness of their Tongues, I think it were a good Accomplishment of his Prophecy, and if we were rid of them, we should be more at Peace. And we may without offence hope to see that sooner, than what the Defendant says he hoped to see.

The next is Sir *William Jennings*, who tells you of a Passage at the Parliament at *Oxford*, which shews his wonderful Gospel and Christian Temper. When a Company of Gentlemen were met together to drink a Glass of Wine, and were wishing Health and Long Life to His Sacred Majesty, His Royal Highness, and the Royal Family, he would not be contented to refuse the Glass, but to shew how wonderful a Christian Spirit he was of, and to evidence his true Protestant Charity (and by his Carriage who was one of the Heads of the Faction, we may guess at the Temper of all the Party) he cries out, *He has ruined the Nation, and if there be any better Place in Hell than other, I hope the Devil will preserve it for him.*

I presume his great Conversation with him he spoke of, hath given him some Intelligence there is in Hell some hotter Places than others, and who they are reserved for. But, Gentlemen, I speak not this that I think any thing that is thus proved by the by doth in the least aggravate the Damages, for the Words in the Declaration are as bad as bad can be; but to let you see the Disposition of this Man that has been so much admired and courted.

After him comes Mr. *Warcup*, who tells you, he was not in the Room with *Oates* when the last Words were spoken; but coming in immediately after, they all told him the same Words, and he afterwards meeting with *Oates*, and reproving him for his indecent Behaviour and Expression, instead of any Remorse or Concern that he had upon him, by reason of his having spoken such Words, he doth still add to it, *The Duke of York is a Traitor, he is in the Plot; and because you take his Part you are a Yorkist, and we will be even with you for it at one time or another.* So he threatens him only for asking him why he behaved himself in such an indecent manner towards His Royal Highness.

The last Witness Mr. *Chapman*, is produced to shew what Mind he continues in. After all this is past, and a body would have thought he might by this time have been brought to some Consideration and Submission to Authority; yet you see how the Man is. The Witness tells you since the beginning of this Term, the Declaration being delivered, and by the Course of the Court he ought to Plead within such a Time, the Attorney goeth to him for a Plea, in order to make his Defence if he could in the Action now before you, but he lets Judgment go by Default; and so far is he from repenting of what he had formerly done, that he persists in it, and tells him, *Are you the DUKE's Attorney?* Yes. *Will, I care not a Farthing for the DUKE nor his Attorney neither; it may be I may be in here for 100,000*l.* (and that I believe is one of the truest Things he ever spoke in his Life) but suppose I be, I do not doubt but when a Parliament meets, a Time will come, when some other People may come in my Place.* But truly since he has declared his Hopes, I think it may not be amiss for us to declare our's too; and for my Part, to say I hope I shall never see such a Parliament.

Mr. *Under-Sheriff*. Lay your Heads together, Gentlemen, and consider of your Verdict.

*They did so standing at the Bar.*

Mr. *Under-Sheriff*. Are you all agreed of your Verdict?  
Omnes. Yes.

Mr. *Under-Sheriff*. Who shall say for you?

Omnes. Foreman.

Mr. *Under-Sheriff*. What Damages do you find?

Sir *Charles Lee*. Full Damages, an Hundred Thousand Pounds.

Mr. *Under-Sheriff*. What Costs?

Sir *Charles Lee*. Twenty Shillings.

*Which VERDICT being Recorded in an Inquisition intended, taken under the Hands of all the Jury, was afterwards annexed as the Return to the Writ of Inquiry.*



CXXX. *The Trial of THOMAS ROSEWELL, \* a Dissenting Teacher, at the King's-Bench, for High-Treason, November 18, 1684. Mich. 36 Car. II.*

*Die Jovis, 23 Oct. An. Dom. 1684.*

**T**HIS Day, being the first of the Term, Mr. Attorney-General moved the Court of *King's-Bench* for an *Habeas Corpus*, directed to the Keeper of the *Gatehouse*, to bring up the Body of *Thomas Rosewell*, Clerk, to be arraigned upon an Indictment of High-Treason, found against him at a late Sessions of *Oyer and Terminer*, held at *Kingston* in the County of *Surrey*; and it was desired returnable to Morrow, but was not taken out till that Day, returnable *immediatè*, and upon *Saturday* it was returned.

*Die Sabbati, 25 Oct. 1684. B. Regis.*

*Dominus Rex vers. Rosewell.*

**T**HIS Day Mr. *Rosewell* was brought upon the Writ of *Habeas Corpus*, to the Bar of the Court of *King's-Bench*, and was thus Arraigned:  
*Cl. of Cr. Thomas Rosewell*, Hold up thy Hand. [*Which he did.*]  
 Thou standest indicted by the Name of *Thomas Rosewell*, late of the Parish of *Rotherhith*, in the County of *Surrey*, Clerk; For that thou; as a false Traitor, against the most Serene and most excellent Prince our Sovereign Lord *Charles* the Second, by the Grace of God, King of *England, Scotland, France, and Ireland*, Defender of the Faith, &c. thy Supreme and natural Lord; not having the Fear of God in thy Heart, nor weighing the Duty of thy Allegiance; but being moved and seduced by the Instigation of the Devil; the cordial Love, and true, due and natural Obedience, which a true and faithful Subject of our said Sovereign Lord the King doth, and of right ought to bear towards him, altogether withdrawing; and contriving and intending to disturb the Peace and common Tranquillity of this his Kingdom of *England*, and to sow Sedition and Rebellion within the Kingdom, and to depose our said Sovereign Lord the King from the Stile, Honour and Regal Name of the Imperial Crown of this Realm, and to bring our said Sovereign Lord the King to Death and final Destruction, the 14th Day of *September*, in the 36th Year of the Reign of our said Sovereign Lord the King that now is, at the Parish of *Rotherhith* aforesaid, in the County of *Surrey* aforesaid; didst propose, compass and imagine to sow Sedition, and raise Rebellion against our said Sovereign Lord the King, within this Kingdom of *England*, and to make a miserable Slaughter among the Subjects of our said Sovereign Lord the King, and to cause our said Sovereign Lord the King to be deposed from the Regal State, Title, and Honour of the Imperial Crown of this Realm, and to put to Death, and final Destruction, our said Sovereign Lord the King; and the Government of this his Kingdom of *England* at thine own Will and Pleasure to change and alter; and the State of this Kingdom of *England*, in all its Parts well order'd and constituted, to overthrow and subvert; and to levy War against our said Sovereign Lord the King, within this Kingdom: And to complete thy said most wicked Treasons, and traitorous Purposes, and Imaginations; and to raise Discord between our said Sovereign Lord the King and his People, Thou the said *Thomas Rosewell*, the aforesaid 14th Day of *September*, in the 36th Year aforesaid, at the Parish aforesaid, in the County aforesaid; falsely, unlawfully, seditiously, maliciously and traitorously, in a certain unlawful Assembly, and in the Presence and Hearing of divers Subjects of our said Sovereign Lord the King, then and there unlawfully and seditiously, and against the Laws of this Land, assembled and gathered together; didst speak, assert and declare, *That the People* (meaning the Subjects of our said Sovereign Lord the King) *made a flocking to our said Sovereign Lord the King, upon pretence of healing the King's-Evil, which he* (meaning our said Sovereign Lord the King) *could not do; but that we* (meaning thyself, and other traitorous Persons, Subjects of our said Lord the King) *are they to whom they* (meaning the Subjects of our said Lord the King) *ought to flock, because we* (meaning thyself, and the said other traitorous Persons) *are Priests and Prophets, that by our Prayers can heal the Delours and Grievs of the People. We* (meaning the Subjects of our said Sovereign Lord the King) *have had two wicked Kings* (the most Serene *Charles* the First, late King of *England*, and our said Sovereign Lord the King that now is, meaning) *together, who have permitted Popery to enter in under their Noses; whom* (meaning the said *Charles* the First, late King of *England*, and our said Sovereign Lord the King that now is) *we can resemble to no other Person but to most wicked Jeroboam: And that if they,* (meaning the said evil-disposed Persons then and there, so as aforesaid with thee unlawfully assembled, and gathered together)

*would stand to their Principles, thou* (meaning thyself) *didst not fear; but they* (meaning thyself, and the said evil-disposed Persons) *would overcome their Enemies,* (meaning our said Sovereign Lord the King and his Subjects) *as in former Times, with Rams-horns, broken Platters, and a Stone in a Sling; against the Duty of thy Allegiance, against the Peace of our Sovereign Lord the King, his Crown and Dignity, and against the Form of the Statute in that Case made and provided.* How say'st thou, *Thomas Rosewell*; Art thou guilty of this High-Treason whereof thou standest indicted, and hast been now arraigned, or not Guilty?

Mr. *Ros.* My Lord, I humbly crave the Favour to speak a Word.

Mr. *Just. Hol.* What is it you would say, Sir? You must plead.

Mr. *Ros.* My Lord, my Charge is very high; and I bless my God, I am not conscious to myself of any Guilt as to those Things that you have heard read, and charged upon me—

Mr. *Just. Hol.* If you will Plead, Sir, to this Indictment, so; that is all you have to do now.

Mr. *Ros.* My Innocence is my great Comfort under the God of Heaven, who knows they have laid to my Charge Things that I know not. I do protest my Abhorrence of these Things alledged to be said by me against my Sovereign, whom I honour in my Heart, and daily pray for; I bless my God for it.

Mr. *Just. Hol.* I hope then your Innocence will clear you. But we have nothing to do now but to take your Answer to this Question, Whether you are Guilty, or not Guilty, of what you stand indicted for?

Mr. *Ros.* I humbly crave your Lordship's Patience a little. Pray, my Lord, give me Leave—

Mr. *Just. Hol.* Sir, you will be heard whatever you have to say, at the time of your Trial.

Mr. *Ros.* Pray hear me a few Words, my Lord; I would not trespass upon your Patience; I have but a few Words to say.

Mr. *Just. Walcot.* You must plead, Guilty, or not Guilty, first.

Mr. *Ros.* My Lord, I beseech you—

Mr. *Just. Hol.* Sir, We cannot hear you in a Case of so great weight and moment as this, till you have Plead: You will have time enough at your Trial to make your Defence; and all we can do now is to take your Plea of Guilty, or not Guilty.

Mr. *Ros.* May it please your Honours, You are sensible of my great Weakness and Ignorance in Matter of Law, and Things of this Nature; I therefore humbly beg I may have Counsel to assist me in this Business.

Mr. *Just. Walcot.* If there be any thing of Matter of Law doth arise upon your Trial, the Court will assign you Counsel.

Mr. *Just. Hol.* We cannot assign you Counsel at present, for we have nothing to assign it upon. If there do any Question of Law arise in your Case, then the Court will (as they are bound to do) take care of you, that you suffer no Prejudice for want of the Assistance of Counsel; and in Matters of Fact upon your Trial, the Court are of Counsel for you.

Mr. *Ros.* I humbly thank you, my Lord: I hope you will pardon my Weakness and Ignorance. I crave the Favour to have a Copy of my Indictment.

Mr. *Just. Hol.* We cannot allow it. You cannot be ignorant of that, it has been denied in many Cases of late.

Mr. *Just. Walcot.* We cannot grant it, except Mr. Attorney will consent to it.

Mr. *Just. Hol.* You must positively say Guilty, or not Guilty. Sir *Samuel Astry*, call him to his Plea.

*Cl. of Cr.* How say'st thou, Art thou Guilty, or not Guilty?

Mr. *Just. Hol.* Look you, Sir, you shall not be straitned, you shall have convenient Time to consider what Defence you have to make. In the mean time, we have nothing to say, but to know of you what you Plead; Guilty, or Not Guilty.

Mr. *Att. Gen.* If you desire to have the Words read again to you, you shall. *Sir Robert Sawyer.*

Mr. *Just. Hol.* Ay, with all our Hearts.

Mr. *Ros.* I thank you, Sir, and my good Lords. I desire, if you please, to have it read in *Latin*.

Mr. *Just. Hol.* Read it in *Latin*.

[*Which was done.*]

*Cl. of Cr.* How say'st thou, Art thou Guilty, or not Guilty?

Mr. *Just. Hol.* Now what do you say to it. Are you Guilty, or not Guilty? for indeed we cannot spend our Time impertinently, we have other Business. Here is a Question you ought to make a direct Answer to, one way or other.



Mr. Ros. My Lord, I humbly crave the Favour it may be read once more in *English*.

Mr. Att. Gen. Sir Samuel Astry, Read the Words without the Innuendo's.

[Cl. of Cr. reads.] 'That the People made a flocking to the King, upon pretence of healing the King's Evil, which he could not do; but we are they to whom they ought to flock, because we are Priests and Prophets, who can heal their Grievs. We have now had two wicked Kings together, who have permitted Popery to enter under their Noses, whom we can resemble to no other Person, but to the most wicked Jeroboam: And if you will stand to your Principles, I do not fear but we shall be able to overcome our Enemies, as in former Times, with Rams-Horns, broken Platters, and a Stone in a Sling.'

Mr. Just. Holloway. Now you hear your Charge, both in *Latin* and *English*; Pray, therefore, let the Court know what you do Plead; Guilty, or not Guilty to it.

Mr. Ros. Not Guilty, my Lord; and I blefs my God for it.

Cl. of Cr. Culprit, How wilt thou be Tried?

Mr. Ros. By God, and my Country.

Cl. of Cr. God fend thee a good Deliverance,

Mr. Ros. These are Things that my Soul abhors, I thank my God.

Mr. Att. Gen. Mr. Justice Holloway, will you please to appoint some time for his Trial?

Mr. Just. Holloway. What time would you have, Mr. Attorney? When can you be ready, Mr. Rosewell?

Mr. Rosewell. I desire, my Lord, it may be on the 19th of November.

Mr. Just. Holloway. What Day of the Week is that?

Mr. Clerk. Upon Wednesday.

Mr. Just. Holloway. Are there no Arguments appointed for that Day?

Mr. Clerk. There is a Jury of Northamptonshire for that Day.

Mr. Just. Holloway. Then it cannot be that Day.

Mr. Ros. Then, if it please your Honours, I desire it may be the next Day; upon Thursday.

Mr. Att. Gen. When it is most convenient for the Business of the Court.

Mr. Just. Holloway. Sir Samuel, you will see when it will be most convenient at the Return of the Venire.

Cl. of Cr. Must I return it?

Mr. Att. Gen. No; the Sheriff must: And the Course is to make it returnable the same Day the Cause is tried.

Mr. Ros. My Lord, I humbly desire I may have Counsel allowed to come to me.

Mr. Att. Gen. You can have no Counsel allowed you.

Mr. Ros. My Lord, I request that my Friends may be allowed to come to me in the mean time; I have been a Prisoner above this Month, and not permitted to see my Friends, nor they to see me.

Mr. Just. Holloway. What Friends would you have?

Mr. Ros. My Relations.

Mr. Just. Walcot. That Relations is a large Word.

Mr. Att. Gen. Truly, Sir, I think he may have liberty to discourse with any Person in the presence of the Keeper. I shall not oppose that.

Mr. Ros. Yes, my Lord, I desire no otherwise.

Mr. Just. Walcot. Who do you name to come to you?

Mr. Ros. I have poor Children, that desire and long to see me.

Mr. Just. Holloway. Who do you say, you would have come to you?

Mr. Ros. My Wife and Children, my Lord, that are my Bowels.

Mr. Att. Gen. In the presence of the Keeper I cannot oppose it.

Mr. Ros. Will your Lordship please to allow Counsel to come to me?

Mr. Just. Holloway. We cannot do it by Law. The Court is to be of Counsel for you when you come to your Trial. The Court will not suffer any thing to be done to your Prejudice against Law.

Mr. Ros. Is there any Statute, my Lord, that forbids the giving of Counsel?

Mr. Just. Holloway. The Law forbids the allowing of Counsel in Capital Causes; unless where Matter of Law doth arise.

Mr. Ros. My Lord, as I remember, Fitzharris had Counsel allowed him.

Mr. Just. Holloway. That was in a different Case, in a Matter where there were Special Pleadings; this is a General Issue.

Mr. Att. Gen. That was in a Matter of Law, that was insisted upon, but it is not so here: If this Gentleman had any Matter of Law to Plead, he should have Counsel assign'd him too. But, Sir, I think Tuesday the 18th of November will be the freest and most convenient Day.

Mr. Just. Holloway. Let it be that Day then.

Cl. of Cr. The Eighteenth of November is the Day of your Trial.

Mr. Ros. But, my Lord, was not Counsel allowed him before his Trial came on?

Mr. Just. Holloway. Yes; but that was upon a Special Plea, of a Matter in Law.

Mr. Ros. I hope you will consider my Case as of one that knows not the Law.

Cl. of Cr. Tuesday the Eighteenth of November is the Day.

Mr. Ros. My Lord, I humbly request the Favour that any Person that can speak of my Integrity, may come and testify for me.

Mr. Att. Gen. Ay, ay; you may have Subperna's out of the Office for any body who you will, that are to be Witnesses for you.

Mr. Just. Walcot. The Officers of the Court will do all things that are requisite and legal for you.

Mr. Just. Holloway. Then take back your Prisoner, Keeper.

Mr. Att. Gen. I do not know truly, whether the Practice of the Court is not to commit to the Marshalsea, being the Prison of the County of Surrey.

Cl. of Cr. Sir, it may be one or th' other way, as the Court thinks fit. As long as the King's-Bench sits in Middlesex, he may be Prisoner still in the Gate-house.

Keeper. Then the Rule of the Court is that he shall come agen then.

Cl. of Cr. Yes, he is, by Rule, to appear here the 18th of November next.

Whereupon he was carried back to the Gate-house.

Die Martis, Nov. 18, 1684.

THIS Day the Prisoner was brought, by Rule, from the Gate-house to the Bar of the King's-Bench Court to his Trial, at which all the Judges of the said Court were present.

Cl. of Cr. Thomas Rosewell, Hold up thy Hand. [Which he did.] Those Men that thou shalt hear called, and do personally appear, are to pass between our Sovereign Lord and thee, upon the Trial of thy Life and thy Death: If therefore thou wilt challenge them, or any of them, thou art to speak unto them as they come to the Book to be Sworn. Sir George Sheeres, Baronet.

Mr. Ros. My Lord, I would humbly crave the Favour of your Lordship, that I may have the Use of Pen, and Ink.

\* Lord Chief Just. Ay, in God's Name, let him have Pen and Ink. \* Sir George Jeffreys.

Cl. of Cr. Swear Sir George Sheeres, Baronet.

Mr. Ros. I beg I may have Pen, Ink and Paper, before he be Sworn.

L. C. J. Ay, let him.

Crier. Look upon the Prisoner. Sir, you shall well and truly try, and true deliverance make between our Sovereign Lord the King, and the Prisoner at the Bar, whom you shall have in Charge; and a true Verdict give according to your Evidence. So help you God.

[Jurat Sir George Sheeres.]

Mr. Ros. My Lord, I challenge him.

L. C. J. That you cannot do now he is Sworn.

Mr. Ros. I was surprized, my Lord; I did not know it.

L. C. J. I cannot help it, Mr. Rosewell, you must mind your Business. We cannot unswear him again. Go on.

Cl. of Cr. Sir St. John Broderick.

Crier. Look upon the Prisoner, Sir; You shall well, &c.

[Jurat Sir St. John Broderick.]

Mr. Ros. I challenge him.

L. C. J. You cannot, Sir; he is Sworn now.

Mr. Ros. I beg your Lordship's Pardon, I was surprized.

L. C. J. Let us not spend Time in such Talk as is to no Purpose; I tell you we cannot unswear him.

Mr. Ros. I desire, my Lord, my Challenge may be received, I was going to speak—

L. C. J. It cannot be after he is Sworn; we cannot make a New Law for you. Mind what was said to you; if you have a mind to challenge any body, you must challenge them before they come to be Sworn.

Cl. of Cr. Sir Robert Knightley.

L. C. J. Mind the thing you are about, Man: Speak now, if you have a mind to challenge him.

Mr. Ros. I do not challenge him.

Cl. of Cr. Then Swear him.

Crier. Look upon the Prisoner; &c.

[Jurat Sir Robert Knightley.]

L. C. J. Pray now mind the Thing you are about; you are looking about you for some private Mark, or Hint to be given you by some body, and so lose your Time of Challenging. You must challenge them as they come to the Book to be Sworn, and before they are Sworn.

Mr. Ros. I beg your Lordship's Pardon; I was minding to set down the Names in my Paper, because I am to take notice of those I challenge for their Number.

L. C. J. You shall have all the fair Advantages that the Law will allow; you shall have your full Number to challenge, which you may do peremptorily, and without Cause as to 35; and as many more as you can with Cause.

Mr. Ros. Is there any one to note the Number?

L. C. J. There shall be sure to be notice taken that you be not surprized that way. You shall have all fair Advantages, I tell you.

Mr. Ros. I humbly thank your Lordship.

Cl. of Cr. Sir William Elliot.

Crier. Look upon the Prisoner.

Mr. Ros. I challenge him.

Cl. of Cr. Sir George Woodroffe.

Mr. Ros. I challenge him.

Cl. of Cr. Sir Cornwall Bradshaw.

Mr. Ros. I challenge him.

Cl. of Cr. Sir Thomas Bludworth.

Mr. Ros. I challenge him.

Cl. of Cr. Anthony Thomas, Esq;

Crier. Look upon the Prisoner.

Mr. Ros. I do not challenge him.

Crier. You shall well and truly, &c.

[Jurat Anthony Thomas.]

Cl. of Cr. Francis Brend, Esq;

Mr. Ros. I challenge him.

Cl. of Cr. John Weston, Esq;

Mr. Ros. I challenge him.

Cl. of Cr. James Reading, Esq;

Mr. Ros. Is it Mr. Justice Reading of Southwark?

L. C. J. Do you challenge him or not? you may if you will.

Mr. Ros. My Lord, my Reason is, I have heard much of him, but never had an Opportunity to know him till now. I have no Exception against him.

L. C. J.



L. C. J. Then swear him.  
 Cl. of Cr. Thomas Newton, Esq;  
 Mr. Ros. I challenge him.  
 Cl. of Cr. Thomas Vincent, Esq;  
 Mr. Ros. I challenge him.  
 Cl. of Cr. Ambrose Muschamp, Esq;  
 Mr. Ros. I challenge him.  
 Cl. of Cr. Ralph Freeman, Esq;  
 Mr. Ros. I challenge him.  
 Cl. of Cr. Joseph Reeves, Esq;  
 Mr. Ros. I challenge him.  
 Cl. of Cr. Anthony Rawlins, Esq;  
 Mr. Ros. I do not challenge him. [He was sworn.]  
 Cl. of Cr. Thomas Overman, Esq;  
 Mr. Ros. I have no Exception against him. [He was sworn.]  
 Cl. of Cr. George Meggot, Esq;  
 Mr. Ros. I challenge him.  
 L. C. J. Crier, Be sure you bid them look upon the Prisoner; and the Prisoner look upon them, that he may see what he does.  
 Crier. I do so, my Lord.  
 Cl. of Cr. Samuel Lewin, Esq;  
 Mr. Ros. I have nothing to say against him. [He was sworn.]  
 Cl. of Cr. Lawrence Marsh, Esq;  
 Mr. Ros. My Lord, I desire to know how many I have challenged.  
 L. C. J. He shall tell you. Count them.  
 Cl. of Cr. Twelve. What say you to Mr. Marsh?  
 Mr. Ros. I challenge him.  
 Cl. of Cr. Ambrose Brown, Esq;  
 Mr. Ros. I challenge him.  
 Cl. of Cr. John Halsley, Esq;  
 Mr. Ros. I challenge him.  
 Cl. of Cr. John Auburn, Esq;  
 Mr. Ros. I challenge him.  
 Cl. of Cr. Henry Flood, Esq;  
 Mr. Ros. I challenge him.  
 Cl. of Cr. John Parsons, Esq;  
 Mr. Ros. I challenge him.  
 Cl. of Cr. John Pettyward, Esq;  
 Mr. Ros. I do not challenge him. [He was sworn.]  
 Cl. of Cr. Richard Coldham, Esq;  
 Mr. Ros. I do not challenge him. [He was sworn.]  
 Cl. of Cr. Robert Sanders, Esq;  
 Mr. Ros. I challenge him.  
 Cl. of Cr. John Heather, Esq;  
 Mr. Ros. I do not challenge him. [He was sworn.]  
 Cl. of Cr. John Austin, Esq;  
 Mr. Ros. Pray, Sir, doth this make Twelve; if he be sworn?  
 Cl. of Cr. Yes, Sir.  
 Mr. Ros. Then I do not challenge him. [He was sworn.]  
 Cl. of Cr. Crier, count these. Sir George Sheers:  
 Crier. One, &c.  
 Cl. of Cr. John Austin.  
 Crier. Twelve. Good Men and true, stand together and hear your Evidence.

The Twelve Sworn were These:

J U R Y.

Sir George Sheers,	James Reading,	John Pettyward;
Sir St. John Broderick,	Anthony Rawlins,	Richard Coldham;
Sir Robert Knightley,	Thomas Overman,	John Heather, and
Anthony Thomas,	Samuel Lewin,	John Austin.

Cl. of Cr. Thomas Rosewell, Hold up thy Hand. [Which he did.] Gentlemen, you of the Jury, look upon the Prisoner, and hearken to his Cause. He stands indicted by the Name of Thomas Rosewell, &c. (Prout) in the Indictment, *mutatis mutandis*.---Upon this Indictment he hath been Arraigned, and thereunto hath pleaded not Guilty; and for his Trial hath put himself upon God and his Country, which Country you are. Your Charge is to enquire whether he be Guilty of this High Treason, in manner and form as he stands Indicted, or not Guilty. If you find him guilty, you are to enquire what Goods or Chattels, Lands or Tenements, he had at the Time of the High Treason committed, or at any Time since, to your Knowledge. If you find him not guilty, you are to enquire whether he fled for it; if you find that he fled for it, you are to enquire of his Goods and Chattels as if you had found him guilty. If you find him not Guilty, and that he did not fly for it, you are to say so, and no more, and hear your Evidence. Crier, make Proclamation.

Crier. O yes, O yes, O yes! If any one can inform my Lords the King's Justices, the King's Serjeant, the King's Attorney-General, or this Inquest now taken, of the High-Treason whereof the Prisoner at the Bar stands indicted, let them come forth, and they shall be heard: And all manner of Persons that are bound to give Evidence on the behalf of our Sovereign Lord the King against the Prisoner at the Bar, let them come forth and give their Evidence; for now the Prisoner stands at the Bar upon his Deliverance: Or they forfeit their Recognizance.

Mr. Phipps. May it please your Lordship, and you Gentlemen of the Jury---

Mr. Ros. Hold! Hold! I crave the Favour that the Indictment may be read in Latin.

L. C. J. Ay, with all my Heart, let it be read in Latin.

Mr. Ros. My Lord, I humbly crave leave to speak a Word or two. [Which was done.]

L. C. J. What would you have?

Mr. Ros. I beg your Patience for a Word or two. I find, my Lord, as I told my Lords upon the Day of my Arraignment, that my Charge is

VOL. III.

very black and high: And truly if I were guilty of those Things that are laid to my Charge---

L. C. J. You are now going to be tried for them. I hope you are innocent.

Mr. Ros. I humbly thank your Lordship: I beg you would hear me but a Word or two.

L. C. J. You must keep up the Method of Proceedings, your time is not yet come. What is it you would have?

Mr. Ros. My Lord, my Soul abhors these Things; I thank my God for it. I was going to speak to your Lordship, to know whether the Words of a Natural or a Mad-man be Treason in Law.

L. C. J. No.

Mr. Ros. Then, my Lord, the Ground of the Question is this, I find by Recollection and Consideration of the Words laid to my Charge, that my malicious Enemies have accused me of what any Man in his Senses---

L. C. J. This is not proper; Mr. Rosewell, at this time; for this is but an Anticipation. You must hear what is first proved against you. We must keep up to the Forms of Law, you shall have your full time to be heard whatsoever you will say for yourself; but you must not anticipate the Cause with previous Discourses.

Mr. Ros. I would only assert my own Innocency.

L. C. J. Not yet; you must not do it, nor you shall not do it. When it comes to your turn to speak, you shall have liberty enough to make your Defence as long as you will. Go on, Sir.

Mr. Phipps. May it please your Lordship, and you Gentlemen that are sworn: The Prisoner at the Bar, Thomas Rosewell, stands indicted, That he, as a false Traitor, not having the Fear of God before his Eyes, but being moved and seduced by the Instigation of the Devil, and endeavouring to disturb the Peace and Tranquillity of the Kingdom, and to depose the King, the 14th of September in the 36th Year of this King, at the Parish of Rotherhith, in your County, did falsely, maliciously, and traitorously, purpose and imagine to raise a Rebellion within the Kingdom, and to deprive the King, and depose; and put him to Death and Destruction; and the Government to change and alter, and to levy War against the King within the Kingdom: And these wicked Purposes to bring to pass, he the said Thomas Rosewell, the said 14th of September in the Thirty-sixth Year aforesaid, at the Place aforesaid, falsely, unlawfully, maliciously, seditiously and traitorously, in a certain unlawful Assembly, then and there congregated, did say and declare; 'The People make a flocking to the King, upon Pretence of Healing the King's Evil, which he cannot do; but we are they to whom they ought to flock: For we are Priests, and Prophets, that can heal their Grievances. We have now had two wicked Kings together, who have permitted Poperie to come in under their Noses; and whom we can compare to none but the most wicked Jeroboam. But if they would stand to their Principles; he did not doubt, but they should overcome their Enemies, as in former Times, with Rams-horns, broken Platters, and a Stone in a Sling.' And this is laid to be against the Duty of his Allegiance, against the Peace of the King, his Crown and Dignity; and against the Form of the Statute in that Case made and provided. To this Indictment he has pleaded not guilty: If we prove him guilty of this Matter, you are to find him guilty.

Mr. Att. Gen. May it please your Lordship, and you Gentlemen of the Jury; these traitorous Words, that the Prisoner at the Bar is accused of, were spoken of in a Sermon, or Preachment at a Conventicle. And though the Gentleman does pretend to much Innocency; yet you will find, that in open Defiance of the Law, he takes upon him to preach against the Law, not only of the Land, but even against the Laws of Almighty God: For he takes upon him to be a Preacher against a Rule, than which nothing is more plain in all the Word of God, viz. 'That he should not speak Evil of Dignities, nor revile the Prince of his People.' He knows this to be the Rule of the Scripture; and yet in his constant Discourses, (as we shall prove) he makes it his Practice to revile the Government on all sides. And by these doings at this Day, Gentlemen, you will easily understand what the Designs of these Conventicles are; only to nurse up People in Sedition, and train them up to Rebellion; that they may be ready to break out into it when their Teachers advise them to it. We shall call our Witnesses, and prove to you, That this is, and has been the constant Terror of his Discourse, viz. Reviling of the Government; and there is almost no Text of Scripture, but, in his Way of perverting it, he has turned against the Government. We shall shew this to be the habitual Course and Practice of him who pretends to be so honest and so innocent a Man. Crier, Call Elizabeth Smith,---Hilton, and Farrar.

Then some of the Counsel at the Bar, being talking among themselves, the Lord Chief Justice reproved them for it.

L. C. J. Look you, Gentlemen, you must not have Interlocutions among yourselves. And you, Gentlemen of the Jury, I must tell you, If any one whisper any of you, you ought to acquaint the Court with it. It is your Duty to be directed by the Court, and the Evidence. Here is a Man's Life in Question, and that is a very weighty Thing: And you must not take any private Insinuations, but only hearken to your Evidence, and mind what is spoken publicly, that the Prisoner may be able to give Answer to it.

Mr. Ros. I humbly thank your Lordship.

Mr. Att. Gen. Where are Mrs. Hilton and Mrs. Smith?

[They were all sworn.]

Mr. Ros. I do humbly request one Favour of the Court.

L. C. J. What would you have?

Mr. Ros. I humbly beg they may be examined *separatim*.

L. C. J. They shall.

Mr. Ros. I humbly thank your Lordship.

L. C. J. Who do you begin withal, Mr. Attorney?

Mr. Jones. My Lord, we shall begin with Mrs. Smith.

6 M

L. C. J.



*L. C. J.* Then you must make way, that the other Witnesses may go out of hearing. You *Crier*, make way for them; and see that they be set where they may not hear.

[Which was done.]

*Mr. Att. Gen.* Come, *Mrs. Smith*, pray give my Lord and the Jury an Account whether you have been at any Meeting, where this Gentleman has been? Whether you know him? and what you heard of him?

*Smith.* I heard him say this—

*L. C. J.* Hold a little. What is this Woman's Name, *Elizabeth Smith*?

*Mr. Att. Gen.* Yes, my Lord. Were you by at any of his Conventicles?

*Smith.* Sir, I have been ever since the 20th of July, 'till that Day for which he was taken, but one Sunday.

*Mr. Att. Gen.* Give my Lord an Account of what you heard.

*Smith.* Yes, Sir.

*L. C. J.* Where was it that his Meeting-House was?

*Smith.* He had several Houses, private Houses and a publick House of his own.

*L. C. J.* Where? In what Place?

*Smith.* In *Salisbury-street*, near his own Dwelling.

*L. C. J.* Where is that?—*Smith.* In *Rotherhith*.

*L. C. J.* You were frequently there, you say?—*Smith.* Yes, my Lord.

*L. C. J.* What number of People might be there, as you guess?

*Smith.* I believe there might be Four Hundred People, or Three Hundred commonly.

*L. C. J.* What sort of People were they?

*Smith.* Men and Women, House-keepers.

*L. C. J.* Well, what did you hear him say?

*Smith.* I can give you an Account of his Sermons several Days.

*L. C. J.* Do so.

*Smith.* The first Notice that I took of any thing concerning the Government, was upon the 17th of August, and that was concerning His Majesty; and then in his Prayer after Sermon, he wished he might not offend God in not praying for the King; but that it might please God to open his Eyes, and the Times might turn.

*Mr. Att. Gen.* What other Things have you heard him say?

*Smith.* The next time that I heard him was the next Sunday again, and that was in *Westlane*, in a House there, and then he was speaking of *Sodom* and *Gomorrhah*, and he brought in this Proof, not doubting but if there had been ten righteous Persons, the City had not been destroy'd: But he did not mean *Recorders*, nor *Lord-Mayors*.

*Mr. Ref.* What Day was that, *Mistress*?

*Smith.* The 22d of August.

*Mr. Att. Gen.* Well, what did you hear him speak upon the Day in the Indictment, the 14th of September?

*Smith.* He said, *The People made a flocking to the King, to cure the King's Evil, which he could not do; but, says he, we are they they should flock unto, for we are Priests and Prophets, that by our Prayers can cure their Grievances.* He said, *We have now had two wicked Kings together, which have permitted Popery to come in under their Noses, and could be compared to nothing but to most wicked Jeroboam.* And then after he had preached a good while, again he said, *If they would stand to their Principles, he did not fear but they should overcome their Enemies, as in former Times, with broken Platters, Rams-Horns, and a Stone in a Sling.*

*L. C. J.* When was this?

*Smith.* This was upon the 14th of September.

*L. C. J.* Where was it?

*Smith.* At one Captain *Daniel Weldy's* House.

*L. C. J.* What is he, a Seaman?

*Smith.* Yes, and he pray'd for him, being then at Sea, and his Son both, who was ill.

*L. C. J.* How many do you think might be present there at that time?

*Smith.* There was a low Parlour full, and a little Room up six Steps; and where he preached was up one pair of Stairs, there was a large Room and a Garret.

*L. C. J.* Where did he stand?

*Smith.* In the Door-case of that Room, that the sound might go up and down.

*L. C. J.* How many People in number might there be, think you?

*Smith.* I cannot tell, my Lord; a great many.

*L. C. J.* How many, as nigh as you can guess, or think?

*Smith.* Several Hundreds of them.

*L. C. J.* Do you know any of them? Were they People of any Quality?

*Smith.* Yes, I know a great many of them; several of them are in the Court, and about the Hall now.

*L. C. J.* Who stood at the Door and let you in?

*Smith.* One *Mr. Paul Shed*; and he was angry at my coming with Patents, for they made an Impression in the Ground, and gave notice to others, that there was Company there: And I promised him I would come no more with them.

*Mr. J. Walcot.* Was he Door-keeper? What is he?

*Smith.* A Brasier, I think.

*Mr. J. Holloway.* Had you any notice of a Conventicle that was to be there?

*L. C. J.* Ay; Tell us how you came thither?

*Mr. Recorder.* How came you to find it out that there Sir *Thomas Jenner* was a Meeting at such a Place?

*Smith.* At first I found it by dogging of People as they went along; and afterwards, there were People set commonly at a Place called *Cherry-garden Stairs* to give notice; and sometimes I asked there, and sometimes I went to *Mr. Shed's* House to enquire.

*L. C. J.* *Shed*, you say, was present there then?

*Smith.* Yes, he let me in.

*L. C. J.* What, he was the Man that managed the Conventicle. He was Clerk, I suppose; was he not?

*Smith.* I never heard him say Amen; but I have heard him expound in the Conventicle sometimes.

*L. C. J.* Oh, he was a Journeyman Preacher, it seems.

*Mr. Recorder.* Pray was there any store of Watermen and Seamen there?

*Smith.* Yes, abundance from *Rotherhith*, or thereabouts.

*L. C. J.* Which way came all the People that were there?

*Smith.* From *Deptford* and *Rotherhith*, and all thereabouts.

*L. C. J.* Was it near the Water-side?

*Smith.* Yes, not far from it.

*L. C. J.* Well, *Mr. Attorney*, have you any more Questions to ask her?

*Mr. Att. Gen.* No, I think not. *Mrs. Smith*, you have heard him, you say, at other Days; how did he use to treat the Government in his preaching at other times?

*Mr. Ref.* My Lord, I beseech your Lordships to tell me whether these Questions are proper to be put, it not relating to the Matter that I am accused of?

*L. C. J.* Yes, yes, to give an Account of the Disposition of your Mind; very proper as can be.

*Mr. Ref.* Because it is not part of my Charge, and I cannot be prepared to answer it.

*L. C. J.* When the King's Counsel have done with her, you may ask her any Questions; but you must let them go on first.

*Mr. Att. Gen.* My Lord, it is charged that he spoke these Words with a traitorous, malicious Mind; and what better Evidence of such a Mind than his usual Discourses?

*Smith.* The 31st of August, I heard him preach at *Paul Shed's* House; and there he preached that there was a certain great Man, that lived at the Upper-end of *Grace-church-street*, about this time Eighteen Years ago; I name no body, says he, you all know him whom I mean: And there came a certain poor Man to him; he was not a poor Man neither, but a Carpenter by Trade, one that wrought for his Living, a labouring Man; and told that great Man, if he would take his Advice, he would tell him how to quench the Fire; but he pish'd at it, and made light of it, and would not take his Advice. Which if it had not been for that great Man, and the Lord Mayors and Sheriffs that have been since, neither that Fire in *London*, nor the Fire at *Wapping*, nor the Fire at *Southwark*, had gone so far, or come to what they did.

*L. C. J.* There was a great Man that lived at the Upper-end of *Grace-church-street*!—Who did he mean by that?

*Mr. Recorder.* He meant, we suppose, Sir *Thomas Bloodworth*, that was Lord-Mayor at the Fire-Time.

*L. C. J.* He did not live there then.

*Mr. Recorder.* It seems he said so.

*Mr. Att. Gen.* Pray *Mrs. Smith*, let me ask you one Question. How far were you off from him; and where did you sit this 14th Day of September, when you heard him say those Words you speak of?

*Smith.* I sat upon the Bed, and he was standing at the Door.

*Mr. Att. Gen.* My Lord, we have done with this Witness at the present.

*L. C. J.* Now, *Mr. Rosewell*, if you will, you may ask her what Questions you please.

*Mr. Ref.* My Lord, I was before going to beg your Pardon for my Weakness, being altogether unacquainted with these Things; and that you would look upon me as one that is *inops consilii*, and pardon any thing that comes from me impertinently. I cannot speak to her as a Lawyer to sift her, and search out the Truth; will your Lordship give me leave to speak to her as a Divine?

*L. C. J.* Ask her what Questions you will, but we will not have any of your Preachments here. You must consider where you are, you are not now in your Pulpit, but at the Bar; I assure you we do not intend to make a Conventicle of the King's-Bench Court.

*Mr. Ref.* My Lord, I meant only to endeavour to convince her, by putting some Questions, like a Divine, to her. For I pity them, tho' they envy me; and I bless my God, have pray'd for them many times since my Imprisonment.

*L. C. J.* Well, well; do not stand to commend yourself now, this is not your time of making your Defence: Only, if you will ask this Witness any Questions, you may.

*Mr. Ref.* You are under an Oath, *Mistress*.

*Smith.* I am so, *Mr. Rosewell*.

*Mr. Ref.* Are you sensible what an Oath is, and the great Obligation you are under by it to testify nothing but the Truth? As you will answer it to the great God—

*L. C. J.* Look you, *Mr. Rosewell*, ask her any Questions to the Business that she has here testified; but do not preach to her. It is not your Work to Catechise the Witnesses, that is the Duty of the Court, and we shall, no doubt, take care to do our Duty. And I will tell her, to save your Preachment, she is in the Presence of the great God of Heaven and Earth, before whom we must appear at the Great Day of Judgment, to give an Account of every Word we speak. And you are under an Oath, and if in Case you tell one Tittle of a Lye in your Testimony against the Prisoner at the Bar, who stands now to be tried for his Life, it will be just with the Great God to sink you down into Hell-Fire immediately. Therefore, I require you, upon your Oath, not to speak one Word but what is Truth.

*Smith.* My Lord, I assure you, I will rather say less, than add any one Tittle.

*L. C. J.* *Mr. Rosewell*, ask her what you will, but do not give yourself, nor us, the trouble of a Preachment to teach her the Obligation of an Oath; for she very well knows, it seems, what it is, and says she will rather speak less than more than the Truth.

*Mr. Ref.* I humbly thank your Lordship for what you have said to her. *Mrs. Smith*, Pray was you at *Rotherhith* the 14th Day of September?

*Smith.*



Smith. Yes, that I was.

Mr. Ref. Did you come alone? or who came with you?

Smith. Mrs. Hilton came along with me, and another Gentlewoman, and Mr. Shed let us in all together.

Mr. Ref. Who is that Mrs. Hilton?

Mr. Att. Gen. You will see her by and by, Mr. Refswell.

Mr. Ref. Where did you meet together?

Smith. Mrs. Hilton lay with me all Night, and we were together the Day before.

Mr. Ref. What time did you come thither, pray, Mistress?

Smith. I came thither before Seven of the Clock, before you came, Sir.

Mr. Ref. And I pray whose House came you to at Rotherhithe?

Smith. We were informed it was Captain Weldy's House.

Mr. Ref. Are you sure it was his House?

Smith. As they did tell us, it was Captain Daniel Weldy's.

Mr. Ref. I pray, Mistress, what Room were you in there?

Smith. We were up one pair of Stairs. There is a little Room we come at sooner; but we were in the Room with the Bed; and there was one Mr. Atkinson there that was in Mourning, and there were two or three Boys of his with him that sat upon the Bed, and their Shoes were plucked off, that they might not dirt the Bed; and I gave him his Boy's Shoes from under the Bed.

Mr. Ref. Pray where did I stand, Mistress, do you say?

Smith. In the Door-Cafe.

L. C. J. What Boy is that you speak of?

Smith. Two Boys that came in with one Mr. Atkinson; his Relations, I suppose they were.

Mr. Ref. Pray how did the Service begin?

Smith. You took your Text out of the 21st of Genesis; that was the Chapter, to the best of my Remembrance.

Mr. Ref. But I ask you, Mrs. how did the Worship, the Service begin?

L. C. J. You mean your Prayer, you do not use to call it Service.

Smith. You made a Prayer.

Mr. Ref. Was it begun with a Chapter, or a Psalm, or how?

Smith. There was no Psalm; a long Prayer you made, as you used to do formerly.

Mr. Ref. How long was that?

Smith. It was always used to be about three quarters of an Hour long.

Mr. Ref. Was there any Chapter read?

Smith. There was no Chapter before you took your Text, as I heard, and I was there before you.

Mr. Ref. Upon what Occasion then were these Words spoke, if there was no Chapter read?

Smith. I say there was none till you took your Text, and then you spoke those Words.

Mr. Ref. But how came those Words in?

Smith. You always took a whole Chapter, and expounded all along.

Mr. Ref. A long Text for one Sermon, Mistress.

L. C. J. Yes, yes, We know you have a fine Way of Preaching.

Mr. Ref. Well, Mistress. Upon what Verse of the Chapter were these Words spoke, about flocking to the King to cure the King's Evil?

Smith. I cannot be punctual to the particular Verse.

L. C. J. Nay, I suppose you seldom keep to your Text. I am sure there was never a Verse in any Chapter that warranted the speaking of any such Words as those.

Smith. My Lord, I cannot be punctual to the particular Verse. It was within five or six Verses of the beginning, I believe.

Mr. Ref. Then upon what Occasion came in the Words about the two wicked Kings?

Smith. In Preaching you brought it in by other Proofs.

L. C. J. Why, Man, there can be no Occasion for speaking of those Words. You spoke them without any Occasion at all. No body can tell what Occasion you had to speak them.

Mr. Ref. But, my Lord, I suppose there may be some coherence in my Discourse. I would know how they were brought in?

L. C. J. Who can tell the Occasion? Do you ask me what Reason any Man has to speak Treason? I tell you there is none at all to be given for it.

Smith. One of your Proofs in your Preaching was concerning *Dalilah* and *Sampson*, and you brought in that Proof concerning the King's using of Women, it was out of the *Judges*. And he said he did not question, but that in the end the Whores would serve the King, as that Whore *Dalilah* did *Sampson*.

L. C. J. Was this at the same time, upon the same Day?

Smith. Yes, it was upon the 14th of September.

Mr. Ref. If it please you, my Lord, these are not Words that are charged in the Information—

L. C. J. You draw it upon yourself by your Questions.

Mr. Ref. If they were spoken, (upon that *Hypothesis*, I say, if they were spoken; but I deny the *Thefis*, I abhor the thoughts of them) I would know how they were brought in, under what Verse?

L. C. J. Ay, I take you right as to that, you do deny it; and they are not in the Indictment.

Smith. I cannot be punctual as to the Verse.

Mr. Ref. Pray upon what account did come in the two wicked Kings?

Smith. I cannot tell the Verse, truly.

Mr. Ref. How came in that about *Jeroboam*?

L. C. J. How can he tell how you bring in Treason?

Mr. Ref. My Lord—

L. C. J. Nay, pray, Sir, hear me a little. You shall have all the Liberty to defend yourself that the Law can allow of. We are accountable to the Law upon our Oaths to do Justice, and are as much accountable to Heaven for our Actions, as you or any Prisoner that comes to this Bar is to the Law for your Actions. But do you ask what Reason you spoke Treason for? I tell you no Reason can be given for it.

Mr. J. Hol. Do you think any of your Auditors can give an account of the Connection of your whole Sermon?

L. C. J. When you talk besides the Cushion, do you think any Man alive is able to give an account how you come to ramble and talk Treason?

Mr. Ref. Can you tell, Mistress, when that was spoken, of standing to their Principles, and their Rams'-horns, &c.

Smith. That was at the latter end of your Sermon.

L. C. J. When you had said there were two wicked Kings, then presently you were for standing to your Principles, and overcoming your Enemies.

Mr. J. Hol. It seems she was very intent upon your Sermon.

L. C. J. For my part, I wonder she can remember so much as she does. It is much she can remember such Stuff as this.

Mr. Ref. The God of Truth, my Lord, I hope will manifest the Truth. Pray, Mistress, were these Words spoken one just after another in my Discourse?

Smith. No, they were not; but they were all spoken at that time.

Mr. J. Hol. Have you done with her?

Mr. Ref. No, my Lord, I humbly beseech your Favour and Patience a little. Pray, Mistress Smith, did you write?

Smith. I did not write till I came home, and after I came home I did write it down. Several that were there did write down your Sermon.

Mr. Ref. Several of whom, do you mean?

Smith. Several of your Congregation, Sir.

Mr. Ref. Did your Companions write? And pray where did you first write down these Words?

Smith. After I came Home I set them down, Word for Word to a Title, as they were spoken, as near as I could remember what you spoke.

Mr. Ref. Was any body with you when you set them down?

Smith. Yes, my own Family saw me write them down; and the other Witness was with me; and afterwards we went to the *Bull and Mouth*, the Quaker's Meeting-House.

Mr. Ref. What other Witnesses were by when you set them down?

Smith. There was my Husband, my Apprentice, and my Child.

Mr. Ref. And did you set them down just exactly as you have sworn them upon this Indictment?

Smith. Yes, to the best of my Knowledge.

Mr. Ref. Upon your Oath, in the presence of the great God, did you set them down as they were spoken?

Smith. Yes, I tell you.

L. C. J. Ay, I would ask you that Question; Did you (I speak to you as in the Presence of the great God, and upon your Oath) set down his Words just as he spoke them in Substance?

Smith. Yes, I did to the same Substance as near as I could remember.

Mr. Ref. Pray what other Words were spoken between these Words in the Indictment, if they were not all spoken together?

Smith. One thing I do remember more that you said that Day. You said there was a Word they called Canting; but for your Part you did not understand what it meant, unless it were this; You said, you chanced to go by one of the great Churches; where peeping in, you saw a Man with a white Surplice, and the Organs were going, and they were canting, and singing the *Litany*, the *Credo*, and the *Ten Commandments*, with a Ha-ha-ha-ha-ha. For your part, you were ashamed to hear it; and this you said was all the Canting you knew.

Mr. Att. Gen. You will draw this upon yourself.

Mr. Ref. I am sorry to hear this indeed, my Lord.

L. C. J. So am I too, with all my Heart, I'll assure you.

Mr. Ref. You say you set down the Words the same Day, when you came Home?

Smith. Yes, I resolved so to do, when I came away from the Meeting, to write them down as soon as I came home.

Mr. Ref. Did you confer with any body about these Words?

Smith. Not till I came to a Justice of Peace, and discovered it.

Mr. Ref. What Justice of Peace was that whom you discovered it to?

Smith. The Recorder of London.

Mr. Ref. And you swear these were the Words that I spoke?

Smith. Yes, as near as I can remember.

L. C. J. If she swear the substantial part of them, it is enough, tho' the very exact Words she doth not swear: For the Words are laid in this Indictment in *Latin*, and by way of Assertion.

Mr. Ref. Your Lordship will pardon my Weakness, I am ignorant of the Law.

L. C. J. And we will take care you shall have nothing done to your Prejudice that is against Law.

Mr. Ref. I humbly thank your Lordship. Mistress Smith, upon your Oath, you say Mr. Shed was at that Conventicle?

Smith. Yes, he let me in at the Door, and was angry with me that I would come so near the Place with my Pattens; he said it might give occasion of Suspicion.

Mr. Ref. You were saying you heard him expound. Where was that, pray?

Smith. Yes, that I did, at Mr. Crookshanks's House; and I heard him another time—

Mr. Ref. What was the Day in August that you say you came first to hear me?

Smith. I do not say it was in August, but in July, that I came first to hear you, the 20th of July.

Mr. Ref. You say I preached in the Publick Meeting-Place; What Day was that, pray?

Smith. The 10th of August, to the best of my Remembrance; it was the fourth Sunday, as I remember, that I heard you there.

Mr. Ref. Have you not sworn against Conventicles in other Places?

Smith. Yes.

Mr. Ref. What Conventicles?

Smith. If my Lords please to ask me, I shall give an account.

Mr.



Mr. Ros. Have you, or have you not?  
 Smith. Yes, several; tho' I never heard any thing spoken in any of them against the King, but at your's.  
 Mr. Ros. Did you swear a Conventicle against one Mr. Hales?  
 Smith. I swore it by Confession.  
 Mr. Ros. Were you at that Conventicle?  
 Smith. No, I was not, but I swore it by Confession.  
 Mr. Ros. What day was that Conventicle?  
 Smith. As they told us, it was the 13th of July.  
 Mr. Ros. Was there any thing done upon that Conviction?  
 Smith. Yes, he paid his Money that was set upon him, and never made any Appeal; his Wife confessed it.  
 Mr. Ros. What other Conventicles have you been at?  
 Smith. Concerning you, do you mean?  
 Mr. Ros. No, any other Conventicles of the Fanatics that you have sworn against?  
 Smith. I do not know whether that be a proper Question.  
 Mr. Ros. What say you, Mistress Smith?  
 L. C. J. No, no; that you must not ask her, that is to accuse herself.  
 Mr. J. Hol. You must not ask her to any thing but that you stand here charged with.  
 L. C. J. You must not ask her any thing that may make her obnoxious to any Penalty.  
 Mr. J. Walcot. Do you ask her any other Questions?  
 Mr. Ros. I will presently, my Lord, I beg your Patience.  
 L. C. J. Ay, ay, take your own time.  
 Mr. Ros. Pray, Mistress Smith, were you a Witness against a Conventicle at one Mistress Batho's?  
 Smith. Yes, that I had by Confession of her own Mouth.  
 Mr. Ros. Was there not some Money offer'd her—  
 L. C. J. That is not to be asked, you must not ask her any Question that may make her accuse herself criminally.  
 Smith. Never by me, Mr. Rosewell.  
 Mr. Rosewell. I beg your Lordship's Pardon—  
 L. C. J. I'll tell you the Reason for it, and it is that which ought to be satisfactory to you or any body. They are not bound to answer any Questions that you ask the Witnesses, whereby they charge themselves with any Crime, or by answering may subject themselves to any Penalty. Whether it be so, or no, you must not ask them, but prove it.  
 Smith. I never did offer any, my Lord.  
 Mr. Ros. I thought I might offer any thing against what she had sworn.  
 L. C. J. Prove what you can in your Time; but do not ask her any such Questions. The Law is so, and the same for you as it is for every body else.  
 Mr. Ros. Mistress Smith, you swear these Words were spoken in the Forenoon upon that place, the 21st of Genesis, one after another?  
 Smith. Yes; those Words, as near as I can speak them, were spoken then.  
 L. C. J. Are those the Words you heard at that time?  
 Smith. In Substance they are, my Lord; as near as I can discover.  
 Mr. Ros. I have no more Questions to ask her at present, my Lord.  
 Mr. Att. Gen. Pray, Mistress Smith, since he has started such a Question; Have you been tamper'd with, and been offer'd any Money; and what, and for what?  
 Smith. There came one Cartwright, and one Norton to me one Day, I cannot give an account exactly what Day it was; and first they spake to me about Mistress Batho's Business, and afterwards they fell into Discourse about Mr. Rosewell, and they told me, They wonder'd I would have my hand in any Man's Blood. Said I to them, Suppose you had heard what I did, what would you have done? Says Mr. Norton, you had better take 20 Guineas, and not appear against him, said he; not that any body that I know of that he is concerned with, will give you that Sum of Money, but you had better take it. Says I, What is the Truth no Money nor Gold shall buy me off from telling. What was Truth I would speak, and no more; and I had already given Evidence of it, and would not retract it. Said Mr. Cartwright then to me, But if you had not discovered it, no body else would. Said I, Yes, others heard it as well as I.  
 Mr. Att. Gen. Has any body else tamper'd with you? Have you had any Letter sent to you?  
 Smith. Nothing till Yesterday Morning: A Letter came then.  
 Mr. Att. Gen. What was that?—Smith. I suppose my Lord saw it.  
 Mr. Att. Gen. Ay, but you must tell the Jury what it was.  
 Smith. One came to my Brother's, and brought a Letter thither, which I read over; and he said to my Brother, if I could be any ways Assistant to Mr. Rosewell in not coming in against him, I might have 200l. paid down To-morrow; not that Mr. Rosewell knew of it, or would give it me, but it was a wager that was laid. Some laid he would be hang'd, and some laid he would not; and so he said he would come and give me an account who it was that spoke to him.  
 Mr. Att. Gen. My Lord, we have done with her now. Call Mistress Hilton.  
 Mr. Ros. Will your Lordship please to indulge me so far, that I may ask her another Question or two?  
 L. C. J. What is it you would have, Sir?  
 Mr. Ros. I desire her before she goes out to recollect one thing.  
 L. C. J. Nay, nay, she shall not go away: If you have a mind to ask her any thing before she goes away, do so; or she shall come again, if you have any Questions to put to her.  
 Mr. Att. Gen. My Lord, she is big with Child, and cannot well crowd in and out.  
 L. C. J. If she be with Child, then let her sit upon the Stool there.  
 Mr. Ros. With your Lordship's Indulgence, I would ask Mistress Smith this Question; The Gentlewoman that was with you, Mistress Hilton I think you call'd her, did she agree with you as to the same Words, and as to Time and Place?

Smith. If you please to examine her, I suppose she will give you an account.

Mr. Ros. Then I would ask her this Question, with your Leave, my Lord; whether was that other Gentlewoman with you in the same Room?

Smith. Yes, she was, and sat upon the Bed with me, and I pulled her by the Sleeve when the Words were spoken, to take notice of them.

Mr. Att. Gen. Come, Mistress Hilton, give my Lord and the Jury an account; have you been at this Conventicle at any time, and what have you heard there?

Hilton. I came to Mistress Smith's on Saturday Night, and on Sunday Morning I went with her to this Place; I was never there before in my Life, they said it was one Daniel's house, one Captain Daniel's; it was near West-Lane in Rotherhith. And when we came there, there was one that Mistress Smith knew, that stood at the Door, they call him Paul Shed, a little Man: And when we came to the Door, he said to us, Pull off your Pattens, says he, for they will give too much Occasion of Distrust of People's coming: So we pulled off our Pattens, and said we would take care the next time. When we came in, we went through a kind of a Hall, and when we came there into the Hall, there were a little Parlour against it: We went up the Stairs, and when we came up Stairs, there were two more Rooms; that Room we came into was hung with sad-colour'd Paper, and upon the Left-hand there stood a Sweetwood kind of Chest, a little Cabinet, and a little Glass over that. Mr. Rosewell came, and stood at the Entrance in of the Door; so there was a little Child in bed when we came up, and we sat down on the other side of the Bed; and the Child was taken out of the Bed presently afterwards. Mr. Rosewell preached upon the 20th or 21st Chapter of Genesis, I cannot be positive which of them, but one of them it was—

Mr. Ros. But upon your Oath cannot you tell which it was?

L. C. J. You must not interrupt her, Sir; you shall have your time to ask her what you will.

Hilton. It was the 20th or 21st of Genesis, I will not be positive which of them it was. But the thing was as to Abraham and Sarah; that was the Contents of the Chapter that Mr. Rosewell was then pleased to preach upon. After he had took his Text, and preached a little while, he said, The People went flocking to the King to cure the King's Evil, which he could not do; for they ought to flock to them, that were Priests and Prophets, who by their Prayers could cure their Grievances. Then he preached a great while of the Chapter following again; and then says he, We have had two wicked Kings that have suffered Popery to come in under their Noses, which I can compare to nothing but the most wicked Jeroboam. There was another King named, and I think it was Rehoboam. I cannot be positive as to that, but Jeroboam I am sure was named. Then he said, If the People would stand to their Principles, he did not question but to overcome all their Enemies with broken Platters, Rams-Horns, and a Stone in a Sling. These were the Words Mr. Rosewell was pleased to say.

L. C. J. Can you remember what day of the Month this was?

Hilton. It was the 14th of September, my Lord.

L. C. J. Do you remember what number of People were there?

Hilton. I believe there were four or five hundred People; there was a Garret full, and two Rooms below, the Parlour full, and the Hall full; and one Paul Shed (as Mrs. Smith told me his Name was) let us in. I did not know any of them; nor ever had Convicted any of them; that was the first time I ever was at a Meeting in my Life, and I had enough of it then.

L. C. J. You say you came on Saturday Night to Mistress Smith's House?

Hilton. Yes, my Lord.

L. C. J. What time that Night?—Hilton. About eight or nine o'Clock.

L. C. J. What time in the Morning did you go along with her to this place?

Hilton. We went by seven o'Clock in the Morning.

L. C. J. Did Mr. Rosewell come before you, or after you?

Hilton. No, he came presently after we were there.

L. C. J. Do you remember any other Words he utter'd there that Day?

Hilton. He was pleased to talk of several things between whiles in his Sermon; among the rest, I heard him speak about Canting. He said there was a Word they called Canting, but he did not understand what that Word meant, except it were the Fellows in their white Gowns. For he was going by one of their Churches, where he heard them sing the Lord's Prayer, the Creed, and the Ten Commandments, with a Ha-ha-ha-ha; for my part, says he, I was ashamed to hear it.

L. C. J. Do you remember any other part of the Discourse?

Hilton. He had a great many other of those things, that I cannot now remember; it affrighted me to hear it out of my Wits.

L. C. J. Where did you go from thence?

Hilton. We went Home to Mrs. Smith's. It was two o'Clock, and we had not eat a bit of Bread all the while; and as soon as she came Home, Mistress Smith took her Pen and Ink presently, and writ down those Words; her Husband and I and she were together; and when we had done this, we went to the Quaker's Meeting.

L. C. J. What Quaker's Meeting is that?

Hilton. It is that by Cheap-side; I do not well remember the Name, I think it was called the Bull and Mouth.

Mr. Just. Hol. What time of the Day was it that the Meeting was done at Mr. Rosewell's?

Hilton. We came from Mr. Rosewell's a little after two o'Clock.

L. C. J. From Seven to Two did he hold? that is pretty long-winded.

Hilton. No, he went in to Dinner, and left us there, and abundance in the Congregation eat Sweet-Meats, or Biskets, or such things as they had. But I am sure we had nothing there. I was never among you before, nor ever Convicted any of you.

Mr. Ros. I humbly beseech your Lordship to make her sensible of the Obligation she is under by her Oath.

L. C. J. Ay, Ay; I will. Look you Mistress, you must take notice, here is the Life of a Man in question, which is a thing of great

Considera-



Consideration. And for you to have any Concern in taking away the Life of a Man, if it be upon false Grounds, is a very dismal thing; besides, that there is a thing which is yet of greater Weight and Moment to you yourself, it concerns your own immortal Soul. You must consider what Guilt you contract upon yourself if you tell a Lye; but there is a much greater Guilt contracted, if you offer to swear a Lye in a Court of Justice, upon a Cause of this Concernment. Consider, I tell you, you are in the Presence of Almighty God, that seeth into the Hearts of all Mankind; that is the Avenger of all Lying and Perjury; that may justly sink you into Hell, if you offer to swear a Falshood. Therefore, I charge you, in the Name and Presence of that great God, the Judge of Heaven and Earth, to answer me truly to this Question: Are these things that you have sworn here true?

Hilton. My Lord, they are every Word true. There is a Gentlewoman here, one Mrs. Collingwood, that shall witness I set them down that Day; and went away to the Recorder, and gave him an Account of them.

Mr. Att. Gen. Well, if you have done, go over.

L. C. J. No, hold, Sir, will the Prisoner ask her any Questions?

Mr. Ref. Yes, my Lord, with your Leave.

L. C. J. Av, in God's Name, what you will, that is fitting to ask.

Mr. Ref. Mistrers, what is your Name?

Hilton. My Name is Hilton.

Mr. Ref. Was your Name ever *Shastoe*?

Hilton. Yes, but my Name now is Hilton.

Mr. Ref. Or otherwise *Smith*, I suppose: for I have heard so.

Hilton. No, Sir.

Mr. Ref. Then, Mrs. Hilton, upon the Oath you have taken (for I hope you have observed what my Lord has said to you about the Sin and Danger of false swearing) —

Hilton. Mr. *Roswell*, God forbid I should stand here to tell such a Lye as this, if it were not all Truth to my Knowledge; I would rather speak less than more.

Mr. Ref. Were you at *Rotherbith* that 14th Day of September?

Hilton. Yes, I was. I was with Mrs. *Smith* at her House over Night, and went with her to *Rotherbith* at Seven o'Clock next Morning.

Mr. Ref. Whose House were you at there?

Hilton. I cannot say at whose House it was of my own Knowledge, for I was never there before in all my Life; but they said it was one Captain *Daniel's* House.

Mr. Ref. What Street was it in?

Hilton. I do not know what Street it was in, it was near *West-Lane*.

Mr. Ref. What kind of Buildings were there in the Street?

Hilton. Over-against it, a little way from the House, is a Bridge, that we went over; I believe it may be some ten or twelve Doors from the House.

Mr. Ref. In the Street, you say, over-against the House?

Hilton. A little way from it. Mr. *Roswell*, if you do remember (I can remember these things very well) there were Shutters in the Windows, and the Sun came in, and you were afraid lest the People that went by should hear you. First, There was not light enough, and you desired that one part of the Shutters might be opened; which was done: And then you desired that half might be shut again, for fear the People should over-hear you.

Mr. Ref. What kind of Entrance is there into the House?

Hilton. There is an Entry, and from the Entry we went into a little Hall, the Rooms were but of a low Height.

Mr. Ref. Was it in an upper Room, or a lower Room that I preached?

Hilton. It was in an upper Room, you were up two pair of Stairs, the Chamber was hung with sad-coloured Paper, and a sad-coloured Bed was in the Room; upon the Left-hand, as you stood, there was a Chest of Sweet Wood stood, and a little Cabinet upon it, and a Glass over that; and upon the Right-hand, on the side of the Chimney, was a Closet; I took very good Notice of all these things.

Mr. Ref. Two pair of Stairs, upon your Oath, you say it was?

Hilton. Yes, it was two pair of Stairs, upon my Oath, Sir.

Mr. Ref. How many Steps, Mrs. Hilton, were there?

Hilton. They were low Stairs, eight or nine to a Pair, I think; I did not number them, Mr. *Roswell*.

Mr. Ref. The other says, there was a little Room up six Steps; and that I was but one pair of Stairs high.

Hilton. And there was a Garret, my Lord; which I am sure there was above four Hundred People there at that Meeting.

Mr. Ref. Did you see that Number of People there?

Hilton. Yes, I did.

Mr. Ref. If you were within in the Room, how could you see them all there that were below, and in the Garret, as you say?

Hilton. When you went down to refresh yourself, to Dinner, as I suppose; said I to Mrs. *Smith*, for the Lord's sake, let me go out, for I am affrighted out of my Wits to hear such Stuff as this.

L. C. J. Frightful Stuff indeed.

Hilton. Says she, You cannot go out till they all go; there is no body to let you out; but I would fain have been got out thence.

Mr. Ref. What time did you come thither, say you?

Hilton. We came by Seven o'Clock in the Morning.

Mr. Ref. How did the Exercise begin?

Hilton. Between Seven and Eight.

Mr. Ref. I do not ask you what time, but how it began?

Hilton. You made a kind of a Prayer, I do not understand your way, for I never was used to your Meetings, I never was at any before in my Life. You took your Text (I cannot be positive which, but it was) either out of the 20th or 21st Chapter of *Genesis*.

Mr. Ref. But can you remember these Words, and not the Chapter?

Hilton. I can tell you more that you said, if you please.

Mr. Ref. Mrs. Hilton —

L. C. J. Let her go on; you ask her a Question, and will not stay for an Answer, but go to another thing. She is telling you what was done.

Hilton. This I am positive in, it was the 20th or 21st Chapter of *Ge-*  
Vol. III.

*nesis*: the Story was about *Abraham* and *Sarah*, how he bid her call herself his Sister.

Mr. Ref. That is the 20th Chapter.

L. C. J. Nay, I suppose you can remember the Text better than this; Woman.

Hilton. I believe it was the 20th, that you did most expound upon that Day; for you said at last *Abimelech* made *Abraham* a Present, which you did think might be about 20 Guineas.

Mr. Ref. I see you are thorough-paced.

L. C. J. Methinks she brought away much of your precious Stuff for one time, upon my word.

Mr. Ref. How long did you stay there, Mrs. Hilton?

Hilton. I staid there from the time you came in to the end of all: about eleven or twelve o'Clock you went down to Dinner; They that were there staid till you came up again, which was in the Afternoon; and then you began upon a Text which you took in the *Psalms*, I think; I cannot positively say where; but a new Text you did take, that you did.

Mr. Ref. In the *Psalms* did you say?

Hilton. And if it please you, Sir, I never saw you but then, and now, in my Life.

Mr. Ref. What Habit was I in?

Hilton. You had a Camblet Cloak on that had an Eye of blue in it, and a mourning Hatband about your Hat; and upon the Bedside by me sat Mr. *Atkinson* in a mourning Cloak, and his two Boys.

Mr. Ref. There was some stop or Pause you say; you call it a Dinner?

Hilton. You went to Dinner, I suppose; I know not where you were.

Mr. Ref. Pray how did the Exercise begin in the Afternoon?

Hilton. I cannot very well tell.

Mr. Ref. Was you there to the End of it?

Hilton. To the very end of all.

Mr. Ref. What *Psalms* was read, or what Chapter that I preached upon?

Hilton. Sir, I cannot remember what your *Psalms* is. These are the Words that you said, and that you preached. Sir, I cannot remember how all these came in, nor all the Stuff that was said.

L. C. J. She says she cannot remember all your Stuff.

Hilton. I was never used to a Conventicle in my Life: and I would I had not been there then.

Mr. Ref. What was the Text I preached upon?

Hilton. In the Morning it was, I tell you, the 20th or 21st Chapter of *Genesis*. But the Heads of your Sermon, and after you had talked about the King, and all those things, was about *Abraham* and *Sarah*----

Mr. Ref. But what was the Text in the Afternoon?

Hilton. I cannot tell that truly.

Mr. Ref. Then upon what Occasion were those Words in the Morning about flocking to the King to cure the Evil?

Hilton. Sir, you said----

L. C. J. How can any Body tell what occasion you could have. You had no occasion from that Text, nor any other Text that I know of, to talk of the King or the King's Evil.

Mr. Ref. But I speak of the Coherence of the Discourse, my Lord.

L. C. J. You preach without any Coherence, or you never had been brought here. When you give yourself the Liberty to talk of these things, you ramble from your Text.

Mr. Ref. I mean by it, my Lord, what Part of the Chapter it was that did lead to it?

L. C. J. No Man living can tell; it was the Devil led you to talk Treason: The Indictment tells you so, that you had not the Fear of God before your Eyes, but were moved and seduced by the Instigation of the Devil to do it. Who leads People to do all sorts of Wickedness but the Devil? You can give no Reason for it yourself, nor no one else.

Mr. Ref. Were these Words delivered in the Forenoon Discourse?

Hilton. I do not know what you call Forenoon, or Afternoon: I am sure we had no Dinner.

Mr. Ref. But was it all before, or after I broke off, and went down?

Hilton. Before, Sir.

L. C. J. She says it was before you went to Dinner; but for her part she had no Dinner at all, she says. If you have done with her, then go on, Mr. Attorney.

Mr. Att. Gen. Where is Mrs. *Joan Farrar*?

Far. Here I am, Sir.

Mr. Att. Gen. Pray, will you tell my Lord and the Jury, were you present at this House when Mr. *Roswell* preached there?

Far. Yes, Sir, I was.

Mr. Att. Gen. What did you hear him say?

Far. Do you ask me of the 14th of September, first, Sir?

Mr. Att. Gen. Yes.

L. C. J. Why, were you there at any other time?

Far. Yes, several times.

Mr. Att. Gen. Well, take your own way of delivering your Evidence, and give an Account of what you know of the Prisoner.

L. C. J. But, hark you, be sure you tell nothing but what is Truth. You must consider, here is the Life of a Man at the stake, and your own immortal Soul is at stake too. You are in the Presence of the great God of Heaven and Earth, that seeth into all your Actions and Thoughts, and searcheth the Hearts of all Mankind, and therefore have a care of contracting any Guilt upon yourself by telling any Lye; be sure to say nothing but what is Truth.

Far. Sir, I was not in the Room with him; I was in a Parlour or Hall, what do you call it, a low Room; and he was up Stairs above it.

Mr. Att. Gen. But were you in the Congregation? Were there any other of the Hearers in that Room among whom you were?

Far. Yes, Sir; there were a great many of them there, Sir.

Mr. Att. Gen. Well, what did you hear him say?

Far. Sir, concerning the Evil was the first thing I heard him say; and



and he made it so, that it was not the King that cured it, but it was they they should flock to. It is we they should flock to, says he; for we are they which are the Priests and the Prophets, that by our Prayers do cure the Grievances of the People.

Mr. Att. Gen. What did you hear him say more in that Discourse?

Far. The next that I observed was, he said, we had now two wicked Kings together; but I could not tell who he compared them two wicked Kings to; but he bid the People stand to their Principles, and in time they should overcome their Enemies.

Mr. Recorder. Pray, have you heard him at any other time?

Far. Yes, I have heard him at other times.

Mr. Recorder. Did you take notice of any thing he said against the Government?

Mr. Ros. I beseech your Lordship, may these leading Questions be asked?

L. C. J. Yes, I have told you already; to shew your Practice. It is not at all a leading Question. What did you hear him say at any other time about the Government?

Far. In a Mill, it was by Rotherhithe-Wall, at one Hudson's, he prayed that he might not offend the Lord in not praying for the King; but the Lord might please to open his Eyes, or turn the Times.

L. C. J. Can you remember when that was?

Far. It was the 17th Day of July,---no, of August, to my best Remembrance; and upon the 17th Chapter of Genesis.

L. C. J. That he preached upon there, did he?

Far. Yes, Sir.

L. C. J. Did you hear him say any thing at any other time?

Far. Yes, Sir.

Mr. Recorder. What do you remember about People in Scarlet?

L. C. J. Tell us what you heard him say else?

Far. At West-lane end, at one Paul Shed's, I heard him preach concerning the Fire of London about eighteen Years ago. That there was a certain great rich Man, that lived in Grace-church-street; he said, he needed not name him, he supposed they all knew who he was; and he said there went a poor Man to him, not a poor Man neither, but a Carpenter, an House-keeper, a labouring Man, and told him how to quench the Fire; and then he preached, that if it had not been for that great Man, that Fire had not been, nor the Fires in Southwark or Wapping, if it had not been for the Lord Mayors and Sheriffs since.

L. C. J. Have you any more to ask her?

Mr. Recorder. What have you heard him say else?

Mr. Att. Gen. No, my Lord, we have done, I think.

L. C. J. Answer my Brother Jenner's Question.

Mr. Recorder. What about People in Scarlet?

Far. Then after he had preached concerning the Fire, he said it was a fine Sight to see Fools in Scarlet Gowns; and he heard the Recorder was to be made a Judge.

L. C. J. He hears strange Stories it seems. What do you make of this, Brother Jenner?

Mr. Ros. God forbid, my Lord, this should be true.

L. C. J. You see she swears it.

Mr. Just. Withins. Mr. Rosewell, will you ask her any Questions?

Mr. Ros. Mistress, you say you were at the Meeting on the 14th of September; pray in whose House was it?

Far. It was at a House at the end of West-lane; there are a Row of Houses that face to the Fields.

Mr. Ros. But whose House was it?

Far. They said it was one Daniel's House.

Mr. Ros. In what Room of the House were you?

Far. In the lower Room.

Mr. Ros. Did you see me there?

Far. Sir, you were gone up Stairs before I came in.

Mr. Ros. You did not see me there upon your Oath?

Far. No, my Lord, I did not see him.

L. C. J. She said at first, you were gone up before she came, and she was in a lower Room.

Far. But I knew his Voice.

L. C. J. Did you know his Voice?

Far. Yes, Sir; I had heard him several times.

Mr. Ros. Did not you tell somebody that you heard none of these Words?

L. C. J. Were you asleep all the while?

Far. No, Sir, I was not asleep, I did not sleep while I was in the Room. I never slept in your Presence in my Life.

Mr. Ros. Were you there at the beginning? What time came you in?

Far. Sir, I believe you had read half your Prayer; I was at the beginning of the Sermon.

Mr. Ros. Who came along with you?

Far. I came alone; my Child was not well, and so I came late.

Mr. Ros. What was the Chapter I was upon?

Far. It was upon the 21st of Genesis, Sir.

Mr. Ros. Upon what Verse of the 21st of Genesis was it, that you heard these Words?

Far. I cannot tell what Verse it was.

Mr. Ros. I ask, my Lord, because I went distinctly upon Verses.

L. C. J. Prithce, Man, I care not how thou went'st on.

Mr. Ros. Cannot you tell how they came in?

Far. No, Sir.

L. C. J. Nor any one else, I dare say, how such Words can come in?

Mr. Ros. Were the Words spoken together in that Exercise that you have sworn?

Far. Yes, in that Exercise.

Mr. Ros. How long did you stay there?

Far. Till you had done, I believe it was Two o'Clock.

Mr. Ros. Was it in the Forenoon?

Far. We had no Dinner at all; I cannot tell what you call Forenoon, or Afternoon.

Mr. Ros. Was it all spoken upon that Chapter, upon your Oath?

Far. Truly, Sir, I think it was upon your first Text.

L. C. J. If you have done with her, let her go over.

Mr. Att. Gen. We shall call one or two more of his Auditors at other times, that will give some account of his Way. Where is your Man, Mr. Atterbury? What is his Name?

Mr. Atterbury. Peter. But here is one of the Witnesses.

Mr. Att. Gen. Swear him then. What is his Name?

[He was sworn.]

Mr. Atterbury. Robert Cook, he says.

Mr. Recorder. Were you an Officer in this Place?

Cook. Yes, in St. Mary Maudlin's I was; St. Mary Magdalen, Bermondsey Parish.

Mr. Recorder. Were you at the executing of any Process against Rosewell's Conventicle?

Cook. If it please you, my Lord, I had a Warrant from Sir Thomas Jenner, to serve at one Wildy's House, a Bricklayer in Rotherhithe; and when I came to the House to serve it, there was abundance of People, and a great Riot was made, but no Blows I confess; but a great Tumult of People, that had not I and the Beadle, one Samuel Bennet by Name, caused the People to stand clear, I do not know but there might have been Mischief done. Of which we upon that gave an account to Sir Thomas Jenner, and he hath bound some of the People over to the Sessions.

L. C. J. What do you mean by this, Gentlemen?

Mr. Att. Gen. My Lord, we have done; this is only about some Disturbances that the King's Officers meet with, in executing Process against these Conventicles.

L. C. J. But what is this to the Prisoner?

Mr. Att. Gen. Here is some would have him called; but I confess we cannot make any use of his Evidence against the Prisoner, only as to what is hinted in the Indictment, that he did it to disturb the Peace.

L. C. J. Pish, that is nothing, the Officer did his Duty; but what is that to this Business? Have you done, Gentlemen, for the King?

Mr. Att. Gen. Yes, my Lord, we have done.

L. C. J. Then, Mr. Rosewell, now is your time to make your Defence; and you shall have time to make it as full as you will.

Mr. Ros. My Lord, may I have the Favour to have the Indictment read again in Latin?

L. C. J. Yes, yes, if you will. Read it again.

Mr. Ros. I humbly thank your Lordship, only the Words, my Lord. Cl. of Crown [reads.] *In quadam illicita assemblea, in presentia & auditu diversorum subdit' dicti Domini Regis, adtunc & ibidem illicite & seditiose assemblea' & congregat', asseruit & declaravit quod populus (subdit' dicti Domini Regis nunc, innuendo) coadunationem fecere (Anglice made a flocking) dicto Domino Regi nunc, sub pretextu sanandi morbum regni (Anglice the King's Evil) quod ipse (dictum Dominum regem nunc, iterum innuendo) facere non potest; sed nos sumus illi (seipsum Thomam Rosewell & al' seditiosos & proditor' person' innuendo) ad quos illi (ligeos subdit' dicti Domini regis nunc, innuendo) debent accedere (Anglice, flock to) quia nos (seipsum prædict' Thomam Rosewell & al' sedit' & proditor' person' iterum innuendo) sumus Sacerdotes & Prophetæ, qui precibus delectes ipsorum (ligeos subdit' dicti Domini regis nunc, iterum innuendo) sanaremus. Nos (subdit' & ligeos hujus regni Angliæ innuendo) habuimus nunc duos iniquos reges (Serenissimum Carolum primum nuper regem Angliæ, & dict' Dominum regem nunc, innuendo) insinuat, qui permiserunt Romanam superstitionem (Anglice Popery) ingredi (infra hoc regnum Angliæ, innuendo) in eorum conspectu (Anglice under their Noses) qui (prædictum Carolum primum nuper regem Angliæ, & dictum Dominum regem nunc, innuendo) assimulari possunt ad nullam personam nisi ad nequissimum Jeroboam. Et si ipsi (divers' maledisposit' & sedit' person' adtunc & ibidem cum prefat' Thomam Rosewell illicite & seditiose assemblea' & congregat' existen' innuendo) ad fundamenta' ipsorum permanerent (Anglice would stand to their Principles) ipse (seipsum Thomam Rosewell innuendo) non timebat quin ipsi (seipsum Thomam Rosewell & prædict' maledisposit' & sedit' person' sic ut prefertur assemblea' innuendo) inimicos suos (dictum Dominum regem nunc, & ligeos subdit' ipsius Domini regis nunc, innuendo) vincerent, sit ut in pristino tempore cum cornubus ariet', patinis fractis (Anglice broken Platters) & lapide in funda (Anglice Sling) &c.*

Mr. Ros. If it please you, my Lord, that which I object against, and desire to be satisfied in by your Lordship, is this; I am charged with speaking Words about flocking to the King to cure the King's Evil; and it is in the Indictment called *Morbus Regni Anglici*, that is the Disease of the English Kingdom.

L. C. J. No, no; it is *Morbus Regni*, Anglice the King's Evil.

Mr. Ros. I do not understand how *Morbus Regni* can be the King's Evil.

L. C. J. Therefore because there is no apt Word in the Law for that Distemper, they help it up by the Word *Anglice*, to shew what they meant.

Mr. Ros. But, my Lord, I understand there are proper Words for the Disease; as *Struma*, and *Scrofula*, those are proper Words for it, not *Morbus Regni*.

L. C. J. Not at all in Law, those may be the Words used among Physicians; but in legal Proceedings we are to keep up exactly to the legal Names and Phrases; and where we have not an usual Word, then we help it up by *Anglice's*: and so we here express that very Distemper, which is called by the Name of the King's Evil, by a Word framed as near to a Law Phrase as we can; and to shew our meaning in it, we add, *Anglice the King's Evil*.

Mr. Ros. My Lord, is that the Phrase that is proper for it in Law?

L. C. J. Yes, yes, it is very well expressed to shew what is meant.

Mr. Ros. But, my Lord, *Morbus Regni*, is in *English* properly the Disease of the Kingdom.

L. C. J. It is so, the Disease of the Kingdom; if they had gone no further, but left it there, it might have had such an Interpretation put upon it. But because the Words are so ambiguous in *Latin*, they are reduced to a certainty, by putting an *Anglice* to them.

Mr. Ros. I thought it had been *Anglici*. My Lord, there is another Phrase that I object against, it says, *Nos habuimus nunc duos iniquos Reges insinuat*. My Lord, this cannot be understood of two Kings one after another; but *insinuat* makes it to be both at once.

L. C. J.



L. C. J. No, we have had now together two wicked Kings.

Mr. Ros. That we do not use to express so in Latin.

L. C. J. The Words do thus sound in English.

Mr. Ros. Here are two Words *Insimul* and *Nunc* that do signify the present time. My Lord, I am now only speaking all this while upon the Hypothesis that these Words were spoken by me; for I still do, and always must deny the Thesis.

L. C. J. We take it so.

Mr. Ros. It should have been *Successive*.

L. C. J. Then it had not agreed with your Words. For the Witnesses swear that you said, We have now had two wicked Kings together, and not successively.

Mr. Ros. If that be an Anglicism, this cannot be true Latin.

L. C. J. Nay, if it be a Blunder in the Latin, it was a Blunder of your making; for you spoke it so in English, and the Indictment in Latin must exactly pursue your English.

Mr. Ros. Then, my Lord, here is another Expression, that they suffered, *Romanam superstitionem*, Popery, to come in.

L. C. J. Ay, is not that well expressed?

Mr. Ros. My Lord, there may be Superstition in the Worship of the Church of Rome, and yet that not be the thing we call Popery.

L. C. J. There may so, you say right; but then this comes under the same reason, as the former Phrase you objected against about *Morbus Regni*. Because *Romana Superstitio* is such a general Word, and because there are several Superstitions in the Romish Church, abundance of them; and this may make it uncertain; and because we have no other Word to express what we call Popery by, therefore there is an *Anglice* put in, to shew what is meant.

Mr. Ros. Then, my Lord, it is said *in eorum conspectu*: is that right, my Lord?

L. C. J. Yes, *Anglice* under their Noses?—Mr. Ros. That is in their Sight.

L. C. J. Pray, how would you put that into Latin, under their Noses?

Mr. Ros. My Lord, if I should speak according to the other parts of the Latin of this Indictment, which your Lordship says must exactly pursue the English, I would render it *sub naribus illorum*.

L. C. J. Such People suffer Conventicles under their Noses, *in eorum conspectu*.

Mr. Just. *Holloway*. 'Tis not your Nose that sees.

L. C. J. Suffer Rebellion under your Noses; are these things *Sub naribus*, or *in conspectu*?

Mr. Ros. My Lord, this could not possibly be spoken of the late King, and this King; when the precedent King died a professed zealous Protestant; and his present Majesty has so often, and earnestly declared against it.

L. C. J. We know that very well; but yet withal we know, 'twas the Pretence of Popery and Arbitrary Power, and those things, that brought that blessed Martyr to the Scaffold; and the great Cry now at this Day, by all factious and seditious busy Fellows, is against Popery; as if it were just breaking in upon us, and the Government abetted it; when it is all false, nothing more untrue: the Indictment calls it so, says these Words are spoken *falso & malitiose*; and all Treasons are so.

Mr. Ros. Then, my Lord, there is another thing, *Si ipsi starent ad Fundamentalium eorum, Anglice*, If they would stand to their Principles, or Principals; for I know not how it is in the Indictment. Pray, my Lord, how comes *Fundamentalium* to signify Principles?

L. C. J. Their Principles, that is, their Foundations, or Fundamentals. *If the Foundations be destroyed, what can the righteous do?* says the Psalmist. The Latin Bible expresseth it by *Fundamentalium*.

Mr. Ros. Then it is *si ipsi* in the third Person; now, my Lord, in common Sense that must needs refer to the two wicked Kings that were spoken of just before, or to the King, and his Subjects spoken of afterwards; and then sure it cannot be Treason.

L. C. J. No, they; that is, I and you that are here. 'Twas spoken to your Congregation. If they would stand to their Principles, then come the broken Platters, &c.

Mr. Ros. If it were spoken to them, and of them, it must have been *you or we*. Then it is added in the end, my Lord, *Fractis Patinis*, broken Platters: Your Lordship has remembered me of that Word. My Lord, I did hear that Mrs. Smith did swear at Kingston Assizes, it was Pewter Platters.

L. C. J. I do not know what she swore there; now I am sure she swears as it is in the Indictment.

Mr. Ros. Mistress Smith, Pray did not you swear it was Pewter Platters at Kingston?

Smith. No, I never said otherwise than I do now, and that is, broken Platters.

Mr. Ros. I did hear she swore *Pewter* then. But, my Lord, I conceive, if it refers to me, and the People that were there, it should have been, as the former Sentence is, in the first Person? *We* have had, &c. but here it is changed into the third Person, and therefore cannot be so meant.

L. C. J. But it plainly speaks its own meaning, that it is meant of the People there.

Mr. Ros. My Lord, then as to the *Innuendo's*, I see there are Eight or Ten of them. Whether are these to make such a Construction of a man's meaning, which doth not otherwise sufficiently appear, as to bring a man under the guilt of Treason?

L. C. J. I tell you the meaning is plain; if you and we, such false Traitors as are said to be there assembled with you, will but stand to our Principles, we shall overthrow and destroy our Enemies with broken Platters and Ram's-horns.

Mr. Ros. It is said here *ipse non timebat quin*—Of whom should I speak that *ipse*?

L. C. J. You were speaking of yourself and your Congregation.

Mr. Ros. But that is in the third Person, and the singular Number.

Mr. Sol. Gen. No, the Jurors that find this Indictment

Mr. Finch. say, that he said so, and that must be in the third Person.

Mr. Ros. That is not according to the rest.

Mr. Just. *Within*. They, is the People with him; and he, is he himself; that is plain, and can have no other Construction.

Mr. Ros. Now, my Lord, will your Lordship please to accept a free Declaration of the Truth of this Matter?

L. C. J. Ay, ay, go now to the Fact; now we are got over the Exceptions to the Indictment. To answer the Fact is most proper at this time.

Mr. Ros. Then here in the Presence of the great God of Heaven, the righteous Judge of all the Earth; before whom you and I, and all that are here, must one Day appear, at that terrible Bar of impartial Justice (and a glorious Tribunal it will be), to give an account of all things that we have done in the body, whether they be good or Evil: and I am told by my blessed Redeemer (who shall also be my Judge that Day), that an account must be given of every idle Word that I shall utter, how much more for Lying and Perjury, and False-witness bearing? as your Lordship (I humbly thank you for it) did very seasonably suggest to those that have witnessed these things against me; I say in the Presence of that great God, and this Honourable Bench of Reverend Judges, and you Gentlemen of the Jury, and my dear Countrymen, that have been now sworn, as well as returned by the Process of Law for that end; I do here most solemnly declare the Truth unto you, as in the Presence of this God I shall answer it hereafter. And I shall begin with the latter part of these Words first, where this Indictment ends; for that seems to refer to some things of the late Times, and also to my Treasonable Intentions now. My Lord, and dear Countrymen, because I heard something mentioned as to the late unhappy Civil Wars in these Nations; I can declare, my Father was no ways concerned in those Wars, for he was dead before they began; and I was then but a Child, and did not understand the thing. But for the Death of the King, (Death did I say? that is too soft a Word; the Murder, the barbarous Murder of his Majesty King Charles the First, whom I had once the Happiness to see the Face of, or rather the Unhappiness to see in respect of his Condition at that time, being at Dinner under a Tree, with some few Persons about him, which very much affected my Heart, tho' then but young. So far was I from being one that would compare him to *Jeroboam*, &c. as your Lordship will hear, that) I always bewailed and abhorred that Act. For my present Sovereign, I declare in the Presence of God, I honour him with my Soul, and daily pray for him; and if I could do him any real good, I would sacrifice my Life most cheerfully to do it; I would die at his Foot to do him any real good. My Lord, I was once threatened with the loss of my Life for declaring for his Majesty in his Exile; when it is well known, few durst appear in those Days on the behalf of an injured Prince. It was objected against me, that I never prayed for *Oliver Cromwell*, that had usurped the Government. My Lord, I knew he stood upon a false Bottom; he was an Usurper. And for declaring, that the Kingdom would never be at Peace till the Right Heir, our Sovereign that now is, were restored to his Right, I was threatened that a Gibbet should be set at my Church-Porch, and I hanged upon it, or at my own Door. I preached upon that place of Scripture, *Ezek. 21. and the 27th Verse, I will overturn, overturn; overturn; and it shall be no more until he come whose Right it is, and I will give it him*. And I declared in my Sermon the several overturnings that God had given them then in Power. And tho' they threatened me, yet God preserved me then here at Home, as he did my dear Sovereign abroad; for whom I have prayed many hundreds and thousands of times. And it is well known, immediately after his Majesty's happy Restoration, I did upon one of His Majesty's Days preach upon that Subject: *For the Transgressions of a Land many shall be the Princes thereof*. I preached concerning the Excellency of Monarchy, which I shewed to be the chiefest and best of Governments, practised almost every where: And I proved it from the Example of the great God of Heaven, the Monarch of all the World, down to some of the meanest Species of Creatures. I shewed it was the Government God had set up in his Church, appointing the Lord Christ to be the King there: Among the Angels there was the Prince of them: Among the Celestial Bodies, the Sun in the Firmament—

L. C. J. Mr. Roswell, I am very unwilling to give you any Interruption, because of the Condition you stand in, being a Prisoner pleading for your Life, upon an Accusation of High-Treason. But I tell you, these things that you have now insisted upon are not at all to the purpose as to what you are brought here for. You are not here arraigned for your good Works, but for your evil Works. If you commend yourself for two Hours together it signifies not one Farthing; and the Gentlemen of the Jury must let it go for nothing. It only serves to please your Humour of talking, and captivate the Auditory; but it is not at all to the purpose. Keep close to the matter, that it is incumbent upon you to answer; to the Business you are upon here. It is our Duty, who are upon our Oaths, and who are accountable to the Government and the Law for what we do, to see that things be done according to Law. You are not here called in Question for your good Works or Actions, but for Treasonable and Seditious Words. I would to God, you had never done worse than what you have said of yourself. But here is an Indictment for Traiterous Preaching at one particular Place and one particular Time; answer to that. The Jury must go, not according to your way of speaking; but according to the Evidence relating to the Matters laid in this Indictment. Do not talk of your Preaching for Monarchy; and your Overturn, Overturn, Overturn, for if this be true, that the Witnesses have sworn against you, you have at once overturned all the good you ever did, or said in your Life before.

Mr. Ros. My Lord, I know very well, one such evil Action is enough to marr a Life of former good ones. But this that I have said, was to shew, how inconsistent those things that they have sworn, are with my constantly declared Judgment and former Practice.

L. C. J. There are abundance of People to whom the King has formerly extended Mercy, not only his Pardon, but even all the Promotions their ambitious fancies could make them pretend to: But 'tis well known, the Devil has not had more ready Instruments to carry on bloody designs for the Murdering this Gracious King, their Princely



Princely Benefactor, than these very Men that were thus gratified and advanced by him. Therefore, we can say nothing to what is alledged of former Loyalty; the Devil surprizes Men into these things; they do them, as the Indictment says, by the Instigation of the Devil. Keep to the Matter before you.

Mr. Ros. Well then, my Lord, to cut short. As to the Business since his Majesty's Return: I have been a constant Observer of his Days, and particularly the 30th of January I have always observed as a Day of Humiliation: And I did upon one of those Days preach upon that Text—

L. C. J. And all this signifies just nothing, and upon that Day you went to a Conventicle against the Law, and preached there; which shews, what a conformable Man to the Government and the Law you are. You can have your Congregation of Hundreds of People, and I know not what; now I tell you all this makes nothing against you, nor doth all your Commendation make any thing for you.

Mr. Ros. My Lord, I do not know any Law of the Land that is against Preaching the Gospel.

L. C. J. Yes, in Conventicles to preach, is against the Law of the Land.

Mr. Ros. My Lord, I humbly conceive it is the Circumstance of Number that makes the Transgression.

L. C. J. It is not only a Circumstance, but the Substance to preach in a Conventicle, and all against Law.

Mr. Ros. If you call that a Transgression to preach the Gospel, I humbly acknowledge myself a Transgressor.

L. C. J. I tell you it is a Transgression; but it is not such a Transgression as that for which you are here indicted: But because you commend yourself so much; a Man, I must tell you, that every Day doth notoriously transgress the Laws of the Land, need not be so fond of giving himself Commendations for his Obedience to the Government and the Laws.

Mr. Ros. My Lord, I was only saying that upon the 30th of January I preached upon that Text; 1 Tim. ii. 1, 2. *I exhort, therefore, that first of all, Supplications, Prayers, Intercessions, and giving of Thanks be made for all Men; for Kings and all that are in Authority; that under them we may lead quiet and peaceable Lives, in all Godliness and Honesty.*

L. C. J. Amen! I say to that Petition.

Mr. Ros. Amen! I am sure I say to it, with all my Soul; and it is my daily Prayer to my God for my Sovereign. And here I shewed, that it was the Duty of Subjects to pray for their Prince—

L. C. J. I tell thee, I care not a Farthing what thy Text was, nor thy Doctrine; I wish you had been at Church tho', and been conformable to the Laws. But this is nothing to our Business.

Mr. Ros. I had therein a sharp Reproof and Invektive against those that instead of praying for their Civil Head, cut it off; and those that design and plot against the Government.

L. C. J. You did abundance of good by your Sermon, no doubt; I shall not now stand to examine that.

Mr. Ros. So far was I from harbouring any Traiterous Thought—

L. C. J. Come, Come; All this is besides the Cushion; come to the Matter that is here before us, Man. I would not restrain you of any part of your Defence, either in Time, or any thing else; but let us not have the time taken up with that which no way concerns our Question. Our Business relates to what was said at your Meeting, at that Time the Witnesses speak of.

Mr. Ros. Then, my Lord, as to the Truth of this particular Case, I shall now declare all that past then; as in the Presence of that God who searcheth the Heart, and trieth the Reins, and who shall judge us all. Upon the 14th Day of September last, I did preach to some People that were met at a Friend's House, one Capt. Daniel in Rotherhithe: and as my Course hath been to expound the Scriptures (to make them understand them), I was, my Lord, that Day upon the 20th Chapter of Genesis. The Chapter is about Abraham and Abimelech King of Gerar. Now, my Lord, will you please that I shall deliver to you what was said, by repeating it by Word of Mouth, or read it?

L. C. J. No, no; I do not desire any of your Expositions, or Preachments: Answer to the Indictment, and what is charged upon you there.

Mr. Ros. My Lord, I am about it, in telling you what was really said; and I ask the favour of delivering in Court what I then delivered to them. My Lord, it was thus: In the 2d Verse it is said, *And Abraham said of Sarah his Wife, She is my Sister*; from whence I observed, that he had been guilty of this once before, in the 12th Chapter, when he told the very same Lye to Pharaoh King of Egypt. And thence I raised this Note, *That a Good Man, or a Friend of God, might fall into the same Sin once and agen.* And in proof of it, I brought three or four Instances. That of Lot in the foregoing Chapter, his falling twice into the same Sins of Drunkenness and Incest with his own Daughters. That of Sampson, in the 16th of Judges (and there came in the mention of Dalilah, that she spoke of, which she only remembers the Name of, and not the Truth of the Quotation), That of Peter's denying his Master, Once, twice, and agen; first, with a Lye; secondly, with an Oath; and thirdly, with an Imprecation. But the Proof which they in this Point have most distorted, is that of Je-heshaphat, who sinfully joined with two wicked Kings: First, with a wicked Father Abah in his Expedition into the Land of the Syrians against Ramoth-Gilead, 2 Chron. 18th Chapter; for which he is reproved as a great Transgressor, and threatened by the Prophet in the 19th Chapter, and the beginning: And yet he afterwards joined with another wicked King, Ahaziah, Abah's wicked Son, to go to Tarshish; as we may see in the 20th Chapter, and the latter end. And here, my Lord, is the whole of the Business concerning the two wicked Kings. In the Presence of the Holy and Great God there was not one word spoken of the Kings of England, either King Charles the First, or his present Majesty. This was as to the two wicked Kings. And then, my Lord, I came to the 7th Verse, which has these Words, *He is a Prophet, and he shall pray for thee, and thou shalt live.* Upon this I observed, *That the Prayers of God's Prophets have been very prevalent for the healing, and helping of others in a time of need.* And

three Proofs I brought of this: The last of which, was that of the Prophet Isaiah's praying for King Hezekiah in the time of his great and dangerous Sickness. But that which has reference to this Business, was that out of the 1 Kings 13. and the beginning; *When the Prophet came to Bethel, and there rebuked Jeroboam, and prophesied against the Altar there; Jeroboam put forth his hands, and shook it at him, and said, Lay hold of him; upon which the King's hand was dried up. Thereupon the King intreated the Prophet, that he would pray unto the Lord his God for him, that his hand might be restored, which the Prophet did; and the King's hand was restored again, and became as it was before.* And here is the Business of Jeroboam. In the Presence of God, I speak it, there was not any the least Comparison of my Dear Sovereign to that accursed wicked Prince Jeroboam, who made Israel to sin: No, my very Soul trembled at the Thoughts of it when I heard it. Upon this Head I had this Sentence, or Observation (which I will give you to a Word) If I were to die the next Moment, and appear before the glorious Tribunal of the Heavenly Majesty, I tell not the least Lye, or Equivocation, or Prevarication, *That a Godly Man's Prayer is a sovereign Cure of the King's Evil; whereby the meanest, or the poorest Christian may gratify, and serve the greatest Monarch.* And this is not my Saying neither, but the laying of an Expositor upon that very place of Scripture, out of whom I did quote it. Nor did I speak of it, or he write of it, with respect to that particular Disease that the Indictment calls *Morbus Regni*, but the King's Evil as the King's own Disease, in reference to Abimelech; who was King of Gerar. For it followeth in the Close of the Chapter, *God heard Abraham's Prayer, and healed Abimelech and all his House.* But as for that Word they speak of; *of the People's flocking to his Majesty to cure the King's Evil, which he could not do; and that we were Priests and Prophets to whom they must come for Cure;* in the Presence of the Eternal God there was not a Word of it. Then, my Lord, for that of the Rams-horns; I shall observe how that came in by and by; but first I will premise, That all this that has been now spoken of, was upon the Exposition of that Chapter in the Morning. In the Afternoon I preached upon a particular Text; I began with the reading of a Psalm and a Chapter; and so far I conceive it was after the manner and usage of the Church of England, which enjoins the reading of the Scriptures as Part of its Worship. I preached upon the 11th of the Epistle to the Hebrews, and the 12th Verse (though one of the Witnesses said it was a Psalm)—

L. C. J. She would not be positive, but she thought a Psalm, she could not tell.

Mr. Ros. My Lord, it was the 11th of Heb. ver. 12. the Words are these, *Therefore sprang there of one, and him as good as Dead, so many as the Stars of the Sky in multitude, and as the Sand which is by the Sea-shore innumerable.* Upon which I had this Note, *That the great God can effect great Matters by very small and unlikely Means:* As here (of one) what was less than one? None at all: And this one too as good as Dead; and yet from him to raise as many as the Stars in the Sky, and the Sands on the Sea-shore. What great things did God effect by the Rod of Moses? which was but a little Wand in his Hand, and yet a Sign and Symbol of Authority; as our Sheriffs' white Staves are. Never was there any great Plague to be sent upon the Enemy of God, and his Church, Pharaoh and his Egyptians, but upon the stretching forth that little Rod, it came. And so, at the Siege of Jericho: What dreadful Dilapidations in that great City did the Sound of the Rams-horns make? What a terrible Army of the Enemies of the Israelites did Gideon's small Host destroy with a few broken Pots or Pitchers? (much less did I mention Platters, or Pewter Dishes; as I have been informed they first swore). And what a tremendous Champion did David strike down with a Stone in a Sling? And what a glorious Work did our Lord Christ, the Son of David, do in his curing the Blind Man with a little Clay and Spittle; more likely to dam up the Eyes of one that could well see, than to open the Eyes of one that was born blind. Now here, my Lord, is the whole truth in the Presence of the Eternal God. Here your Lordship fees is mention made upon the second Verse of the Twentieth of Genesis of two wicked Kings; but how, not (as they have represented it) with any Reflection upon the Kings of England; nor were they spoken in that order as they have sworn them, but as I have now repeated them. Here is mention of healing the King's Evil, and of Jeroboam; but no way in that manner as they say. And here is likewise mention of Rams-horns, broken Pitchers, and a Stone in a Sling; but not with the least application to the Government, or reference to it, or Reflection upon it, or the King: and this is the Truth. I have made an ingenuous Confession of the whole as it passed, that your Lordship may see how much I am abused by these false Wretches. And if they have so good Memories as really and indeed to remember what was then said, their Memories and their Consciences cannot but go along with me, and confirm what I have said; that all that was spoken by me that Day, was as I have related it, without the least Reflection upon, or Application to his former Majesty and our present Sovereign, or either of them, or any thing relating to the Government. And if you be not convinced here, I am sure there will be a Day come wherein you will find and see, that these are none of the King's Friends, but his Enemies, that thus have falsely accused an innocent, faithful, loyal Subject of Treason; a Crime which my very Soul abhors the thoughts of. In Proof whereof, if your Lordship will give me leave, I will now call my Witnesses to testify the Truth of all this Matter. And after this free and ingenuous Confession of the Truth, and what the Witnesses I shall call will testify about it, I hope, and trust in my Good God, that he will let you, my Dear Countrymen, see the Truth and Sincerity of my Heart in whatever Words were spoken by me. Had I been guilty of those Things that are laid to my Charge, I were not worthy to live. Pray, Mr. Crier, call Mr. Thomas Hudson.

L. C. J. Ay; Come call your Witnesses.

Mr. Ros. My Lord, One thing I would desire to speak to your Lordship. Your Lordship was speaking, that what I declared of my former Loyalty was nothing to what the Witnesses have deposed; My Lord, I have read in a true History (I think the Scriptures will be owned by all Persons that are here to be such) of two false Witnesses,

they



they were such; they are called Sons of Belial (I pray God these be not accounted Daughters of Belial) that swore Naboth did blaspheme God and the King. Doth your Lordship believe it?

L. C. J. What would you have of us, Man, by that Question?

Mr. Ros. I am confident, my Lord, your Lordship and the Court do not believe he did so.

L. C. J. The Scriptures tell us it was not true; Do you think we do not believe the Scriptures, because we do not hear you preach in your Conventicles? We do believe the Scriptures, Man; and we believe too they have been perverted by you, and other People, to very ill Purposes. Yes, I do remember the Story of Naboth; and to show you that I can remember some Holy History as well as you, I can tell you of another Story, and that is the Story of Susanna and the Elders, and there was Circumstance of Time and Place testified to; but it seems they were defective in their Proof, and thereby discovered. You would do well to detect the Witnesses, if you can, in some Contradiction, or Falshood; that will do you more Service, than all your Harangues and Speeches.

Mr. Ros. The God of Heaven will do it this Day, I trust; for to him I have opened my Cause.

L. C. J. Well, well, call your Witnesses, and prove what you can.

Mr. Ros. My dear Redeemer himself was served so; nay, condemned by the Testimony of false Witnesses. [Mr. Hudson came in.]

L. C. J. Come, here is your Witness; What say you to him?

Mr. Ros. Mr. Hudson, were you present at the Meeting at Rotherhithe on Lord's Day the 14th of September last?

Mr. Hudson. Yes, Sir, I was so.

Mr. Ros. Here is Mrs. Smith hath sworn, that since the beginning of August we had a Meeting in our Publick Meeting-House: Was there any, pray Sir?

Mr. Hudson. There was none such, that I know of.

Mr. Ros. She swears, that we were at the House of Captain Daniel Weldy's the 14th of September. Was it so?

Mr. Hudson. No, Sir.

Mr. Ros. What place was it then?

Mr. Hudson. It was one Captain Daniel's.

L. C. J. That is the same, as they say.

Mr. Ros. The first Witness, Mrs. Smith, said Capt. Weldy's; indeed, the other said, Captain Daniel's.

L. C. J. She said she was told so, but she could not tell; but she remembers you prayed for him, and his Child too, who was then ill.

Mr. Ros. Pray Sir, as to the truth of the Business; Did you hear me speak of two wicked Kings? That, my Lord, came in, I say upon the second Verse of the 20th of Genesis, which I then was expounding.

L. C. J. Nay ask him in general what he heard you say; and whether he heard you say any thing of two wicked Kings, and what it was.

Mr. Ros. Ay, about Abab, and Abaziah his Son—

L. C. J. Nay, nay, I must have none of those Things, we must have fair Questions put; for, as you see we will not admit the King's Counsel to put any Questions to the Witnesses, nor produce any Witnesses against you, that are leading, or not proper, so nor must you: But if you have a mind to ask him any Questions, what he heard concerning two wicked Kings generally, do so.

Mr. Hudson. Upon the 2d Verse he was then.

L. C. J. Of what Chapter?

Mr. Hudson. Of the 20th of Genesis. I was then in the Place, and writ. He was upon the second Verse, and concerning Abraham's denying of Sarah his Wife. Says Mr. Roswell, Doth Abraham here fall agen into Lying? I thought he had smarted enough in the 12th Chapter, for the same he told to Pharaoh: And doth he fall agen, and not take warning by it? From that you may take notice, that the best of God's Children may fall agen and agen into the same Sin. And there you quoted what Mischief good Jebeshaphat had like to have brought upon himself, by joining with two wicked Kings: First, with wicked Abab King of Israel; and after he was reproved for it by the Prophet, yet he fell into the same Sin agen, by joining with Abab's wicked Son King Abaziah. And so he quoted Sampson, who got Mischief by taking a Wife among the Daughters of the Philistines; and yet after he had felt some smart and hurt by it, yet like good Jebeshaphat, and good Abraham, he falls into the same Sin agen, by going to Timnah, and taking Dalilah.

Mr. Ros. What said I, pray, upon the Seventh Verse?

Mr. Hudson. The seventh Verse was concerning God's appearing to Abimelech in a Dream; where God says, *He shall pray for thee, for he is a Prophet, and thou shalt be healed.* And there Mr. Roswell spoke concerning the Worth and Value of the Prayers of God's Prophets; wherein he instanceth in one thing, that they were good to cure the King's Evil. And he quoted several Texts of Scripture of the Worth and Value of them; and among the rest was that in the First Book of Kings, the 13th Chapter, and the 6th Verse, wherein the Prophet came to reprove Jeroboam at the Altar at Bethel; and the King stretched forth his Arm, and bid lay hold on him, and the King's Hand was dried up: Upon which the King said to the Prophet, *Intreat now the Face of thy God for me,* and he did so; the Prophet prayed unto the Lord, and the King's Arm was restored whole as the other. And he did quote that of Hzekiah too.

Mr. Ros. My Lord, this Man did take Notes; and therefore may be the more exact.

Mr. Hudson. Yes, my Lord, I have my Notes, and can read them at large; and I did generally write, my Lord.

Mr. Ros. Then pray, Mr. Hudson, will you declare, whether you heard any thing in that Exposition or Discourse, concerning Rams-horns, broken Platters, and a Stone in a Sling?

Mr. Hudson. That was in the Sermon, Sir, in the Afternoon.

Mr. Ros. She swears it was all in the Morning Discourse.

Mr. Hudson. There was not such a Word in that, as I know of. The Sermon was not in the Morning; you did only expound, as you used to do in the Morning.

L. C. J. If you have done with him, I should ask him a Question or two. Hark you, Sir, Pray what time did this Exercise begin?

VOL. III.

Mr. Hudson. It begun about Eight o'Clock.

L. C. J. What number of People do you think there were there?

Mr. Hudson. I cannot judge how many they were.

L. C. J. How many do you think?

Mr. Hudson. I believe there were a matter of Forty or Fifty there.

L. C. J. No more than Forty or Fifty?

Mr. Hudson. Alas, we could see but in one Room.

L. C. J. What Room were you in?

Mr. Hudson. I was in one of the Chambers.

L. C. J. How many Pair of Stairs high?

Mr. Hudson. Two Pair of Stairs high.

L. C. J. Did you see Mr. Roswell?

Mr. Hudson. No, I could not see him at all.

L. C. J. Was there ever a Bed in the Room where you were?

Mr. Hudson. No, my Lord, there was not.

L. C. J. Was there a Dinner-time between?

Mr. Hudson. There was at Noon a Resting a little while.

L. C. J. Did Mr. Roswell go down?

Mr. Hudson. Yes, my Lord, he did, I believe, go down Stairs.

L. C. J. Do you remember any thing that was spoken of Sampson and Dalilah?

Mr. Hudson. Yes, as I said before, there was about Sampson's going down to Timnah to take Dalilah; shewing his failing, how he fell twice into the same Sin.

L. C. J. Did you hear any Discourse about Canting? Did you observe he used that Word Canting?

Mr. Hudson. No, not that Day, as I know of.

L. C. J. Did you ever hear him use that Word?

Mr. Hudson. Yes, I did one Day.

L. C. J. Ay; What did he say that Day about Canting?

Mr. Hudson. I am not able to tell you very exactly.

L. C. J. You must, you must indeed.

Mr. Hudson. I do assure your Lordship, I know not how to repeat his Expressions about it.

L. C. J. For look you, Sir; though you are not upon your Oath, because the Law doth not allow it; yet the same thing that I told those Witnesses before, the same I must tell you; you must consider, Friend, you come here to serve no Turn, nor Party; you are in the Presence of the great God of Heaven and Earth, who will call you to Account for every thing you testify here; and therefore without any Subterfuges tell us the Truth, and the whole plain Truth without Welt or Guard.

Mr. Hudson. My Lord, I will not deny one Tittle of the Truth, nor tell any thing that is untrue; I know I am in the Presence of a great Court of Justice, and in the presence of the God of Heaven.

L. C. J. Tell us then, what the Prisoner said about Canting.

Mr. Hudson. He was speaking of the wicked Men of the World, that when they spoke concerning serious Religion, called it Canting, and says he, What is Canting? Canting, says he, is a whining Tone.

L. C. J. Did you hear him speak any thing concerning Organs, and Surplices, and white Gowns?

Mr. Hudson. No, my Lord; nothing of Surplices nor white Gowns.

L. C. J. Nor any thing concerning Organs?

Mr. Hudson. No; but something he had concerning the Cathedrals, and their canting Tone there.

Mr. Roswell. Will your Lordship accept an ingenuous Confession from me myself about this Matter?

L. C. J. No, no, Mr. Roswell, that will not be Evidence; you can neither acquit, nor condemn yourself by these Things either confessed or denied. It is your Witnesses that I must ask, and that I expect an Account from. Therefore I ask you, Friend, and pray recollect yourself, How was it that he talked concerning the Canting in Cathedrals?

Mr. Hudson. Truly, my Lord, I cannot give a better Description of it than I have done. For I neither do particularly remember what time it was that I heard him use that Expression, nor can I tell you where it was; neither where, nor when.

Mr. Roswell. Shall I tell your Lordship the Occasion—

L. C. J. Why do you think I believe any Word you say, notwithstanding any Imprecations or Asseverations you make about yourself? It must neither weigh with the Court nor the Jury: we must go according to the Evidence. St. Peter himself, that you say you talked of, denied all with a great many Asseverations; but that Denial did not make him Innocent, no, it was his Sin. So all your Imprecations, and Asseverations, and Affirmations of your own Innocence, do not signify one Farthing to this Cause.

Mr. Att. Gen. Hark you, Mr. Hudson; Let me ask you one Question, Pray when Mr. Roswell had explained those Texts of Scripture, did he not use frequently to make Application of his Quotations?

Mr. Hudson. Yes, my Lord.

Mr. Att. Gen. Then, pray, Sir, after he had spoken of the two wicked Kings, how did he apply that?

Mr. Hudson. My Lord, I will tell you how he applied it. After he had made those Quotations, says he, Take notice, if Abraham fell, and good Jebeshaphat fell, and Sampson fell, and Peter fell, then what are we? Let him that standeth take heed lest he fall: and that was the Application he made of it.

Mr. Att. Gen. Do you speak to all that Mr. Roswell spoke in that Discourse at that time touching these Matters?

Mr. Hudson. No, Sir, not all; I cannot remember all: But the Substance of the distinct Heads I do remember.

Mr. Roswell. Then about the King's Evil; how did you apprehend it was meant?

Mr. Hudson. My Lord, I do not believe he spoke it with respect to that Disease which we call the King's Evil; because he spoke it with reference to the Disease that the King was under.

Mr. Roswell. Did you hear any thing about Twenty Guineas?

Mr. Hudson. No, I did not hear a Word of any Guineas that Day.



Mr. Sol. Gen. Did you hear him say any thing about the People's flocking to the King?—Mr. Hudson. No indeed, Sir, not I.

Mr. Ros. Pray, Mr. Hudson, did I name the Word Priests?

Mr. Hudson. No, Sir, I did not hear you name Priests, but Ministers and Prophets; and what a Judgment it was to have the Prophets taken away.

Mr. Att. Gen. Pray recollect yourself; Is that a Phrase they use, Ministers and Prophets; or do not they call themselves Priests?

Mr. Hudson. Ministers and Prophets, my Lord, are the usual Words.

Mr. Att. Gen. Priests is the Word I am told they have.

Mr. Ros. Then, Sir, pray will you give an Account how that about the Rams-horns came in?

Mr. Hudson. That, my Lord, was upon that Text, xi. Heb. 12.—

Mr. Ros. Do you remember what time it was; Forenoon, or Afternoon?

Mr. Hudson. I do remember it was in your Sermon in the Afternoon. The Words are these, *Therefore sprang there even of one, and him as good as Dead, so many as the Stars in the Sky in multitude, and as the Sand by the Sea-shore innumerable.* From whence he raised this Note, or Doctrine; That the great God could by very small Means bring great things to pass. And then he came to prove his Doctrine, by several Instances. Says he, What Works did God do by Moses's Rod? And by Gideon's broken Pitchers routing a whole Army? What great Works has God done by small Means? That by the founding of Rams-horns the Walls of Jericho should fall down! And what great Wonders he wrought when David slew the tremendous Giant Goliath with a Stone out of a Sling! And what great Works and Wonders did the Son of David, our Lord Jesus Christ do, in opening the Eyes of him that was born blind, with a little Clay and Spittle? The Application of that was, *A little Grace*—

L. C. J. We do not desire to hear your Applications.

Smith. My Lord, if your Lordship please, Mr. Hudson used to expound himself.

Mr. Hudson. My Lord, I used to repeat what I writ, in my own Family, that is all.

L. C. J. Yes, no doubt he is a most excellent Expounder; there are several People take upon them to expound, that can neither read, nor write. But pray, Friend, let me ask you one Question more; Was the Captain, at whose House you were the 14th of September, at Home or at Sea?

Mr. Hudson. My Lord, he was not at Home, but at Sea; and is still at Sea.

L. C. J. Do you remember that he prayed for him at that time?

Mr. Hudson. Yes, my Lord, 'twas his common Practice to pray for the Family wherever he came.

L. C. J. And did he pray for his Son that was sick?

Mr. Hudson. I cannot tell whether he were sick, or no, I do not remember that; but he prayed for the Father and all his Children, the whole Family.

Mr. Ros. Pray did you hear any one Word mentioned of the Kings of England, or of his present Majesty, but only in Praying for him, as I bless God I daily do, that God would give him Grace, and all good Things here, and his Glory hereafter?

Mr. Hudson. Not one Word did I hear named of the Kings of England; nor of any Kings, but those mentioned in the Scriptures, that were quoted, the Kings of Israel, and the like.

Mr. Ros. Was there any Word spoken about Popery being permitted to come in under their Noses?

Mr. Hudson. Not one Word of that was spoken, that I know of.

L. C. J. Did you hear the King of England mentioned at all that Day?

Mr. Hudson. Yes, in his Prayer. It was his constant course to pray for the King.

L. C. J. Ay; what did he pray for?

Mr. Hudson. He used to express himself very heartily in Prayer, that God would enable him to rule and govern the People under his Charge, and bless him. And he used to say, God forbid that he should sin against God in neglecting to pray for the King.

Mr. Ros. It was Samuel's Speech to Saul. Pray, Sir, did you hear that?

L. C. J. Nay, nay, ask him what he did hear you pray.

Mr. Ros. Did I pray about opening the Eyes—

L. C. J. But you must not open your Witnesses Eyes: Do not lead him.

Mr. Hudson. It was his Common Practice to pray for the King, that God would preserve him from all his Enemies.

L. C. J. And we say the same thing too.

Mr. Hudson. And that God would remove all Evil Counsellors from him.

L. C. J. Ay, no Question.

Mr. Hudson. And establish his Throne in Righteousness, and lengthen his Life, and prosper his Reign; and he used to pray as heartily and as favourably for the King, as ever I heard any Man in my Life.

L. C. J. So there was praying in this Hall, I remember, for his late Majesty; for the doing of him Justice: We all know what that meant, and where it ended.

Mr. Ros. Mr. Crier, pray call Mr. George Hall. [Who came in] Mr. Hall, Were you present this 14th Day of September at Rotherbith?

Mr. Hall. Yes, Sir, I was.

Mr. Ros. When I expounded upon the 20th of Genesis?

Mr. Hall. Yes, you did so, Sir.

Mr. Ros. Pray will you inform my Lords what you heard me say?

Mr. Hall. I will inform them to the best of my Memory.

L. C. J. What Trade are you, Friend?

Mr. Hall. I am a Mealman, my Lord.

L. C. J. Well, what say you?

Mr. Hall. The 14th of September last it was my Lot to hear Mr. Rosewell expound the 20th Chapter of Genesis; as it was his usual Course to expound a Chapter.

Mr. Ros. It was not of Choice, but taken in Course. And pray what do you remember was said by me about two wicked Kings?

Mr. Hall. Sir, I remember you brought a Scripture concerning Jehoshaphat joining with two; first of all with wicked Ahab, and afterwards

with wicked Abaziah his son; and you proved it out of 2 Chron. xviii. Chap. and 19th and 20th Verses.

Mr. Ros. Do you remember there was any one Word spoken of the Kings of England?

Mr. Hall. There was not one Word of his present Majesty, nor his Father, nor any of the Kings of England; but of the Kings of Israel, Ahab and his son.

Mr. Ros. Well then, concerning Jeroboam, what do you remember of that?

Mr. Hall. As to Jeroboam—\* You were expounding from the 7th Verse of the 20th Chapter of Genesis—And in the opening of that 7th Verse among several Texts of Scripture, Mr. Rosewell had this Note,—Hold—Jeroboam—

L. C. J. Ay, about Jeroboam.

Mr. Hall. My Memory fails me—

L. C. J. Ay, so I perceive it doth wonderfully.

Mr. Hall. As to Jeroboam, he brought a Text from the 2d Book of Kings, the 13th, and the former part of the Chapter. There was a Man of God that came to Bethel, and prophesied against Dan and Bethel, and there were these Words, that Jeroboam—

Mr. Ros. He had his Hand dried up—

L. C. J. What do you mean by that? If your Witnesses be out in his Story, must you prompt him? Go on, Friend.

Mr. Hall. He prophesied, that the bones of the Priests should be laid upon the Altar and burnt, as we read in that Text of Scripture, 2 Kings 13. and the beginning. And Jeroboam was there, and put forth his Hand—and bid some body take hold of him—whereat the Hand of Jeroboam dried up.

Mr. Ros. If it please your Lordship, I will call another.

L. C. J. Ay, ay, you may set him going, for he is out.

Mr. Hall. If it please you, I can go a little further. I have something to say as to that—

L. C. J. You had best go out, and recollect yourself; you have forgot your Cue at present.

Mr. Ros. Mr. Crier, pray call Mr. James Atkinson. [Who came in.]

L. C. J. You, Mrs. Smith, I will ask you, (I will not ask him himself, because he may accuse himself by it) Is this the Miller, at whose House one of the Meetings was?

Smith. No, my Lord, the former Witness Hudson is the Miller where he preached.

L. C. J. Well, what do you ask this Witness?

Mr. Ros. Mr. Atkinson, were you at our Meeting the 14th of September last?—Mr. Atkinson. Yes, I was there the 14th of September.

Mr. Ros. Were you there at the Beginning?

Mr. Atkinson. I was there from the Beginning to the End.

L. C. J. Pray, what Trade are you, Sir?

Mr. Atkinson. My Lord, I am a Mathematical Instrument-Maker.

Mr. Ros. What Chapter was I upon?

Mr. Atkinson. The 20th of Genesis in course, and not out of Choice. His usual Custom was to expound a Chapter before he preached.

Mr. Ros. Pray, what do you remember was said by me of two wicked Kings?

Mr. Atkinson. Of two wicked Kings! I remember that was upon the second Verse; how Abraham said of Sarah his Wife, *She is my Sister*: And upon that Mr. Rosewell had this Note, *That a Child of God may fall into the Commission of the same Sin again and again, after he had been reprov'd and smarted for it.* And he quoted several Instances: As that of Lot committing Incest over and over again; that of Peter denying his Lord three Times; that of Sampson out of Judges taking two Wives among the Philistines, one after another; and then quoted that of Jehoshaphat joining with two wicked Kings; Ahab, in the 2d of Chron. xviii. Chap. and afterwards, though reprov'd by the Prophet Jehu, he joined with Ahab's wicked Son Abaziah.

Mr. Ros. Pray, what did you hear of the King of England?

Mr. Atkinson. Not a Word, unless it were in his Prayer; in which he always used to pray earnestly for the King.

Mr. Ros. What do you remember was spoken about the King's Evil?

Mr. Atkinson. There was an Expression concerning the Evil, upon the 7th Verse; *He is a Prophet, and he shall pray for thee, and thou shalt be healed.* And he had this Expression, or to this same Effect, for I hope you cannot expect I should speak every Word exactly; but I shall endeavour to speak the Sense, and the Truth, as near as I can, and nothing else. He said, the Prayers of God's Prophets were very prevalent for the healing and helping others in time of need. And he quoted several Instances; as that out of the Prophet Jeremy, xxvii. Chap. and 18th Verse, to the best of my Remembrance. And he also quoted that of the 1 Kings 13. concerning Jeroboam. The Prophet came to reprove him, and Jeroboam stretched out his Hand against him, and it dried up; and then he desired of the Prophet to pray for him; which he did, and his Hand was healed.

L. C. J. Look you, what you say may be true, and so may what they say too; for he might say both. You used to say abundance of good things, as well as some bad ones; therefore I would ask him this Question, whether he heard any thing of the King's Evil, or that had any Reference to the King of England?

Mr. Atkinson. This is all that I heard that comes to my Memory concerning the King's Evil: *That a godly Man by his Prayers may help to cure the King's Evil, and thereby the poorest Christian may gratify the greatest King,* as says our English Annotator upon that 7th Verse; but I never understood him to mean it of the Disease of the King's Evil.

Mr. Ros. Do you remember that I preached in this Discourse about Rams-horns, or broken Platters?

Mr. Atkinson. I did not hear of any such thing upon all that Chapter.

L. C. J. But did you hear him speak of any such thing at all that Day?

Mr. Atkinson. Yes, my Lord, I did.

L. C. J. Come then, let us have it. What was it?—Mr. Atkinson. His Course was, after the Exposition, to preach a Sermon.

Mr. Ros.



Mr. *Rof.* Was it in the Forenoon, or in the Afternoon?

Mr. *Atkinson.* It was after the Exposition; he prayed, and then ceased for a quarter of an Hour.

Mr. *Rof.* Was it distinct in the Afternoon?

Mr. *Atkinson.* It was another distinct Discourse after the People had received some Refection in the Afternoon; I cannot tell exactly the time. But the Discourse was preached from *Heb. xi. 12.* I suppose that I need not repeat the Words.

L. C. *J.* No, no, I care not for that.

Mr. *Atkinson.* But he thence raised this Doctrine, *That the great God can effect great Matters by very unlikely means*; and he instanced in several Particulars to prove it. As the Miracles of God wrought by *Moses's* Rod; and the Walls of *Jericho* falling down at the sound of *Rams-horns*, in the 6th of *Joshua*; and then he quoted that of *Gideon*, a dreadful Rout of a great Army by a few Earthen Pots and Pitchers; and what a tremendous Champion did *David* smite down with a Sling and a Stone!

Mr. *Rof.* I have this one Question more to ask you; Did you hear me speak any thing of standing to their Principles?

Mr. *Atkinson.* Not one Word; and I was there all that live-long Day; from beginning to end.

L. C. *J.* Then, Sir, I would ask you a Question or two, if Mr. *Rosewell* have done with you?—Mr. *Rof.* I have, my Lord.

L. C. *J.* Pray, what Room were you in?

Mr. *Atkinson.* I was in the same Room that Mr. *Rosewell* was, he stood at the Door.

L. C. *J.* What, one Pair of Stairs?—Mr. *Atkinson.* Yes.

L. C. *J.* Is there not another Room between the Floor, or the ground Room, and that you were in?

Mr. *Atkinson.* Yes, Sir; there is another little Room, a little lower than that.

L. C. *J.* Was there a Bed in that Room you were in?

Mr. *Atkinson.* Yes, Sir.

L. C. *J.* Did you sit upon the Bed?

Mr. *Atkinson.* I did sit upon the Bed sometimes.

L. C. *J.* Had you a mourning Cloak on that Day?

Mr. *Atkinson.* Yes, I had.

L. C. *J.* Had you a mourning Hatband?—Mr. *Atkinson.* Yes, I had.

L. C. *J.* Do you remember who sat by you?

Mr. *Atkinson.* No, my Lord, I do not know.

L. C. *J.* Do you remember any Body gave you your Boys Shoes from under the Bed?

Mr. *Atkinson.* Yes, my Lord; but I cannot tell who.

L. C. *J.* Well then, I ask you, did you hear any mention made that Day about *Dalilah* and *Sampson*?—Mr. *Atkinson.* Yes, my Lord.

L. C. *J.* You did?—Mr. *Atkinson.* Yes, my Lord, as an Instance of a good Man's falling twice into the same Sin.

L. C. *J.* Did you hear any mention made at that time concerning any other matter that you remember?

Mr. *Atkinson.* My Lord, that of *Sampson* and *Dalilah* was one of the Instances that I repeated before.

L. C. *J.* Mrs. *Smith*, was it the same Day that he spoke about Canting?

Smith. Yes, it was;

L. C. *J.* Do you remember, Friend, any thing that was spoken by him that Day concerning Church-musick?

Mr. *Atkinson.* No, my Lord, not a Word that Day that I know of.

L. C. *J.* Did you hear any thing about Canting that Day?

Mr. *Atkinson.* No, not a Word.

L. C. *J.* Did you hear him talk any thing of Surplices or white Gowns?

Mr. *Atkinson.* No, my Lord, not one Word all that Day; but that of *Sampson* and *Dalilah*, my Lord——

L. C. *J.* You remember that?

Mr. *Atkinson.* Yes, it was one Instance of a good Man's committing the same Crime once and again.

Mr. *Rof.* Yes, I own it was so; but not as the other Witnesses swear.

Mr. *Atkinson.* Truly, my Lord, I would not tell one tittle of a Lye; to the best of my Remembrance——

Mr. *Sol. Gen.* Pray, Sir, let me ask you one Question: I see you are very perfect in the Proofs of the Sermon; Did you take Notes that Day?

Mr. *Atkinson.* No, I did not, Sir.

Mr. *Sol. Gen.* Can you remember then any one Observation that he made upon any other Verse? Pray what Observation did he make upon the eighth Verse?—Mr. *Atkinson.* None at all.

Mr. *Sol. Gen.* What upon the 12th or 13th Verses?

Mr. *Atkinson.* I cannot tell; I can upon the 5th.

Mr. *Rof.* Will your Lordship give me leave to acquaint you with that?

Mr. *Atkinson.* He only explained that which was difficult; but when it was a little Historical, he only read it. But what he observed upon the second and the seventh Verses, was the substance of the whole Exposition almost.

Mr. *Att. Gen.* Has no body read the Notes of that Sermon to you since?

Mr. *Atkinson.* I endeavoured to recollect myself, after I heard Mr. *Rosewell* was accused; and writ, what I could remember, down.

Mr. *Att. Gen.* But did any body read their Notes to you since?

Mr. *Atkinson.* No, indeed, there has no body read any Notes to me.

Mr. *Att. Gen.* Upon your Oath how came you to remember the word Tremendous?—L. C. *J.* He is not upon his Oath, Mr. Attorney.

Mr. *Atkinson.* Because when he made such short Notes, I endeavoured to remember them; I thank God I have a pretty good Memory.

Mr. *Att. Gen.* Ay, upon my Word, a very strong one.

Mr. *Atkinson.* He did use the Word Tremendous Champion.

Mr. *Recorder.* Had you and Mr. *Hudson* any Discourse about this Matter since?

Mr. *Atkinson.* Yes, Sir, we might talk what we did remember to one another.

Mr. *Sol. Gen.* Did he write down the Sermon?

Mr. *Atkinson.* Yes, I suppose he did; but I did not sit by him.

Mr. *Rof.* Mr. Crier, Pray call Mr. *William Smith.* [Who came in.]

Mr. *Smith.* Were you at this Meeting the 14th of September last?

Smith. Yes, I was, Sir.

Mr. *Rof.* Pray will you acquaint my Lords, what you heard me say there? What Chapter did I expound?

Mr. *Smith.* The 20th Chapter of *Genesis.*

Mr. *Rof.* What do you remember of it?

Smith. I remember the Chapter concerned *Abraham* and *Abimelech.*

Mr. *Rof.* What did you hear of the People's flocking to the King to cure the King's Evil?—Mr. *Smith.* I heard no such Word.

Mr. *Rof.* Or that his Majesty could not cure the King's Evil?

Mr. *Smith.* No, Sir, not a Word of it.

Mr. *Rof.* Did you hear any thing at all concerning the King's Evil?

Mr. *Smith.* Sir, you did quote something out of the Annotator about the King's Evil.

Mr. *Rof.* Do you remember what that was?

Mr. *Smith.* I cannot remember it fully at length, Sir.

Mr. *Rof.* Pray did you understand it as meant of the King's Evil; or of the Evil of *Abimelech* King of *Gerar*?

Mr. *Smith.* I did not understand it of the Disease so called; but of the Evil of *Abimelech.*

Mr. *Rof.* What did you hear concerning Priests and Prophets?

Mr. *Smith.* You said it was the Function of the Prophets to pray for the People.

Mr. *Rof.* What do you remember was said of two wicked Kings?

Mr. *Smith.* You did make mention of two wicked Kings, *Abab* and *Abaziah*; that *Jehoshaphat* sinned, in joining with them one after another.

Mr. *Rof.* Was there any thing of the Kings of *England*, or of my Sovereign?—Mr. *Smith.* No, not at all, Sir.

L. C. *J.* Did you hear any thing concerning *Jeroboam*?

Mr. *Smith.* Yes, that *Jeroboam* stretched forth his Hand, and his Hand withered; and the Prophet prayed for him, and his Hand was restored.

L. C. *J.* Did you hear any thing in the Exposition of broken Pitchers, I mean in the Forenoon?—Mr. *Smith.* No, I think not.

L. C. *J.* What did you hear of them? and when?

Mr. *Smith.* To the best of my Remembrance it was in the Afternoon; That God could do great matters by small means; and you quoted several things. I did not stand well, so that I could not hear all the Particulars.

L. C. *J.* But what did you hear?

Mr. *Rof.* Pray did you hear any Word of standing to their Principles, or of overcoming, that Day?

Mr. *Smith.* No, I did not.

Mr. *Just. Hol.* It seems you did not stand in a good Place to hear.

Mr. *Rof.* Mr. Crier, Pray call Mr. *William Bates.*

[Which he did, but he did not appear.]

Crier. He is not here, Sir.

Mr. *Rof.* Pray, Sir, call Mr. *George Hales* then. [Who came in.]

Were you this 14th Day of September at this Meeting, Sir?

Mr. *Hales.* Yes, I was, Sir.

Mr. *Rof.* Were you there from the Beginning to the End?

Mr. *Hales.* Yes, I was, Sir.

Mr. *Rof.* Pray then will you tell my Lord what you heard me say, with reference to flocking to the King, or curing the King's Evil.

Mr. *Hales.* I heard nothing that you should say of People's flocking to the King; but you were speaking of the King's Evil, and that was thus: My Lord, it was from the 7th Verse of the 20th Chapter of *Genesis*, *He is a Prophet, and shall pray for thee, and thou shalt be healed.* God is speaking to *Abimelech* in a Dream; and after a little Paraphrase upon the Words, Mr. *Rosewell* said, *That a godly Man's Prayer was a Sovereign Cure for the King's Evil*; and quoted some Scripture Instances, as in *1 Kings*, where God having sent a Man of God to reprove *Jeroboam* for his Idolatry, he stretched out his Hand, and his Hand withered; and he desired the Prophet to pray to the Lord his God, that his Hand might be restored; and accordingly it was accomplished.

Mr. *Rof.* Did you hear any thing of the Kings of *England*?

Mr. *Hales.* No, not one Word all that Day; only you prayed for His Majesty, as you used to do.

Mr. *Rof.* What do you remember was said about Rams-horns?

Mr. *Hales.* I remember you were preaching out of the xi. *Heb. 12.* and the Words were these, *Therefore sprang there of one, and him as good as dead, as many as the Stars in the Sky for Multitude, and as the Sand upon the Seashore innumerable.* From whence he had this Observation, *That God is able to bring great Matters to pass by small Means.* And so accordingly Mr. *Rosewell* instanced how the Walls of *Jericho* were shook down by the sounding of Rams-horns; or something to that Purpose.

Mr. *Rof.* What do you remember of broken Platters?

Mr. *Hales.* I remember you brought in an Instance concerning *Gideon*; and I think it was thus, that by breaking a few earthen Pitchers he routed a great Army.

Mr. *Rof.* And so of a Stone and a Sling. But was there any thing of standing to Principles?

Mr. *Hales.* Not a Word.

L. C. *J.* As you heard?

Mr. *Hales.* That I heard.

L. C. *J.* Or that you remember?

Mr. *Hales.* Yes, my Lord. But you said, What a Tremendous Champion did *David* slay with a Sling and a Stone!

L. C. *J.* Did you take Notes?

Mr. *Hales.* No, my Lord.

L. C. *J.* Then pray how came you to remember that Word Tremendous?

Mr. *Hales.* I do remember he did use that Word.

L. C. *J.* Have you had any Discourse about this matter since?

Mr. *Hales.* Yes, I have.

L. C. *J.* With whom?

Mr. *Hales.*



Mr. Hales. With several Friends.  
 L. C. J. Did you discourse with Atkinson about it?  
 Mr. Hales. Yes, I did.  
 L. C. J. Did you with William Smith?  
 Mr. Hales. No; I do not remember I did.  
 L. C. J. Did you discourse with Hudson?  
 Mr. Hales. I cannot say I did.  
 Mr. Att. Gen. Nor you cannot say you did not.  
 L. C. J. Did you hear any Notes read?—Mr. Hales. I think I did.  
 L. C. J. Whose Notes were they you heard?  
 Mr. Hales. Thomas Hudson's Notes, I think; I am not sure of it.  
 L. C. J. It is so hard and difficult to get out the Truth from this sort of People; they do so turn and wind. How long after the Sermon was preached was it that you heard the Notes read?  
 Mr. Hales. I was in the Country when Mr. Rosewell was taken; and when I came home again, I heard of it.  
 L. C. J. But you did not remember it till after he was taken?  
 Mr. Hales. No, my Lord; and I read the Chapter myself, and remember'd these things.  
 Mr. Sol. Gen. Pray is the Word Tremendous in Hudson's Notes, or no?  
 Mr. Hales. I cannot tell whether it be, or no.  
 Mr. Att. Gen. Pray, when was the next Day after this?  
 Mr. Hales. I cannot tell, I was in the Country.  
 L. C. J. Did he take Notes in Long-Hand, or Short?  
 A Stranger that stood by. In Characters, my Lord.  
 Mr. Att. Gen. Have you not heard him preach since that time?  
 Mr. Hales. Sir, I went into the Country soon after.  
 Mr. Att. Gen. Where was his Text at any other time, can you tell?  
 Mr. Hales. No, I cannot readily.  
 Mr. Att. Gen. Nor what he discoursed upon?  
 Mr. Hales. As to any particular time I cannot.  
 Mr. Att. Gen. Do not you remember his Text at any other Time?  
 L. C. J. When was the time before this 14th of September, that you did hear him preach? You have heard him before?  
 Mr. Hales. Yes, my Lord, I have.  
 L. C. J. Was that upon a Sunday?—Mr. Hales. Yes, it was.  
 L. C. J. Did you hear him the Sunday before?—Mr. Hales. Yes, I did.  
 L. C. J. Well, what did he preach upon then?  
 Mr. Hales. This I know, that in his Course of Reading and Exposition, he was upon the 19th of Genesis.  
 L. C. J. What was his Discourse upon that Chapter?  
 Mr. Hales. That I cannot tell.  
 L. C. J. Nor the Day afterward?—Mr. Hales. No, my Lord.  
 L. C. J. Upon my word, you have a lucky Memory for this Purpose; to serve a turn, it can just hit to this very Day. You are very punctually instructed.  
 Mr. Sol. Gen. Do you remember any other part of the Sermon of this Day than what you have related?—Mr. Hales. Yes.  
 L. C. J. Ay; tell us what you remember besides.  
 Mr. Hales. I must consider a little; I am not so ready at it.  
 L. C. J. Ay, come, let us hear it.  
 Mr. Ros. These Things he might have more occasion to recollect by reason of my Charge.  
 L. C. J. You say right, just occasion for this Purpose. But I thought these Men that have such stupendous Memories as to tell you they remember the Chapter, and the Verse, and particular Words, when it serves a Turn, might remember something before or after, at least in the same Sermon. Why do you think they were enlightened to understand and remember that one Day more than any other? They can remember particularly as to such things, and can clan it together to answer such particular Questions; but as to any thing before or after, they are not prepared.  
 Mr. Just. Withins. Have you any more Witnesses, Mr. Rosewell?  
 Mr. Ros. Mr. Crier, pray call Mr. John Wharton. [Who came in.]  
 Mr. Just. Holloway. Where do you dwell, Wharton?  
 Mr. Wharton. At Rotherhith.  
 Mr. Just. Holloway. What Calling are you of?  
 Mr. Wharton. A Gardener.  
 Mr. Ros. Were you at the Meeting the 14th of September?  
 Mr. Wharton. Yes, I was, Sir.  
 Mr. Ros. What do you remember, pray, of the Exposition then concerning Flocking of the People to the King to be cured of the King's Evil?  
 Mr. Wharton. Sir, I do remember upon your Exposition of the 20th of Genesis, you were speaking concerning Abimelech King of Gerar; and you took your Exposition thus, That Abimelech had taken away the Wife of Faithful Abraham, that I do remember very well; and that you did say in your Exposition, that the Prayers of the Prophet were prevalent for the curing of the King's Evil. And then you brought your Proof, to the best of my remembrance, concerning King Jeroboam; that Jeroboam stretched out his hand against the Prophet of the Lord, and that the King cried, Lay hold of him, when he came to cry against the Altar at Bethel, and his Hand dried up; whereupon the King desired the Prophet to pray to the Lord, that his Hand might be restored; and he did so. This was the Exposition that you made upon that Verse in Part.  
 Mr. Ros. Do you remember any thing of comparing the King of England to Jeroboam?  
 Mr. Wharton. I do not remember any such Passage.  
 Mr. Ros. Do you remember any thing about two wicked Kings?  
 Mr. Wharton. I do remember this Passage, concerning Jehoshaphat, that he had fallen twice into the same Sin, by taking part, first, with wicked Ahab, and then with his wicked son Ahaziah.  
 Mr. Ros. Was there any thing of the Kings of England mentioned in this Discourse?  
 Mr. Wharton. No, nothing, Sir. It was but an accidental thing that I heard you then. I heard nothing of the King of England in your Exposition or Sermon, but only in your Prayers; when you pray'd for his long Life and happy Reign.

L. C. J. Did you ever hear him before that time?  
 Mr. Wharton. Yes, my Lord.  
 L. C. J. Did you ever hear him since?  
 Mr. Wharton. Yes, once since.  
 L. C. J. Now let us know his Text, and the Subject Matter he was upon since.  
 Mr. Wharton. Truly, as to the time since I did not take much Account; for I did not write.  
 L. C. J. Canst thou tell us of what past at any time before?  
 Mr. Wharton. Once before I heard him upon the xix. of Genesis, where he made his Exposition—Truly, I have not any Notes—  
 L. C. J. Then hark you, Friend, have you spoken with any Body since that 14th of September that did take Notes?  
 Mr. Wharton. I am not acquainted much with them that were his constant Hearers, that did take Notes.  
 L. C. J. But answer my Question that I ask you; did you ever discourse at all about this Matter, and with whom?  
 Mr. Wharton. I came thither by myself, I say; I had not much Acquaintance with them.  
 L. C. J. Nay, do not prevaricate, Friend, with the Court, but speak the Truth out plainly. I ask you in the Presence of Almighty God, did you ever speak with any Body since the 14th of September about this Business?  
 Mr. Wharton. Mr. Hudson did speak with me about it.  
 L. C. J. Did he read his Notes to you?  
 Mr. Wharton. Yes, he did.  
 L. C. J. It is a strange thing, Truth will not come out without this Wire-drawing. You cannot help this Canting for your Life; this is Canting, if you would know what Canting is. Did you ever speak with Hales, or Atkinson, or Smith about it?  
 Mr. Wharton. I do not know Atkinson, or Hales. I know Mr. Smith; but I never spoke with him about it; nor he with me.  
 L. C. J. When was it that Hudson and you spoke together of this thing?  
 Mr. Wharton. It was last Thursday.  
 L. C. J. Did he come to you, or you to him?  
 Mr. Wharton. I met him.  
 L. C. J. Where did you meet him?—Mr. Wharton. At Rotherhith.  
 L. C. J. Did he speak to you of it first, or you to him?  
 Mr. Wharton. He spoke to me.  
 L. C. J. Then I ask you (and remember, though you are not upon your Oath, yet you are to testify the Truth, as if you were upon your Oath) did he mention any thing of Jeroboam?  
 Mr. Wharton. Yes, he did.  
 L. C. J. Of Jehoshaphat? and of Abimelech?  
 Mr. Wharton. Yes, he did.  
 L. C. J. Did you mention any of these things to him?  
 Mr. Wharton. Yes, Sir, I repeated more then, than I have done now.  
 Mr. Att. Gen. Was your Meeting accidental, or appointed?  
 Mr. Wharton. It was accidental in the Street; I dwell below him a great deal.  
 Mr. Att. Gen. And where was it?  
 Mr. Wharton. We were talking in the Street.  
 Mr. Just. Withins. Did not you go into some House?  
 Mr. Sol. Gen. Had you any Discourse at that time of being present at the Trial of Mr. Rosewell?  
 Mr. Wharton. No, I did not know any thing of it till I saw the Subpœna.  
 Mr. Sol. Gen. Before you discoursed with him, did you remember all these things?  
 Mr. Wharton. Yes, I could remember them as well as he; and a great deal more then.  
 Mr. Att. Gen. Then cannot you remember what was done the next Day?  
 Mr. Wharton. No, I cannot.  
 Mr. Att. Gen. How came you then to remember so well what was said that Day?  
 Mr. Wharton. Because there was a remarkable Passage, that I had never heard before expounded, I had not staid at that time, but that he was expounding of a very remarkable thing, which I had never heard expounded before.  
 L. C. J. Have you any more Witnesses, Mr. Rosewell?  
 Mr. Ros. I have some Witnesses to call more, if your Lordship pleases, to testify concerning my Life; and that I always prayed for the King, that God would crown him with Grace here, and Glory hereafter; and that he would remove all his Enemies from him.  
 L. C. J. Ay; Mr. Rosewell, first remove all his Friends from him; and then remove his Evil Counsellors.  
 Mr. Ros. Pray, Crier, call Mr. Charles Arthur. [But he did not appear.]  
 Mr. Just. Withins. Come, it seems, he is not here, call another.  
 Mr. R. J. Call Mr. Thomas Jolliff. [Who appeared.]  
 L. C. J. What do you call this Man to?  
 Mr. Ros. My Lord, this Person I call to testify with respect to my Conversation and Carriage towards His Majesty and the Government.  
 L. C. J. What is your Name, Sir?—Mr. Jolliff. Thomas Jolliff.  
 Mr. Just. Hol. Where do you live, Sir?  
 Mr. Jolliff. In Mary Magdalen's Parish.  
 L. C. J. Why not St. Mary Magdalen's?  
 Mr. Ros. He is my Neighbour, my Lord.  
 L. C. J. But, I suppose, he thinks that would have made the Name so much the longer; or else, he thinks that there is Popery in calling it so.  
 Mr. Jolliff. No, my Lord, I have called it a Hundred times, and a Hundred times, St. Mary Magdalen.  
 L. C. J. Prithee then do it again, it will never be the worse for thee, I dare say. Well, Mr. Rosewell, what do you ask him?  
 Mr. Ros. Pray, Sir, will you testify what you know of my Conversation towards the Government, and particularly towards His Majesty?  
 Mr. Jolliff. My Lord, in the time of Indulgence I have heard Mr. Rosewell once, or twice, or more; and I heard him pray for the King, and the Peace and Welfare of the Nation, as heartily as ever I heard any Minister in England in my Life.

Mr. Ros.



Mr. *Rof.* Pray, Sir, for my Conversation; Did you ever hear any thing of my Disloyalty or Disaffection to his Majesty, or the Government?

Mr. *Jelliff.* No, Sir, I never heard any thing of any Disloyalty, or any such thing in my Life; but all the Parish will give you an Account, that you have behaved yourself as an honest Man; and I never knew that, either in Word or Deed, you were accused of any Disloyalty. And, my Lord, if you please to give me my Oath, I will swear it; for it is the same thing to me to testify here in such a Court under an Oath, or without it; for I ought, I know, to testify the Truth.

Mr. *Rof.* My Lord, I am confident that what he says he would swear; and he is a very honest Man.

L. C. J. Well, Mr. *Roswell*, if you have any more Witnesses, call them; and make what Remarks upon the Evidence you please afterwards, for this is not the time for making Remarks.

Mr. *Rof.* I humbly thank your Lordship for your great Favour.

L. C. J. I do not speak it to cramp you in your time; but call your Witnesses, and then make what Remarks you will: For God forbid we should hinder you from taking your full time; for you stand here for your Life.

Mr. *Rof.* Is Mr. *Winnacott* here?

[He did not appear.]

Then pray call Captain *Richard Cotton*.

[But he did not appear.]

Call Mr. *Thomas Fipps*.

[Then Capt. Cotton appear'd.]

Mr. *Rof.* This Gentleman, my Lord, hath known me for several Years. Captain *Cotton*, I pray, Sir, will you speak what you know of my Conversation, and Life, and Loyalty, with respect to the King and Government?

Capt. *Cotton.* My Lord, and Gentlemen of the Jury, of late I have not frequented Mr. *Roswell's* Company, or his Congregation; but when the Door stood open, without opposition, I have been there; and have heard him pray for the King and Government several times; and bless God, that we lived under so peaceable a Prince, when all our Neighbours were in Blood and War.

Mr. *Rof.* Pray, Sir, have you ever heard, that either in Word, or Deed, I should ever declare against his Majesty or the Government?

Capt. *Cotton.* No, I never heard any such thing in my Life; but what I heard now upon this Trial up and down the Hall, as I was walking below.

Mr. *Just. Withins.* How long ago is it, that you speak of, Mr. *Cotton*?

Capt. *Cotton.* I was abroad most of the time at Sea; but this was three, or four, or five Years ago.

Mr. *Just. Withins.* What time was that?

Capt. *Cotton.* It was in the time of the Indulgence.

Mr. *Just. Withins.* Ay, then, it may be, he could speak kindly enough of the Government.

Mr. *Rof.* He has known me these ten Years. Have you not, Sir?

Capt. *Cotton.* Yes, I believe I have, ever since you came thither.

[Then Mr. Fipps came in.]

Mr. *Rof.* This Gentleman hath known me several Years, have you not, Sir?

Mr. *Fipps.* Yes, Sir.

Mr. *Rof.* Pray, Sir, will you give my Lord and the Court an Account what you know of my Life and Conversation, and of my Loyalty or Disloyalty to the King or Government?

Mr. *Fipps.* My Lord, I have known this Gentleman divers Years. He lived in *Wiltshire*, and there he had the Reputation of a very honest Man, a good Scholar, and a pious Man. I never heard him preach in my Life, because I never go to Conventicles; but I have been in the House, where I have heard him pray in the Family; and there he prayed very earnestly for the King and Government, for the Prosperity of it. Since I came to London he came to London too, and has been here in London about ten Years; and has been often in my Company since, and in the late Times, the *Bethelish Times*, when every Body did take Liberty to say what they would of the King and Government; I have been often in his Company, and heard him speak with a great deal of Respect of the King, and of the Government, and thank God for the Liberty he did enjoy, and the Protection he had from the Government; but I never heard him speak an ill Word of the Government in my Life; and I have known him as much (I believe) as any other Man that was not his Hearer; he was always reputed a very ingenious Man; and that is all I can say. I never heard or knew any thing of ill of him in my Life.

Mr. *Rof.* Pray call Mr. *Galeb Veering*.

[Who came in.]

Sir, you have known me several Years. Pray be pleased to testify to my Lord, and the Court, what you have known of my Conversation with respect to his Majesty and the Government.

Mr. *Veering.* My Lord, I have known Mr. *Roswell* these several Years; and I have been in Company with him upon the Occasion of receiving Money on Account of Rent for a Friend of mine; and likewise have heard him formerly, when he preached publicly; and never heard any thing from him that reflected upon the Government, or shewed any Disrespect to the King. I have heard him pray often very heartily for the King, and he never meddled with any publick Business, nor spoke of any News while I was concern'd with him.

Mr. *Rof.* Pray, Sir, did you ever hear of any ill I should speak of my Sovereign?

Mr. *Veering.* I have heard him often pray for the King and Government; and I never heard any Man say that he did otherwise, or that ever he spoke an ill Word concerning any of them.

Mr. *Roswell.* Call Mr. *John Hitchcock*—

[Who came in.]

Sir, you are a Gentleman that have known me for several Years; pray, will you testify what you have known concerning me? And if you have heard or known any ill of my Conversation towards the King, pray speak it out, and let me be shamed before God, and this great Assembly.

Mr. *Hitchcock.* I have known him, my Lord, several Years, and have heard him formerly, though not of late; and when I heard him, he used constantly to pray for the King and Government; I never knew him to

speak any thing against the King and Government in my Life, but always spoke very worthily of them.

Mr. *Rof.* Have you heard me often pray for the King?

Mr. *Hitchcock.* I have so, Sir, a great many times.

Mr. *Rof.* How long is that ago?

Mr. *Hitchcock.* About two or three Years ago, my Lord; and I never knew him to be but a very worthy Gentleman.

Mr. *Rof.* Pray call Mr. *Michael Hinman*—

[Who came in.]

My Lord, here is another Gentleman that hath known me several Years. Pray, Sir, will you speak what you know of my Conversation, with respect to His Majesty and the Government?

Mr. *Hinman.* My Lord, I have known him many Years, and been in his Company several times, and never heard him speak any thing of ill relating to the King or Government.

Mr. *Rof.* Pray, Sir, have you not been (upon some Occasions) present where I have prayed?

Mr. *Hinman.* Yes, Sir, I have heard you pray; and I have heard you pray for the King very heartily.

Mr. *Rof.* Have you heard of any Evil I should either say, or do? Or any thing by Word or Deed against the King or Government?

Mr. *Hinman.* No, never in all my Life, one way or other.

Mr. *Rof.* Pray call Mr. *Nicholas Wanley*.

[Who came in.]

Sir, you have known me for these many Years; pray will you be pleased to speak the Truth of what you know of my Conversation, with respect to the King and Government.

Mr. *Wanley.* My Lord, I have known the Prisoner at the Bar several Years; I have been frequently in his Company; and never heard him speak an ill Word against the King or Government in my Life; but have often heard him wish that the King might live, and have a long and prosperous Reign: I never heard him say one ill Word of the Government in my Life; but always, when he spoke of it, it was with all the respect that any Person could do.

Mr. *Rof.* Did you ever hear from any other Person, directly or indirectly, that I have spoken reflectively upon His Majesty?

Mr. *Wanley.* Never in my Life, my Lord.

Mr. *Rof.* One way or other?

Mr. *Wanley.* No, not any way at all.

Mr. *Rof.* Pray, call Mr. *John Strong*—

[Who appeared.]

Sir, you are a Gentleman that have known me many Years too, ten or twelve Years, I believe.—Mr. *Strong.* Yes, Sir.

Mr. *Rof.* Pray, will you tell my Lord, and the Jury, what you know of me with respect to my Behaviour in Word or Deed, in reference to his Majesty, or the Government?

Mr. *Strong.* Sir, I have heard you teach several times formerly; I was not at this time indeed (for which you now stand accused) at that Place: But I never heard you speak a Word against his Majesty, or the Government; but you always prayed very earnestly for his Majesty.

Mr. *Rof.* Did you ever hear that I should say any thing ill of the King or Government?—Mr. *Strong.* No, never.

Mr. *Rof.* Call Mr. *John Cutloe*—

[Who appeared.]

Sir, you have known me too very many Years: What do you know, pray, concerning my Behaviour towards his Majesty and the Government?

Mr. *Cutloe.* My Lord, I never knew him speak one Word disrespectfully of the Government, or the King, in my Life; tho' I have known him some Years.

Mr. *Rof.* Did you ever hear from any Body else, that I did speak ill of the King or Government, directly or indirectly?

Mr. *Cutloe.* No, never a Word, I assure you, Sir.

Mr. *Rof.* Have you been where you have heard me pray for his Majesty?

Mr. *Cutloe.* Yes, Sir; I remember at *Bristol* once occasionally I heard you in the time of Liberty; otherwise I cannot say I have heard you. But I never heard any thing against the Government; but you always behaved yourself Loyal and Peaceably that I know of.

Mr. *Rof.* Call Mr. *Charles Melfum*—

[Who appeared.]

My Lord, I call this Gentleman, who will acquaint you that he lived with me many Years in an honourable Family, a Person of Quality of this Nation, one of the *Hungerfords*, where, my Lord, I was Tutor to Sir *Edward's* Son for near seven Years; a Gentleman well known for his great Loyalty to the King and Government: So that if I had been such an Enemy to the King, or so disaffected as these People would make me to be, sure he would never have entertained me. Pray, Mr. *Melfum*, will you please to acquaint my Lord, and the Jury, how many Years I was in that Family?

Mr. *Melfum.* Seven Years; and I was above Fourteen myself.

Mr. *Rof.* Pray, what do you know of my Carriage in that honourable Family, with respect to the King and Government?

Mr. *Melfum.* As far as I know for my Life, I will declare. I do not remember he did trouble himself, or meddle with any Man's Business but his own. He was a Man that kept much to his Study: And when he came up to Prayer, he prayed heartily for the King; and had the good Word of all his Neighbours thereabout.

Mr. *Rof.* Have you often heard me pray for the King?

Mr. *Melfum.* I have heard him a Hundred times pray for the King; I never miss Prayers when I was at Home; and it was his constant Practice.

L. C. J. Did he pray in the Family then?

Mr. *Melfum.* Yes, he did.

L. C. J. Did he use to go to Church?

Mr. *Melfum.* Yes, he went to Church, to the beginning of the Prayers; he did frequently attend Divine Service.

L. C. J. Did he receive the Sacrament in all that time?

Mr. *Melfum.* Yes, I believe he did; I cannot say it directly.

Mr. *Rof.* I was a constant Attender upon the Publick Ministry. It is now above a Dozen Years ago; it was in the Year 1664, my Lord, and so downward. Sir, You know I was a constant Attendant upon the Ministry of the Church, and the Worship of God there.

L. C. J. Did you ever hear him make use of the *Common-Prayer* himself in the Family?



Mr. Melfum. I cannot say he did.

L. C. J. Well; have you any more Witnesses, Sir?

Mr. Ros. Yes, my Lord. Pray call Mr. Robert Medham.

[Who appeared.]

Here is another Gentleman, my Lord, that lived in that Family. Pray, Mr. Medham, how long did you live in that honourable Family?

Mr. Medham. About four Years.

Mr. Ros. Was that in the Time that I was there?

Mr. Medham. Yes, it was.

Mr. Ros. Pray then, Sir, will you declare what you know of my Conversation in that Family with respect to the Publick?

Mr. Medham. My Lord, it is a great while ago; but at that time Mr. Rosewell did always keep to the Parish-Church. He was Chaplain to my Lady Hungerford; and always pray'd for the King at every time of Prayer.

Mr. Ros. Did you ever hear that I should speak or declare any thing against the King or Government, in all my Life, all my time, or your time that I was there?

Mr. Medham. I must needs say, I never did hear any such thing in my Life.

Mr. Just. Hol. But it was not the Prayers of the Church that he used?

Mr. Medham. I cannot say that.

L. C. J. Did you ever hear him use the Prayers of the Church?

Mr. Medham. The Prayer that I heard, was that which was usually made in the Family.

L. C. J. But pray, speak plain; Did he use the Common-Prayer?

Mr. Medham. No, my Lord; I cannot say he used the Common-Prayer.

L. C. J. I tell you what I mean; Did he pray out of the Book of the Common-Prayer?

Mr. Medham. No, my Lord, I cannot say that.

L. C. J. Dost thou take his EXTEMPORE Prayer to be the Prayers of the Church?

Mr. Just. Withins. My Lord, he does not know the Difference, I believe; I believe he does not go to Church.

Mr. Medham. Yes, I used to attend upon the Public; and so did Mr. Rosewell.

Mr. Just. Withins. Well, Sir, have you any more Witnesses?

Mr. Ros. Yes, my Lord: Pray call Mrs. Anne Broadhurst.

[Then Mr. Winnacott appeared and offered himself.]

Mr. Winnacott. My Lord, I heard I was call'd; and am come as soon as I could get in.

Mr. Ros. Ay, Mr. Winnacott, you have known me many Years; I desire you would testify what you know concerning my Conversation and Behaviour.

Mr. Winnacott. Formerly, when I heard him, I never heard him speak a Word against the King or Government; and it is some three Years ago since I heard him.

Mr. Ros. Have you heard of any Evil that I have said or done against the King or the Government?

Mr. Winnacott. No; but I have heard him often pray for his Majesty.

Mr. Just. Withins. Well, there is your other Witness Anne Broadhurst; what ask you her?

Mr. Ros. My Lord, this was a Servant that lived several Years in my Family. Pray, Nan, how many Years did you live there?

Anne Broadhurst. Four Years, my Lord.

Mr. Ros. Pray declare what you know of me in my Family, with respect to the King and Government.

Anne Broadhurst. I have generally heard you twice a-day pray in your Family; and I never heard you pray in my Life, but I heard you pray as earnestly for the King as you did for your own Soul. This I can declare during the time that I lived there.

Mr. Ros. Did you ever hear me speak Evil of the King in my Family; or reflectively on the Government?

Anne Broadhurst. No: You always pray'd for the King (as I say) as earnestly as for your Self or your Family.

Mr. Ros. If you know any ill Carriage in Word or Deed towards my Sovereign, I desire you to speak it out, without favour or affection, or any respect to me in the World.

Anne Broadhurst. No, I never did; but have often heard you heartily pray for him.

Mr. Just. Withins. Pray, how long ago is this?

Anne Broadhurst. Two Years ago I lived with him.

Mr. Ros. Pray, tell my Lord again, how long it was, and when that you lived there.

Anne Broadhurst. I lived there four Years; and it is two Years ago since.

Mr. Just. Withins. Pray, how often were you at Church in that time?

Anne Broadhurst. When I had occasion to go, I did go; but I did usually hear my Master, when I dwelt with him.

Mr. Just. Withins. Well, who is your next Witness?

Mr. Ros. Call Anne Manning. [Who came in.] You lived with me in my Family several Years?

Anne Manning. Three Years, Sir.

Mr. Ros. Pray, will you declare what you know of my Carriage and Behaviour towards the King and Government, in my Family, while you were there?

Anne Manning. My Lord, he prayed for the King, for his long Life, in his Family Duties, Morning and Evening; and in private, when Nobody heard him but myself.

L. C. J. What! you and he were at Exercise together?

Anne Manning. My Lord, I have gone by his Study-door, and have heard him pray for the King's long Life, when he knew not that any Body heard him.

Mr. Ros. This, my Lord, is more than I expected; for I little thought that any Body could give a Testimony of my private Devotion; tho' I never then omitted to pray for the King, and never shall as long as I live.

Anne Manning. My Lord, he pray'd as heartily for the King's Life as for his own Soul; and I have heard him often praying, and desiring God to preserve him in his Kingdom, and give him long Life; and have heard him insist upon that Scripture, *Speak not Evil of the King, no, not in thy Bed-Chamber; for the Birds of the Air shall declare it.*

Mr. Ros. Pray speak the Truth. Did you ever hear me utter an ill Word or Reflection upon his Majesty or the Government?

Anne Manning. No, my Lord, he was always mightily for the King.

Mr. Ros. Speak the Truth of what you know; I hope you would speak the Truth, and nothing more than the Truth, as if you were upon your Oath.

Anne Manning. I do speak the Truth, and it is what I can declare, and would, if I were to die the next Moment; and I can safely swear it.

Mr. Ros. Then, pray, call Isabella Dickeson.

[Who appeared.]

My Lord, surely I would not speak Evil of his Majesty, or the Government, in publick in the Congregation, when I prayed for him in my Family and my Closet. But here is another Servant that liv'd in my Family: Pray will you speak what you know concerning my Behaviour in my Family, with respect to the King and Government?

Isabella Dickeson. He used to pray twice a-day in his Family, Morning and Evening, and he always pray'd earnestly for the King, for his good Health, long Life, and Prosperity.

Mr. Ros. Did you ever hear me speak any Evil of the King or Government in any Respect?

Isabella Dickeson. No, never, Sir, in my Life; nor do I believe you ever had an evil thought of the King.

Mr. Ros. Pray then will you call Mr. James Atkinson?

Mr. Just. Withins. We have had him already, and I suppose he is gone; he is not here.

Mr. Ros. I call him now to testify another Thing, if your Lordship pleases; and he is at hand, my Lord, I suppose.

L. C. J. You should examine your Witnesses together, but we will not surprize you; we will stay.

Mr. Just. Hol. Pray call any Body else, in the mean time, if you have any other.

L. C. J. Nay, Brother, it may be he hath observed a Method to himself; he is for his Life; let him take it.

[Then Mr. Atkinson came in.]

Mr. Ros. That which I call you now for, Sir, is to testify what you heard upon the 30th of January from me, about praying for the King, and all that are in Authority.

Mr. Atkinson. My Lord, he kept that Day, the 30th of January, as a Day of Fasting and Prayer; and he preached from that Text on the 1 Tim. ii. 1. *Pray for Kings, and all in Authority:* And then he did assert that Kingly Government was most agreeable to the Word of God, and the Constitution of the Government of England, which was the best in the whole World; and had been so approved by Writers, both Foreign and of our own Country: And he did urge it as a Duty incumbent upon all People to pray for the King and Magistrates, that they might live a peaceable and quiet life under them in all Godliness and Honesty.

[Then he seem'd a little faint and stopp'd.]

Mr. Ros. Pray, Sir, will you recollect yourself? My Lord will indulge you a little.

Mr. Atkinson. I have been acquainted with Mr. Rosewell these ten Years.

Mr. Ros. But pray, Sir, what do you remember of the Application of that Sermon upon the Text, about praying for Kings and all in Authority?

Mr. Atkinson. That Persons were to pray for them, and to obey them, and that it was their Duty. This is all that I can remember.

Mr. Ros. What do you remember of my Invectives against those that practis'd the contrary?

Mr. Atkinson. Why, truly, as to those Things, he did highly condemn those Persons that had any way acted against it. And I have heard him, both in publick and private, inveigh against those that had any hand in the Murder of the late King, and condemned the Fact as a diabolical Design.

Mr. Ros. Is Mr. Smith there?

Mr. Atkinson. I was very ill on Sabbath-day last, and I thought I should not have come out now; and I would not, to the best of my remembrance, speak a Lye, as I am in the presence of this honourable Court, and in the presence of God, to whom I must give an Account another Day.

Mr. Ros. God will reward you for what you come to do for an innocent Person this Day.

Mr. Atkinson. I never heard an ill Word against the King or Government drop from Mr. Rosewell in my Life. I am not upon my Oath, but know myself to be bound to declare and tell the Truth, and nothing but the Truth.

Mr. Ros. I am confident, my Lord, he would not speak what he would not swear.

L. C. J. The Jury are Judges of that, Mr. Rosewell, I must leave it to them.

Mr. Ros. Pray, Mr. Atkinson, was Mr. Smith with you?

Mr. Atkinson. Yes, and I have sent one to call him.

Mr. Ros. Pray, Sir, let me ask you as to what Mistress Smith says, that I should say of the Recorder being made a Judge?

Mr. Atkinson. I never heard you speak any such Words in my Life.

Mr. Ros. Upon the last Day of August last, at Mr. Shed's House, she says, that I did use that Expression.

Mr. Atkinson. As to Shed's House, I was then sick, and was not there. If my Lord will give me leave to look upon my Note-book, I can tell what Day I was there.

Smith. It was at one Daniel Weldy's House, as I think, that you spoke about the Mayors and the Sheriffs; but what you said about Fools in Scarlet Gowns was at Shed's House.

Mr. Ros. Was there any Meeting at the Meeting-House, since July last, upon the Sabbath Day?

Mr. Atkinson. Truly, I be not able to remember; but if my Lord please to give me leave to look upon my Note-Book, I can give an account; for I writ down every Day the Place where we met.

L. C. J. Prithee, look upon thy Note-Book; for I have a mind to know something out of that Note-Book. Prithee tell me what was insisted upon the 14th of September?

Mr. Atkinson. My Lord, I only have a Note of the Day, of the Place, and of the Text.

Mr.



Mr. *Rof.* Pray, Sir, did you hear me speak of a Great Man in *Grace-church-street* at the upper end; and that if it had not been for him, the Fire had been quenched?

Mr. *Atkinson.* I never heard that Expression from you in all my life.

[Then Mr. Smith came in.]

Mr. *Rof.* Pray, did you hear any such thing, Mr. *Smith*?

Mr. *Smith.* No, my Lord.

Mr. *Rof.* My Lord, I can bring all the rest to testify the same thing, if your Lordship will let me call them over again.

L. C. J. Do as you will, I would not restrain you from any thing of a legal Indulgence, that is fit to give to any Man in your Condition.

Mr. *Atkinson.* What Day of the Month do you say it was, Sir, that you spake of the Recorder?

Mr. *Rof.* The 31st of *August*, I think.

Mr. *Atkinson.* At that time I was sick, and was not there.

Mr. *Rof.* Pray, Mr. *Smith*, have you ever heard me preach upon the 30th of *January*?

Mr. *Smith.* Yes, Sir; I have heard you upon that Day, and upon that Text, that we should pray for Kings and all in Authority. You kept it as a Day of Humiliation, and you abhor'd the Action of that Day. It was kept very solemnly, for the bewailing the horrid Murder of our late King. And you were so far from giving any Countenance to the Action of that Day, that you detested it, and preached very much against it, and you have always preached up kingly Government.

Mr. *Atkinson.* Sir, you were asking me; if there were a Meeting since July, in the Meeting-house?

Mr. *Rof.* Yes, because she says there was one upon the 10th of *September*.

L. C. J. If you look upon your Notes again, Mr. *Roswell*, you'll find it was the 10th of *August*.

Mr. *Roswell.* Where were you upon the 10th of *August*?

Mr. *Atkinson.* I was at home sick then; it is written down, your Lordship may see it.

L. C. J. Do you take notice where you heard the Meeting was, when you were sick?

Mr. *Atkinson.* Yes, my Lord, I have a short Note of it.

L. C. J. Where was the Meeting then?

Mr. *Atkinson.* In the Meeting-house, as I heard.

L. C. J. Pray, recollect yourself, and look upon your Book, how is it enter'd there?

Mr. *Atkinson.* Myself at home the 10th of *August*.

L. C. J. When didst thou take that Note, upon your Word, now?

Mr. *Atkinson.* When my Family came home, some body did tell me that day, or the next day.

L. C. J. Well, where was it the time before?

Mr. *Atkinson.* The 3d of *August*, at Mr. *Crookshank's*; the Text was the *Heb. xi. 7.* The 10th at the Meeting-house, myself at home; and *Canticles* the 11th and 13th.

Mr. *Rof.* My Lord, these Gentlemen say, they were at several Meetings. I desire, my Lord, that these Witnesses may be called.

L. C. J. Call whom you will. Who do you call first?

Mr. *Rof.* *Thomas How.* My Lord, I could bring Hundreds of Witnesses as to this Point.

L. C. J. Well, there is *Thomas How*; to what purpose do you call him?

Mr. *Rof.* My Lord, to testify that she should swear before Sir *George Treby*, that Mr. *How* was at a Conventicle such a time, when he was not. And therefore I desire him, that he would please to testify the Truth of that matter.

Mr. *How.* My Lord, I will testify the Truth as far as I know it; she sent three Ten—

L. C. J. How do you know that?

Mr. *How.* So they said.

L. C. J. That is no Evidence; and I care not what they said: If you know any thing yourself of your own Knowledge, speak it.

Mr. *How.* They offered—

L. C. J. I tell you their offering signifies nothing.

Mr. *How.* My Lord, it is an Year and an half ago.

L. C. J. Let it be never so long ago, if it be only what they said, it signifies nothing, it is no sort of Evidence; but if you can say any thing of your own Knowledge, you say well; in God's Name we will hear it.

Mr. *Rof.* Then my Lord, some Questions I desire I may have leave to put to Mr. Recorder.

L. C. J. If Mr. Recorder be ready to answer your Questions, with all my heart.

Mr. *Rof.* Mr. Recorder, I desire you would please to do me the Justice to testify, whether you know any thing concerning *Mistress Bathoe*?

L. C. J. Who is she?

Mr. *Rof.* My Lord, it is whether there was not a Conventicle sworn before Mr. Recorder against one *Mistress Bathoe*?

Mr. Recorder. I can't well tell, Mr. *Roswell*. There was a Conviction before me (as I remember) of one Mrs. *Bathoe* for a Conventicle; and, as I take it (as the Witness told you just now) she had it from her own Confession.

Mr. *Rof.* Do you know any thing, pray, Sir, of a Composition that was made upon that Conviction?

Mr. Recorder. No, Sir; you don't think, sure, that I make Compositions, or know any thing of them.

Mr. *Rof.* Was not the Money, Sir, paid back again?

Mr. Recorder. Not a Penny that I know of, or any Agreement for it.

Mr. *Rof.* Pray, Sir, will you acquaint the Court, how that Matter was really?

Mr. Recorder. *Mistress Bathoe* came to me, and said, she was mistaken if any such Words did pass from her; for indeed there was never any such Conventicle as *Mistress Smith* swore she had confess'd. Upon that I sent for *Mistress Smith*, and bid her consider of it, whether there was really any such Conventicle; and *Mistress Bathoe* had brought her Appeal, and it is depending now, and will be heard the next Quarter-Sessions.

Mr. *Rof.* Pray, Sir, did you tell her, that she might have her Money again?

Mr. Recorder. I did tell her, *Mistress Smith* was mistaken, and did not insist upon it, and she would have her Money return'd again.

Mr. *Rof.* Pray, Sir, did you send your Warrant for one *Cartwright* under your hand?

Mr. Recorder. You ask me a hard Question; I might send a Summons for several Persons, I cannot remember all their Names.

Mr. *Rof.* By whom, I pray, Sir?

Mr. Recorder. I can't tell who I send all my Summons by.

Mr. *Rof.* Was it not by these two Women, *Mistress Smith* and *Mistress Hilton*?

Mr. Recorder. I can't tell; it may be it might be so.

Mr. *Rof.* Pray, Sir, what did you say to Mr. *Cartwright* when he came thither?

Mr. Recorder. I can't remember particularly.

Mr. *Rof.* Sir, did you not ask him what he had to say against these Witnesses that are produc'd against me?

Mr. Recorder. My Lord, I remember, when Mr. *Cartwright* came to me, I did ask him some such Question; for they had told me that he had, by a Person, been tampering with them, to take them off from prosecuting a great many Persons.

Mr. *Rof.* By whom were you told so, Sir?

Mr. Recorder. By themselves. I know nothing of it: But I tell you the reason why I sent for him; because they told me, they went in Danger of their Lives; that they could not walk the Streets in Safety, but they had Stones thrown at them; and they were reproach'd as common Informers, and were beset hard with Applications of Money, to take them off from prosecuting. And, among the rest, they complain'd of one *Cartwright*, that he had been dealing with them; and it was upon that account that I sent for him, to know what he had to say against them; and he satisfied me, that he had nought to say against them.

L. C. J. These Questions, Mr. *Roswell*, perhaps, may be better let alone.

Mr. Recorder. I have seen a Letter that does threaten them very much; but I cannot say whence it comes.

Mr. *Rof.* My Lord, I desire to ask Mr. Recorder, whether or no he did not send for some of my Witnesses?

Mr. Recorder. I don't know your Witnesses, Sir.

Mr. *Rof.* Did you send for one *Richard Gibbs* of *Rotherhith*?

Mr. Recorder. Yes, he was Constable at *Rotherhith*.

Mr. *Rof.* Pray, Sir, upon what account did you send for him?

Mr. Recorder. I did it, because I heard the Constables of your Side durst not execute their Warrants, for fear of the Rout of the People.

L. C. J. I tell you, these Questions were better let alone.

Mr. *Rof.* Mr. *How*, that which I call you for, is, whether Mrs. *Smith* has not offered to swear before a Justice, that you were at a Conventicle when you were not?

L. C. J. She says she does not know any thing of her own Knowledge.

Mr. *Rof.* She offered it a Year and a Quarter ago, before Sir *George Treby*.

L. C. J. Were you by when she offered any such thing?

Mr. *How.* I was by, when she was before Sir *George Treby*; and she went into a Yard, and offered to inform against one Mr. *How* for being at such a Conventicle; but I was not the Man, she said.

Mr. *Rof.* My Lord, she had sworn it.

L. C. J. No, no, she had not sworn it, she only offered it, and for aught I perceive, she is a very careful Witness, to see that she does not fix upon the wrong Person.

Mr. *Rof.* Then, if it please your Lordship, I desire *John Townsend* may be called.

[Who came in.]

Pray, will you testify what you know concerning Mrs. *Smith's* swearing that Mr. *How* was at a Conventicle?

Mr. *Townsend.* Sir, I will tell the Truth as near as I can; I cannot tell the Day, it was about a Year and an half since, that he was out of Town of the Lord's Day, and that Day was remarkable; for I met him coming to Town, and it was about Evening, about five of the Clock, and that Day they had brought him some notice of a Warrant for the seizing of his Goods, for that he had been at a Meeting: Now he, understanding when they were to make Affidavit of it before Sir *George Treby*, he desired me to go with him thither, and I went with him, and he asked her if she knew the Man. There he was, and I was, and one more, and there came one Stranger: And we went out to the Light, and she look'd upon all of us, and knew never an one of us.

L. C. J. You use to go to Conventicles, all of you, I warrant you?

Mr. *Just. Withins.* She was not rash out in her Conjecture, I dare say.

L. C. J. But she seems to be very careful, that she did not swear against the wrong Person. And (speaking to Mr. *Townsend*), If she had sworn that thou hadst been there that Day, I warrant you she had sworn true.

Mr. *Rof.* Is Sir *George Treby* here?

[He did not appear.]

Then I desire Mr. *Thomas Harvey* may be call'd.

L. C. J. There he is; what do you ask him?

Mr. *Rof.* My Lord, to prove that this *Elizabeth Smith* swore that several Persons were at several Conventicles, which she afterwards confess'd in truth they were not; and made Applications to compound for the Forfeitures, and they should have their Money again.

L. C. J. Prithee, ask him in general, what does he know of her?

Mr. *Harvey.* *Elizabeth Smith* came to a Friend of mine in April, or May last—

Mr. *Att. Gen.* Were you by?

Mr. *Harvey.* Yes, I was by. She came to a Friend of mine, I say, and she told him, that she could swear against him, and some others, for a considerable Value of Forfeitures upon Conventicles—

L. C. J. What Friend of thine was this?

Mr. *Att. Gen.* Where does that Friend live?

Mr. *Harvey.* In *Southwark*.

L. C. J. What's his Name?—Mr. *Harvey.* One *Games*.

L. C. J. What Trade is he?—Mr. *Harvey.* A Sail-maker.

L. C. J. Whereabouts does he live in *Southwark*?

Mr.



Mr. Harvey. By St. Mary Over's Dock. And he came to me, and desired me, that I would meet and speak with her; I met her, I think it was about the Exchange, at the *Ros-buck*; there was she, and another fellow with her. She told me she could swear against such and such; and desired me to give her a Cup of Drink, which I did; and then she told me her Story, and demanded either 10 or 20 Pounds; and that that should take her off from swearing against them. I told her, I could say nothing to it; but I would acquaint them, which I did, particularly Mr. Games. They thought not fit to give her any thing; which Answer I returned to her. She told me she was very Poor, and if she could have but something, she would declare who it was that would swear; but upon reasonable Composition (though she had offer'd to swear) she would not. But she had taken the Copy from a Sister of her's; and, I think, she said her Sister's Name was *Mary Farrar*, as I remember.

L. C. J. Did she offer to swear any thing against you?

Mr. Harvey. No, my Lord.

L. C. J. You know that Games very well, don't you?

Mr. Harvey. Yes, my Lord.

L. C. J. Does he use to frequent the Church constantly?

Mr. Harvey. I don't know that, my Lord; I have known him many Years.

L. C. J. Do you live near him?—Mr. Harvey. No, I do not.

Mr. Ros. Pray call Mr. John Cartwright, and Mr. George Norton.

[Mr. Cartwright appeared.]

Mr. Cart. I desire you would please to testify what you know here concerning Mrs. Smith, who hath testified against me.

Mr. Cart. My Lord, may it please your Honour; the 22d of July last, Mrs. Smith and I were together from Seven o'Clock in the Morning till half an Hour after Eleven; and that Morning we went to a Constable, one *Alexander Venner* in *Aldersgate-street*; and from thence we went to *Moorfields* to look for a Meeting in *Petty-France*; but there was none: And from that place we went into *Moorfields* again, and followed an ancient Man, whom we supposed was going to a Meeting; and this Man we followed the space of almost an Hour's time, that it was almost this time of Day that it now is that I am speaking. That Day she convicted Mrs. Bathoe for having a Meeting in her House; when she owned to me, and another Man, that she never was in the House of Mrs. Bathoe; and then for the same Morning there was one *Rice Bowing*, that was convicted of a Conventicle at *Bermondsey*, upon her Oath.

L. C. J. How do you know that?

Mr. Cart. As I was told.

L. C. J. But it may be you were told a Lye; you must only speak what you know yourself.

Mr. Cart. Then, my Lord, several times she has asked me to convict with her, when I never had been at a Meeting; and also, she has offered to convict with me, when I have been there, and she hath not been there; and she also asked my Wife to convict one *Dod's* Meeting at *Shoreditch*, and my Wife refused it, because she was not there.

L. C. J. Were you by when she asked your Wife to do it?

Mr. Cart. Yes, and please your Honour.

L. C. J. Who did you tell this first to? Because I see you hunted along with her, why did not you go and complain, when she had several times proposed such a thing to you?

Mr. Cart. My Lord, I did not so well understand it at that time.

L. C. J. Who did you first of all tell it to, I ask you?

Mr. Cart. I first of all told it to one *Smith*.

L. C. J. Was this before Mr. Rosewell was taken, or after?

Mr. Cart. It was afterwards.

L. C. J. Did you go to *Smith*, or did he come to you?

Mr. Cart. It was through another's means that I came to speak with Mr. *Smith*.

L. C. J. Who was that?

Mr. Cart. It was through a Goldsmith's means.

L. C. J. What is his Name?

Mr. Cart. His Name is *Ferne*; he lives in *Newgate-street*.

L. C. J. How came he to understand it, to bring you together?

Mr. Cart. Because he understood that I was with Mrs. *Smith* that time that she convicted Mrs. *Bathoe*, and was concerned with her. I did not know any thing of Mr. *Rosewell* at that time at all.

Mr. Ros. Did she not tell you, she would do as much for me?

Mr. Cart. She did offer me this; that if I would go and discover any Meeting, she would convict them, though she was not there.

L. C. J. Who didst thou tell a thing of this Nature to; only to Mr. *Smith*, and that Goldsmith?

Mr. Cart. I told it first to that Mr. *Smith*.

L. C. J. When these Witnesses and things drop out of the Clouds, I never put any great Value upon them. These come to serve a Turn, and never make any Discovery till you are taken.

Mr. Ros. My Lord, you may observe it was her common Practice to convict upon a Report, not having any Eye or Ear Witnesses.—

L. C. J. Well, I will observe what he has said; but I tell you what I think of it.

Mr. Cart. She has asked me to do it several times.

L. C. J. All that I can say to it, is, it seems she looked upon thee as so very a Knave, as that thou wouldst have done such a thing; and, it may be, she was not mistaken.

Mr. Ros. Then call Mr. *George Norton*.

[Who appeared.]

I call you as a Witness, to declare what you know of Mrs. *Smith's* importuning you or any one to swear against Meetings.

Mr. Norton. Yes, she has offered to swear, but I cannot say with him; for I was not present all the time. All that I can say, is, that she owned she was never at Mrs. *Bathoe's* House.

L. C. J. So she says still; and it agrees with all the rest of the Evidence: It was only Hear-say.

Mr. Ros. Then pray, will you please to call *John Hobson*?

L. C. J. There he is: What say you to him?

Mr. Ros. My Lord, I bring this Witness to testify, that Mrs. *Smith* swore there was a Conventicle at such a Place, when there was none.

Mr. Hobson. Sir, there was none since I came into the House, to my Knowledge.

L. C. J. What House?

Mr. Ros. At Mr. *Hales's*; she swore there was a Meeting upon the 13th of July.

Mr. Hobson. There was none, to the best of my Knowledge.

Mr. Just. *Withins*. We must not convict People of Perjury upon such Evidence. Indict her of Perjury, if you have a mind to it.

L. C. J. Where is the Instrument-Maker, *Atkinson*? Bid him find me his Book.

L. C. J. Were you at every Meeting always that he preached at?

Mr. Hobson. No, my Lord.

L. C. J. Then there might be many Meetings that you do not know of?

Mr. Hobson. I live next Door to this Mr. *Hales*.

L. C. J. You used to go frequently to hear Mr. *Rosewell*, did not you?

Mr. Hobson. No, Sir.

L. C. J. [Having looked upon the Book.]

Was there any Meeting that you know of, the 13th of July?

Mr. Hobson. None there: He lives the next Door to me.

L. C. J. Was there no Meeting no where there-away?

Mr. Hobson. Not that I know of.

L. C. J. She swears to that Day, at Mr. *Hales's*.

Mr. Ros. Ay, and to the very Place.

L. C. J. Do you know one *Hodgeson*?

Mr. Atkinson. It is *Hudson*, my Lord.

Mr. Hobson. No, my Lord; I do not know him.

L. C. J. Were you ever at his House at any Meeting?

Mr. Hobson. No, my Lord; I never was at any Meeting these two Years.

Mr. Ros. He lives next Door to the House.

L. C. J. There may be a Meeting next Door to my House twenty times over, and I not know it.

Mr. Ros. Then, pray, call *John Crook*.

[Who came in.]

Pray, Sir, do you know whether there was any Meeting at Mr. *Hales's* the 13th of July?

Mr. Crook. No; I never heard of any such thing, but what was according to his own use amongst his Family. I live under his Roof, and never yet did know that there was a Meeting there.

Mr. Ros. Pray, call *Sarah Whibby*.

[Who came in.]

I desire she may be asked, whether Mrs. *Smith* did not swear there was a Conventicle at Mr. *Hales's* the 13th of July; and whether there was any such thing?

Mrs. *Whibby*. There was none.

L. C. J. That you know of, you mean.

Mrs. *Whibby*. I am certain of it.

L. C. J. How came you to remember the Day particularly?

Mrs. *Whibby*. I can tell you by a very good Token; because the Chimney of my House was on Fire that Day.

L. C. J. How do you recollect it was the 13th of July?

Mrs. *Whibby*. Because there was a Neighbour of our's, that is a Waterman, that was sent for to wait upon His Majesty; and I went that Day to call him to quench the Fire; not finding him at home, I went further to call more Help.

L. C. J. How can you tell that it was the 13th? It might be the 20th, for aught you know.

Mrs. *Whibby*. No; it was the 13th.

L. C. J. How can you tell that?

Mrs. *Whibby*. Because there was another Meeting on the 20th Day, for which I paid 20 Shillings; and I can remember my Chimney was on Fire that Day.

L. C. J. What Day of the Week was it?

Mrs. *Whibby*. It was *Sabbath-Day*.

L. C. J. Why, if my Chimney was on Fire the 14th or 15th, it may be I can remember it a little while, but how came it that you do remember it so long?

Mrs. *Whibby*. It was the 13th of July.

L. C. J. How can you be sure of that?

Mrs. *Whibby*. Because it was the *Sunday* before the Meeting at Mr. *Bowen's*.

L. C. J. Where was the Meeting that Day your Chimney was on Fire?

Mrs. *Whibby*. I did not know then; but I knew since, it was at Mr. *Hudson's*.

L. C. J. Then you have been instructed about it. But pray don't think you come here to serve a Turn.

Mrs. *Whibby*. It was at Mr. *Hudson's*.

L. C. J. Was there a Meeting on the 13th of July?

Mrs. *Whibby*. By Relation there was; but I was not at it.

Mr. Ros. My Lord, I bring her to testify there was no Meeting at Mr. *Hales's* that Day.

L. C. J. We know well enough you snivelling Saints can lye.

Mrs. *Whibby*. I have answered the Truth, as far as I know.

Mr. Ros. I only ask her about Mr. *Hales*.

L. C. J. She shall answer such Questions as the Court shall think fit to ask her.

Mr. Ros. How far is your House from Mr. *Hales's*?

Mrs. *Whibby*. Next Door.

L. C. J. How far is your House from Mr. *Hudson's*?

Mrs. *Whibby*. A great Way.

L. C. J. Was it half so far as you went to fetch the Waterman?

Mrs. *Whibby*. That was but three Doors off; but Mr. *Hudson's* is half a Mile, I believe, or a Mile.

Mr. Ros. Then, pray, call *Anne Collins*.

[She appeared.]

Mr. Just. *Withins*. Well; what do you ask her?

Mr. Ros. Mrs. *Smith* hath sworn, that there was a Conventicle at Mr. *Hales's* the 13th of July; I desire to know of you, whether there was such an one, or no?

Mrs. *Collins*. The 13th of July there was none.

Mr. Ros. Upon your certain knowledge?

Mrs. *Collins*.



Mrs. Collins. Upon my knowledge there was none; I can justify it.  
L. C. J. Not there you mean, at Mr. Hales's: But do you know there was any where else?

Mrs. Collins. No, not to my knowledge.

L. C. J. Do you know Mr. Hobson? Was there any there that Day?

Mrs. Collins. I know one Hudson.

L. C. J. I thought you had said Hobson.

Mrs. Collins. No, it was Hudson.

L. C. J. Was there any Conventicle there?

Mrs. Collins. I cannot tell any thing as to that.

Mr. Ref. Then, pray, call Sarah Bathoe, and Susan Bathoe.

[Sarah Bathoe appeared.]

L. C. J. Well, what say you to this Witness?

Mr. Ref. That which I call Mrs. Bathoe for, is to prove that Mrs. Smith was mistaken, when she swore that Mrs. Bathoe permitted a Conventicle at her House the 20th of July: Upon which Mrs. Bathoe was convicted, and brought her Appeal.

L. C. J. You do mistake, Mr. Roswell. She says, that Bathoe confess'd that there had been a Conventicle at her House, as she heard.

Mrs. Bathoe. She has convicted me.

L. C. J. Ay, but it was upon your own Confession.

Mrs. Bathoe. No, I never confess'd any such thing; for I had none there at that time, nor did confess any such Thing.

L. C. J. Had you ever any Conventicle at your House?

Mrs. Bathoe. That is not it that I am to answer to now. I desire to be excused from answering that Question.

L. C. J. Then I will not believe her, if she talked as long as you preach.

Mr. Ref. There was an Appeal brought, my Lord.

Mr. Att. Gen. She is not a Witness, it is in her own Case. It would be a fine thing if an old Woman's Story should prevail here against positive Testimony.

[Then Susan Bathoe came in.]

Mr. Ref. Mrs. Smith hath sworn, that Mrs. Bathoe had a Conventicle at her House the 20th of July.

L. C. J. No; she only swears that Mrs. Bathoe confess'd it; but herself was not there, she says.

Mr. Ref. Did you confess it?

L. C. J. No matter what she says; it all agrees with that Testimony that she has now given: This Matter, it seems, is depending upon an Appeal, and so she testifies for herself. And when I ask her whether she ever had any Conventicle at her House, she will not tell me; which induces a Suspicion, that she does not come for a fair Purpose, but only to serve a Turn.

Mr. Ref. Pray, Mrs. Susan Bathoe, was there any such Conventicles?

Mrs. Bathoe. There was none.

L. C. J. Why, I tell you, you mistake still. Mrs. Smith swears that Mrs. Bathoe confess'd to her, that she had a Conventicle, but she swears she was not there. And take all together, seeing she will not answer whether she ever had a Conventicle; and so it may be only a mistake just of the Day: Or she might tell her so, for any thing appears; and for ought I know Hales has had Conventicles: And what is all this to the purpose of which you are accused?

Mr. Ref. Call Mr. John Ferne.

[He did appear.]

My Lord, I desire Mrs. Bathoe may not go away.

L. C. J. Let her stay then. What do you call this Man for?

Mr. Ref. It is to prove she has compounded Convictions. Pray, Sir, do you know whether Mrs. Smith hath compounded with Mrs. Bathoe, since the Conviction, to set by the Prosecution; and Mrs. Bathoe was prevailed with so to do?

Mr. Ferne. Mrs. Bathoe came to me about 8 or 10 Days ago; says she, I must get you to go with me to the Recorder's. I am promised my Money again that was paid upon the Appeal I brought. I was glad to hear it, and went with her; the Time appointed was five or six o'Clock. I was there a little after five; and Mrs. Smith was not there, that was one of the Witnesses upon her Conviction, Elizabeth Smith, for I served her with a notice to attend the Recorder. We were there a second Time at the Recorder's Chamber about six o'Clock; she was not come. We waited hard by, and went a third Time; and then she was there, and desired my Sister to excuse her that she was not there earlier; but she did not doubt but she should have her Money; and waited to see the Recorder. Mr. Recorder had several above with him. We waited an Hour, or better. Mrs. Smith went up, and my Sister went up with her, or followed her: And, says the Recorder to her, Are not you the Woman that was with me such a Time, with Mrs. Williams? Yes, Sir, (says she) I was. Says he, What made you make such haste away? Upon that, Mr. Courtispe steps forward with the Book; Sir (says he) I have paid it in to the Clerk of the Peace. Then, says the Recorder, It is out of my Hands, I can go no further: but promised afterwards to speak with Sir William Smith, the Chairman of the Sessions, about it.

L. C. J. I can make nothing of all this. What a Business is here!

Mr. Ferne. She seems to be a rash Woman, ready to swear any thing.

L. C. J. Oh dear, Sir! and you seem to be a grave, prudential fort of a Man.

Mr. Ref. If she did not swear that this Meeting was at Mr. Hales's, why was he convicted for that Meeting?

L. C. J. I know nothing of the Conviction at all; it is the first time that I have heard of it.

Mr. Ref. Then if your Lordship please, we desire to have the Record of it read; here it is.

L. C. J. Make it appear that she swore, and that what she swore was false; and then you say something.

Mr. Ref. We desire to have these Copies of Records read. Here it is per Testimonium Elizabethæ Smith, or per Sacramentum.

L. C. J. Prove that she swore it.

Mr. Ref. My Lord, we had a very gracious Answer concerning the Petition that my poor Wife delivered to His Sacred Majesty in reference to her coming to me; which His Majesty granted with a great deal of Compassion. He remitted it to your Lordship, and your Lordship did second it, for the having the use of what Records should be necessary for my Defence. And upon what Application we made to the Attorney-General,

VOL. III.

it was readily granted: But for the searching of the Records, we have desired the Recorder, and cannot have it.

L. C. J. You are much misinformed in that. I'll tell you how it was: Your Wife and a young Man came to me, a matter of a Fortnight ago, and did tell me, there were several Records, that were necessary for your Defence, and the Recorder refused to let you have Copies of them. I told her then, God forbid but that you should have all manner of Helps from Records, that were necessary for your Trial; and thereupon I did require my Brother Jenner, who is Recorder, to attend to shew Cause, why he did refuse to let you have any Records that you thought necessary for your Defence: And he gave me this for Answer, That they were Records of Convictions, and were returned to the Sessions of Peace; some to Surrey, and some into Middlesex, and some were in the Clerk of the Peace's Hands. Whereupon I told your Wife, if she would go to the Clerk of the Peace for Copies of the Records, if they did not readily give you Copies at your Charge, I would make them do it, if she came to complain to me; and if they would not, I would lay them by the Heels. When my Brother Jenner came to me, said I, I believe that which they have a mind to, is to know upon whose Testimony the Convictions are made. Now that is no part of the Conviction; and that we thought ought not to be granted. Nor is there any Law for it; for that is to open a Way to the tampering with the King's Witnesses. After this, there was Mr. Wallop, that came and moved the Court of King's-Bench about this matter; and we gave him the same Answer, that for any one to discover the King's Witnesses before they come to Trial was not to be allowed by Law. If Mr. Attorney had come here, and said, Pray, give us a List of all the Witnesses that Mr. Roswell will make use of at his Trial; we should have denied his Motion. God forbid but that the Witnesses you bring should be heard; and that the Witnesses they bring should be heard; but we must prevent tampering with the Witnesses on all sides.

Mr. Ref. If the Witnesses are suppress'd, it is impossible to encounter their Testimony.

L. C. J. What do you mean by suppressing the Witnesses? They are here produced.

Mr. Ref. Their Names, my Lord, upon the Records.

L. C. J. Their Names are never exposed, nor ought to be.

Mr. Ref. My Lord, it is that which must enable me to make my Defence. If we could have their Names, we could prove them perjured.

L. C. J. It cannot be by Law. You have the same Benefit that all the rest of the King's Subjects have. If any one be convicted of Treason by Witnesses (twenty in Number) we never enter them upon the Record; and if any be acquitted, the Testimony of the Evidence upon that Acquittal is never entered upon Record. It may be in your Matter, it was not upon the Testimony of Witnesses that the Conviction was; but upon the Notoriety of the Fact, or by Confession, as in the Case of Mrs. Bathoe; that was by Confession, and Witnesses. The Notoriety of the Fact, or the Confession of the Party, are all, and each of them sufficient to make a Conviction by Record. You have the same Liberty that every Subject has.

Mr. Ref. Mr. Courtispe is the Recorder's Clerk, that saw the Convictions in the Clerk of the Peace's Hands.

L. C. J. We cannot tell that, without the Clerk of the Peace was here.

Mr. Ref. Pray, where is Mr. Charles Walker?

[He appeared.]

I desire you, Sir, to testify what you know concerning the Conviction of Elizabeth Smith upon Mr. Hales, for a Conventicle at his House the 13th of July.

Mr. Walker. You had a Copy of it from the Clerk of the Peace; I made it out.

Mr. Ref. Of Mr. Hales and Mrs. Bathoe, do you mean?

Mr. Walker. No, only of Mrs. Bathoe.

Mr. Ref. Then I suppose we may have it; and the Clerk will testify it to be a true Copy.

Mr. Walker. This is a true Copy.

L. C. J. Then make what use you please of it. Will you have it read?

Mr. Ref. No, my Lord, not yet. If your Lordship please, I desire Richard Drew may be called; but however, if your Lordship will, let him read that Passage in it, that I cannot so well read, 'tis in Court Hand.

[Clerk of the Crown reads.]

Memorandum quod ad generalem Sessionem pacis pro Com' Midd' septimo die Octobris, tricesimo sexto, &c.

L. C. J. What do you make from this? Here is a Record of the Conviction, which says, that by two credible Witnesses, and the Notoriety of the Fact, she was convicted.

Mr. Ref. Pray call Richard Drew.

[Who came in.]

Pray, Sir, what do you know about Mrs. Smith's Practice in relation to Conventicles?

Mr. Drew. Upon the eleventh of July last there was an Acquaintance of mine, that she did pretend was at a Meeting—

L. C. J. Who was that that did pretend to?

Mr. Drew. Elizabeth Smith; and she would have had some Money of him. He came to me, and asked my Advice. Yes, said I, I think you had better give her Money, than to run the Hazard of swearing against you: So he did. He took me along with him to a Place where they were to meet, where she took ten Shillings, and promised he should come into no further trouble about it.

L. C. J. Had he been at a Conventicle, or not?

Mr. Drew. That I cannot say.

L. C. J. Do you believe he was, or was not?

Mr. Drew. My Lord, I cannot say that he was, or was not.

L. C. J. But that is not the Question I ask you: for you would not persuade him to give her Money, if he had not been at a Conventicle.

Mr. Drew. My Lord, I did not know whether he was, or was not.

L. C. J. I ask you again, did you believe he was, or was not?

Mr. Drew. I believe he might, by his being so willing to take my Advice; though he said it was a base thing to give her any Money in such a matter.

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Mr. Ref.



Mr. Ros. Pray, call James Howard.

L. C. J. There he is; what would you have with him?

Mr. Ros. My Lord, I crave leave first to ask Mistress Shaftoe; Are you Mr. Hilton's Wife?—Smith. Yes.

Mr. Ros. Then I desire Mr. Howard may testify what he knows concerning this Mistress Smith: But first, which Hilton's Wife are you?

Smith. George Hilton's.

Mr. Ros. What then do you know of her, Sir?

Mr. Howard. I was once drinking a Cup of Ale in Grub-street, where she did take a parcel of Money in the Concern of the King, my Lord.

L. C. J. Prithee, speak up: In what Concern?

Mr. Howard. She took a Bribe in the Concern of the King.

L. C. J. What dost thou mean?

Mr. Howard. Of a Person that had been at a Meeting.

L. C. J. Prithee, what Bribe was it?

Mr. Howard. About 11 or 12 Shillings.

L. C. J. Prithee, of whom was it?—Mr. Howard. The Man I never saw, nor the Woman before; I came in by chance.

L. C. J. How long ago is this?

Mr. Howard. About the middle of July last.

L. C. J. Who did you discover this matter unto?

Mr. Howard. My Lord, I was only drinking a Cup of Ale; and I discovered it to Mr. Drew, that was call'd last.

L. C. J. Was Mr. Drew one of them?

Mr. Howard. No: Mr. Drew I am acquainted with; he is my Neighbour.

L. C. J. When were you at Church last?

Mr. Howard. The last Lord's Day.

L. C. J. When did you receive the Sacrament there?

Mr. Howard. My Lord, I never did. We have no Parish-Church at present; it is now a-building.

L. C. J. Where do you live?—Mr. Howard. In Mugwell-street.

L. C. J. Have you no publick Preaching in the Parish?

Mr. Howard. I do hear Dr. Fowler, and Mr. Smythies too, sometimes.

L. C. J. That is, when there is no Conventicle (I suppose) in the way. That Mr. Smythies and Dr. Fowler are both very well known.

Mr. Ros. Is Mrs. Anne Farry here?

[She did not appear.]

Pray call Mrs. Anne Higgenfon.

[Who appeared.]

Do you know Mrs. Shaftoe, or Mrs. Hilton, as she is call'd?

Mrs. Higgenfon. My Lord, I have very little Knowledge of her; I have known her but a very little while.

Mr. Ros. What Testimony can you give of her Conversation?

Mrs. Higgenfon. Since I have known her, I have heard some ill things of her: But I cannot speak to any thing of mine own Knowledge.

L. C. J. Why, so People may say a great many ill things of you that you do not deserve, nor know any thing of.

Mr. Ros. Call Anne Carter.

[She did not appear.]

I desire Sir John Talbot would please to be examined.

L. C. J. Here is Sir John Talbot by me.

Mr. Ros. Sir, I desire you would please to testify to the Court and the Jury what you know concerning the Conversation of Mistress Shaftoe, otherwise called Mrs. Hilton.

Sir John Talbot. She was a Servant, that liv'd in my House a great many Years; but I did not use to converse with her.

Mr. Ros. No, Sir John; but what do you know of her Conversation while she lived in your House?

Sir John Talbot. All that I know of her, is, she had no very good Character in the Family.

L. C. J. Do you know any thing of your own Knowledge?

Sir John Talbot. As to any thing of my own Knowledge, I cannot speak; it is all no other than Hear-say from all the Family.

L. C. J. But I ask you what you know of your own Knowledge, Sir John. Tell us the Particulars you yourself know.

Sir John Talbot. It was the Complaint of all the Servants of the House, that she was guilty of telling Lies and Stories in the Family.

Mr. Ros. Was she reported in the Family a frequent Lyar?

Sir John Talbot. She had that Character in the Family; all the Servants complain'd of it. I only know of other things since she was gone out of the Family; and that she has been concern'd in an odd sort of Practice, about attempting to steal away a young Lady.

L. C. J. Do you know of it of your own Knowledge?

Sir John Talbot. I had it from herself, and upon her own Affirmation.

L. C. J. What was that?

Sir John Talbot. It was about the Practice that had been set on foot of cheating People of money for procuring Fortunes; particularly concerning the Daughter of one Sir Harry Jones. And there have a great many Gentlemen been abused about Town in that matter, and made believe that this Woman had an Interest in her, and would put this great Fortune into their Hands: I have not been privy myself to any of the Negotiations, but I have understood there were such Practices; there was one Salem and she that were engaged.

L. C. J. Look you, Sir John, Do you know this of your own Knowledge? For we must not hear Evidence to take away People's Reputation by Hear-say: If she hath confessed any thing to you, you may speak that, and let us know it.

Sir John Talbot. My Lord, if it be not too long to give you the Circumstances how I came to know it, I will tell you what I have been informed about it.

L. C. J. No, that is not Evidence, Sir John; unless you know it yourself, or had it by her Confession.

Sir John Talbot. My Lord, I do not come here as a voluntary Evidence, but I am here called upon. And, my Lord, I think I ought to give my Testimony, if a man's life be concerned.

L. C. J. And so ought we who are upon our Oaths, to insist upon it, that you give legal Evidence, what you know of your own Knowledge; and I ask you here again, whether what you relate be of your own Knowledge, or what was by Hear-say?

Sir John Talbot. My Lord, I had notice sent me by a Letter, That there was a Gentleman come to Thistleworth with a Coach and four Horses, with a Design to steal Mrs. Jones. I cannot remember whether there was any Name to the Letter, but such a Letter was sent, and I was to inquire about it of this Ellinor Shaftoe, who was engaged in the Design. I sent to her to come to me, and she did come; and told me that there had been such a Practice of one Salem, and she would bring a Gentleman to discover the whole Business, and she did so; and brought this Hilton (by whose Name, as her Husband, she owns herself), and he came to me, and gave me a Note of several Gentlemen's Names that were concern'd in it; and, I believe, I have a Book wherein their Names are. I then asked, Why she did let it so long run, and the Business go on so far? Mr. Hilton did confess, that one particular Gentleman had been kept in Treaty, who was a Country-man, and came to live in Town, and was in Town the greatest Part of the Winter upon this Design; and did walk that Way, expecting that this Nan Carter should bring down this Heiress, so that they might have an Opportunity to steal her. Mr. Hilton had no other way of Application to me but by this Shaftoe; and he confess'd himself, that he was a Party concern'd in the Design.

L. C. J. Ay; but what did Hilton's Wife say? For what he said is nothing to the Purpose in this Point.

Sir John Talbot. She is one that I had no Communication with, nor converse, while she was in my Family, otherwise than as an ordinary Servant; but this same Mrs. Jones was my Ward.

L. C. J. Did she confess she had any Design in this matter; or was to have a Reward for setting the matter on foot?

Sir John Talbot. No, my Lord; she did not particularly confess she had any hand in the Design; but it was that which several other Persons have come and inquired since of my Family about; who have told me, that there was one Shaftoe, otherwise Hilton, that was concern'd in it.

L. C. J. That is no Evidence, Sir John, I must tell you again.

Sir John Talbot. My Lord, I can't make the Evidence otherwise than as it is. I tell you what I know.

L. C. J. You understand yourself so well, Sir John, that you know it is not Evidence; and you are not to talk of what other People have told you.

Mr. J. Withins. How long did she live in your Family?

Sir John Talbot. I can't tell how long, my Lord, but I believe she was there ten Years.

Mr. J. Withins. That's a strange thing, that you should keep an ill Woman so long.

Sir John Talbot. My Lord, with your Permission, she was a Servant when that Child came to me, and when the Mother died; and my Wife did not think fit to put her away; so she came and staid with the Child as long as my Wife could keep her; but at last she did foment Differences in the Family, Lies, and Stories, and was found to be a Person not fit to live in the Family; and therefore my Wife was afraid to keep her any longer, and put her away.

L. C. J. Well, Mr. Rosewell, have you any other Witnesses?

Mr. Ros. Pray call Anne Dillingham.

L. C. J. Well, what do you ask her?

Mr. Ros. My Lord, I bring this Witness to prove concerning Mrs. Shaftoe, alias Hilton, that she offered to swear against People, as being at Conventicles, whom she had never seen.

Mrs. Dillingham. She lodged in my House, and is a very ill Woman; and asked me to swear of Meetings that I never knew any thing of at all in my Life. I never was at Meetings but about Thirteen Years ago. I asked her why I should swear, or what I could swear to? She told me, I should have a share of the Money, if I would swear to what she said, whether it were right or wrong, I should have a share, if I would but swear.

L. C. J. How long ago is this?—Mrs. Dillingham. Two Years ago.

L. C. J. Who did you tell this to first?

Mrs. Dillingham. My Lord, I am subpoena'd here to give my Testimony.

L. C. J. That's true; but who did you tell this, that you talk of, first to?

Mrs. Dillingham. My Lord, I never told it to any body but her, except it was to my own Husband.

L. C. J. But why would you keep this as a Secret, and not tell it to any body?

Mrs. Dillingham. Why, my Lord, I don't speak it for any Malice to her at all, I assure you.

L. C. J. Where do you live?

Mrs. Dillingham. In Long-Acre, at the Golden Ball.

L. C. J. If you live in Long-Acre, how came you to discover any thing of a matter that was transacted at Rotherhithe?

Mrs. Dillingham. My Lord, I know nothing of it, of my own Knowledge; but what she would have persuaded me to.

L. C. J. But how came she to talk to you about a matter at Rotherhithe? Or, you to know any thing about her? That I desire to know; and how you came here?

Mrs. Dillingham. One Mrs. Peirce, that is a Neighbour, ask'd me what I knew of her; and so would subpoena me, because she lodged at my House.

L. C. J. How long did she lie at your House?

Mrs. Dillingham. I can't tell; I believe about half a Year.

L. C. J. Well, what became of her? How did she behave herself?

Mrs. Dillingham. My Husband turn'd her out of the House, and would not entertain her; because she kept Company with a Man that was none of her Husband.

L. C. J. Why, can you tell when they were married?

Mrs. Dillingham. She went as the Wife of Mr. George Hilton, when she was not married.

L. C. J. How! Was she not married then?

Mrs. Dillingham. No, they were not married then. He was not her Husband then. There are a great many of our Neighbours that can say more



more than I. She is a naughty, filthy Woman; a very ill Woman; if I should call her Whore, I believe she might trouble me for it; but I believe it to be true.

L. C. J. Have you any more Witnesses, Mr. Roswell?

Mr. Ros. No, my Lord; but I hope your Lordship will give me leave to say something to the Court and Jury.

L. C. J. Mr. Attorney, have you any more Witnesses to call for the King?

Mr. Att. Gen. My Lord, we have some Witnesses to support the Credit of these Witnesses that we have produced: But we don't think there is any need; nor that it is any way diminished by the Defence of the Prisoner at the Bar.

L. C. J. Do as you please, Mr. Attorney; go on your own way.

Mr. Att. Gen. No, my Lord; we shall trouble your Lordship no further with any Evidence.

L. C. J. Then, Mr. Roswell, let's hear what you have to say further for yourself; for all the Witnesses have been heard, of one side and t'other.

Mr. Ros. My Lord, and dear Countrymen, who are to be my Judges in this Cause this Day, what I now speak, is with respect as much to their precious Souls, who are concern'd either in Prosecution, or trying of me, as my own Safety. There is not a Man of you of the Jury, tho' you are Strangers to me, but I would lay down my life to-morrow to save one of your Souls, if I might be an Instrument therein: How much more then all of them, if the Consideration be taken of the Worth of an immortal Soul? Your Lordship knows, and I am sensible, how unfit I am now to do such a thing as this is, in the Company of so many learned Gentlemen of the Long Robe. I have betrayed already too much of my ignorance in such Affairs, and I beg your Pardon for it; and I humbly thank your Lordship, and the Court, for the Indulgence that you have shewed towards me in my Infirmities. You are, my Lord, as in the Presence, so in the Place of the great God, the Judge and Lord of all, at this Day: You are *Elohim*, *I have said ye are gods*; whose Property it is to help the weak, and compassionate the innocent; therefore I make this Apology in reference to my own Innocency, and my great inability to sum up the Proofs that have been in this Cause. If you will put my Weakness in competition with their vast Abilities, who are of Counsel for the King against me, and my ignorance in the Laws of the Land against their great Knowledge; I cannot but expect to be overthrown, notwithstanding my Case is very innocent, and I have declared in the Presence of God the Truth of my Heart this Day. And if I were to be called to the Bar of the great God, the Judge of all the Earth, before I sleep, I should speak the same thing, and must, and no other. I am sensible a Lye is both a base, and a very wicked thing; and that the Lake that burneth with fire is prepared for all Liars. And I pray God convince these Gentlemen wherein they have wronged and abused me, that they may repent of their Sin; which (I bless God) I have prayed for them most Days ever since I was confined, and begged it of God with Tears, in Charity to their poor Souls. And I believe I have prayed more for His Majesty in one Week, than they have done in all their Lives. They are not the King's Friends, but his Enemies, in bringing such Allegations against those that are his true, faithful, and innocent Subjects, as I am, my God knoweth.

And here, my Lord, I would first observe the Variations that are in their Evidence. In the first place, Mrs. Smith swears, That the Text I preached upon was the 21st Chapter of *Genesis*. And here is Mrs. Hilton comes, and she swears afterwards, that it was the 20th: herein they vary. Then I suppose, my Lord, if they vary and differ, in Law they are not two Witnesses, but differing so are both of them incredible: And I think the *Statute Law* of this Land is, that a Man must be convicted upon the Oath of two Credible Witnesses.

Next, my Lord, here's Mistress Smith swears, that these Things were delivered, which are charged in the Indictment, all together in the Morning-Exercise, in the Forenoon: Whereas your Lordship has heard from several Witnesses (and I do not know one Man of them but fears a Lye; and would have sworn to the Truth of what they have spoken. They tell you) how every Passage that these People would pervert, must come in, and how it was divided. I hope your Lordship will pardon the Infirmary of two or three, a few illiterate Men, that are weak, and could not so well instruct themselves to speak in a Court of Justice upon such an Occasion: But upon the whole matter, they give such an account, all, that it cannot be presumed, or thought, that they should agree to speak any thing that was not true. And I am confident, there is not a Man of them, but would take his Oath (as I said) of the Truth of what he has here declared. And they have declared that there were two distinct Exercises, as I have protested in the Presence of the great God. That in the Morning was upon the 20th of *Genesis*: And the other in the Afternoon (there being an Hour that past between) was upon one particular Verse of a Chapter in the Epistle to the *Hebrews*, quite distinct from the other Discourse that was in the Morning. She not only varies from the Truth, but also from her Fellow-witness, that it was all in one Exercise. This I submit to your Lordship's and the Jury's Consideration (these worthy Gentlemen that are to judge of my Life and Death) whether they are two Credible Witnesses, thus varying.

There be several other Things, my Lord, that because of my present Infirmary, I may not so readily call to mind; but which ought to be recalled and recollected, as in reference to the Person, whose House we met at. One says it was one Capt. *Daniel Weldy's*: Another that it was one Mr. *Daniel's*. Therein again they vary in reference to the Person; and if they are out in one Thing, they may be out in another.

Smith. I can say nothing about his Name: I never was there in my Life before.

L. C. J. Mrs! Mrs! You must not interrupt him; he is upon his Defence for his Life.

Mr. Ros. Then, my Lord, she says that my Text in the Afternoon was upon a *Psalms*; and there was no such thing, as your Lordship has had it particularly made appear to you. I have ingenuously told you the

Text, and the Truth; I have spoken it from my heart in the Presence of the Great God; and upon what occasion every Passage that they have wrested was spoken: And your Lordship may thereby perceive how most abominably they have perverted my Words. Now, they having wrested my Words, that are innocent in themselves (so far from being Treason, that I do not know there was any Fault or Crime in them; being only plain Scriptural Proofs of Doctrinal Propositions in Divinity, without those Applications that they have pretended to), certainly your Lordship and the Gentlemen of the Jury will consider what is most probable or likely; what they have declared, or what you have heard from the several Witnesses that have come in to testify concerning me.

My Lord, I was going to speak something to your Lordship of the great Wickedness of their making the Application of what was innocently spoken and meant, to the late King of *England*, and his present Majesty, whom I daily pray for, and always did, whatsoever these Witnesses have declared concerning me. And your Lordship has heard my Maid testify (which I little expected) that I used to pray for the King every Morning and Evening in my own House; and God knows that to him I have addressed myself for him daily: And more than that, she heard me (when I thought none but the God of Heaven himself had heard me) pray for him in my Closet. I would desire your Lordship and the Jury to consider, whether these are not the Criminals (and not I), that have made application of innocent Passages, and wrested the Words, that were plain and innocent in themselves, to a wrong meaning, to make me Guilty of High Treason; applying them to His Majesty, when I never intended, or thought the least of any such thing.

My Lord, I doubt not but there have been several that have joined in it, that have helped to frame and forge this Accusation against me. And there is that, which I suggested to your Lordship in the Morning, in the beginning of this Cause: These Persons have not only, or so much sworn me a Knave, but a perfect Fool and a Madman, to speak such absurd, incoherent, inconsistent, solecistical, and nonsensical Things. I believe there is no Man of common Sense and Reason, no Gentleman that's here this Day, that can imagine that a Person, that had the use of Common Sense and Reason, should speak such absurd Things as these are. Besides, my Lord, I have brought Witnesses, several of them, to testify there never was any such Thing spoken by me, as they have testified against me, and misapplied. I have likewise produced several Persons to give Evidence of my usual and constant Practice with relation to the King and Government all along; my contending for Monarchy, and against Anarchy, which did too much reign in these late Days of Confusion, which I remember by very sad Experience, tho' I was then indeed but a Child. And when I came to be a Man, I used always to observe the 30th of *January*, and the 29th of *May*; preaching upon those Days, and pressing People to Obedience; and inveighing against those that had acted against their Principles, and were Rebels either against his present Majesty, or had been concerned in that barbarous Act against his Royal Father; which I did utterly abhor.

And, my Lord, methinks it should have been very unlikely that a Man, that should make it his common Practice so to do, as I have testified concerning myself, should fall under such a Suspicion and Accusation, as I now am; or, that such an one should fall into such a Solecism, as the Words that are testified against me must import; it is very unlikely. I leave it to the great God of Heaven to vindicate my Innocency in the Matter; which I do not question but he will do.

Then, my Lord, here are several Gentlemen of the *Church of England*, that have testified concerning my Conversation. They have had Acquaintance with me many Years, some of them near 20 Years; the least 8, 10, or 12. They never heard an indecent Word, with respect to His Majesty, or the Government, fall from me; any unworthy Reflection upon either of them: But my constant Practice was to pray for His Majesty with all earnestness and solicitude. There are several of them Gentlemen of repute in the City. There are particularly two Persons, that belonged to an honourable Family in which I lived so many Years, who give a Testimony what my Conversation there was, and my constant Practice of praying for the King, while I was there. This your Lordship, and the Gentlemen of the Jury, have heard and observed, I doubt not.

But, besides that; your Lordship and the Jury, I hope, observe as to these People, who swear against me, what my Witnesses have testified, that they would swear any thing, and forswear it: And what a Character is given concerning one of them particularly, your Lordship has heard from that worthy Gentleman, Sir *John Talbot*, whose Face I never saw before it was in this place. And by the last Witness, you have a Testimony concerning her lewd Conversation. And several other Witnesses prove she would swear any thing for them, if they would swear for her. So that it appears she would, and does swear at a venture such and such Conventicles; only upon Hear-say, and mere report: And that she has taken Money, and made some Compositions too. These things I must refer to your Lordship, and these worthy Gentlemen who are of the Jury.

If then, my Carriage and Conversation (so well known in the World) be compared with that Character that is given of these Persons, I must humbly submit it to your Lordship, and the Jury, how far they are to be believed against me; and might argue from the Incredibility of their Testimony: but your Lordship cannot but remark it.

My Lord, it is very strange, that these two Women should exactly remember these Words. They agree in every particular Circumstance. I durst appeal to your Lordship, and the Jury, particularly to the Jury, if now they would undertake to repeat upon their Notes, the Words that have so often been repeated here; and whether there is any of them would be able to agree in all the particular Words? They have an incredible Memory, that could so exactly agree together, that these were the Words. I do humbly submit this to your Lordship. For, my Lord, I lay the stress of my Defence very much, not only upon the incredibility and improbability, but even the impossibility of the

Evidence



Evidence that they have given. I humbly submit it, I say, to your Lordship, and these Gentlemen; and leave it with them, and the great God of Heaven, whom I pray to direct them. I hope they will consider the Life of a Man, and the worth of Blood. My Lord, however I am represented this Day, I know myself to be a faithful Subject to His Majesty; and to the great God of Heaven, whose I am, and whom I desire to serve.

My Lord, I will now, if you please, ingenuously confess my Crime, if it were any. I have been frequently preaching in my Congregation, out of the Scriptures, and it is true, as your Lordship sees, the Chapter came then in course to be expounded: Which I used to do, to let the People understand the Scripture, as well as I could; for the People perish for lack of Knowledge; and it is by the knowledge of Jesus Christ, that they must come to Life and Salvation; for him to know is Life Eternal. It has been my way to Expound the Scriptures to them.

In the Presence of the great God, before whom I speak, to whom I can appeal for the truth and integrity of what I say, that God before whom we must all stand (all, whose Faces I see here shall meet, and see one another at the great Tribunal), it is to this God that I appeal as to the Truth of my Heart in these Things. And, my Lord, I shall continue, as I have done, however God disposeth of me, to pray for the Life and Happiness of His Majesty; my usual Prayer, Morning and Evening, being, that God would crown him with Grace here, and Glory and Honour hereafter. And this I shall do, by the Grace of God unto my Dying-day; for my Soul does abhor such Things as have been testified against me this Day.

Thus, my Lord, I have dealt as plainly with your Lordship, and the Jury, as I can. My Infirmities are great. I desire to leave my whole Cause with the Lord, and with these worthy Gentlemen my Countrymen, who, I do not question, will have a just compassion and consideration of my Case, under these Circumstances wherein I stand, and to all the Circumstances that have been made out in this Cause this Day.

*L. C. J.* Mr. Attorney, will you please, or any of the King's Counsel, to say any thing in this Matter?

*Mr. At. Gen.* No, my Lord, we leave it entirely to your Lordship.

*L. C. J.* Gentlemen of the Jury, this Case has held a long time; and, Gentlemen, I must tell you, no body ought to think Time too long in a Case of this Nature, wherein the Government is so much concerned on the one side, and the Life of the Prisoner at the Bar on the other. *Et de vita hominis nulla est cunctatio longa.* I think no Man ought to apprehend his patience too much tired in finding out the truth in the case of a Person that is tried for his Life. However, Gentlemen, by the way, because the Case has been long, it is fit that there should be some recollection made of it; and in order, as near as I can, that I might help your Memories in the Evidence that hath been given, both for and against the Prisoner at the Bar; I would endeavour, as well as I can, to repeat at least the substantial Part of it to you; and in case any thing that is material be omitted, God forbid but it should be supplied by any one that is able for to give any Assistance of that kind; for I cannot pretend to be so exact, as to give an account of the whole Evidence myself. But, Gentlemen, I must tell you it is a Duty incumbent upon the Court, to give you all the Assistance that can be in a Matter of this Nature, and I will do it with as much Integrity, and with all the Care and Caution of doing no Injury, either to the Prisoner, or to the King, between whom we are to be indifferent, both you, and the Court, as possible can be, that there may be no wrong done on the one side, or on the other; and, according as the Prisoner himself hath said, what I shall speak, I know I speak in the Presence of the great God of Heaven and Earth, who is to be the Judge of all Men. We are upon our Oaths, and you are upon your Oaths; and we are all of us bound by our Oaths that we have taken, to be guided in this weighty Affair (for so I must call it) by the Evidence that has been given to us at this time, both against the Prisoner, and for him. For certainly there cannot be a thing of greater concern, nay, even in point of Compassion, than to see any Man come to be accused of so high a Crime as the Prisoner at the Bar is now tried for. And he must have a strange obdurate Heart and Conscience, that cannot so far participate of the common sympathy of human Nature, and his Fellow-Creatures, as to compassionate any one that stands in such Circumstances as the Prisoner does. But then, on the other hand, the Denials of the Prisoner at the Bar, with all the Imprecations that he has made, and all the Affirmations that he has offered of what he has formerly done; and all these things of his appealing to the great God of Heaven about his Innocency, that I must tell you, of themselves, they are not to weigh with you; for your business is to know, according to the Oath that you have taken, whether you have Evidence given to you (since you are sworn upon this Trial) to satisfy you that he is guilty according to that Evidence. So that if the Affirmation of the Person accused, tho' attended with never so many Imprecations one way or other, be offered to Persons that are in your case, as Jurymen, it is not to weigh with you at all one way or other, if it be only the Affirmation of the Party accused; for if so, then there would never be any guilty Person brought before any Jury whatsoever; or any Criminal could come to suffer any Judgment, or be convicted of any Crime, if his own Affirmations concerning himself, and his own Commendations of himself, would be sufficient to acquit him, and set aside his Accusation. So that now you are to go according to the Evidence offer'd, and so are we, against this Person that is here before you.

Gentlemen, I must say that it is very untoward, and, I hope, by this Cause there will be a Warning given, at least, to other Persons, that there have been too many notorious Transgressors of the Law in this Matter of Conventicles. I speak that, not to affect this case at all; but I speak of what the Nation hath had but too woful Experience of, as to these seditious Meetings, that are, and have been continually kept up in opposition to the Laws; and I speak nothing as to the Meeting that was at this time; but I speak it, that others may be warned for future Times; for always Mischief attends the open and publick Transgression of the Law. God forbid, but that People should worship God, and serve him, according to their own consciences; therefore the Law has been so indulgent to them, as to give them leave to exercise their Religion in other manner than as is done in the Church of England; provided there be not any occasion of Tumult; but that there be not above Five, except those of the same Family, meet-

ing together; which you know the Act of Parliament hath provided for. And the truth of it is, the Reason of the Law is very plain: For you all know, who are Gentlemen of Quality, that this Law, as well as another Law, that has so great a relation to the Case before you, does declare, that from these Seminaries of Sedition and Faction Conventicles, and the Clubs and Cabals of discontented, irregular People, disaffected to the Laws both of Church and State, was the great Mischief and Confusion that was brought upon us, and which at length brought us into the Diffractions of the late Times.

Gentlemen, I must say likewise this to you, that whatsoever the Prisoner at the Bar thinks now, that blessed Martyr King Charles the Ist, was by such means brought to that horrid, accursed, murderous Death and End; I cannot call it less than so, in relation to the Persons that brought him to it, under the Pretence of Religion. It was the Cry of Popery and Arbitrary Power, of which he was no way Guilty, tho' that was insinuated into the Minds of silly People, those ignorant Souls, that were easily captivated with a base Lye; but that was the Occasion. Many of you, Gentlemen, that are yet in being, remember it yourselves; and many of you have, and cannot but have seen and read the History of those Times, and have been so conversant with the Practices of these People since, that you are able to make a Judgment in the Matter. All these sorts of Things are but pretences, and fair shews of dangerous and seditious People; that which was most dangerous to us at that Time, and I am apt to believe will be so to the World's end. For when People come to gild over their bitter Pill of Sedition, it is always under pretence of Religion. For, a lack-a-day! perhaps there were as many Rebels against the late King raised by the beating of the Cushion in the Pulpit, as by the beating any Drum in the Street; for it is well known these are the Bell-weather of the Faction, that under pretence of Religion, come there to incense the People to commit all these Villanies that sometimes they are incited to do, as we know; and to prepare the way to bring us into that condition that we were in in the late Times: And, particularly, were used as Instruments to bring that blessed Martyr, King Charles the First, to the Block. These Pulpiters took occasional Texts of binding their Kings in Chains, and their Nobles in Fetters of Iron; and raised up such Doctrines from Texts of Scripture, that were certainly intended for quite far other Purposes, to countenance their Practices, to make People kill and slay God's Anointed, under pretence of saving and protecting the Anointed of God. But who did they mean by it? Pray, how did these People come to take upon them to preach against Popery, when indeed they were preaching down all manner of Religion, under the Pretence of that? So that you grew to have as many Religions, as there were Sects or Dissenters in the Nation; and never any could be tolerated that were not grown into the Party, but they came all into Office, and the more extravagant the more prefer'd; so that without the Blessing and immediate Providence of God, by a second Resurrection, reducing us into some sort of Order, in restoring his Sacred Majesty (whom I pray God grant long to reign over us; and so ought all Loyal Subjects to pray); what a miserable condition had we been in! And I may call it a second Resurrection, it being the Resurrection of our Religion: we were turned all into Confusion; we had no other Religion, at least apparently predominant, but that that had the strongest Army to support it, and that had force enough to contribute to what the luxurious, debauch'd Professors of it would make to be Religion; for they were the Professors at that time of all things.

Gentlemen, I speak this, because even the Laws, that have been made since the Restoration of the King, have taken notice, that the beginning of all the Mischief hath been this; and that the great Incendiaries of all sorts of Rebellion were these, who took upon them in their Pulpits, under colour of Religion, to countenance Rebellion and Treason, Confusion and Anarchy. Now how far these things have been known to you all, that I must leave to you; and must betake myself a little nearer to the Case, having premised these things; to which I would add this as a Warning to all People, that they would not abet or assist in any Meeting against Law, or that is known to be against Law, whatsoever they think; for there will Mischief come upon it one time or another, let them pretend what they will. As that Gentleman says, he undertook to expound, and teach his People the Knowledge of the Lord: the Knowledge of the Lord is a very good Lesson to be learnt, and to be taught all People; but blessed be God, we thank him for it, we have Churchmen of as great Learning (without any reflection upon the Gentleman at the Bar) as he can pretend unto, and men as pious and virtuous; and perhaps we may say at this time, with a little more Confidence than ordinary, that we have as learned a Clergy as ever was since Religion was known within this Kingdom. And, God be thanked, these Men are not only learned for themselves, but they exert themselves for the good of others, for the Satisfaction of that Duty in which they are employed, by their due and constant attendance upon the Worship of God, in their places of Worship, the Churches, which are by Law appointed for it; and we need not run into Holes, and Corners, and Conventicles, and Clans, to understand the Word of God, and the Practice of our Duty towards him, or towards Men; because we have Churches to apply ourselves to, where we may learn to know God, to obey him, and them that are put in Authority under him; which I am sure is a Duty incumbent upon every Preacher of the Word of God to insist upon, and press, and urge. And I am sure, whosoever preaches at a Conventicle, cannot with a safe Conscience preach Obedience to the Civil Magistrate; because, while they are in that very Preaching, they are acting Disobedience against his Laws, in regard what they do, is against the Authority of those Laws under which they live; and no Man can preach well against that, which he knows in his own Conscience, at the same time, he is practising himself.

So that, Gentlemen, I must tell you this is a wonderful dangerous thing; and therefore I give it as a Caution to all People to beware how they break the Laws, by going to such Meetings and Conventicles as these are; for it will have at the long-run, one time or other, a very dangerous Issue. And there is another thing, which is wonderful dangerous too, to see what Shoals and



and Crouds of People come to these Sorts of Meetings; People of all Sorts of mean Trades and Professions. And how easy is it, if a Man has a Mind to insinuate into some silly, ignorant People, common, illiterate Fellows, that can neither write nor read some of them, yet thereby to feel their Pulse, to see whether they will swallow down such a Thing, or such a Pretence at first? For they did not in the late Times begin with open Rebellion, and preaching the Doctrine of deposing of Princes, or bringing them to the Block; but they tried with several previous Ways, and as the Bait funk, and was sucked in; they attempted to try further. They applied themselves perpetually to pursue the Temper of their Auditor; and therefore we must have a great deal of Care to prevent all such Mischiefs as these are for the future, that they may give no Countenance to such, who pretend to be Expositors, but are very ill ones of the Scripture; and thereby infill into the Minds of Men such dangerous and pernicious Doctrines; that the Scripture may not be perverted, to give an Authority to such desperate Things as these are; for we have known over and over how easily People are drawn into Mischief in this Age, even by the very same Train that they were in the Time of the late Rebellion.

Now, Gentlemen, these Things being premised, I would take Notice to you, that the Thing now before you, is a Question of a different Nature from what I have now spoken of. It is not the Question that you are to try, Whether he preached at a Conventicle or not? or whether the doing of that which he did in so preaching, is against the Law or not? but whether he did at any Meeting (especially as to the Time that is particularly specified) speak Words of the same Substance, to the same Effect and Intent that are comprised in the Indictment? For though he did preach at a Conventicle, and thereby did transgress the Law; yet in Case he did not preach to the Substance of what is contained in this Indictment that hath been read unto you, and that he is accused of, he must be acquitted. That I must declare to you for Law, as no doubt it must be acknowledged by me to be; therefore you are to take Care, upon your Consciences, to try and consider whether or no you believe these three Witnesses, that have been produced against him, swear true, or are guilty of wilful Perjury. For, in downright plain English, they are guilty of Perjury, if he be not guilty of the Words laid in the Indictment. One of the two is certainly true; either they are guilty of Perjury, or the Prisoner at the Bar is guilty of the Treason laid to his Charge: I pray God direct you in your Enquiry; for it is a Question, I must needs say, of very great Difficulty.

Gentlemen, for the Intention of a Man's Heart, I must tell you this for Law, as to the compassing and imagining of the Death of the King, it is not to be discovered but by some Action; some Word, or Overt-Act, there might be to interpret the secret Imagination of the Heart. It is impossible to discover or disclose the Imagination of any Man's-Heart, except we be directed to that Discovery by Words or Actions.

Now, Gentlemen, Words that in themselves may bear a good Construction, and are good Words, yet coupled with Actions that are Evil, or other Words that are Evil, these very Words may be a Discovery of the evil Imagination that is in a Man's Heart. As to express myself in a very familiar Example, for the Purpose, that I may make Things as plain as I can, for that is my Design, and ought to be every one's that is concerned in such a Matter as this. Because we have had some Discourse concerning the late blessed Martyr King Charles the First, he was here brought to a Shambles of Justice; for I cannot call it a Court of Justice, however they called it a High Court; and there was a kind of Mockery or Pageantry of a Trial. He was arraigned and tried for Treason, and a new national Treason, never yet invented nor known of before amongst us, Treason against his People; I say, now and never thought of till these Butcherly Fellows that sprung out of the Shambles, came to put it in Practice; erecting what they called a High Court of Justice, but which was truly to be called a High Court of Injustice; and there they were to have some come and cry Justice, Justice upon the King. Gentlemen, Justice is a good Word; but if that Word be used and spoken as it was in that Case, in order to bring the King to his Death, that which was a good Word, and if otherwise used, had been a proper Word even at that Time; that is, if applied to good Purpose, to set the King and the Nation free; yet being applied to the bringing that Sacred Martyr to so horrid and barbarous a Death, that was plain downright Treason; and I make no Difficulty in the World (nor can any Man that understands any Thing) that it was so by Law; and it was an Overt-Act sufficiently indicating the Intention of all Persons that were therein concerned to put and bring the King to utter Death and Destruction; and all these Fellows that made Use of that good Word, Justice, Justice, Justice, were all undoubted Traytors; making Use of it for that ill Purpose.

Gentlemen, again; suppose if Mr. Cook was a Man of Law, that was Solicitor of what they called the Commonwealth at that Time, Solicitor to the State (I only speak this to explain my Mind,) if he comes (when the King had just Ground to dispute the Authority of that Court of Injustice, that he was dragged to, and refused to plead) and does pray Judgment against the King, as he did, and it was proved at his Trial, Judgment alone might be there meant as tending to excuse the King, as well as to sentence him to Death; yet he being there praying Judgment against the King, and which was afterwards at his Prayer so pronounced; that shewed what his Opinion of the Word he used was at that Time; and that made him a Traitor, and was an Overt-Act to discover his Guilt.

Why so, Gentlemen, I am to tell you, though these are Words that may be used in a Scriptural Way very well, and to very good Purpose; yet if they be applied to an ill Purpose, they may be a sufficient Indication of a Man's compassing and imagining the Death and Destruction of the King. Therefore, Gentlemen, you are the Judges, whether if in this Case, he speaking these Words, of destroying our Enemies, and standing to our Principles, they have not an Allusion to the former Words; and whether they are not Expositors of the Mind of this Person, the Prisoner at the Bar, of compassing and imagining the Death and Destruction of the King; and I do this on Purpose to remind you of what is necessary to let you into the Question.

Now for the Testimony against the Prisoner at the Bar you have three Witnesses. First, you have Mrs. Smith, she does directly swear that she

did frequently, several Times, go between the 13th of July and the 14th of September, to hear the Prisoner at the Bar preach at several Conventicles or Places of Meeting. She tells you the particular Days: She tells you as to one, that she heard him the 20th of July: She heard him another Time the 10th of August, according to the best of her Remembrance. She heard him again the 17th of August, the 24th of August, the 31st of August; and she heard him the 14th of September; that is according to the best of her Remembrance. She both tells you the Time and the Place, and she heard him preach at these Conventicles. All that she says as to this, is introductory to what she speaks of the 14th of September, which is the Day to which the Indictment does refer; and this she does say positively, that upon the 17th of August, he prayed that he might be forgiven for not praying for the King; and by that she would have you to understand, as she would insinuate, that he did not use to pray for the King.

Mr. Roswell. [Turning to the Jury.] I made Use of the Words of Samuel, God forbid that I should cease to pray for him.

L. C. J. Sir, you must not talk to the Jury now; I am directing of them.

Mr. Roswell. My Lord, I beg your Pardon; it was to set the Matter right. It was misapprehended.

L. C. J. All this is antecedent to the Matter for which he is accused; and you see his Answer to it, from a Text of Scripture that he offers to you, which he did not repeat with Dislike to pray for the King; but that he thought it his Duty always so to do.

Then she tells you particularly at another Time, which, I think, was at the House of one Paul Shed, I cannot particularly tell directly the Name, there was a talk of the Recorder, and of the Lord Mayor of the City of London; but that was before this Time. And afterwards, the first and the second Witness, two of them more, give you an Account tho' they were never there but then: That he began to talk about the Fire, and that he should say there was a great Man at the corner of Grace-church-street, I need not name his Name, for you all know him very well; that he met with a poor Man, though indeed he was not a poor Man, he was a labouring Man, a Carpenter; and they began to talk much concerning the Fire, and he did say, that in Case it had not been for that great Man, there had been no such Thing as the Fire in London; nor if it had not been for the Lord Mayors and Sheriffs afterwards, there had been no such Thing as the Fire in Southwark and Wapping. And I take Notice too, that at the same Place, which was Shed's House, that they spoke of, there is Mrs. Farrar, against whom there is not the least Objection that I can hear of; She agrees both in the Circumstance of Place and Time, and of the Words, and to the Dialogue about Grace-church-street, and the Carpenter, and to the previous Words, that he was not a poor Man, and the like, and about the Discourse relating to the Fires of London, Southwark, and Wapping, and likewise relating to the Lord Mayors, and Aldermen, and Sheriffs; these Discourses were at that Time.

Gentlemen, the next Testimony you have, is of these Witnesses that speak of the Time that is in the Record; which all the three Witnesses that you have heard, speak to; tho' the most of what I mentioned before, was another Time: And this is at the House of one Captain Daniel; one says, Captain Daniel Weldy. But that it was a Captain that was then at Sea, is plain; for this Gentleman himself, Mr. Roswell, does not deny that this was at Capt. Daniel's House; and that he did pray for him, as being then at Sea, and for all his Family; and all the Witnesses speak to the same Time. Tho' indeed the first Witness did say, that she did not know but it might be Capt. Daniel Weldy; but she likewise said, she did not directly know his Name. But she directly swears to the very Words that are mentioned in the Indictment. She does directly swear that Mr. Roswell preach'd upon the 21st of Genesis. Says she, as I remember; though Mr. Roswell did think, there was a Difference between the Evidence of the one and the other Woman about the 20th or 21st, yet it was only upon her Remembrance, as well as she could, and she did not positively swear it was in that Place, but according to the best of her Remembrance. And the second Witness, Mrs. Hilton, when she came to swear, she said it was either the 20th or 21st; but in so many Words she did directly swear, that he should preach, that the People made a Flocking to the King on Purpose for the curing of the King's Evil; but the King could not do it; but we are they that the People should flock to for the Curing of all their Evils. Which are the very same Words in Substance that are in the Indictment.

The very same Words in Substance, says that other, the second Witness; the same Day, in the same Place, did I hear Mr. Roswell then speak these Words; and they go further, and the same Witnesses both swear, Hilton and Smith, that Mr. Roswell should say, We have had two wicked Kings together, who have suffered Popery to come under their Noses, who can be compared to no other Persons but wicked Jeroboam. Mrs. Smith swears these Words directly, and Mrs. Hilton says, she thinks there was the Name of Rehoboam mentioned; but she is sure there was mention of two wicked Kings in the same Words as Mrs. Smith speaks. They go yet further, and say, both the one and the other of them, that he said, If the People would stand to their Principles, he did not doubt but they should overcome their Enemies as in ancient Times with Rams-horns, broken Platters, and a Stone in a Sling. The two Witnesses, both Mrs. Smith and Mrs. Hilton, swear to the very Words, and at least to the Substance of them; and if there should be some little Variance in some few of the Words, that will signify nothing, if the Substance be the same.

But now, Gentlemen, besides these two Witnesses, there is a third Witness, Mrs. Farrar, against whom (that I can see) there is not the least Exception in the World, if you remember any, you would do well to consider of it; you may be better able to recollect what has been spoken or offered, than I can in so long a Time; and you ought to endeavour (being Men of Understanding, and good Quality) to refresh one another's Memories, and make what Observations you can; which I perceive you have taken Notes about, some of you at least.

She does directly swear as to the Business of the King's Evil, the same Words that the other two have sworn, about flocking to the King to cure the King's Evil, which he could not do: But they were the Priests and Prophets that could cure the Maladies of the People. And as to the second Words, she swears that he said, there had been two wicked Kings



that had suffered Popery to come in under their Noses. And she swears in the Third Place, That there was likewise an Exhortation to stand to their Principles, and that they should overcome their Enemies. She does not indeed particularly tell you about Rams-borns, and the Platters, and the Stone in the Sling, but only of standing to their Principles, and overcoming their Enemies: Which I would have you particularly to take Notice of, it being the material Part of the Indictment, to make these Words Treason.

Now, Gentlemen, give me leave to tell you, there is great Regard, and very great, to be had to the Circumstances in this Case, to see how far these Things are to be tack'd together. First, you remember the Witnesses were examined apart; and it does not appear that they have talked together; and there was all the Care taken that possibly could be, they should be out of the Court, and out of one another's Hearing; so that there was as much Endeavour to detect the Falshood of their Testimony (if it could be) as possible in any Case, even in the very most minute Circumstance. Mrs. Smith swears, That Mrs. Hilton came to her House on Saturday Night; that they went together to the House of this Capt. Daniel upon the 14th, about Seven of the Clock; that they were there before Mr. Roswell came in; that there was a Lower Room in the House; and a little higher there was a little Room; and then there was a Room up Two Pair of Stairs, where there was a Bed; that Mr. Roswell stood upon the Stairs, but they both sat upon the Bed, together with one of Mr. Roswell's own Witnesses, which was the Mathematical Instrument-maker, and that he was in a Mourning-Cloke; and that there was particular Notice taken of a Pair of Shoes given by Mrs. Smith from under the Bed to the Child of that Mathematical Instrument-Maker; and that there was Prayer made for Capt. Daniel, the Master of the House, who was then at Sea, and for his Child and Family. There were these Circumstances, every one particularly asked of the Witnesses, and sworn to by them in the very same Words, the same Manner of Posture, the same Things done both as to the Room, the Bed, who sat upon the Bed, the Mourning-Cloke, the plucking off and delivering of the Shoes; that I may appeal to your Memories, if they did not agree to a Tittle exactly.

Then they began to enquire further concerning other Expressions of Mr. Roswell at other Times: Something about People in Scarlet, and something about Canting: And Mrs. Smith tells you, that he did speak something about Canting; that he was talking concerning that Word; says he, I will tell you what that Canting means: I went not long ago thro' a Cathedral, where the Organs are, and there the People were gathered together; and they were singing the Lord's Prayer, and I don't know what; I heard them sing, and I could not but laugh out; and he broke out in his Sermon into a He! he! he! that is Canting. This, they say, was his Expression at that Time.

When Mrs. Hilton came in, she tells you the very same Words, even to a very particular Phrase, which I had forgot before, that he saw the Men in White Gowns that were singing, and which he counted Canting. It is very true, there is no such Thing mentioned in this Indictment; but only it is offer'd by the King's Counsel to shew the Temper of the Man, and how he usually used to preach.

As concerning the Story of Sampson and Dalilah, that's sworn by both Witnesses, that there was such a Discourse; for he began to talk of our King's keeping of Women, and he hoped they would bring the same Destruction upon him, that they brought upon Sampson; he hoped it would so fall out with our King. How far it is true (they both having sworn it) you are the Judges; they have directly sworn it, and to all the Circumstances both of Time and Place.

Gentlemen, There is yet another Thing that is material too, tho' a small minute Circumstance, and that is about this same Paul Shed, that they have spoken of. When the first Witness came in, he chid her for coming in her Pattins, and bid her pull off her Pattins, for they would leave such an Impression there, that People would be apt to discover that there was, or would be a Meeting; and therefore she promised, when she came any more, that she would be sure to leave off her Pattins. And it is proved; that Mrs. Hilton and Mrs. Smith were in the Room above, and Mrs. Farrar was in the Room below, and it does not appear that she was acquainted with the rest. She had heard him several Times, and tho' she did not see him that Day, he being up Two Pair of Stairs higher, yet she swears directly to the same Words, the substantial Part of them that the other two Witnesses spoke of. So that I must say, if in Case they have contrived this Story to take away the Life of the Prisoner at the Bar, they have contrived it with all the devilish Subtilty that ever any could do, or that could enter into the Minds of any People. You are the Judges of the Fact, I pray God to direct you, that you may detect the Truth; far be it from the Court, or any Body, to desire that any thing but Truth should prevail; for it were far better a thousand Times that a Hundred guilty Men should escape, than one innocent Man should suffer. But on the other Side, far be it from any Man, that is upon his Oath to do his Duty between the King and the Subject, to be moved by Compassion, or any Thing of that Nature, to do against the Evidence that is given in open Court; unless he be satisfy'd that the Evidence is false. For in this Case, I say again, either you must find the Prisoner guilty of what he stands charged with in the Indictment; or else you must find these three Witnesses guilty of wilful Perjury: And I pray God again to direct you what you are to do in it.

Gentlemen, as to the Testimony that has been offered on the Behalf of the Prisoner (I would follow the same Method that has been taken, both in the Evidence given by the King and the Prisoner, as near as we can): First, you have had brought by him Half a Dozen (for I would not injure him as near as I could one Tittle) that have given you an Account of what he said at that Time. There was Hudson, Hall, Atkinson, Smith, Hales, and Wharton; I took their Names, as near as I could; and all these People do directly say, they were present at that Time, and they heard nothing spoken of the late blessed Martyr King Charles the First, or of Reflection upon the Government; but all that was said of the King's Majesty, that now is, was in his Prayer, wherein he did pray for him; that they heard nothing come from Mr. Roswell concerning the King's Evil in the Manner that the Witnesses speak of; but what was spoken, was spoken of another King, in relation to Abimelech King of

Egypt, and not relating any way to the Disease they call commonly amongst us the King's Evil. It is true, one of them does say (which is a Word that has obtained very much amongst some Sort of People), that when he prayed for the King, he pray'd for his Deliverance from evil Counsellors: And under these Words, evil Counsellors, and Deliverance from them, we know what became of that so often mentioned Prince now, King Charles the First. Under that Pretence they would remove all his Friends from him; and when he was left alone, they could easily do what they pleased with him. Many, with Pretence of great Pity and Zeal for the King, cry out; that all that they complain of, is not of what the King does; him they think to be a wonderful good Man; it is not he, but his evil Counsellors, that they reflect upon; and so we must fight against these evil Counsellors; and when we have laid them aside, and he stands alone, then it will be easy to serve him as they did his Father. Whatsoever the Pretensions of such Words are, we know what the Designs of the People, that made the same Pretence heretofore, came to; and I pray God, that there are not the same Designs on Foot still; nay, that that was not the Design of this Prayer of the Prisoner at the Bar.

Gentlemen, they give you a particular Account how he Preached upon the 20th of Genesis; and they speak as to the 2d and 7th Verses of that Chapter, and what Discourse he had upon them. But truly, it is pretty strange (as Mr. Roswell himself objected even to you of the Jury very well), can any one of you remember so exactly the Words that were spoken as these Witnesses have sworn? And truly he puts a very material Question: But then the Question turns t'other Way; how come all your Witnesses to give such an exact Account; all except the second Man, who indeed did commit a Blunder or two, your Six Witnesses, even to the Texts of Scripture, to the very Phrases that were used, particularly to the Word Tremendous? They are all as exact as can be. It is strange that Five People should agree in all the Circumstances; but why should it not be as much believable that Three should have as exact a Memory as the other Five? Nay, and I will tell you, what is pretty strange too, that these People must hear, and remember just what was said upon the 14th of September; but that which was said upon the Text the Time before or after, that they cannot so well remember. It is plain, they have been dialogueing with one another; and it is plain, that some People can neither write or read, nor remember, but how they shall be sure to serve the present Purpose. That seems to carry an Objection in it on the other Side, as the King's Counsel say; and it seems the more reasonable on our Side, why they should remember so exactly, as they have sworn; because (say they) that Day, when we came home, we called for Pen, Ink, and Paper, and set down these Words, the Substance of which we have now here sworn: So that that does shew you we had Reason to remember, what we have testified against this Person. But what is yet greater than all this, it cannot be imagined (say the King's Counsel) that the Prisoner's Witnesses are so much to be believed, since they give no Account of what was spoken at any Time before, nor any Time since.

Then, Gentlemen, there is another Reason, says Mrs. Smith, I came on Purpose to see who was at the Conventicle; tho' I had been at several Conventicles before, yet I never heard such Words spoken. Says Mrs. Hilton, I was glad to be gone; and tells you of her Unwillingness to stay there, having never heard such Words spoken against the Government before; and therefore she set them down immediately as soon as they came home; and they went together to the Bull and Mouth, the Quakers Meeting near Aldersgate afterwards; and that that Day, or the Day following, they went to Mr. Recorder, and gave him an Account of what had past in their Knowledge. This is the Answer that is given by them to what the Prisoner's Witnesses say: But you are to weigh this Testimony of both Sides. For I must tell you, Gentlemen, tho' these Witnesses, that are for the Prisoner, are not upon their Oaths, yet they are as much under the Obligation of giving true Testimony, as they can be by Law; and you ought to have Regard to their Testimony, how far it is consistent with Reason and with Truth. Some Things they differed in; some Things they heard in another Manner; whether you may believe such Things may slip out of their Memories, or how that is, you are to consider of it. This, Gentlemen, is the First part of the Evidence that the Prisoner hath given for himself.

Next, Gentlemen, there is another Part of the Evidence, and that is from the Fifteen Witnesses, one Mr. Jolliff, Captain Cotton, Mr. Fippi, Mr. Veering, Mr. Hitchcock, Mr. Hinman, Mr. Wanly, Mr. Strong, Mr. Cutloe, Mr. Melfum, Mr. Medham, Mr. Winnacott, Anne Broadhurst, Anne Manning, Isabella Dickeson; all these were called to his Reputation as to his Behaviour and Conversation towards the Government. They tell you they have known him a long Time. It seems they frequented the Hearing of him sometimes, when there was an Indulgence and a Dispensation for such Meetings, then they went to hear him, and then he used to pray for the King; and it has been observed, that, it may be, meeting with Favour and Kindness from the King and Government, he might be very well pleased with the King at that Time; tho' that turned to the Prejudice of the Government (as we all know). But whether his Complexion altered towards the Government, when it was thought fit to restrain that Indulgence, that you have to consider. They say, they know nothing of Harm by him, and that may be true; no more do I; and I presume you do not; if you do you will tell us. You and I, pray God we had never heard of any thing of Harm come from him, with Relation to the King and Government; but you have heard what has been testified by these Witnesses.

Then there came two Witnesses, that lived at Sir Edward Hungerford's when the Prisoner at the Bar lived there; one of them lived Ten Years there, the other Four. And they give you an Account, how he was used to pray (not according to the Common-Prayer) but he used to go to Church, and he did pray for the King very earnestly, and heartily, as they say; he came there in the Year 1664, and he continued there Seven Years, and they always looked upon him to be well-inclined to the Government.

Then you have an Account of Three Servants that lived in the House; one lived Four Years with him, and that she frequently heard him pray for



for the King (for I would not willingly forget a Word that should make for the Prisoner's Advantage), she said he prayed as earnestly for the King as for his own Soul, with as much Zeal and Earnestness as he could do; this is what she says. And the second lived with him three Years, and she does remark particularly, that one Time being in private in his own Closet, at Prayer by himself, she heard him very earnest in praying for the King: So that he would urge it as improbable, and unreasonable, to believe, that if he, in his private Family, and by himself, should so earnestly pray for the King (which was never intended to be heard by any Body, and came to be thus heard by Accident), he should in publick, before a great Congregation, utter such Words against the King and Government as are pretended against him. This is the Use he makes of that.

Then, Gentlemen, you have likewise afterwards, the Testimony of those two Witnesses that have been examined before, that is, Mr. Atkinson, and Mr. Smith; that whereas you seem to say, says he, I made a great Reflection upon the late King, and his present Majesty; it was so far from that, that I used to teach upon the 30th of January, and then to preach Obedience to the King, and to pray for the King, and make sharp Invektives and Reflections upon those that had been concerned in that horrid, barbarous Murder of the late King, of blessed Memory; so that I cannot be thought to encourage such Things as these, when I used to preach to my Auditory such Doctrine, as I now tell you of. This is the Substance of that part of the Evidence, as near as I can remember, and recollect; you have taken Notes, Gentlemen, yourselves; you will be able for to make Observations, according to what Notes you have taken.

Then, Gentlemen, here are eighteen Witnesses; that he has called, to endeavour to persuade you to a Disbelief, and gain a Discredit as to the Witnesses that are produced against him. Now as to that, which was offered by the first Witness, *How*; that was but by Hear-say, he knows nothing of his own Knowledge; for my Brother, Sir Thomas Jenner, he gives you an Account of all the Questions that he was asked about; that she never did say that she was present at the Conventicle, but that Mrs. Bathoe had confessed it to her; and upon that Confession she was convicted. Now, Gentlemen, it is a very untoward Thing in this Matter, that Mrs. Bathoe, it is plain, used to have Conventicles, and she is the Widow of a Non-conformist Preacher, and this Woman was so far from saying, that she was there, that she only insinuated upon it; that Mrs. Bathoe had confessed it to her. So likewise you have been told concerning that Business of Mr. Hales, the Conventicle at his House, on the 13th of July; it was so far from her swearing that Mr. How was there, that tho' he was mentioned, yet she refused before Sir George Treby to swear that there was any such Conventicle, or that he was the Man; she did not know the Man, and could not say any Thing to him. And my Brother Jenner being convinced that there might be a Mistake, that there might be no such Conventicle at Mrs. Bathoe's; went as far as he could to retrieve it; but it seems it was past from him into the Clerk of the Peace's Hands; I cannot say any Thing to it: But if you are satisfied that there was no such Conventicle at all, all that can be said, is, that the Old Woman belied herself, and my Brother Jenner, as to an Accommodation between them, did resolve to do what he could, and promised to speak to the Clerk of the Peace: Not but that, for any Thing yet appears, this Woman; that is here brought as a Witness against Mr. Rosewell, did swear true, That that other Woman did confess to her, that there was such a Conventicle; they indeed have endeavoured to evince there was no such Conventicle. I must leave it to you; for nothing appears clear of the one Side, or the other.

Then, Gentlemen, as concerning her talking with, and about one Games; wherein you had an Account given you by one Harvey, and he advised to give Money, rather than to be troubled; but they would not give Money. Now, for that the whole Answer (that it may be given together) is, that you know the Prosecutor, in these Cases, has a Share out of the Penalties that are incurred by Conventicles; and tho' it may be that it was not so well done by such Informations to compound Penalties, yet it is no evil Thing: For if I will choose to inform, or not inform, there is a Right in me to a Part of the Penalty arising from the Offence: And tho' it be not a commendable Thing, yet it is not a criminal Thing for me to compound it; for I do not observe that they are proved to be People that do use to go to Conventicles.

Then, Gentlemen, there is something to be observed concerning the Evidence of Cartwright: He comes and tells you, that he was by, and one of the Persons that went along with Mrs. Smith to several Places, in order to make Convictions of Persons for Conventicles; and she would have him swear such and such Conventicles, that she would dictate to him; and she promised, and offered to swear for the Conviction of Conventicles, when she was not there: And this was a great while ago; but nobody heard a Word of it till now, and that when Mrs. Smith was engaged in this Prosecution against Mr. Rosewell. Now when we meet with this Sort of People, we ought to consider of the Nature of their Evidence. It is certainly a very improbable Thing, that any Person should come and tell him, I will be guilty of Perjury, I will be forsworn for you, if you will be forsworn for me. It can hardly be believed that any body should say so to a Fellow, that you see is likely enough to detect any such Thing if it should be for his Advantage: And it had been his Duty (if he had been an honest Man) to have discovered this to a Magistrate immediately, and detected it, so as that the Villainy should have been punished; not to come and serve a Turn upon such a Trial, just as this is. And therefore, Gentlemen, I do not like such accidental Witnesses, that seem to drop (as it were) out of the Clouds, and we can have no Account of them before. You have no satisfactory Reason how he comes in now to make this Discovery. Here you have several other Witnesses, that were before, that give some Account of her Behaviour in these Matters.

As to the Conviction that they talk'd of, upon the 13th of July, several Witnesses give you an Account of the Matter. First of all, it is very apparent by that Book that is produced, that there was a Conventicle the 13th of July, and it was at Mr. Hudson's; but indeed it was not at Mr. Hudson's; and it is not alledged here by her that it was so. And for that other, my Brother Jenner gives you an Account, that upon the Confes-

sion of Mrs. Bathoe there was a Conviction; but there was no such Conviction of Hales in the Cafe, but only of Bathoe; as appears by the Record which hath been produced.

Then, Gentlemen, the next Question is concerning the Clerk of the Peace, and the Writing that they talk of; which makes nothing one Way nor t'other. Then there are two Witnesses, *Drew*, and the other Man, that met with this Woman, Mrs. Smith, in *Grub-street*, in order to make a Composition for Penalties for going to Conventicles; and they find out a Fellow that used to go to Conventicles, and they frighten him into a Composition, and so much as they say, were paid perhaps, and he ought to have paid more: But it's plain, he used to go to Conventicles; and it's pretty odd that he should be picked up on a sudden there, on this Side the Water, to discover these Practices, at the Instigation of the Prisoner at the Bar; who lives at such a Distance on t'other Side of the Water.

Then, Gentlemen, as for Mrs. Higgenfon, I can only say this, she says nothing to the Purpose, that is either material for, or against the Prisoner; for she said, she knew nothing of her own Knowledge; and all that she did say, was but Hear-says and Reports, not by Way of downright Accusation against the Person she was produced against. And, Gentlemen, you are to consider, that Hear-say and Report is no Evidence at all; but it must be what the Witnesses know, and say of their own Knowledge.

The next is a worthy Gentleman, Sir John Talbot, and as to whatsoever he said, or any of his Family told him, except he knows it of his own Knowledge, that's no Manner of Evidence at all to take off the Credit of Mrs. Hilton. But what she herself did say (if it can be testified) is Evidence against her. If she confessed that she had any Design, or was engaged in any Practice to betray the young Lady Sir John Talbot talks of, that indeed is a very evil Thing. But whatsoever were the Apprehensions of others concerning her Share in that Matter, or any of the little Things that they talked of concerning Mistress Hilton, before she intermarried, it can signify but very little in this Matter. And when we ask Sir John Talbot the Question, he cannot give any satisfactory Account of it; for he says plainly, he had no Conversation with her. It seems it was not a Contrivance while she lived there for Ten Years together; and it is pretty hard to imagine in such a Cafe, if she had been such an evil Person, as they would represent her, in that Time, that it had not appeared, so far at least, as that she had been discharged the Service long before: For Sir John Talbot is a Person that cannot be thought to permit any Thing of ill in his Family. But yet withal, he can't know all that passed, any more than any of you, of Irregularity in the Family. If indeed they had questioned any of the Servants, that were more conversant with her, and taxed her of any Thing that was evil, then it had been a much more probable Exception; but to have People's Reputations blasted barely by Tittle-tattle, and Stories, after Persons are gone out of a Family, where they have lived for many Years, is a Matter of very dangerous Consequence; and any Man in the World may be injured in his Credit, if such a Thing be permitted. What Sir John Talbot speaks of his own Knowledge, that is Evidence, and we would hear it, and give all due Regard to it: But what was spoken of concerning Hilton, before she was married; what the rest of the Servants said concerning her; or the general Reputation that she had in the Family; that's no Evidence at all.

Gentlemen, in the last Place there is a Witness produced, one Dillingham; and she pretends that she is a Woman of a very ill Reputation; and that she would have hired her (as she would have it believed) to have sworn against several People. Now as to that, she would have done exceeding well to have made a Discovery of this before this Question; and it had been her Duty so to do; and not now to come, and drop in, just when this Question comes to be debated before you: That, Gentlemen, draws a Suspicion along with it, and a very great one: But I must leave the whole Matter to you, which I do not question but you will examine, and look into, as well as you can. Thus I have offered the Evidence that has been given on the one Side, and on the other, in Point of Fact.

Now, Gentlemen, there are some Remarks made by the Prisoner at the Bar (as God forbid, but he should have the Advantage of whatsoever can be observed upon the Evidence given against him), that is, he makes a Difference between the Testimony of the one and the other of these Witnesses, about the 20th or 21st of Genesis; that the one said the 21st, the other the 20th. Now, it is to be observed, as has been said, that she that said the 20th, which was the second Witness, said it was either the 20th or the 21st; and Mrs. Smith said it was so to the best of her Remembrance; but it appears to be, and so I perceive, by all the Witnesses, upon the 20th; so that as to her it cannot be very material, because she does not swear positively either the one or the other.

Then, Gentlemen, there is another Thing, that is, that she should talk of one *Weldy*, Captain *Weldy*, or Captain *Daniel Weldy*, when it seems his Name was not *Weldy*, but his Name was Captain *Daniel*; which I think can go no great Way in the Cafe. She is not acquainted with the Man himself; she tells you one Part of his Name right; describes the House in all the Parts of it; and speaks of the Circumstance of his being at Sea, and being prayed for by Mr. Rosewell; therein they do both agree: So that, tho' she apprehended that his Name might be *Daniel Weldy*, yet it is so far right enough that it was one Captain *Daniel*; and that there is a very small minute Difference, that will make little one Way or other.

Then, Gentlemen, he insists upon the Difference between their Evidence about that Circumstance, whether it was all upon one entire Subject; or Part one Part of the Day, and Part the other. One of them says, it was not an entire Discourse; for that about the Rams-horns, and the broken Platters, and the Stone in a Sling, was after Two o'Clock, after the Interval that had been, and the Space of Time between the Discourse of the King's Evil, and those other Things; and therefore, says Mr. Rosewell, whereas she pretends that it was all spoken at the same Time, just as it is laid in the Indictment, that cannot be; and so it appears upon his own Evidence. Now, says that Woman, I can't tell, whether it was Forenoon or Afternoon, and truly they might call it Forenoon, because they had neither eat nor drank; and

says



and says the Woman, we reckon that it's Forenoon till after we have dined; and she cannot tell whether it was in the Psalms, or whether it was upon the Chapter; but it was in that Discourse that he held that Day. She does generally apply it to the whole; and that in that Day's Discourse (all which Time she stayed, till all was over) such Words did pass. You have heard the Difference that is between the two Witnesses, and you will do well to consider of it, if you think there is any thing material in it.

Gentlemen, I must confess it carries a notable Sort of Testimony in it, of which you are Judges, and will weigh it according as it ought to be weighed: *First*, That these People should luckily hit together concerning the King's Evil, and that there was such a Discourse as is laid in the Indictment about it, and of the Prophet's praying for the People for the Cure of the King's Evil, and then they should be immediately heal'd. And on the other Side it is pretty strange (as he urges for himself) that that should be perverted, which he spoke concerning the Prophet's praying for the King, and thereupon his Hand being healed, whereby the Prophets have the Honour (as he says) sometime by Prayer, of curing the King's Evil: So that something or other there is in the Matter, that gives a mighty Countenance to what the Witnesses speak. There is a certain Sort of Occasion given (as one would say) for such Expressions, as they have testified, in his Discourses.

Then, when they come to talk concerning the Rams-horns, and the Platters, the Witnesses say, we heard nothing concerning Platters, much less of Pewter-Platters; no, it was broken Pitchers, and that was occasioned by, and had Relation to a Text (says Mr. Rosewell) about *Gideon*, how easily he discomfited the *Philistines* Army, and there was no such Thing as any Discourse concerning the King, or the Government, or any Relation thereunto; it was only a Phrase used by me in the Pulpit, to shew how great a Matter might be done by little Means. And so likewise concerning the Stone in the Sling, that being an occasional Instance too what great Miracles have been brought about by little Means and Circumstances: I have instanced in that (says he) how *David* killed *Goliath* with a Stone out of a Sling, and that our Saviour Jesus Christ cured the blind Man by a little Spittle mingled with Clay. So that he would insinuate, that those Words that were spoken were not with any such Intention as the King's Counsel would make it, and as the Indictment insinuates; but only in a common, ordinary Preachment, as Inferences from such and such Scriptures. And whether this that he talks of, was the Discourse he held at that Time; or what the Witnesses speak, must be left to you; they having sworn it. And this, as I take it, is the Substance of the Evidence given by the one and the other Side.

Then, Gentlemen, Mr. Rosewell put the Question in the Morning, and he seemed to insist very much upon it in Point of Law, that the Discourses of a Madman cannot be Treason. It is true, that such Discourses cannot be Treason, if you take Madmen in the true Sense that the Law commonly takes it. All Traitors, all Knaves, and Villains, are some Way, and in some Sense, Madmen; for no Person can act with any Reason in any such Affairs. Treason is not to be committed upon the Foundation of Reason. Therefore upon his asking of the Question of the Witnesses, what Reason there was for him to use such Expressions; I told him, you did it, according as the Indictment says, which is drawn according to the Prescripts of the Law, by the Instigation of the Devil; you did it, not only without Reason, but against Reason. But if the bare saying that it was against Reason, and that therefore a Man was a Madman, would serve the Turn, there would be no Traitor according to that Rule; because every Traitor would be a Madman. Every Traitor is a Madman; but every Madman is not a Traitor. A Madman, in our common Acceptation, is one that is captivated in his Senses, not one that is corrupt in his Will and Affections, which must be the Definition of a Traitor: So that the Argument, I must tell you, is fallacious. Every Man, that is depraved in his Mind and Affections, is a Madman, so as to be an Enemy to the Government, or to Mankind; but he is not such a Madman, as is commonly meant by that Word; one whose Words may be mistaken, because of some Disorder in his Understanding, so as to be excused from the Accusation of Treason. Therefore whatsoever Consequence there may be of the Thing, I must tell you, all Men that talk after this Rate, that this Person is accused to talk in his Pulpit, they are every one Traitors, and so Madmen; for every Traitor is a Madman: And if in Case Mr. Rosewell be Guilty, he is in that Sense a Madman. It is true, in other Things you find him a Man of very notable Understanding, a Man of a very great Insinuation, one that has a great deal of Knowledge in the Tongues, looked upon to be a very learned and ingenious Man, who was thought fit to be a Tutor to Sir *Edward Hungerford's* Children; and has had very many learned Discourses, and shewn himself to be a Man of very great Parts. Tho', if he be a Traitor upon this Evidence that is given, he is, *eo nomine*, a Traitor, and consequently a Madman, for Preaching and Publishing such Doctrine as this, that will not serve to excuse him from his Treason: But the rather, because he is a Man of so much Learning, it aggravates the Treason, as it must needs do to any Body in the World that considers it. For he under that Pretence offering to preach his Doctrine as Gospel-Truth to ignorant People, it seems, 300 or more, of all Trades and Persuasions, whose Duty it was, according to Law, to have been then at Church; Men of Strength and Ability of Body, as they appear to be, for the Service of the Government; for these People to be debauched into such Doctrines as these, of *standing to their Principles* against the Government; the more Learned the Man is, the greater and blacker is the Crime of that Man that is Guilty of it. God knows whether that be Mr. Rosewell's Case, and you that are of the Jury are to try it: To do it under Pretence of Preaching the Gospel is the worst Way of doing it that could be taken; to quote Scripture for Rebellion adds to the Crime; as it did to that of those Black Villains that were concerned in the Murder of our late dread Sovereign, who has been so often mentioned; they were generally the Preachers of the late Times that contributed to that horrid Villainy.

Gentlemen, it is notoriously known to you in this accursed late hellish Conspiracy against his Sacred and most Merciful Majesty, our Sovereign

that now is (whom I pray God long to reign over us) those that had an Hand in the Intention to destroy him, and his Royal Brother, were a great many of them Black-Coat Dissenters to the Church of England; and I cannot say I know any one Member of the Church of England that had any Hand in it at all. How many of them stand now convicted by Outlawry for that Bloody Treason, I won't say all Parsons, but generally all of them Dissenters; and we know these are those base, profligate Villains, always made Use of in these base Sinks of Rebellion. And they are the common Sewers of Faction, these Conventicles are, and of Treason and Conspiracy against the Government in Church and State. God be praised, we have a Religion that teaches us much better, a Religion established by the Laws of the Land, and with that Decency of Worship, and Care of the Souls of Men, that may bring us all to Heaven, by the Grace of God, if we please to hearken to the Dictates of it, and to mind what is injoin'd us, our Duty by the Law; but when People are once deluded by the Insinuation of such false Teachers, and run into Faction and Discontent, then they'll soon run into Rebellion too. And I speak this, the rather to deter and give Warning to other People, to have a Care how they come near such Places, and such Practices, than to affect you.

Gentlemen, here you have had three Witnesses examined against the Prisoner, who stands accused for a Crime of High-Treason. I must confess, I have taken up a great deal of the Time; and a great deal of the Time was taken up before; but there's no Time too long, wherein a Question of so mighty Moment as this is, is to be decided: The Government, the Preservation of our King, the Preservation of our Religion, the Preservation of our Laws, are all concerned: For by the Destruction of our King, and of our Government, our Religion, and all that is near and dear to us in the World, will run a great Hazard, if not come to a total Destruction; and I am sure it did come near to it in a former Time, by this very Sort of way. Therefore I injoin you, in the Presence of the Almighty God, let neither Displeasure, nor any Sort of personal Animosity, in any Thing, that has been contracted by Hearsay from abroad, nor any Imaginations that have been suggested here without Proof, any Way direct you in the Consideration of this Cause against the Prisoner at the Bar: But go according to the Evidence that has been here before you, on the one Side and on the other Side. For as on the one Side you are not to be corrupted by common Talk, or any Prejudice against a Party or a Faction; so are you not to be misled by any Affirmation, or Reflection, or Comment that the Prisoner has made or said for himself, other than what is supported by the Testimony of these Witnesses that he has produced, and whose Evidence is left to you to consider: For you must not be led by any Circumstances, or by Discourses, but what's sworn on the one Side for the King, or testified on the other for the Prisoner. And therefore I can with all Freedom and Zeal for the Government, and all due Compassion to the Prisoner at the Bar (whom with all my Soul I am sorry to see accused, or indeed any Man, of such a Crime) leave this Matter entirely upon the Evidence that has been given. And tho', I say, I am sorry to see him accus'd; yet such Transgressions are aggravated now, when we live in an Age, wherein we have all Peace and Plenty, while the rest of our Neighbours are wallowing in their Blood round about us; some we have heard of, are brought to the Necessity of eating the most filthy and basest Animals, that never was designed for the Food of Man; I say, when all our Neighbours are groaning under the Miseries of War (blessed be God), we live and sleep quietly under our own Vines; we enjoy the Benefit of being Subjects to a gracious King; we enjoy the full Extent of our Laws, which are sufficient to secure our Liberties and Properties; and no Man can be brought (no, not one of the meanest Subjects the King has) to such an untimely End, but by the true Methods of Justice.

He is to be tried by you, Gentlemen, who are Gentlemen of Quality of the County where the Fact is alleged to be committed; against whom he might have made his Challenges and Exceptions, if he had any Reason; as he did against the others (according to the Liberty the Law allows him) without any Reason. So that you stand indifferent between the King and the Prisoner at the Bar, to try this Cause, whether he be guilty, or not guilty of the Treason of which he stands accused. In Case the late intended Rebellions and Insurrections had taken the designed Effect, according to the Doctrine preached in these Sermons, of standing to Principles, and overcoming Enemies; and what several of his Brethren, who stand now accused of, and are upon Prosecution (and for ought I know every one of them might be actually engaged), I say, in Case such a Thing had been, there had been nothing but cutting of Throats; there had been no Justice for any Subject to have expected; no Methods, or Proceedings of Law; but Destruction would have come upon us like an armed Man.

Therefore, Gentlemen, as the Evidence has been long, so I hope you will give me your Pardon, that I have been the longer in insisting upon it; and, according to my best Understanding and Memory, I have given you the best Account I can, both of the Evidence for and against the Prisoner. You are Judges of the Fact; and I pray God direct you, and guide you and your Consciences, that the Truth may be discovered by your Verdict.

Mr. Rosewell. May a loyal Subject speak, my Lord?

L. C. J. No, Mr. Rosewell; after the Jury are charged by the Court, you are not to say any Thing. Swear an Officer to keep the Jury.

[Which was done.]

Then the Jury withdrew into the usual Room for such Purposes, to consider of their Verdict; and afterwards they returned into Court.

Clerk of the Crown. Crier, take the Appearance of the Jury.

Crier. Sir George Sheers.

Sir George Sheers. Here.

Crier. Vous avez Sir George Sheers, &c. — [And so of the rest.]

Cl. of the Crown. Gentlemen, are you agreed in your Verdict?

Jury. Yes.

Cl. of the Crown. Who shall say for you?

Jury. Our Foreman.

Clerk of the Crown. Thomas Rosewell, Hold up thine Hand. [Which he did.] You of the Jury, look



look upon the Prisoner. How say you? Is he Guilty of the High-Treason whereof he stands indicted, or Not Guilty?

*Foreman.* Guilty.

*Cl. of Cr.* What Goods or Chattels, Lands or Tenements, had he at the time of the High-Treason committed, or at any time since, to your Knowledge?

*Foreman.* None, that we know of.

*Mr. Ros.* Then the Lord have mercy upon the Jury! My Lord, I humbly request this Favour, that they may be asked *separatim*, whether they be all of the same Opinion.

*L. C. J.* That's never done, *Mr. Rosewell*, unless there be any Difference suggested from amongst themselves.

*Mr. Ros.* I ask it in regard to them themselves; for I have heard many times the Jury go by the major part; and I would know whether they be all of that Opinion. Therefore I beg they may be asked that Question.

*L. C. J.* You must be contented, *Mr. Rosewell*; in case there were any difference, we should hear of it from amongst themselves.

*Cl. of Cr.* Then hearken to your Verdict, as the Court has recorded

it. You say that *Thomas Rosewell* is guilty of the High-Treason whereof he stands indicted; but that he had no Goods, Chattels, Lands or Tenements, at the time of the High-Treason committed, or any time since, to your Knowledge, and so you say all?

*Omnēs.* Yes.

*Cl. of Cr.* Gentlemen, the Court dismisseth you.

*L. C. J.* Marshall, you must take him into your Custody, being now convicted.

*Mr. Ros.* My Lord, I would heartily beg, for the Jury's sake themselves, that that Question may be asked of them.

*L. C. J.* We must not indulge any Innovations. It is not usual: You may ask them, if you please; see whether they will answer you. We must go according to the Forms of Law.

*Mr. Ros.* Then, my Lord, if all these Gentlemen's Estates were joined in one, I would not change Conditions with that Man of them, who should possess the Whole.

*L. C. J.* *Mr. Rosewell*, we must have no Reflections upon the Jury.

*Then the Prisoner was taken away, and the Court broke up:*

## Die Lunæ 24 Nov. An. Dom. 1684. B. Regis.

### Dominus Rex versus Rosewell.

THIS Day *Mr. Rosewell* being brought up to the Court, to receive Sentence, the Court proceeded as follows.

*L. C. J.* Brother *Jenner*, have you any thing to move?

*Mr. Serj. Jenner.* My Lord, we wait upon the Prisoner at the Bar, to desire Judgment upon the Conviction that was here the other Day for High-Treason.

*L. C. J.* Against the Prisoner at the Bar, do you mean?

*Mr. Serj. Jenner.* Yes, Sir.

*L. C. J.* Then call him to his Judgment.

*Cl. of Cr.* *Thomas Rosewell*, hold up thy Hand. [*Which he did.*] Thou hast been indicted for High-Treason, in compassing and imagining the Death of the King, and the Subversion of the Government: Upon that Indictment thou hast been arraigned: Upon that Arraignment thou hast pleaded Not Guilty: And for thy Trial thou hast put thyself upon God and thy Country; which Country has found thee Guilty. What hast thou to say for thyself, wherefore Judgment should not be given against thee, to die according to the Law?

[*Then he was made to kneel and rise again.*]

*Mr. Rosewell.* My Lord, I humbly hope that your Lordship will not give Sentence against me upon this Indictment, considering the Circumstances of it. I have, my Lord, protested to this honourable Court, in the Presence of the great God, the Searcher of Hearts, my Innocency in this Case; but I have been found Guilty by the Jury, on whom the Lord have Mercy. I do still protest my Detestation and Abhorrence of the Fact, even in my very Soul; and I do humbly beg your Lordship and the Court to compassionate my present Condition; and, with humble Submission to your Lordship, I would enter into my Discourse upon that Hypothesis; for I would be still taken thus, even in this Conviction to deny the Thesis, That I ever was guilty of speaking such Words as are laid in the Indictment. But upon the Hypothesis, supposing that I were Guilty, I do humbly conceive that these Words, as they are laid, are not Treason. They are very foolish and ugly Words; and may be a very great Misdemeanour in Law (if true, which still I must over and over again insist upon), but they are not Treason. And I beg your Lordship will do me the Favour to let the Indictment be read once more.

*L. C. J.* Ay, with all my Heart.

*Mr. Ros.* I humbly thank your Lordship; I desire it may be read in Latin.

*L. C. J.* Read it to him in Latin.

*Surrey ff. Juratores pro Domino Rege super Sacramentum suum præsentant, &c.*

[*The whole Indictment was read.*]

*Mr. Ros.* I humbly thank your Lordship. There are some things that I shall offer to your Lordship in Arrest of Judgment out of this Indictment; and I request your Lordship to hear me with Patience, being here for my Life. I pray Judgment may be arrested for these Causes: That there is not any Crime sufficiently set forth for your Lordship to give Judgment upon. My Lord, I humbly take it for granted, that in all Indictments of Treason there must be some particular Matter of Treason assigned; and that it is not a sufficient Indictment in general, that a Man did intend to depose the King, or to raise Rebellion, without some Overt-Act positively asserted to be done by that Person; the general Intention being only an Inducement to the Charge. The special Matters that set forth the particular Acts of Treason, are those that make the real Charge, upon which the Court and the Jury are to proceed. Now, my Lord, if that special Matter, that is alledged, be insufficient, with an humble submission, tho' there be never so many such Sorts of Facts proved, and found by the Jury, the Party cannot be convicted of High-Treason: For, in this Case the Party has the same Advantage to except against the Particulars alledged, to prove the general suggested Treason, as against the general Treason itself. Now, with humble Submission, my Lord, again I say, that the Matter here suggested is insufficient, as will evidently appear by what I am going to offer to your Lordship.

The first and principal Objection that I have, is against the Innuendo's, which are so many, and so strange, in these Words that are alledged against me. These Innuendo's, my Lord, I say, are nought and void; and I presume that it will be allowed to me, upon reading of the Words by themselves, as bad and as foolish as they are. Without these Innuendo's there could nothing be made out of such Words as these are, neither Treason, nor any thing else.

Then, my Lord, in the second Place, laying aside the Innuendo's, I must insist upon the repugnancy and insensibility of the Words laid in the Indictment, being in Latin, and such Latin, as I believe your Lordship never saw; and upon these two Points, I desire that Judgment may be arrested, and I humbly pray Counsel may be assigned me to make them out in better Form.

VOL. III.

*L. C. J.* What say you to it, Brother *Jenner*, and the King's Counsel?

*Mr. Serj. Jenner.* I cannot see that he has alledged any Objection, which here requires an Answer from any of us, that are of Counsel for the King.

*L. C. J.* Yes, Brother; methinks he does.

*Mr. Att. Gen.* If he does pretend to object against any of the Overt-Acts alledged in the Indictment; your Lordship observes, this Indictment is upon the Statute of the 12th of this King, wherein Words are made Treason, if they intend any Hurt or Imprisonment to the King's Person. For his Objection as to the Innuendo's, he does not assign wherein they are repugnant, or insufficient. He does assign in particular, indeed, that it is insufficient, being a general Crime; which yet he does not say is not sufficiently laid; for it is said, that he did compass and imagine the Death and Destruction of the King: And, to effect that compassing and imagination, he did speak such and such Words, which by the Statute are made Treason, if they tend to attempt, by Preaching or Writing, any Imprisonment or Harm to the King's Person. Then for him to come to talk of Standing to their Principles, after he had spoken of two wicked Kings together, meaning the late King, and the present, and that then we should overcome our Enemies; what is that but Preaching in order to raise a Rebellion and Insurrection, tending to the Destruction of the King, and his Government? All this is laid in the Indictment; the Jury find it spoken maliciously, and with such an Intention as we have laid; and therefore we think that it is sufficient.

*L. C. J.* But, if I take the Gentleman right (for I tell you beforehand Justice must be done to all People impartially. The Crime is a very great Crime that he stands accused of; and the Jury have found him guilty of the Crime laid in the Indictment: But, if I take him aright) he does not say that Words are not sufficient to create a Treason, but the Words here, as they are laid in this Indictment, are not sufficient: And as I take it, there is no great difficulty in the Matter; but the Words would have been sufficient to have supported the Accusation, if they be well laid. But the Question is, Whether the Words, that you have laid here, be so positively affirmed to have been spoken by the Prisoner, and to relate to the Government, as they ought to be in an Indictment of High-Treason?

*Mr. Att. Gen.* That the Indictment must make out; and the Jury have found him Guilty, according to the Indictment.

*L. C. J.* But that is his Objection, they are not so in the Indictment.

*Mr. Att. Gen.* My Lord, they are laid as the Witnesses swore them; as your Lordship can't but remember.

*L. C. J.* That they are not positively affirmed, but only alledged under an Innuendo; that is, he spoke such and such Words, whereby he compared the King to *Jeroboam*, and the like; and we had two wicked Kings together, but if we would stand to our Principles, we should overcome our Enemies, Innuendo the King. The alledging of the Words spoken in the Indictment is positive, if there be sufficient Matter in the Words to make them applicable to the Government, so as to make it Treason. But if you only say, he spoke them, Innuendo so and so, that is not positive enough to make the Indictment good. I take it the Objection runs that way.

*Mr. Ros.* My Lord, I humbly thank your Lordship for explaining my meaning: It is so.

*L. C. J.* In an Action on the Case, if you say the Defendant spake such and such Words, if you do not lay it that he spoke them of the Plaintiff; Innuendo, The Plaintiff, in repeating the Words won't do. So here, if you had brought it in the Indictment, that having discourse of the late King and this King, he had spoken these Words, *We have now had two wicked Kings, &c.* you then had brought it home to him: But you do not lay it that it was spoken of them at all, but only in the Innuendo; whereas you ought to say, first, That he spoke of the late King, and this King; and then said, We have had two wicked Kings together, Innuendo the late King, and this King.

*Mr. Att. Gen.* My Lord, I do not know how we could have done it better than we have done.

*L. C. J.* Look ye, we give no Opinion; but the Objection has Weight in it, upon my Word. As I told you before, in common Cases an Action of the Case for Words, or the like, you must lay a Communication concerning the Plaintiff, or an Innuendo will not be a sufficient Averment of its being spoken of him. In an Action of the Case for Words, till within these Seven or Eight Years, they were obliged to lay a Colloquium of the Plaintiff, and of his Trade; and that to defame him, were spoken of him at such a time such Words, as that he was a Cheating Knave; where the Word Knave would bear an Action, a bare Innuendo would not do, that was not enough. But, now I confess, since Declarations



are made a little more concise, you need only say *dixit de Quarente*, such and such Words without a *Colloquium*, but you must aver it to be spoken of the Plaintiff. I never thought it good in such a Case, to say of a Merchant, he is a Bankrupt Knave (*Innuendo* the Plaintiff), unless he say he spoke of his Trade and Merchandise. So that the Objection does seem to carry very much Weight in it.

\* *Mr. Finch.* \* *Mr. Solicitor.* My Lord, if your Lordship would give me leave, I would endeavour to answer the Case as your Lordship has put it; for, my Lord, no doubt in all common Actions of the Case for Words, it must be averred that the Words were spoken *de Persona* of the Plaintiff; but the first Part of the Indictment, in this Case, shews that the Words must be spoken of the Person of the King, and of the late King; for it says, he did conspire the Death and Destruction of the King, and to depose him from his Government, and to manifest that traitorous, wicked Intention of his; *Ea intentione* he did speak these Words of the Government, *We have had two wicked Kings together*, meaning this King and the late King.

*L. C. J.* If you had said so, that he spoke these Words of the King, you had answered my Objection; but the Conspiracy of the Death of the King being only a general Form for Treason, will not make good an Indictment of High-Treason; but you must shew some Acts or Words to evince and prove that that was his Intention; that he did either speak such and such Words, or did such and such Actions. It is not a good Indictment to prove that he did conspire, for he spoke such and such Words; but that to carry on his Conspiracy he did speak such and such Words of the Government, that must be positively alledged.

*Mr. Solicitor.* We do so, my Lord; for we say, *Et ad easdem nefandas proditones, &c. perimplendas*, he spoke such and such Words. We have had two wicked Kings together, *Innuendo* this King and the late.

*L. C. J.* You have *Innuendo* it too much, I do doubt; for all the Facts are laid under an *Innuendo*, without a positive Averment.

*Mr. Att. Gen.* My Lord, I think it is as fully laid, as it possibly could be.

*L. C. J.* Come, *Mr. Attorney*, if in Cases of common Actions for Words there be such Strictness required, ten times more ought there to be in an Indictment of Treason, where a Man's Life, and All, is so much concerned. I am not satisfied, I assure you, that this Indictment is well laid, though I give no Opinion; but in all Justice we ought to assign him Counsel to make out his Objection.

*Mr. Att. Gen.* All this, my Lord, is only in delay.

*L. C. J.* *Mr. Attorney*, *De vita Hominis nulla est cautatio longa*. I think we ought to assign him Counsel, and the rest of my Brothers are of that Opinion too.

*Mr. Att. Gen.* Let them read Colonel *Sidney's* Trial, and the Indictment there, and they'll find it the same thing.

*L. C. J.* I cannot tell whether there are any such *Innuendo's* there, I believe not; but I know not if there were, if in case it had been moved in Arrest of Judgment, what the Court would have done then. But I think we ought to assign him Counsel to make out his Objection.

*Mr. Solicitor.* The very Fact that makes this Treason, is his stirring up Sedition and Rebellion within the Kingdom; and we say, to effect it, he had these Expressions in his Pulpit, We have now had two wicked Kings together, meaning this King and the late, who have suffered Popery to come under their Noses; but, if you will stand to your *Principles*, meaning the People, we shall overcome our Enemies, meaning the King and Government.

*L. C. J.* Ay, but you do not say that he spoke these Words of the King: This you should have said at first, because the speaking of these Words is the very Overt-Act; and if he did not speak them of the King, which you ought to affirm, but only by way of *Innuendo*, that cannot, we think, be so good, nor sufficient.

*Mr. Just. Withins.* I take it that these are the main Words that are to maintain this Indictment of Treason; and the Question is, Whether they ought not to have been averred that they were spoken of the two Kings?

*L. C. J.* We do not give any Opinion, *Mr. Attorney*, but because there seems to be some reasonable doubt and weight in the Objection, we desire to have it argued, and therefore will assign him Counsel.

*Mr. Ros.* I humbly thank your Lordship.

*L. C. J.* We do think it fit to look into it, before we proceed any farther in a Case where a Man's Life is concerned.

*Mr. Ros.* I pray God to bless your Lordship.

*L. C. J.* Nay, you have no need to thank me; for I desire to do Justice to all Men.

*Mr. Ros.* But I desire to return my hearty Thanks to your Lordship, for explaining and making out what my unskilfulness in the Law would not permit me to do. God be your rewarder for it.

*L. C. J.* Well, who would you have to be your Counsel?

*Mr. Ros.* If your Lordship pleases, *Mr. Wallp.*, *Mr. Pollexfen*, and *Mr. Thomas Bamfield*.

*L. C. J.* Let them be assigned of Counsel for him. But, *Mr. Rosewell*, I think it is not improper for me, upon this Occasion, to take notice of this that is in my Mind, relating to your Affair, because I observe it is a Matter of great expectation, and so was at your Trial, and here is a great Croud of People now; that as this Fact is found, if the Indictment falls out to be a good Indictment, which is the Question that now depends before the Court, so that you come to have Judgment of High-Treason passed upon you, and to suffer according to that Judgment, what will become of these 400 People that were your Auditors at the time that these Words, that are thus found and adjudged to be Treason, were spoken? And I speak it for the sake of all Conventiclers, and Frequenters of such Meetings, as these are. If you, that are the Preachers, and Teachers, the Mouths of such Congregations, do utter Treason, and so they conceal that Treason, what a Condition are they in? What are they guilty of? Therefore, if People will consider, they would do well to think, that when they go to such Places, they go at a great Peril; being to answer for Themselves, their Lives and Estates, upon the Prudence of the Expressions, to say no more, that come from the Teachers. I only put you in mind of this, because I would have all Standers-by, and the Auditory, which I see is very great, in mind, what Danger and Risque they run in thus offending the Law.

*Mr. Ros.* My Lord, I do believe, that no one in the World, besides these Witnesses, that here were produced against me, can ever testify the least disrespectful Word spoken by me of the late King, or of his present Majesty.

*L. C. J.* Well; when will you be ready, Gentlemen?

*Mr. Pollexfen.* My Lord, we desire to have as much time to prepare ourselves as we can.

*L. C. J.* Two or three Days time will serve.

*Mr. Att. Gen.* It is fit we should know what Points they intend to insist upon, that we may prepare to answer them.

*L. C. J.* Yes, yes, that must be, but I perceive his main Objection is, what I tell; let him be brought by Rule hither, upon *Thursday*, because the Court may have time to consider of what shall be said on both Sides.

*Mr. Ros.* My Lord, these Gentlemen are Strangers to me; but I dare rely upon them, from the Character I have heard of them, that they will do me all the Justice that they can.

*L. C. J.* Well, they are assigned of Counsel for you. But I could not forbear giving that hint that I did, that this might be a Warning to People, how they transgress the Law in going to such Meetings.

Die Mercurii, 26 Novembris, 1684.

Rex versus Rosewell.

*L. C. J.* *MR. Pollexfen*, have you any thing to move?

*Mr. Pollexfen.* My Lord, I have one Word to move for myself, and the others that are appointed to be of Counsel for *Mr. Rosewell*. We think it our Duty to apply ourselves to your Lordship for this Favour; that, to enable us the better to do our Duty for the Person for whom we are assigned, your Lordship and the Court would please to order that we may have a Copy of the Indictment. We do acknowledge, that it is not an usual thing to have Copies granted (tho' there be no express Law that we know against it) in capital Matters, but where any Doubt does arise upon the Penning the Indictment, and Counsel is assigned to enable them to do what is fitting for them to do for their Client, Copies of the Indictment have been granted; as particularly in the Case of *Fitzharris*, in order to the Plea that he was to put in; and I myself was one of the Counsel at that time.

*L. C. J.* *Mr. Pollexfen*, I make no doubt in the World, it is in the Power of the Court to order a Copy of the Indictment, if they see Cause; but, if you remember (for you were of Counsel in that Cause too), it is not to be granted, because it is asked. For my Lord *Ruffel* had no Copy of the Indictment, tho' he insisted very much upon it: And it was in the Case of *Fitzharris* granted, that he might particularly apply his Plea (if he had a mind to it) to the Indictment itself.

*Mr. Pollexfen.* My Lord, I do not desire a Copy of all the whole Indictment; but of so much thereof, as may be enough for us to know the Foundation upon which we are to go. I do remember we were called in, in my Lord *Ruffel's* Case, upon the Point of Challenge, for want of Freeholders; but that was not in the Point of the Indictment, and there I cannot see what we had to do with the Indictment; but here we must understand how it is laid really in the Indictment, that we may apply our Arguments to the Case; and that I believe was never denied.

*L. C. J.* Look ye, if you speak to me privately, as to my own particular Opinion, it is hard for me to say, that there is any express Resolution of the Law in the Matter; but the Practice has been always to deny a Copy of the Indictment. And, therefore, if you ask me as a Judge, to

have a Copy of the Indictment delivered to you in a Case of High-Treason, I must answer you, Shew me any Precedents where it was done: For, there are abundance of Cases in the Law, which seem hard in themselves; but the Law is so, because the Practice has been so, and we can't alter the Practice of the Law without an Act of Parliament. I think it's a hard Case, that a Man should have Counsel to defend himself for a Two-penny-trespass, and his Witnesses examined upon Oath; but if he Steal, commit Murder or Felony, nay, High-Treason, where Life, Estate, Honour, and all are concerned, he shall neither have Counsel, nor his Witnesses examined upon Oath: But yet you know as well as I, that the Practice of the Law is so; and the Practice is the Law.

*Mr. Pollexfen.* My Lord, we heard the other Day the Indictment read, and so may have some little Account of the Indictment; but we desire such a Copy as may enable us to argue as we ought to do, and as the Court will expect from us, being assigned by the Court.

*Mr. Wallp.* My Lord, if we should offer any thing that is not in the Indictment, it's all one as if we held our Tongues; and if we have only a loose Account of the Indictment, that may be as bad as if we had a false one: And therefore we desire, to the End that we argue *ad idem*, that your Lordship will please to favour us, that we may have a Copy of so much of the Indictment, as upon which our Objections may be grounded.

*L. C. J.* *Mr. Pollexfen*, you may remember a particular Case, I have forgot the Name, but I believe you may remember it; where a Prisoner at this Bar desired to have the Indictment delivered to him to read, but it was denied him: It is hard, I confess, and so are many other things in the Law; but I am wonderfully tender of making Precedents: And therefore, if it has not been practised, I do not see how we can do it.

*Mr. Just. Withins.* That is the usual Practice, my Lord; but it is in the Power of the Court sure to grant a Copy; or, at least, of so much as is necessary for them to apply themselves to. There have been many Cases of Murders, where they have had Copies of the Indictment in order to move in Arrest of Judgment, as this Case is.

*Mr. Just. Walcot.* But have there been any in High-Treason?

*Mr. Just.*



Mr. Just. *Withins*. I do not take it that there is any difference between the one Case and the other, they being both capital Crimes; and Counsel being assigned, they must know what they are to speak to.

L. C. J. I would know when ever a Copy was granted to enable the Party to move in Arrest of Judgment.

Mr. Just. *Withins*. My Lord, when there is a Motion in Arrest of Judgment, and Counsel assign'd, that is a Thing they ought to know, how to demean themselves in their Arguments.

Mr. *Pollexfen*. My Lord, we submit it to you. We desire the Favour that we may acquit ourselves as we ought to do, and as the Court (we know) expects from us.

L. C. J. As far forth as I could do, being in the Case of Life, I would indulge you: But I tell you, I am loth to be the Author of Precedents in Cases of this Nature, one way or other; especially in this Case, where I know you cannot but understand, by what was spoken here t'other Day, what the Objection is, and where the stress of it lies: Every man at the Bar must needs understand it.

Mr. *Pollexfen*. My Lord, we know People have various Understandings; and the case is many times variously stated, not only in our Minds, but in our Books.

L. C. J. Well, we know you understand yourseives well enough: And what we could grant, we would.

Mr. Just. *Withins*. It may be Mr. *Pollexfen* does it only to make way for an excuse, when he comes to argue, that he is not so well prepared as he should have been; but we know him well enough.

Mr. *Pollexfen*. But, my Lord, if we miss the Words of the Indictment, we hope your Lordship will not think us impertinent, in having made this Motion, which is for Ourselves, not for our Client: And therefore, we hope you will pardon us, if in case we mistake; which we could have had no colour to have desired, if what we had to say, were guided by a true Copy of the Record.

No Copy was granted, nor Rule made.

Die Jovis, 27 Novembris, 1684. B. Regis.

*Dominus Rex versus Rosewell.*

THIS Day Mr. *Roswell* was brought to the Bar, and the Court asked the Counsel assign'd for him, what they had to say?

Mr. *Wallop*. May it please your Lordship, I am of Counsel for Mr. *Roswell*, by your Lordship's Appointment, he being here a Prisoner now at the Bar. My Lord, I am informed (for I have not seen the Proceedings, nor heard the Indictment read), that it is an Indictment for treasonable Words; and many treasonable Words; and likewise, as I take it by Information, these Words are applied by divers Innuendo's; so that, for aught I can apprehend by what I am informed (which I must still keep to) it is so uncertain, insensible, involved, and intricate, that no safe Judgment, as I humbly conceive, can be given upon it.

My Lord, to consider these Words; First, if you please, I shall state them as discharged of the Innuendo's, and put them to your Lordship barely and nakedly, as they are in the Indictment, and as they were sworn, and are to be supposed by the Conviction to have been spoken. The Words are these, as they stand discharged of their Innuendo's: That 'the People make a flocking to the King, under pretence of healing the King's Evil, which he could not do; but we are they to whom they ought to flock, because we are Priests and Prophets, that by our Prayers can heal the Dolors and Grievs of the People. We have had now two wicked Kings together, who have suffered Popery to enter under their Noses; who can be likened to no other Person but the most wicked Jeroboam: And if they would stand to their Principles, he did not fear but they should overcome their Enemies, as in former times, with Rams-horns, broken Platters, and a Stone in a Sling.'

These, my Lord, are the Words nakedly in themselves; and these are said to be spoken in a Publick Assembly, where they were likely to do hurt to the Government. Thus, I say, they stand without any of the Innuendo's. Now, tho' your Lordship will have, and justly ought to have, a good Account given you of such Words as these, how they came to be spoken, even taking them as they stand discharged of the Innuendo's; yet I humbly conceive, with Submission, they do not contain any intention of deposing or destroying the King, and so can have no treasonable intention in them: And then your Lordship, I suppose, will likewise expect to have a good account of these Words, in another respect, how Words, which in the hearing of them barely and nakedly spoken, could not carry a treasonable Intention; I say, how it comes to pass that in the writing of them down in an Indictment, they become High-Treason.

My Lord, these Words, as they stand discharged of the Innuendo's, are loose, extravagant, insensible Words, sounding rather towards Phrenzy, than Treason. So that as they stand without further Explanation by an Innuendo, they are perfectly insensible, and one cannot tell what they refer to, or whom; and if the Words, *Ex vi termini*, without further Averment, contain no treasonable intention and meaning, and so consequently have no Treason; it may seem very difficult and hard to maintain, how, out of the Assembly in which they were spoken, being put into Latin in an Indictment, they should become Treason: They not being Treason at *Rotherhithe*, where they were spoken; how they should be made Treason at *Kingston*, or here, where they are dressed up in another Form. Indeed, I know no way that it can be done, but by adding some other Words, by some other Hand. And, my Lord, I suppose it was so done by those who framed this Indictment that is before your Lordship, by inserting and adding this Multitude of Innuendo's.

But I suppose, then, they that would insert these Innuendo's, must have a good Warrant to insert them: For if they are inserted without Warrant in Law, then it must be acknowledged to me that the Indictment is not good; and I humbly conceive it to be a Rule in Law, that no Innuendo can warrantably be inserted in an Indictment, Information, or Declaration, upon an Action of the Case for Words, unless the Defendant first himself be averred, and that directly, to have mentioned a Person in certain, to whom those Words may be referred; and it must not slide in by Supposition, but it must appear in the Body of the Discourse of the Defendant. And the Reason is evident in all Cases of Slander, and particularly in these of treasonable Words; for how could the Hearer understand whom the Preacher meant, or he that discoursed so and so, and so be influenced to Rebellion, unless he had named the Person of whom he spoke, as here, unless the Defendant had named the King, to whom the Words he spoke should be referred?

My Lord, the Treason of the Words is in stirring up Sedition and Rebellion; and if then the Words cannot terminate upon the King, and the Hearers could not collect that to be the Intention of the Speaker, these Words could not influence a People to Rebellion and Sedition. And according to this Rule, I conceive that most of the Innuendo's in this Indictment are not warrantable.

For, my Lord, as to the first Words, to take them in order, tho' I take it, that that is the most remote Matter from the Crime charged; yet let us strike off these Innuendo's as we go along, if we can. There

it is, *Quod Populus, &c. The People* (meaning the Subjects of our Lord the King) keep a flocking to the King to cure the King's Evil, which he cannot do, &c. Here the first Innuendo is the *People* (meaning the Subjects of our Lord the King). Now he had never before named the People of England; but the Innuendo fastens that meaning upon the Word (*People*). Which, with Submission, my Lord, is always a Sign of a naughty Innuendo; and it is without Warrant of Law; an endeavouring to give an original certainty to uncertain Words; which is more than the Office of an Innuendo will allow or warrant. I say, my Lord, it always bears a bad face, where Words first appear with an Innuendo; and have no certainty even in the Beginning of them, but by the Innuendo; that with Submission is to be rejected, the Innuendo not doing its proper Office for which it ought to be used in Law: For *Populus* may intend any People, it may intend the French People flocking to the French King (and he does heal the King's Evil in the same manner: nay, pretends to it, as a sole Gift to him, his Predecessors, and Successors: But I only put that for an instance); and all the Innuendo's, if you observe them, are of this Nature. The Words first appear without any light, but what these Suppositions give them, and therefore, I say, they are to be rejected.

But now, my Lord, I come to that which is more particular, *Nos habuimus nunc duos iniquos Reges insimul; We* (meaning the Subjects of the King) have had two wicked Kings (meaning King Charles the First, and this King) together. Now that we say is altogether void, for there was no mention of any Kings, wicked Kings or good Kings, pious or bad, before in the Discourse, to which, according to the Office of an Innuendo, these Words are to be applied. My Lord *Coke* in his 4 *Rep. fol. 17. B.* has this Case:

*John James* brings his Action against *Alexander Rutledge*, for speaking the following words concerning him, to one *John Bonner*. "Hang him (prædictum Johannem James innuendo) he is full of the Pocks (innuendo the French Pocks) I marvel that you (prædictum Johannem Bonner innuendo) will eat or drink with him (prædictum Johannem James innuendo) I will prove that he is full of the Pocks (innuendo the French Pocks). Upon a Motion in Arrest of Judgment, it was resolved by the Court, that in every Action of the Case for Slander, two things are requisite. First, That the Person who is scandalized be certain. Secondly, That the Words spoken be apparent Slander. The Office of an Innuendo is to design the same Person that has been named before: And is in Effect, instead of a Prædict. But it cannot make the Person certain, that was uncertain before. In the present Case, it was evident that the Plaintiff did speak the Words of the Defendant. But as to the second Thing, it did not appear that the Words spoken did mean the French Pocks; and Words are to be taken in mitiori sensu."

Et de quæz meisme le person que fuit noime en certaine devant: Et en effect estoit en lieu de un (prædict) mes un (innuendo) ne poit faire person certain que fuit incertain devant: Car serra inconvenient que actions serra maintaine per imagination d'un entent que n'appiert per les parols sur que l'action est fondue, mes est tout incertain & subiect al deceivable conjecture: Mes si un dit a J. S. Thou art a Traitor, &c. la comit de Personne, Et action gisi: Iffint icy en le case al barre, quant le defendant & Bonner ad parlanee del pl' dorques quant le defendant dit hang him: La (innuendo) voyle denote meisme le person noime devant: Mes si le defendant sours aucun parlanee del plaintiffe ad dit, hang him, &c. la nul innuendo voyle aver fait le person certain. ¶ Quant al 2. si come (innuendo) ne poit faire le person certain que fuit incertain devant, iffint un (innuendo) ne poit alter le matter ou sence des parols meismes: Et pur ceo quant le defendant en le case al barre dit al plaintiffe: That he was full of the Pocks (innuendo the French Pocks) cest innuendo ne fait son propre office, car ceo contende a extender les general parols, the Pocks, ale French Pocks, per imagination d'un entent que n'est apparent per aucun precedent parols, a que le innuendo referer; Et les parols meismes serra prise in mitiori sensu.

And I humbly conceive this Book is a most pregnant Authority, that states the Matter truly, with a Judgment of Law, and the Reason of it; and all the Books that come after this, borrow their Light from what is laid down as the Rule of Law is in this Case: as there are an infinite

Number

Mich. 41. & 42 Regine Eliz. en bank le Roy, entre John James pl. & Alex. Rutledge def.

L' E plaintiffe count que le defendant, & un John Bonner ayant conference de la plaintiffe; Le defendant dit del plaintiffe ad dit John Bonner ceux parols; Hang him (prædictum Johannem James innuendo) he is full of the Pocks (innuendo the French Pocks) I marvel that you (prædictum Johannem Bonner innuendo) will eat [B] or drink with him (prædictum Johannem James innuendo), I will prove that he is full of the Pocks (innuendo the French Pocks). Le defendant plead non culpable, & fuit trouve par le plaintiffe, & damages assise: Et fuit move en arrest de judgement que les dits parols ne fueront actionnable. Et fuit resolve que en chescun action sur le case per slanderous parols, deux choses sont requise. ¶ 1. Que le person qui est scandalize soit certain. ¶ 2. Que le scandal soit apparent per les parols meismes. Et pur ceo si un dit sours aucun precedent communication, que l'un des servants de J. S. (il ayant divers) est un notorius Felon ou Traitor, &c. icy pur le incertainie del person nul action gisi; Et un (innuendo) ne poit faire ceo certain: Iffint si un dit generalment: I know one near about I. S. that is a notorious Thief, ou tiels semblables. Mes quant le person est un soit noime en certaine, come si deux parlant ensemble de J. S. l'un dit, He is a notorius Thief: La J. S. en son count poit monstre que la fuit parlanee de luy entre les deux, & que l'un dit de luy: He (innuendo prædictum I. S.) is a notorius Thief. Car le office de un innuendo, est a container & de quæz meisme le person que fuit noime en certaine devant: Et en effect estoit en lieu de un (prædict) mes un (innuendo) ne poit faire person certain que fuit incertain devant: Car serra inconvenient que actions serra maintaine per imagination d'un entent que n'appiert per les parols sur que l'action est fondue, mes est tout incertain & subiect al deceivable conjecture: Mes si un dit a J. S. Thou art a Traitor, &c. la comit de Personne, Et action gisi: Iffint icy en le case al barre, quant le defendant & Bonner ad parlanee del pl' dorques quant le defendant dit hang him: La (innuendo) voyle denote meisme le person noime devant: Mes si le defendant sours aucun parlanee del plaintiffe ad dit, hang him, &c. la nul innuendo voyle aver fait le person certain. ¶ Quant al 2. si come (innuendo) ne poit faire le person certain que fuit incertain devant, iffint un (innuendo) ne poit alter le matter ou sence des parols meismes: Et pur ceo quant le defendant en le case al barre dit al plaintiffe: That he was full of the Pocks (innuendo the French Pocks) cest innuendo ne fait son propre office, car ceo contende a extender les general parols, the Pocks, ale French Pocks, per imagination d'un entent que n'est apparent per aucun precedent parols, a que le innuendo referer; Et les parols meismes serra prise in mitiori sensu.



Number of them, which I shall not trouble your Lordship with particularizing; only just to name some of them. 5 Co. 20 Hob. 45. and 2 Cro. 126. wherein they say, That altho' the Plaintiff be particularly named by a special Name; yet if the Declaration comes to name him in an Action of the Case for Words, at the first appearance with an Innuendo, then that Innuendo is void; tho' his Name be expressly alledged in the very Words, yet they will reject that Innuendo, as not doing the proper Office of an Innuendo; and that Judgment shall be arrested, tho' the Jury found that the Party spoke such Words: And this is upon the Rule in 4 Co. before-mentioned.

Now, my Lord, to apply this Rule in the 4th Report, to the Case before your Lordship, we say there was no mention at all before of any two Kings; nay, not of any King, in his Discourse, to which the Innuendo should refer; and the Innuendo being joined to the Words first spoken, without any Discourse laid concerning such a Person, or Averment to be spoken of such an one before, the Innuendo cannot give any certainty to that, which had no such original certainty; that being against the Office of an Innuendo, and so is to be rejected. And the meaning of the Books, and of that great Rule, which I first cited, is this, That the Defendant must himself, in his Discourse, first set up such a Light about the Words of the Person concerning whom they are spoken, that the Intention of the Speaker may with ease be collected; then comes the Innuendo with a Beck or a Nod, as it were; and that Collection is to be the *nutus*, to shew who was meant; but it is not sufficient to give an original certainty, where such a certainty is not fixed before the Innuendo comes. The Defendant himself must set up such a Light as will carry the Intention to the End of the Discourse.

Then it is said, *Duos iniquos Reges*, in the Plural Number; meaning the late King Charles and his present Majesty; now King Charles the First was never pretended to be mentioned before; why then, according to that Rule, as to him the Innuendo signifies nothing at all; and then it must be taken in common understanding, *We have now had two wicked Kings together*, Innuendo, our Sovereign Lord the King that now is, against whom the Treason must be said to be committed: But this is very harsh, and insensible, and impossible; it is harsh, in all respects, both of Grammar, and Reason, and Law; it is insensible, because it is impossible; and it is impossible, because you must else make two Kings to be one, or one King to be two, and the Innuendo must serve both ways; which, I believe, your Lordship will hardly undertake to do.

And besides, my Lord, there is another Inconsistency in these Words, *habuimus nunc*, that's contradictory; *habuimus* refers to the Time past, and draws one Way; *nunc* to the Time present, and draws another Way: and when there are such Inconsistencies and Incoherences, how can any Man make a Judgment in this Case, where the Life of a Man especially is concerned?

But, my Lord, if *habuimus* be that which being first shall take place, then these Words refer to any two Kings that we have had, under whom Popery hath been let in; and so we must run back from Harry the 8th, up to the Conquest, nay, beyond the Conquest, to the Saxons and other former Kings, to the first that established the Christian Religion, which was then subject to the Papacy. And it will be hard to construe them wicked Kings for so doing at that Time; as any Man's reading, that knows any thing of the History of England, will easily tell him. So that it is unintelligible and insensible, even that way; and, to be sure, if it be so, that we have had two wicked Kings together, referring so far back, it cannot at all concern the present King.

My Lord, I shall be short: I only state these things before you, and recommend them to your Lordship's Consideration. Then come these Words, which it seems are most relied upon, *If they would stand to their Principles, he did not question, but they should be able Inimicos suos vincere*, Innuendo the King and the Government. This is the most insensible, as I apprehend, of all; and it is in the fatallest part, it being there that the Treason must lie, if there be any. Now, my Lord, we first say, there is no mention at all of any Enemies throughout all the Words precedent; there is no Averment that the King was Enemy to any body, or any body to him; and therefore the Innuendo, for this reason, is to be rejected; and the rather, in that it makes the King and his Subjects to be Enemies one to another; which is an Imputation that ought not to be admitted; and I dare say, will not be by your Lordship. Therefore, in this Case, to put such a Sense in such a Weighty Matter, being a Matter of Fact, upon such Uncertainties, without any further Averment of the Intention and Meaning of the Speaker to be so and so, and without any thing but such Innuendo's, is very hard: For now perhaps the Jury only from this Innuendo were persuaded that all these things pointed upon the King and the Government; and did take it that the Law was so; that the Words intended as much: Then do they give their Verdict of a Matter that was never averred, and for want of an Averment could never be put in issue, so that the Party could have a Trial, whether he were guilty as the Indictment says.

My Lord, I shall cite no Books more than I have done. I humbly conceive, that putting that great Rule in the Book I first mentioned, and the Reason of the thing together, and the subsequent Authorities that I have cited; and they stand so fair and clear to avoid this Indictment, that to trouble your Lordship further were to embroil the Case; therefore I shall say no more out of the Books. But the Rule is a firm, reasonable, undeniable Rule, which must rule all Cases that come under the Reason of it. And I never heard that Book was ever contradicted; but all subsequent Judgments were agreeable thereunto.

Mr. Just. *Withins*. What Folio is it, Mr. Wallop, in the 4th Rep.?

Mr. Wallop. Folio 17. B.

Mr. Just. *Holloway*. It is ----'s Case, is it not?

Mr. Wallop. Yes, Sir. My Lord, I have stripp'd the Words of the Innuendo's. You will not, I am sure, put, nor can an Innuendo put such a Violence or Force upon Words, as to make them Treason, when in themselves they have no such Meaning. Innuendo's are to follow the Meaning of the Words as they lie in the Record, and not to draw the Meaning of the Words after the Innuendo; for you will never (especially in a Case of Life) press Words, or strain them to speak more than will-

ingly they mean or intend. It is not the practice of the Law so to do, to make any such Stretches. *Qui nimis emungit, elicit sanguinem*, he that wrings the Nose too hard, will draw forth Blood; that is the Rule of that great Lawyer, my Lord Coke, who applies that Saying to the forced Straining of Words beyond what in themselves they naturally and easily will bear. And it is plain that God is not well pleased with such Emunciations: Nor does the Law of the Land at all allow it, but absolutely forbids it, for the Law of England speaks thus, *In dubiis & generalibus, benignior sensus est praefendus*, in all dubious, uncertain, and general Cases, the most benign and candid Interpretation is to be taken: So that if there should be a doubt about these Words, what Sense they be taken in, the Law of England does injoin your Lordship to take the Way that lies on the right hand, and make the most favourable construction, that can be of them. We say then, the Words, as I conceive, standing quite otherwise, and without the Innuendo's, are insensible, at least uncertain, to what they should be applied, or to whom; and then if there should be a Doubt, though indeed in one respect I think there is none, yet if there should remain a Doubt, I say, your Lordship and the Court are to take that which is the most mild and gentle way of construing these Words.

My Lord, I shall not trouble your Lordship further in the matter, for I think it is seen by its own Light, and these few Touches, that I have given of that general Rule, as applied to the particular Case before your Lordship: And I do not question, but they will be applied by your Lordship and the Court in their Consideration of the Case: Therefore I lay it at your Lordship's Feet, and humbly pray, that the Judgment may be arrested.

Mr. Pollexfen. My Lord, I am assigned by the Court to be of Counsel for Mr. Rosewell, the Prisoner at the Bar, and therefore humbly desire your Lordship would please to spare me a Word of the same Side with Mr. Wallop. The Case, that is, this Part of the Indictment, hath been put, according to what our Information is, right by Mr. Wallop; but because there may be many Words in the Indictment, and there are so, some of a higher Nature than others, therefore I beg leave to put the Words distinctly as they lie, and I shall endeavour, with Submission to your Lordship, to shew what Words are in themselves Treason, and what are not Treason, tho' they may be a great Misdemeanour, and highly punishable by the Law, and by the Court.

My Lord, though the Statute of the 25 Edw. 3. does provide, that for the Convicting of any for Treason, there shall be an Overt-Act, yet I do not hold, nor do I think, but that there may be Words that are an Overt-Act, and consequently Treason, within that Statute; but then what sort of Words these are, is that which I would humbly offer to your Lordship to discourse of: For, my Lord, it plainly appears that Words in themselves, that are very evil and wicked, yet are not Treason, nor are to be punished by virtue of that Statute of the 25 Edw. 3. As in one Cro. 117. & 125. *Hugh Pine's Case*. The Words there spoken by *Pine* are most evil and wicked Words, yet by all the Judges of England they are agreed not to be Treason.

But, my Lord, for a further Determination of this Point, what Words are Treason, and what not, give me leave to mention the Statute of 13 Car. 2. which I understand to be the Statute upon which the Prisoner is indicted, and the two Branches of that Statute: for the first tells what is Treason, and the second what is not Treason, but only Misdemeanour; and that second Branch of the Statute says, that if any person shall maliciously and advisedly publish or affirm the King to be an Heretick or a Papist; or that he endeavours to introduce Popery, or, maliciously and advisedly by Writing, Printing, Preaching, or expressly Speaking, publish, utter, or declare any Words, Sentences, or other Things, to stir up the People to hatred or dislike of the King's Person, or the established Government; then he is disabled to have or exercise any Place or Office, civil or military, and be liable to such further Punishment, as by the common Laws or Statutes may be inflicted in such Cases; by which, I take it, the meaning to be fine and Imprisonment, or bodily Punishment; but not the Punishment that is appointed to the Judgment of High-Treason, or loss of Life or Member.

Mr. Att. Gen. My Lord, I humbly crave your Lordship's Judgment whether this shall be permitted, that the Counsel should enter into such a Discourse as this. The Question, I take it, that your Lordship appointed to be spoke to, is, Whether this Indictment as to Form be sufficient for your Lordship to give Judgment upon? But Mr. Pollexfen is going into that which is a far greater Point; Whether these Words abstracted from all their Innuendo's are Treason, or no? My Lord, the Prisoner did not move that in Arrest of Judgment; and whether your Lordship expects any such thing should be spoken unto, that was not moved or stirred by him, I must submit it to you. The Jury found that these Words were spoken with an Intent to depose the King. Whether that your Lordship will permit it to be argued, whether such Words are Treason in their own Nature, is of quite another Consideration.

Mr. Pollexfen. Good Mr. Attorney, Pray, spare us. We come to shew that if in their Nature they import not Matter of Treason, then the Innuendo's cannot help them, so as to make Treason of them.

Mr. Att. Gen. Truly, my Lord, I did not understand that it was your Lordship's Pleasure the Counsel should have liberty to argue any such thing, as whether the Words be Treason, being found to be spoken with such an Intention; but whether these Innuendo's have sufficiently been laid to maintain the Indictment in point of Form.

Mr. Pollexfen. If you leave out the Words Innuendo'd, then sure we may speak to the Words themselves.

L. C. J. Look you, Mr. Attorney, either you mistake Mr. Pollexfen, or I do: For I take it, that he is entering into the Consideration of these Words as they are laid in the Indictment; that are uncertainly laid, so as that they will not support an Indictment of Treason.

Mr. Att. Gen. My Lord, he is arguing, that if they were spoken of the King, yet they would not be Treason.

L. C. J. Will he say so? I dare say, he will not.

Mr. Att. Gen. He is arguing upon the Statute, what Words are Treason, tho' spoken of the King, and what not; which I take it, is not the Question now.

Mr. Sol. Gen. My Lord, We humbly offer it to your Lordship, whether it be according to your Lordship's Rule and Intention, that he was



to argue whether the Words were Treason; or only whether the Form of the Indictment, as to the Innuendo's, was good and sufficient.

L. C. J. Taking the Words to be sufficiently set forth in the Indictment, and found by the Jury to be spoken of the King, especially the last Words: Do you think we would suffer that Question to be debated, whether they were Treason or not? God forbid. I will not sit here to hear that Question at all so much as made or put, I'll assure you. I took him not to argue at all any thing that way.

Mr. Pollexfen. Pray, my Lord, hear me; I am going only to this; for I would not offer any thing beyond what is fit for me to offer, and for the Court to hear: But this we say, that the Words, the effective Words, are not so sufficiently laid in this Indictment, as to make them amount to Treason, I am only going to that.

L. C. J. Ay; that's the stinging Part of the Question, and so I understood him before.

Mr. Pollexfen. My Lord, I only mentioned that of the Statute, that there were two Sorts of Words there taken notice of; to shew that I thought these Words were not within that Branch that is said to be Treason.

L. C. J. Well, go on.

Mr. Pollexfen. I will keep myself to the first Clause of the Statute; for what I mean, is this, That if these Words come not within that first Branch, which makes the Treason, then your Lordship cannot give Judgment upon this Indictment. For tho', my Lord, it may be these Words are extraordinary ill, and being spoken or preached, may have an ill Sense or Meaning with them; yet I would observe to your Lordship, there are other Penalties and Punishments provided for some sort of Words, than there are for others.

But then, my Lord, let us consider the Words of the first Branch of this Statute. If so be any Person does compass the Death, or bodily Restraint, or other harm to the King's Person, or to deprive the King, or levy War against the King, &c. and this compassing and imagination does express by Printing, Writing, Preaching, or malicious and advised Speaking, they shall suffer Judgment of High Treason. Now then, all that I would come to, is this, that this same treasonable Printing, Writing, Preaching, or Speaking, must be of such Words as shall intend the Death, bodily Hurt, Restraint, or Imprisonment of the King's Person, or levying of War.

My Lord, having said this, the next thing is to come to the Words themselves, and to take them as they are in themselves, without the Innuendo's, and see what the natural Sense of them will be: And we'll take them in the natural Order as they are laid in the very Indictment, and found by the Jury.

The first Passage of them is, *quod Populus*, &c. (meaning the People of England, the Subjects of our Lord the King) made a flocking to the King (meaning our said Lord the King that now is) to cure the King's Evil, which he could not do; but we are they to whom they should come, being Priests and Prophets, that by our Prayers can heal the Grievs of the People. Now, my Lord, with humble Submission, it is plain that as to these Words, they have not in themselves any tendency to Treason at all, whatsoever Reflection they may make upon the King; they are the Words of a Priest magnifying his own Office, and his Power with God Almighty; but they do not come up (I think) to this Crime, for which the Prisoner at the Bar stands accused.

Then the next Words that follow, are these, *Nos habuimus nunc duos iniquos Reges insimul, qui permiserunt Romanam superstitionem intrare in eorum conspectu*, &c. and who can be liken'd to none but wicked Jeroboam. My Lord, these, I do acknowledge, are very wicked and bad Words, especially if they must be applied, as the Indictment has set them forth, to the late King, and his present Majesty: Yet these very Words (under favour) will not amount to the Charge of High Treason. They deserve very severe Punishment; but they seem not to come up to any thing of an Intention, or compassing, or designing the Death, bodily Hurt, or Imprisonment of the King; or the levying War against him. This I speak, my Lord, with Submission, and I believe your Lordship may be of the same Mind.

But then, my Lord, the next Words that follow, are the Words (I suppose) that are rely'd upon, to make out this Accusation; *Quod si ipsi starent ad fundamentalia, ipse non timebat*, &c. That they should overcome their Enemies, as in former Times, with Rams-horns, broken Platters, and a Stone in a Sling. These, my Lord, seem to be the Words in which the Crime consists. Now, my Lord, if these Words in themselves are so uncertain, or such as do not tend or relate to the present King, or the present Government, to stir up Sedition or Rebellion against them, then they will not be Treason, because they do not so relate.

Now, my Lord, these Words, if you take them alone without the former Clause, *Nos habuimus nunc duos iniquos Reges insimul*, &c. closed with the Innuendo, that he meant the late King, and this, I see not possibly how they can be said to relate to the present King and Government, to make them Treason within this Act. Which way can it be? If they would stand to their Principles, they should overcome their Enemies: How can they be intended to be meant of the King, and his loyal Subjects? Then let us consider the Words that go afore, whether they will help any thing or no; *habuimus nunc duos iniquos Reges insimul*. These Words of themselves, stript of the Innuendo, do not express what two Kings are meant by them. If you take the Words strictly, that *We have had two Kings now together*, insimul, as the Word signifies, it must be two Kings at one and the same time: But take it in the English Phrase (as perhaps they would have it turned into English) *We have had now two wicked Kings together*, (meaning the late blessed Martyr, and his now Majesty), then it must be, We have had now two Kings successively; but it is a strange thing to render such Latin into such English, which seems to be, in the Nature of the Words themselves, such as will bear no such Sense or Construction as that. And then, the *qui permiserunt Romanam superstitionem intrare in eorum conspectu*; if the first Words do not in themselves express what Kings were meant, these Words that follow can give no manner of certainty to them at all: For here's not so much as any Innuendo; nor can the Words that follow them (*qui assilari possunt*, &c. which can be liken'd to none but wicked Jeroboam) in any sort, shew any certainty to whom the Words are to be applied, or illustrate whom the Speaker meant.

But now that which is the next Clause, is the worst Clause of all, *Sed*

VOL. III.

*si ipsi starent ad fundamentalia*, &c. *Ipsi* in all ordinary Construction of Speech in all Language, being coupled to the former Words (and so I think the Rule in the Grammar is, and will be read by any reasonable Person that reads) must refer to the next Antecedent. And then, who are they that are last spoken of? It must be the two wicked Kings, let them be who they will, that were meant by those wicked Kings; for there is no other Person that does intervene, as spoken of, to whom they should be referred. The former Words are spoken in the first Person, and plural Number; *We have had*, speaking in the Name of himself, and they that were his Auditors, and then to come with *Ipsi*, after he had mentioned two Kings, who had suffered Popery to come in, and were to be likened to Jeroboam, changes the Form of the whole Speech. It should seem, according as it is laid in the Indictment, to run thus, and then I desire your Lordship to consider the Sense and Grammar of them; *We had now two wicked Kings together, who have suffered Popery to come under their Noses, we cannot compare them to any but wicked Jeroboam: And if they would stand to their Principles, then he did not doubt but they should overcome their Enemies, as in former times*, &c. Why then, if *Ipsi*, according to Grammar, and ordinary reading, being a Relative; must refer to that which went last before, there is nothing in all the Sentence before, but, *We*, that is, he and the People that heard him, and the two Kings that he spoke of; and the two Kings being last spoke of, it must in all Grammar, I say, and Sense, be understood of the Kings. Then let us see, what Sense we can make of it; *We have had two wicked Kings, that have permitted Popery under their Noses, that they can be compared to none but wicked Jeroboam: and if they stand to their Principles, he did not fear but they (the Kings) should overcome their Enemies*. In all ordinary and fair reckoning, I cannot see how they can mend it, but the *Ipsi* must refer to the *Reges*; and the *Eorum fundamentalia*, *ipsorum Regum*, if you take these Words, as they do lie; and if they have any Sense or Meaning at all in them, this is the proper and natural Sense and Meaning of them.

For it is pretty hard to apply the *Nos habuimus nunc duos iniquos Reges*, to the *ipsi qui starent ad fundamentalia*. In all Probability he spoke it thus, if it continued on in a Discourse, which I can say nothing to, being only to speak to the Words as they are laid in the Indictment, *And if we do but stand to our Principles, I do not doubt but we shall overcome our Enemies as formerly*, &c. But *Ipsi* is a Variation of the Person, and, according to all Grammatical Construction, we know how it must be expounded. The other seems to be the natural reading of the Words; but the Indictment has not pursued them; but has made them instead of that, to be quite Nonsense, supposing them to have been spoken as the Jury have found them.

But, my Lord, if they do not well bear that Sense, which I think they should properly and naturally bear; if they had been right laid, the Question then is, Whether we can make these Words, as they are laid, to bear any such Sense, as the King's Counsel, by their Innuendo's, have placed upon them? that is, if they, meaning his Auditors, should stand to their Principles, then they should overcome their Enemies, meaning the King and his loyal Subjects. Truly, my Lord, I cannot see how that can be, how *Ipsi* should be me; I and mine Auditors should stand to their Principles.

But setting that aside, come we then to the main Words: *He did not fear but they should overcome their Enemies*. The great force of these Words lies in the word *Enemies*. What is meant by *Enemies*? For all the rest without that, would not signify any great Matter, with Submission to your Lordship, as I think: And therefore here comes the great Burden, and that which is the sharp Sting of all this Indictment. And to make *Enemies* to signify the King and his Subjects, my Lord, is a very wonderful Innuendo, as I believe ever was attempted to be made. So it seems to me, with Submission to your Lordship; the word *Enemies* itself is a Word of so large Comprehension, that it reaches to a great Part of the World. God knows, Mankind is so very unhappy, as that every one hath very many, and too many Enemies. Who is not an Enemy? A Man scarce knows; 'tis well if he does. And this is a thing that's mighty hard, that so general a Word should have so heinous a particular Application.

There then rests the Burden of the Case, whether *Inimicos* should signify the King and his loyal Subjects. If in the natural Grammar, the former Words of *Ipsi starent ad fundamentalia*, be, as I have shewn, to be referred to the *duos Reges* as the last Antecedent, then it must mean, that the *duo Reges* would overcome their Enemies, and then there is no hurt in all these Words, but whatsoever was spoken is very commendable, and very allowable: But if you would take it otherwise, I see not how it can be done without the greatest Strain in the World of so general a Word; to make *Inimicos* mean the King and his Subjects.

Now, my Lord, let us see how they intend to help it out, and that is, by these Innuendo's. The Nature of an Innuendo hath been already opened to your Lordship by Mr. Wallop. I shall not repeat any thing of that which was said before, for that I cannot take to be any Service to the Prisoner at the Bar, to take up your Lordship's time in Repetitions. The Books have been cited, and Reason itself will direct to that; for must not a Man be convicted by his own Words, as well as punished for them? It is not, sure, the skill of the Clerk to put in an Innuendo, or of any one else, that shall be construed to make my Words to have any other Sense, than I that spake them intended them in. If the Words are not clear, why then they cannot affect the Auditory, so as to have any evil Influence upon them, to incite them to Sedition or Rebellion: for sensible Words must influence sensible Men: But Words that are insensible, can have no Influence at all upon rational Creatures. Then shall an Innuendo make that an Offence, which without it was not an Offence; especially so great an Offence as that of High-Treason? Surely not.

Besides, my Lord, all our Books are against making any such Construction. *Ro's Abr. 1. Part 84*. There is a whole Bead-Roll of them to prove, that Innuendo's will not help, where the Words in themselves have any Incertainty in them. The bare setting down the Words with Innuendo's are not an Averment sufficient to maintain an Action, or an Indictment. The Cases there are indeed upon Actions of the Case for Words, which in reason are under the same Rule.

For, my Lord, there are two Ways to apply Words that are uncertain, to bring out the true Intent and Meaning of them, to whom they are to be applied; the one is by a *Colloquium* precedent, and where there is a *Colloquium* precedent of such Matter as will lead in the Sense of the Words, which



without it were not to be understood, there the laying that *Colloquium* makes the Words come to be sensible, and there is this Reason for it, whenever that's done, the *Colloquium* must come in Evidence, and must be proved: But I never yet knew an Innuendo offered to be proved. Another Way is this, where Words are laid in a Declaration with an Averment precedent to be spoken of such a person, then the words, with an Innuendo after that Averment, shew sufficiently what is meant by them. If so be scandalous Words are spoken, as to say, *Thy Landlord, your Brother, your Master, your Servant, your Son, is a Thief*, or the like: In these Cases the Words in themselves do not express the Man of whom the Scandal is raised, but they give such a Denomination of the Man, that may by the Hearers be sufficiently known. Why then, in that Case, if in the Declaration it is averred that the Plaintiff was his *Landlord*, was his *Brother*, was his *Master*, was his *Servant*, was his *Son*, and that these Words were spoken of him, and thereby it comes to be made apparent to the Court what is meant, and who is meant, that is well, and all that must be proved to the Court upon Evidence, or the Action cannot be maintained. By such means as this it is made plain and demonstrable, that there can no doubt remain, either with the Court or the Jury, to whom the Injury is done, and of whom the Scandal is uttered. And these are the only two Ways that ever I could observe were allowed to be sufficient to maintain any such Action: And there the Innuendo comes very properly in to assist the Averment, or the *Colloquium*.

But now, my Lord, here in this Case, here's nothing of that kind but only a bare Innuendo, that such and such were meant, without either a *Colloquium* that there was a Discourse concerning such and such Persons, or an Averment that the Words were spoken of the Persons.

My Lord, I cannot tell what Precedents they will offer to your Lordship of former or latter times. We have had but a very little time to look into it, and have not that recourse to the Precedents on the Crown's side that the King's Counsel have. But, my Lord, for Precedents that may have past *sub silentio*, without having the question stirred, I suppose, will not be allowed by your Lordship, and the Court, as Precedents against us. But I think there will be no Instance given, where-ever any such thing came in question, that ever Judgment was given against the Defendant.

My Lord, this seems to be the Sense and Nature of the Words as they are laid in this Indictment, stript of the Innuendo's, and your Lordship knows what a Case we have now before you. We are in the Case of the Life of a Man, which is much favoured in Law, and if there be any doubt or uncertainty, your Lordship will lean rather towards the favourable side; and if, according to the Rules of Law, Words to make Men criminal shall not be strained, or forced beyond their plain, natural meaning, sure they shall not to make a Man capitally so: For the greater the Crime is, the greater Consideration the Court will have to see that there be no strained, forced Constructions to bring the Life of a Man in danger: And therefore I humbly pray that Judgment may be arrested.

*Mr. Att. Gen.* May it please your Lordship, I am of Counsel in this Case for the King: and notwithstanding any thing that has been said, I do conceive, that there is High-Treason well alledged in this Indictment, of which the Prisoner is found guilty, against whom I must demand your Judgment. My Lord, there is a great difference in this Matter; that is, whether the Words are Treason, as they were spoken by him, and whether or no this Treason, admitting it to be Treason, be well disclosed by this Indictment: For, my Lord, I think to preach in a Publick Assembly, that *we have had two wicked Kings together, who have permitted Popery to come under their Noses*, and then to go on with it to *Stand to their Principles* (for so the Words are laid in this Indictment) and they *should overcome their Enemies, as in former Times, with Rams-horns, broken Platters, and a Stone in a Sling*, is a very high Aggravation of such Words. And, my Lord, if you remember the Evidence, as I doubt not you do, it was all spoken in a publick Assembly, before 4 or 500 People, and they were spoken without any Words intervening whatsoever. These were the only Words that were spoken relating to this Matter: So that these must carry their own pregnant Sense with them, of exciting the People to stand to their Arms against the wicked Kings, or else they are of no signification. And thus they are laid in the Indictment, and found by the Jury to be spoken positively to stir up the People against the King, to depose him, and to raise Rebellion within the Kingdom. This, I say, is positively affirmed, and laid down in the Indictment. But now, whether or no these Words are in point of Form so laid, that the Court must understand them with relation to the King and Government, and as an Argument to stir up the People, is the Question: For if they be so, then they are well laid to support this Conviction of Treason.

Now for that, my Lord, I would only first say, they must either import Treason in themselves, or they do not. If they do import Treason in themselves, no Addition of the Person concerning whom they were spoken, as that they were spoken of the King, will mend the Case, or make it better. Tho' it be laid never so much to be spoken of the King, and that be never so much averred, yet if it be not spoken to disturb the Government, or to raise Rebellion and Insurrection, the adding a thousand times that it was spoken *de Domino Rege*, would not avail. They confess they have no Precedents to produce, and I believe truly they have not: And so they only go by way of Argument, taken from Actions upon the Case for Words: Whereas there is a great Disparity in the Case between Actions of the Case for Words, and Informations or Indictments for Words that are Criminal or Capital; and I know if they will look into the Precedents that are in Print, in the Entries, and in the Reports of Informations or Indictments, they will find it is never, or very seldom, or rarely done, it being looked upon as to no Purpose, or as perfect Surplusage, to lay that such or such a thing was spoken, *de Domino Rege de Gubernatione*. But in Criminal Cases, and not Capital, it is commonly thus, of which there are multitudes of Instances: That such a one being of an ill Mind, to raise Commotion in the Kingdom, and stir up Sedition, spoke these and these Words. This was the constant Form in your Lordship's time, as your Lordship can remember, in the Informations that were, or the Indictments of Persons that had spoken Words relating to the Duke of York. I can remember when your Lordship used to say, *Never consult me, but follow the ancient Precedents*, which I dare undertake to say are all thus, and so I shall shew by and by, it

has been in Indictments of Treason: And though, perhaps, one or two might at any Time be otherwise drawn (of which yet we can find none), yet, this hath been the constant Form for any thing that I can find, and it is of very great Consequence to say at this time of Day, That what has for 100's of Years together been the constant Practice, and way of Indictments and Informations, is not good, it were to turn all things topsy-turvy, and to make great confusion in Prosecutions, and the Practice of the Law, in Criminal Matters. I shall therefore shew your Lordship that here is such a Certainty as the Law does require, and as is usually practised, and that the Words in themselves are such, that they must have Relation to what we have laid down in the Indictment, and to nothing else.

But then they do lay down this for a Ground, which I think I may grant them very easily, and yet it will signify nothing to what they mean; I would wipe off all these Innuendo's, leave them out of the Case, for I never expect any help from them at all; and then I do agree that an Innuendo, without a strong, urgent Averment that the People which hear the Words spoke, and the Court that are to pass Judgment upon them, shall say forcibly appears from the Words themselves, who was meant, and what was meant, will not support the Indictment, nor has the Verdict fortified it at all.

But they tell you in Actions of the Case, if *John-a-Stiles* be called a *Bankrupt*, if he will bring an Action against the Party that spoke these Words, he must aver and affirm, that they were spoken *de Querente*, of that particular Person that doth bring the Action; and so it is, the Law is so, and the Reason's plain, because there are many *John-a-Stiles's* perhaps, and the Plaintiff that brings the Action is but one; and therefore, if he does not shew that the Discourse was of that *John-a-Stiles*, who brings the Action, it is uncertain who was meant, and cannot be supported by a bare Innuendo. But I take it in these Cases, wherever the precedent Averment is necessary, there must be a distinct Proof of that Averment, as if *John-a-Stiles* be called *Bankrupt* (in the Case I mentioned), and he brings his Action, and avers the Discourse to be *de Querente*; and he calls Witnesses, who prove the Words to be spoken, that the Defendant did say *John-a-Stiles* was a *Bankrupt*; and the Court demands this Question of the Witnesses, But do you know what *John-a-Stiles* the Defendant meant? and he shall answer, No, we only heard the Party say, *John-a-Stiles* is a *Bankrupt*: It is apparent that Evidence will not support the Action; for that Averment must be proved, that he that brings the Action was intended, and that there was a Discourse concerning him. There must be, I say, the Proof of the Averment to make up that certainty of the Application of the Words, which the Law requires. And therefore in what Case soever it be, if the Words be the only Proof, or if the Words carry sufficient in themselves to shew of whom they were spoken, it is ridiculous to say there must be an Averment that they were of such a one; because Words cannot prove themselves.

For, my Lord, where-ever Words by strong and pregnant Intendment do carry Slander, and of such a particular Person, there the Books are express that there needs no Averment, that they were spoken of such a one; as in the Case of *Fleetwood* and *Curle*, *Hob.* 267. which is a Rule for all Cases upon Actions of the Case for Words. *Sir Miles Fleetwood* being Receiver of the Court of Wards, brought an Action of the Case against *Curle*, for that he (having Speech with one *Whorewood*) did speak of the Plaintiff these Words, *Mr. Deceiver* (Innuendo the Plaintiff) had deceived and cozened the King, &c. He did there alledge the Words to be spoken of the Plaintiff. In that Case, upon Not Guilty pleaded, it was found for the Plaintiff, and it was moved in Arrest of Judgment, that it did not appear by the Words spoken, that they were spoken of the Plaintiff: For, *Mr. Deceiver* had no Propriety to that Purpose; and the Innuendo would not make it certain, when it appeared to the Court, that the Words would bear no certainty, tho' he did alledge the Words to be spoken of the Plaintiff in that Case; because there may be many Deceivers, or Receivers, and he must prove it particularly spoken of himself. But then the Book is express, that after a Verdict, tho' he did not aver it was spoken of him in his Office, yet Judgment should be given for the Plaintiff, because there is a pregnant, violent, certain Sense, that may lead the Court and Hearers to take it so to be meant, and cannot be otherwise imagined; and therefore the Court will not imagine it. As if a Man spoke of an Attorney, that he is a Knave, and spoke not of his Practice; why then the Action won't lie: But if he be named an Attorney in the Declaration, and the Hearers knew him to be an Attorney; in that Case, it was ruled not necessary to have any such Averment; for the Words themselves did import it in the Original Case, that it was spoken of him in his Office, by the Word *Deceiver*; that having an Allusion and ironical Resemblance to the Name of his Office; and in the other Case, because the Hearers knew him to be an Attorney.

So, my Lord, upon these Grounds, Judgments have gone in those Cases, which they themselves do so much rely upon; Actions for the Case for Words; wherever the Words import pregnantly such a Sense, there does not need such an Averment. But I shall shew that in Informations and Indictments this cannot be necessary, and the Reason seems plain: For here, as we have laid it, and as the Truth is, we all know it, there is but one King and one Government; and when Words are laid to be spoken to excite Commotions, or Rebellions, or Insurrections, they are but external Declarations of the Mind; the Treason that he is charged with, that is inward, it is the Thoughts that are Treason. But it is true, the laying that alone, that he did so compass and imagine, without some outward Declaration, would not be good in an Indictment, any more than the outward Declaration without the inward Intention. But the Treason is, that he did imagine to raise Rebellion and War within the Kingdom, to stir up the People against the King, and to depose the King, and bring him to Death, and deprive him of his Crown and Dignity; and then goes the Indictment on, and says, to the End that he might effect this Treason, he spoke such and such Words, which by that new Law (that *Mr. Pollexfen* mentioned) will amount to Treason in Speaking, as well as Writing. I say, it is positively charged in the Indictment, that he did thus and thus speak to stir up the People to Rebellion and War against the King; and then come the Words. If indeed any collateral Words be spoken, which in their own Nature import not a Tendency to incite and stir up the People against the King, it would be naught with Innuendo's; and so it would be, if there were



were twenty Averments. But I think that this is as strong an Averment as can be (what we all know to be true), that there is but one King, and one Government. And then he spoke the Words in a Publick Assembly, *We have had so and so, and if they would do so and so*; which carries forcibly and pregnantly this Sense, that it cannot be intended to be spoken against any one else, but against the King and the Government; especially now after the Verdict, when the Jury find that he did all this to raise up the People against the King. All the Discourse is in itself pregnantly and forcibly tending that way.

My Lord, we are now upon the Form of the Indictment. Put the case there are many idle Expressions in it, as I may grant there are; yet, if the greatest part import Treason, Sedition and Rebellion, and are laid to be done to incite the People to Rebellion, and so found by the Jury; then the Indictment is well laid, and Judgment must be given for the King. The first Words are highly derogatory to the King, and must be understood to be spoke of him. If the Prisoner had thought these Words would not have been Treason, if he had demurr'd in the Case, by that, as the Jury find it now here, he would have confess'd it to have been spoken of the King; for it is said, He spoke it to the People, and he spoke it of the People of England; and to say that *Populus* may mean the King of France's People, as Mr. Wallop would have it, certainly no Man can think that: For when he speaks in English, to an English Auditory in a Publick Assembly, *That the People make a flocking to the King*, how can that King mean the King of France? And how can the Word *People*, by any Intendment, but a very foreign and strange one, be interpreted to mean that the French People should come over hither, for to be cured of the King's Evil, when (as he himself says) the French King claims such a Power? No, That does fix it particularly upon our own King.

Pray, let's consider then, what possibly can the Intendment of these Words be, that follow, *We have had now two wicked Kings together*? As for that Objection of the Word *insinuat*, that it means together at one Time, that sure can have very little in it; it being to be taken according to common understanding in our Dialect; and in English, to say we have had now two wicked Kings together, every one will understand it, we had them one after another, because we have but one King at a Time.

And then, my Lord, if the latter Words were left out, with submission, I conceive upon the Authorities that are in our Books, these Words would have been Treason upon the Statute of 25 Edw. 3. For, my Lord, in a Publick Assembly of People, which is an unlawful Assembly, as this was, to speak such Words of the King, would be Treason. For put the case, he had collected a number of armed Men at *Hounslow Heath*, and there exhorted them to stand together; that the King was a wicked Prince, and had misgovern'd himself in the Administration of the Government; I think that would be Treason within the Law. By the new Statute, to say the King is a Papist, plainly is a *Præmunire*; but to say the King is a wicked King, and has misgovern'd himself in introducing Popery; that's a step further than what the Act makes a *Præmunire*; for these are Words to stir up the People against the King, especially preached in a Publick Assembly.

Then, My Lord, you'll take all these Words together; first, after he had drawn away that great Authority, and great Power that the God of Heaven hath given to the King, in curing the King's Evil, and declared him to be a wicked Prince, by suffering Popery to come under his Nose, and that he was to be compared to none but wicked *Jeroboam*; and then, to exhort the People to stand to their Principles, and he did not doubt, but they should overcome their Enemies, what can be plainer Treason? For it is plain, that he did speak to the People, to the Congregation; and that can never be understood otherwise by the Court, nor by the Hearers. For that Interpretation, that the King should overcome his Enemies, it is foreign and ridiculous, and not to be imagined by any body, that has either Sense or Reason about them.

But, my Lord, I shall leave all this (the Jury having now found it), to shew what Precedents we could prepare for your Lordship; how things of this Nature have been used to be drawn: For we have made, for the little time we had, as good a Search as we can; and I have found several: And indeed, I cannot find one otherwise, than as this is. And for late Informations and Indictments, if you examine the Clerks that now are, they'll tell you, that there is not one otherwise: But that if it be said to be done with an intent to raise Rebellion or War against the King, or Sedition, or the like; and then say, he spoke such and such Words, that is sufficient. But I will shew your Lordship some ancienter Precedents, some few which will shew how the Practice was heretofore.

The first is 3 H. 8. Rot. 17. in the Indictment against my Lord Grey of High Treason; after the general Charge of machinating the Destruction and Death of the King, and Subversion of the Government; it is said there, that *Proditorie* he did speak these Words, *'That the King's Grace should be driven out of the Realm, and the Prince's Grace should never succeed.'* And it is not averr'd that these Words were spoken of the King, and of the Prince; nor was there any need it should be averr'd; for the Words plainly import they were spoken of them; and the laying it, that it was to raise Sedition within the Realm, was sufficient to make them High-Treason.

Then the next is my Lord Cobham's Case, 2 Jac. Sessione 1ma; for it is one of the great Records that lie in the Chest, amongst the *Arcana*. But by the Book in the Office, we have a Copy of it; but there is the Record in the Chest, and there it is, *'Posteaque 12 die Junii, ultimo præterit. ac diversis aliis diebus & vicibus, tam postea quam antea, dixerunt, &c.'* (for there are other Defendants) *Proditorie* 'there will be no good till the King' (meaning our Sovereign Lord the King) 'and all his Cubbs, (meaning the Children of our said Lord the King) were quite taken away, &c.' I leave out the General Charge of the Machination and contriving of the Death of the King; but to the intent to effect that Treason, such Words were spoken without any averment, that they were spoken *de Rege*. There was no mention of the Progeny of the King before; or that the Cubbs that were spoken of were the King's Children; neither would the Words *Regalis Progenies* answer the English Word *Cubbs*; which was a Word abusively mentioned by him. But in that Case it was

held to be a good Indictment; and Sir *Walter Raleigh* was condemned upon it.

Another is *Williams's Case*; and that's very like our Case in the first Part; that is, the first Words insisted upon are laid positively to be spoken of King James, by an Innuendo. *Pafch. 17. Jac. Rot. 40.* there, after the *Machinans & intendens, &c.* it is laid, that he, such a Day of September, *Proditorie* devisavit a treasonable Book called *Balaam's Ass*; wherein there are such and such Passages applied to the King by the Innuendo. There is nothing said of that, to be spoken of the King, *de Rege*; but the Words of the Book carrying their own plain Sense and Meaning in them, that they must be intended of the King, and the Government, that was sufficient to maintain the Indictment; and he was Executed. The Innuendo's are not material. If it can have no other Sense, that is enough to maintain the Indictment.

My Lord, in *Fitzbarris's Case*, which your Lordship and all the Court remember; part of the Libel related to the Duke of York, by the Letters D. of Y. and sometimes only called by the Letter Y, and the King himself by the Letters Ch. And the Innuendo is, meaning our Sovereign Lord the King; and there is nothing averred in that Case, and indeed there can be nothing averred; for by the Import of the Thing it must have that Sense.

Colonel *Sidney's Case*, my Lord, you'll find to be the same: There's no Averment; but the Words of the Libel are brought in with an Innuendo.

And you have another Indictment at *Salop, 31 Car. 2.* One *Pitt* was indicted of High-Treason, and convicted for these Words, *'If the King should hang or banish any of the Papists, his Throat shall be cut.'* This is laid in the same Form in the Indictment, as we have it here in our Case. If you please it may be read that he did *advise, proditorie*, speak such and such Words, *if the King*, meaning our Sovereign Lord the King, without any previous Discourse of the King, or saying it was spoken *de Rege*, *should hang or banish any of the Papists (quasdam personas male dispositas, &c. Innuendo) his Throat shall be cut.* He was Convicted, I say, and I think was Executed, tho' I cannot directly tell that: But this is the Record of his Conviction.

So I take it, it is, with Submission, that the Precedents go all along, both in Criminals that are not Capitals, in Indictments and Informations; and also in Indictments for High-Treason. The charging the Words to be spoken to stir up Sedition and Rebellion within the Kingdom, without the help of any Averment whatsoever, is sufficient; that is a strong Implication that they are spoken of the King and Government.

And, my Lord, as to these Words they could not be laid otherwise, than they are in this Indictment; for this is all that the Persons that are the Witnesses swore was spoken. Your Lordship remembers it, it was so, when they were here; they could swear no more. So that to have averred that he spoke to them *de Rege & Gubernatione*, would have put a Proof upon us, that our Witnesses would not have come up to. We must have proved a Discourse of the King and Government, and a swearing of the Words would not have been a Proof of that. The Jury has found that this was done to stir up Sedition, and to levy War; therefore, I conceive, according to the constant course of the Precedents, there is no need of any Averment; but the Words are well laid, and well proved, and he well convicted.

To say, that Enemies is a very general word, and that we have Enemies of all sorts; and that therefore a bare Innuendo cannot make it mean one more than another, is odd in this Case: For I would fain have any Man assign me what sort of Enemies he could be thought to mean. In such a Discourse he could not mean spiritual Enemies; because the Instruments that they were to be destroyed with, were carnal Weapons, broken Pitchers, and a Stone in a Sling. These are not fit for overcoming spiritual Enemies; but they must be such Enemies as can be destroyed by such Instruments, Carnal Enemies that are to be vanquished by outward Force. And then what Enemies can such a publick, unlawful Assembly have, but the Government? All that are of their own Side and Party are none of their Enemies. And it cannot be taken distributively, that every particular Man has his Enemy, that's a foreign Understanding: But when he spoke to the Congregation in a Conventicle, that they *should overcome their Enemies*, being so unlawfully assembled, that must be the Government: And had he not told you before, who were the Enemies that he plainly meant? He had said, that the King was a wicked Man; and according as he represented him, an Enemy to God and Man by introducing Popery into the Kingdom. And you are to consider the Time when, and the Place where these Words were spoken. We know that in these Conventicles it has been the constant Cry, that we should be all over-run with Popery, and the like: And therefore, that is considerable in the Case.

My Lord, I make a great Difference between Words spoken in private, and Words spoken in a great and large Assembly. It is the same Thing as if it had been spoken at the Head of an Army; especially when People meet contrary to the Laws of the Land in Defiance of the Government, and gather together in such great Multitudes; and have such Discourses and Opinions broached amongst them. I cannot see truly, how it is possible to have been better laid, being sworn directly as it is laid; and especially being found to be all spoken to disturb the Government, and to raise Sedition and Rebellion. Therefore I must submit it to your Lordship; and pray your Judgment against the Prisoner for the King.

Mr. Sol. Gen. My Lord, I beg leave to add one Word on the same Side. That which I shall apply myself to, is to shew that this is a very good Indictment, in the Form of the Indictment, and that upon this Matter which the Prisoner is proceeded against; for it could not be better.

My Lord, the Fact charged upon the Prisoner is as Mr. Attorney has opened. These Words were spoken in a Conventicle, *The People make a flocking to the King to cure the King's Evil, which he cannot do, &c.* These are the Words upon which the Prisoner was committed: These are the Words upon which he is proceeded against; and these are the Words which have been found against him. And, my Lord, more Words than these are not alledged to be spoken by the Prisoner, nor proved to be spoken by him at his Trial upon this Indictment. Therefore, if these

Words



Words are High-Treason, this is a good Indictment in Substance, if it proves so too in Form. And whether these Words are not themselves Treason, I shall not now speak, but shall only go to shew, as I said, that it is a good Indictment in Point of Form. For these Words are his Crime, as spoken in that Conventicle; and the only Crime of which he was accused, and of which he is found guilty.

Now, my Lord, let us see how the Indictment is. He is charged with compassing, imagining, and intending to raise Rebellion, and levy War in the Kingdom, and to depose the King; and to bring the King to Destruction: That is the Charge of High-Treason, in the Kind of it. Now, as that is the Charge, it is of absolute Necessity to alledge an Overt-Act, which must be proved too; and if there be not an Overt-Act, the Indictment is naught. Well, then, the Treason is compassing the Death of the King, and intending to raise Sedition, and levy War. What is the Overt-Act charged upon him? Why, to bring such his wicked Purposes to pass, he did traiterously speak, publish, and utter [the Words of the Act of Parliament, in 13 Car. II.] in an unlawful Assembly, in the Presence of divers of the King's Subjects, these Words that I repeated before to your Lordship.

Now, my Lord, I ask; Are these Words Treason in themselves, or are they not? If they are Treason of themselves, then the Indictment is certainly good in Form, without saying, that he spoke the Words of the King, or of the People of England, Subjects of the King. For either they do import that of themselves, or they do not. If they do import it of themselves, the saying that he did speak them of the King, and of the People, would have been impertinent and idle, because it is a thing manifestly plain of itself. If they do not import this of themselves; then had it been charged, that they were spoken of the King and of the People, this must have been proved.

To go on then, my Lord: If it must have been proved, it must have been proved either by the Words themselves, or by something else. If it were to be proved by the Words themselves; why then it returns to the old Question, and we need not alledge it. If it were to be proved by something else, then the Fault is not in the Indictment; but it must be want of other Matter than what our Witnesses would prove; which, I am sure, would have been a very great Fault in us to have drawn upon ourselves. But if the Words import of themselves the Meaning to be of the King, and of the People of England; then it is plain they make the Treason of themselves, and there requires no Averment.

As now, for Instance, my Lord, to change the Words a little, to illustrate the Case; as suppose it had been charged in the Indictment, that to bring his wicked Purposes forth to effect, he did speak these Words in such an Assembly, *Procure to yourselves Arms, and make yourselves ready by such a Day, and go to Whitehall, and kill the King*; would any Man have said here, that it was necessary that we should say in the Indictment that he *dixit de Populo, vel de Rege*, so and so? No certainly, it is not necessary, because the Words plainly import their own Meaning.

So here in this Case; if the Words themselves necessarily import to be spoken of the King, it is as impertinent here to say, *dixit de Rege, dixit de Populo*, as in that Case; because it is no more than what they necessarily and naturally import of themselves: Which shews that this Averment, that they would have, is absolutely immaterial; and, if it had been charged, would have required some other Proof than the Words themselves. And so the Fault cannot be, as they would alledge, in the Form of the Indictment; but in the Substance of the Words, that they do not import in themselves such a Meaning. And therefore, I think, with Submission, I have maintained the Form of this Indictment beyond all Contradiction; and, notwithstanding all their Objections, it is a very good Form without the Words *dixit de Rege, vel de Populo*.

As Mr. Attorney said, it is necessary, my Lord, in Actions on the Case for Slander, to aver, *dixit de querente*, because he must ascertain the Person of whom the Words are spoken, to be the very Plaintiff; for there may be divers of the same Name: And you must always, upon a Record, ascertain the Person, to entitle the Plaintiff to the Action: But where Words are pregnant, and full of themselves, there needs no Averment in such a Case; which without such Pregnancy would be necessary, and, if not done, the Action would fail. As in that Case that was cited by Mr. Attorney of Sir Miles Fleetwood; if it had been that the Words were, *Sir Miles Fleetwood has deceived the King*, it would not have borne an Action, unless it had been averred to have been spoken of him as of *cozening the King* in his Office: Because generally to say a Man has *cozened the King*, will not bear an Action, it is too loose. But when he says, *Mr. Deceiver*; the Ironicalness of that shall not excuse him, but rather demonstrate both who, and what he meant; that it shall be applied to him, as doing it in his Office. And, being so, it must necessarily be understood to be a very great Slander; and then it needs no Averment. So says the Book.

So that where Words are plain and full, even in an Action on the Case, there requires no Averment: But in Indictments, they being for Offences against the Government, the very ancient Forms used will govern the Case, as well as the Reason and Nature of the thing; that no one can be meant, by such sort of Words, but the King and the Government: And for that I rely upon the Precedents that have been cited, that the Forms were always thus. The Precedents, with humble submission, where the Overt-Act laid in the Indictment, is by Words spoken, that it is said, *dixit de Domino Rege, &c.* There is not one that does ever carry it so, but the Forms are constantly in the same Manner with this that is now before your Lordship, without such Averment, as carrying plain Surplusage, to aver that which the Words necessarily import.

To say, my Lord, in this Case, as we hear it objected on the other Side, That these Forms passed *sub Silentio*, and no such Objection was ever made, I say, that is no Objection to our Indictment; for the Argument sure turns the other way; because the Forms have been constantly in this Manner that ours is, therefore it is assigned, that what they offer, is no Objection at all; for, doubtless, in so long a tract of Time, when so many learned Men sat on the Bench, and so many learned of the King's Counsel attended the King's Courts, and so many Persons have been

indicted, tried, and suffered upon such Indictments, who would have saved their Lives, no doubt, if they could, by making such Advantage of such an Exception; that is a strong Argument, that it was never thought an Exception. So that, besides the Reason of the thing, the Precedents are all with us, which hath always been accounted a good Argument.

My Lord, a great many of us remember the Indictments of latter Times; particularly that of Colonel Sidney: Tho' there is another Overt-Act laid in that Indictment too, yet that is nothing to this Case. If there be but one Overt-Act laid in the Indictment, it must be proved by two Witnesses; but if there be several Overt-Acts laid in the Indictment, and one is proved by one Witness, and the other by another Witness, that is sufficient to maintain the Indictment. In Mr. Sidney's Case there was to one Fact but one Witness; and therefore it was necessary to lay another Overt-Act, which was proved by other Witnesses. And one Overt-Act comes to this point that's now in Question before your Lordship. It is in this Form directly, without any Averment that the Words were spoke or written *de Rege or de Regimine*, but that the Book contained so and so: And the Thing itself speaks itself of whom it was meant. If therefore the Words in that Case, being proved, were necessarily to be applied to the Government of England, there need no Averment: No more does there here.

My Lord, not to trouble your Lordship further in so plain a Case, the Precedents being thus, and it being known to be the constant Practice in point of Form, I would fain know what they would have had us done. The Witnesses swear these are the Words, and there are no more; how then can we frame a better Indictment, than upon the Words that they swear were spoken? My Lord, we pray your Judgment for the King.

L. C. J. Well, have you done on both Sides?

Mr. Attorney. Yes, my Lord.

L. C. J. Truly for my part, I think this is a Case of great Consequence on the one side, and on the other. I hear it's said there are abundance of Precedents in the Case, some have been mentioned, and it is necessary we should look upon these Precedents, before we deliver any absolute Opinion. But, truly I must say, Mr. Attorney's Precedents have with me very little weight. And I must differ from Mr. Attorney in another Thing: For if in case the last Words were out of the Case, of *standing to their Principles, and overcoming their Enemies*, do you think, that because it is said in the fore part of the Indictment that he intended the Death of the King, and to raise Rebellion, and therefore said, there *were two wicked Kings* who suffered *Popery under their Noses*, and were to be likened to *Jeroboam*; that that would be a good Indictment for High-Treason? Then it were plain the Act of Parliament, 13 Car. II. was made to no Purpose. For tho' I doubt not in the least, words may be an Overt-Act of High-Treason, in compassing the Death of the King, upon the Stat. of 25 Edw. III. I make no Difficulty in the World of that: So was my Lord Cobham's Case, and so were the Cases in Harry the Eighth's Time, *“We will drive the King out of England,”* or any thing of that Nature: I say, that would be an Overt-Act sufficient to bring a Man within the Compass of the Statute of 25 Edw. III. because those are express words tending to the Death and Destruction of the King, the deposing him and depriving him; and they call him the King. But if a Man comes and says, That such a one; with a Purpose and Intent to destroy the King, said these Words, *That the King could not cure the King's Evil*; that's not such an Overt-Act as to make good an Indictment of High-Treason. And to say, that the King introduces Popery under his Nose into the Kingdom; why it's a very high Crime, but it is prescribed by the Act of Parliament to be prosecuted only as a Misdemeanour, and punished by *Premunire*. If you look into that Statute, you will find which way the Words shall have a Tendency, that are to convict a Man of Treason; that is, that tend to the Imprisonment, bodily Harm, Death, or Destruction of the King, or raising Insurrection, and Rebellion; or levying War within the Kingdom, that is High-Treason. But Words that do not necessarily tend to any such thing; as to say the King is a *Papist*, introduces *Popery*, is *Popishly affected*, Phrases that some People delight in; that has a peculiar Punishment appointed to it by this Act. And this is all taken care of, to shew the Judges how they should proceed, being careful of leaving it loose, in so great a Case as High-Treason. And the Parliament seems to be the more careful in it, because they make the treasonable words such an offence, during the King's Life only. Now, as Mr. Solicitor puts the Case, by way of Illustration, in other words; I make no difficulty, but to bid Men prepare Arms, and go to *Whitehall*, and kill the King, would be rank downright Treason. Would any Man in the World doubt to aver, that that were an Overt-Act? No man living would. But if I will say, that to compass and imagine the King's Death, he bid them rise up and go to *Whitehall*, and they should overcome their Enemies, does that import the King? There's no necessity of that. The King cannot be said to be an Enemy, unless it be plainly declared by the Party himself who he meant. And then to say, How could it be made better? No doubt of it, it might easily be made better, if it had been considered of. For if you had come and averred, that these Words were spoken concerning the King, and the People of England, certainly it would have made it more certain. I don't bind myself now in my Opinion, by what I now tell you; but I am only breaking the Matter. If you had said, that he said, If we will stand to our Principles, we shall destroy them, I think it had made the Case stronger ten times; but you have not so done. Indeed, I am not so fond in my Imagination, as the Counsel for the Prisoner seem to be; That *we have had two wicked Kings together, who have suffered Popery to come under their Noses*; that therefore we must run it up to King *Ethelbert*, and I don't know who; no, that plainly in common English speaking, means two Kings successively; and it must be made a strange, forced Construction, if we should interpret it, that he did not speak these Words of the late blessed Martyr, and his present Majesty. And because *Enemies* is in the Plural Number, therefore to make it Nonsense, because one is destroyed, if the words had been well laid, as they might, therefore it could have no relation to him that was left, I say, would make a strange forced Construction. That might be well enough, if the words had been properly laid. But when

you



you come to speak of Enemies, innuendo, the King and his Subjects? how can that possibly be? For you had talked of no body before that they are said to have a Displeasure to; and therefore, without saying that the King is an Enemy, to say, *Stand to your Principles, and you shall destroy your Enemies*, innuendo, *The King*, is, I doubt, to stretch it a little too far. But whereas I have put the words, how I think they should have been laid; says Mr. Solicitor, The Truth is, they were not so spoken as you would have them laid, but they are laid as they were spoken, and as they were sworn; and that's a Point of Fact to be left to the Jury, whether they aimed at the King and Government, or not. Do you think that an Answer? For it would be the same Argument in an Action of the Case for Words: Where it's plain it must be *dixit de querente*, you do so and so. My Declaration must aver it, and I must prove it too. If I do not say it, tho' I prove it, that won't maintain the Action: if I do say it, and not prove it, it will not maintain the Declaration; all's naught: and what is there more in this Case? If you had said it, that would have directed the Jury plainly, upon finding the words as laid in the Indictment, to have found what was the Intention of the Party by these words. These are things (I must confess) that wonderfully weigh with me. It is in a Case of a capital Offence, where the Life of a Man is concerned. If the Precedents have all gone so, there is some Weight in that: But if the Precedents be only such as you have spoken of, Words directly telling who is meant, they have no manner of likeness to the Words in this Indictment, because there they could never import any thing else.

In the next place, I am stumbled at another thing, Mr. Attorney, and that is, the difference of the Persons in one part of the Words, and another. You have begun in the first Person Plural, *We have had two wicked Kings together*, and as the Latin Words are, *Nos habuimus nunc duos iniquos Reges infimus*, but afterwards you say, and if they, *Ipsi*, will stand to their Principles, *he did not doubt but they should overcome their Enemies*. It had been best to have laid them, as (certainly in common understanding) they must be believed to be spoken, *If you or we will stand to our Principles*; and then the very Innuendo would have been more sensible and applicable.

Mr. Sol. Gen. But, my Lord, it was sworn so by the Witnesses, that he said, *If they*.

L. C. J. The words say he preached, *We have had*, that is, he and the Congregation assembled, and then it is afterwards turned to *they*. I make no difficulty in the World, but that *we have had two wicked Kings together*, was intended of the late King and this; and if it had been alledged, that afterwards he had said, *We shall overcome them*, and a Jury had found that these words were spoken with such an Intention, as is laid in the Indictment, it would have been Treason. But both in Grammar and Reason, when you come to say, and *si ipsi*, &c. pray, to whom should that relate? What's the English of *ipsi*? Is it *we* or *they*? If it be *they*, in the third Person, there are no third Persons spoken of, but the two Kings, and they are the last Antecedent. For my part, it does stumble me, it is a thing of great Consideration. I speak not, as I said, to bind myself in Opinion; but I think, if ye had put the word *Nos* instead of *Ipsi*, it had come nearer to the understanding of Men, both in Grammar and Sense. For I exclude myself, and them I speak to, if I put it in the third Person, and your Innuendo (I said) can no way help it.

Mr. Att. Gen. Truly, my Lord, I did not think that that did rest upon your Lordship at all, as any Objection.

L. C. J. It does rest, I assure you, Mr. Attorney.

Mr. Sol. Gen. If we had done otherwise, we should not have laid it as the Truth is, and the Latin does not alter the Case, for the word spoken was *They*.

L. C. J. Ay, but certainly he said (no doubt) *You or We*, if you will stand to your Principles, it's Nonsense else.

Mr. Sol. Gen. My Lord, I take that to be well enough, for here are three Sentences. The first is, *That the people make a flocking to the King*, &c. *Quod Populus*, &c. The next is, *Quod nos habuimus*, &c. And then the third is, *Quod si ipsi*. Now *Quod* governs the particular Sentence, and it being a particular Sentence by itself, with humble Submission, it is good in Grammar, and in Sense too.

L. C. J. Suppose you were to speak it in English. Mr. Solicitor, suppose you were to speak it, *Now we have had two wicked Kings together, who have suffered Popery to come in under their Noses* (meaning the late King and this), there perhaps the Innuendo is sensible, and, no doubt of it, then he must mean them: But to say, *If they will stand to their Principles, they shall overcome their Enemies*, pray to whom does that they relate?

Mr. Sol. Gen. My Lord, with humble Submission, you put the Case of an entire Speech, made in the Person of the Preacher, and the Congregation, and as the Words were spoken all at one time. I would make it an entire Speech too; but it seems to be several Sentences, and therefore that differs the Case. For taking it that these are three distinct Sentences, they might be spoken in a several manner by varying the Person, and so they were sworn. And suppose he had only spoke the last Words, an Indictment for this in the third Person had been a good Indictment: And if it had been charged in that Case, *Quod dixit & asseruit, quod si ipsi*, &c. and then in Evidence, come and prove these Words, would not that have been good?

L. C. J. Truly, I think, Mr. Solicitor, if the Indictment for these last Words alone had been in the third Person, it is a Question whether that might have been a good Indictment, if you had come in Evidence, and proved, that he had said of the King and Government, *If you will stand to your Principles, you shall overcome your Enemies*. Tho' I deliver no absolute Opinion of that, because there ought (I think) to have been an Averment, that they were spoken of the King, and the People.

Mr. Sol. Gen. In an entire Speech (my Lord) there the Relative must be applied to the last Antecedent, according to Grammar.

L. C. J. And I think it must be taken to be an entire Speech, and you lay it in the Indictment to be so, and then the Relative must go to the last Antecedent, or else Dr. Busby (that so long ruled in *Westminster School*) taught me quite wrong, and who had tried most of the Grammars extant, and used to lay down that as a positive Rule in Grammar, that the Relative must refer to the next Antecedent.

Mr. Just. Withins. Mr. Solicitor, if you make it several Speeches, then it's ten times worse, for then the latter Part is so uncertain, without an Aver-

ment of whom the Words were spoken, that sure it can never be made good.

Mr. Sol. Gen. Suppose it had been *Uterius dixit*, would that have made it a distinct Sentence? If it would, our Proof it may be was, that it was an entire Speech, but yet consisting of several Sentences, and must have the common understanding, as to their relation one to another.

Mr. Att. Gen. This Objection of *quod ipsi*, &c. was not moved by the Prisoner at the Bar, and therefore we did not expect to speak to it.

L. C. J. It is started here now by the Counsel. And it is a Question truly with me, whether this can be any way sensibly applied, as you would have it. Surely the Innuendo can never make it good.

Mr. Att. Gen. My Lord, I say sling all the Innuendo's out of Doors, the Words in themselves will do it.

L. C. J. Why then we must see whether it be a good Indictment in point of Form, or rather in point of Substance, as you have laid these Words, without saying they were spoken *de Rege*. It is a Question of great Weight and Concernment both to the King and to the Prisoner, and therefore we must take good time to consider of it, before we deliver a settled Opinion. But Mr. Solicitor, you very well remember that *Stalley's* Case was otherwise. For, tho' the Words were, the King of *England* is a Tyrant, &c. yet there it is said, and expressly averred, that he spoke the Words *de Rege*.

Mr. Att. Gen. Could Colonel Sidney have moved in Arrest of Judgment this that the Prisoner now starts? No, he could not sure. He might have moved for a new Trial-----

L. C. J. Certainly (Mr. Attorney General), that Case comes not up to this. Where the Words import in themselves that the King is meant, or any way circumstantially, it does necessarily imply they could be meant of no one else, and that would be good without the Averment. Which was the Case of Colonel Sidney, where the Matter declared in the Libel was plainly down-right relating to the Government, that if he did so and so he must renounce his Crown, and the like. How can that be applied to any but the King? The People of England have committed the Kingdom to his Power, &c. Why, how can it be interpreted that any Body else is meant?

Mr. Att. Gen. When will your Lordship please to give Judgment?

L. C. J. Mr. Attorney, we will consider of it. It is usual, in Cases of less Difficulty than this, to take time of Consideration. I do not say, but that looking upon the Precedents, perhaps I may alter my Opinion, and therefore do not speak this to bind myself: But we will consider of it.

Mr. Att. Gen. I look upon it that the Government is greatly concerned in this Matter, more than ten such as the Prisoner at the Bar.

L. C. J. It is true, Mr. Attorney, the Government is greatly concerned, and the Prisoner is greatly concerned, for his All is at Stake. I do say a good Indictment might have been made, I am sure.

Mr. Sol. Gen. This is the best we could make, for we had no Proof to make out any Averment, because these were all the Words he said.

Mr. Att. Gen. After the Jury have found the Words as laid in the Indictment, was it ever asked of a Jury, *These Words were spoken of the King, or they were not*, but you have not said that they are spoken of the King, for it is not laid in the Indictment? Would that ever vitiate the Verdict?

L. C. J. Mr. Solicitor, pray, would you have us give Judgment, that the Jury could not find that the Words were spoken of the King?

Mr. Pollexfen. The Jury have not found that they were spoken of the King, for there is no such thing averred.

Mr. Att. Gen. Nor they have not found them to be not spoken of the King; but they have found them to be spoken to stir up Sedition.

Mr. Solicitor. We are never bound by Law to aver that that we cannot prove. And therefore I put all upon that Dilemma; Either the Words import of themselves to be spoken of the King, or they do not. If they do not, if we had said, *dixit de Domino Rege*, it must have been proved, and that would have been to have left it to the Jury whom he did mean. And if they be not self-evident, God forbid the Jury shall be charged to find out such a Meaning; but if they are self-evident, they need no Averment.

Mr. Just. Hol. Truly, we think it may be good Evidence to a Jury and it is every Day done in Cases of Actions for Words. It is left to the Jury to consider, whether he meant the Plaintiff, *John-a-Stiles*, or any other: And the Evidence is helped by this, or that circumstance, where the Words do not naturally import it.

Mr. Just. Walcot. I do think that the Averment that these Words were spoken of the King, is a point of Fact that ought to be averred and proved. Might not the Jury in this Case have found that they were not spoken of the King? If they had found that, why they would have acquitted him; if they had found they were, and you had not alledged it, why then they had found more than the Indictment would lead them to.

L. C. J. Well, this is only by way of Discourse, not that we bind ourselves by our present Opinion. We must look upon it. We will not give our Judgment suddenly in a Case of this Nature.

Mr. North. Will your Lordship please to spare me one Word?

L. C. J. Ay, Sir, let every Man be heard, in God's Name.

Mr. North. My Lord, as to this Objection, *quod ipsi* relates to the two wicked Kings spoken of just before, that cannot be: For you take notice that these Words of the two wicked Kings relate to the late King, and to the present, as the Indictment says. One of the Kings is dead, so that you cannot understand it to be of the two Kings, that should overcome their Enemies, and therefore it must be the People. This *Populus* being a Noun of Multitude, and taken in the Plural Number, *Ipsi* will very well relate to it.

L. C. J. Mr. North, the Argument turns both Ways upon that, and certainly he did not express himself after that rate. It is so loose a hung-together Indictment, as truly I have scarce seen. For my Part, I would know how it come to pass; that we should not have as much Certainty in Indictments, as we have in Actions upon the Case?

Mr. Att. Gen. My Lord, there must be Certainty in all Cases, and we think there is Certainty enough in this for your Lordship to give Judgment upon.

L. C. J. Mr. Attorney, I believe if you sat in our Places you would not think so. All our Books require greater Certainties in Indictments, than in Actions on the Case: Nay, in Causes of this Nature, we are bound by our Law Books to be of Counsel for the Prisoner, which we are not



in civil Causes, where the Prisoner may choose his own Counsel. And we have not one Act of Parliament to help the defect of forming Indictments, as we have in Civil Actions, but still in all the Statutes made in *Jeofails*, there is an Exception of capital Offences, to shew that our Ancestors would not help Uncertainties or Insufficiencies in Form, where the Life of a Man was concerned. This seems to carry a great Consideration with it.

*Mr. Att. Gen.* My Lord, I was very willing and desirous your Lordship should assign the Prisoner this learned Counsel, because we did suppose they would have produced some Precedents of a better Form than this: But they have cited none.

*L. C. J.* And you have cited never such a Case as this, *Mr. Attorney*. And if we can find no other like Case, we must be governed by the Reason of the thing.

*Mr. Att. Gen.* My Lord, we hope you will expedite it, for the sake of the Government.

*L. C. J.* Certainly, I think it is very uncertain who are meant by *Enemies*; it may be *Mr. Solicitor*, *Mr. Attorney*, it may be the Court, no body knows who it is: For every body knows, that to Preachers in Conventicles, and to those that meet there, the Judges, and all that are for the Support of the Laws, may be reckoned to them as *Enemies*. But when it is so uncertain who are meant, how can we supply it by such an Innuendo? That there might have been a good Indictment framed upon such Words as these, as he in all Probability spoke them, and he justly found guilty, is no Question with me at all. And (as I said the other Day, for the Sake of the Auditory) if he be guilty of speaking such Words, and of Treason in speaking them; what will they be guilty of that were present,

and heard the Words spoken? They may thank God, that we have a gracious King, that does not take all the Advantages the Law gives him against those that break his Laws.

*Mr. Sol. Gen.* My Lord, your Lordship was pleased to mention *Staley's* Case to me. As I do remember it, it is not as your Lordship says: But it is, *That he, to perfect his wicked Treason (speaking of the King) said so and so*. Now, if an Averment be necessary, this is a naughty Averment; for it is not positively averred that he did speak of the King.

*L. C. J.* Well, we will look upon it. And I would ask you, *Mr. Solicitor*, whether if he said (as it is most likely he did) *If you will stand to your Principles; and you put in si ipsi*, whether that would be good?

*Mr. Sol. Gen.* My Lord, we put it in as the Witnesses swore it.

*L. C. J.* They did swear the Words according to their Apprehension; but, no doubt of it, in common Form he must speak them as I say.

*Mr. Att. Gen.* They swore the Words so; and we could lay them no otherwise.

*L. C. J.* Well, *Mr. Attorney*, will you move any thing?

*Mr. Att. Gen.* No, my Lord.

*L. C. J.* Then we will consider of it. And take you back the Prisoner; and you shall have a Rule of Court to bring him, when the Court is ready for Judgment.

*Then the Prisoner was carried back to the King's Bench; and no Judgment was given that Term; But the next Term Mr. Roswell pleaded the King's Pardon \* at the Bar of the Court of King's Bench; and was discharged.*

\* See the Pardon in the Appendix.

### CXXXI. The Trial of JOSEPH HAYES \* at the King's Bench for High-Treason, in corresponding with Sir Thomas Armstrong, an Outlaw for High-Treason. Nov. 21, 1684. Mich. 36. Car. II.

*MR. Hayes* was brought by *Habeas Corpus*, upon the 3d of November, 1684, from the Gate-house, and was arraigned upon an Indictment, to this Effect, viz.

*That he being a false Traitor against the King, &c. the 31st of August, in the 35th Year of the King, knowing Sir Thomas Armstrong to have conspired the death of the King, and to have fled for the same, did traiterously relieve, comfort, and maintain him; and for his Relief and Maintenance, did pay the Sum of 150l. against the Duty of his Allegiance, &c. To this he pleaded Not Guilty.*

Upon the 21st of November, 1684, He was brought to Trial, before the Lord Chief Justice *Jeffreys*, Judge *Holloway*, Judge *Withins*, and Judge *Walcot*; and the Jury being called, he challenged the following Persons.

<i>Sir Thomas Griffith,</i>	<i>William Fownes,</i>	<i>Robert Townsend,</i>
<i>Richard Ellis,</i>	<i>Charles Gregory,</i>	<i>James Bush,</i>
<i>Thomas Langham,</i>	<i>William Peele,</i>	<i>Walter Masters,</i>
<i>Henry Whistler,</i>	<i>Richard Weedon,</i>	<i>Thomas Larkham,</i>
<i>Nicholas Smith,</i>	<i>Thomas Pory,</i>	<i>Edward Cooke,</i>
<i>Thomas Soper,</i>	<i>Thomas Piercehouse,</i>	<i>William Fashion,</i>
<i>Thomas Passenger,</i>	<i>Richard Burden,</i>	<i>John Flowerdew,</i>
<i>Henry Minchard,</i>	<i>John George,</i>	<i>John Greene,</i>
<i>Peter Jones,</i>	<i>John Steventon,</i>	<i>John Grice,</i>
<i>William Crouch,</i>	<i>Robert Watkins,</i>	<i>Charles Fowler, and</i>
<i>Peter Devet,</i>	<i>George Twine,</i>	<i>James Smith.</i>
<i>Henry Lodes,</i>	<i>Thomas Short,</i>	

In all 35.

The Jury sworn were,  
*Samuel Sheppard,* *Daniel Templeman,* *Edward Cheeke,*  
*Daniel Allen,* *William Dewart,* *Edward Underwood,*  
*Rowland Platt,* *Edward Piggot,* *Robert Masters, and*  
*Adam Bellamy,* *Thomas Brailsford,* *William Warren.*

Then the Indictment being read, *Mr. Dolben*, as Counsel for the King, opened it to the Jury.

*Mr. Attorney General* \*. After *Sir Thomas Armstrong* had fled, the Prisoner relieved and aided him with Money, and that, after he was indicted, and sued to the Exigent; besides, a Proclamation followed upon his Flight, which was a sufficient Notice to all the King's Subjects. *Sir Thomas* went by the Name of *Henry Lawrence* beyond Sea; by that Name the Prisoner held a Correspondence with him, and sent him a Letter, dated the 21st of August, and tells him, he had sent him a Bill of Exchange for 165 l. drawn upon his Brother, *Israel Hayes*, who was acquainted with *Sir Thomas*.

If it were not for these receiving and nourishing of Traitors, they would not lurk at *Amsterdam*, as they do. The Letter was taken about *Sir Thomas*, and we shall prove it is the Prisoner's Hand-writing, and that *Sir Thomas* received the Money.

I hope, you will take care, by convicting this Gentleman, to stop the Fountain, which issues so much Supply to these Traitors who lurk abroad.

*Mr. Hayes* then affirmed, that he never knew *Sir Thomas* in his life.

Then the Indictment against *Sir Thomas* was read, which was found the 12th of July, and *Mr. Glover* proved a Copy of the King's Proclamation against *Sir Thomas*, dated the 28th of June, 1683.

Then *Ezekiel Everis* was sworn, and testified, that in August, 1683, he was at *Cleve* in Germany, with the Lord *Grey*, who went by the Name of *Thomas Holt*, and *Sir T. A.* came thither by the Name of *Mr. Henry Lawrence*, and shewed him a Bill of Exchange, from England, upon *Mr. Israel Hayes* in *Amsterdam*, for 160l. odd Money; and that it was for 150 Guineas, paid in England; and he told him, it was drawn by *Joseph Hayes*, and it was signed *Joseph Hayes*; and the Bill was accepted, and he saw

*Israel Hayes* his Letter to *Sir Thomas*, by the Name of *Lawrence*, which mentioned the sending the said Sum to *Cleve*.

The Common Serjeant (*Crispe*) then delivered a Parcel of Letters into the Court, and swore that he received them of the Lord *Godolphin*, and they had been ever since in his hands.

The Lord *Godolphin* then testified, that he received three Letters produced in Court, from *Mr. Constable*, *Mr. Chudley's* Secretary, who told him they were taken about *Sir Thomas*, that one of them, without any Name, mentioned 150 Guineas returned to *Henry Lawrence*.

*Constable* testified, that he was present, when the Scout of *Leyden* apprehended *Sir T. A.* and that the Letters were taken out of his Pocket, and he himself delivered them to *Mr. Chudley*, who sealed them up, and sent them by him, to the Lord *Godolphin*.

*Charles Davis* testified, that taking Boat from *Amsterdam* to *Rotterdam*, he met *Israel Hayes* and *Sir Tho. A.* coming to take Boat, and *Sir Thomas* went with him in the Boat, and he told him his Name was *Henry Lawrence*.

*Davis* added, that he lodged a Month in one *Briscoe's* House at *Amsterdam*, where there was a Club every Thursday: There were *Mr. Israel Hayes*, *Mr. Henry Ireton*, one *Wilmore*, *Emerton*, *Dare*, and some other English Merchants; and he heard them several Times abuse the King at Table.

The Attorney-General then shewed *Mr. Hayes* a Letter, saying, It may be he will save us the labour of proving it; but *Mr. Hayes* disowning it, *Mr. Walpole* was called, and *Mr. Hayes* said, He was my Servant, and went away after a rate that possibly would not be allowed.

*Walpole* testified, that he served *Mr. Hayes* almost four Years and three Quarters, and did believe the Letter to be *Mr. Hayes's* Hand.

*Mr. Hayes*. My Lord, in Matters of Treason, I hope you will not admit of Comparison of Hands and belief, for Evidence.

*L. C. J.* Yes, no doubt of it.

*Mr. Hayes*. It has not been so in other Cases, that have not been capital; as particularly in the *Lady Carr's* Case.

*L. C. J.* This is a Mistake, you take it from *Algernon Sidney*; but without all doubt it is good Evidence.

*Judge Withins*. Comparison of Hands was allowed for good Evidence in *Coleman's* Case.

*Mr. Hayes*. That, with Submission, vastly differs: Those Letters were found in his own Custody; this was not found in my Possession, but in another Man's, and in another Nation.

*Sir John Trevor*, Counsel for the King. This Gentleman was a Trader with the *East-India* Company, and made Contracts with them, which are entered in their Books: We will compare them with the Writing in this Letter.

The Common Serjeant then called *Harman* and *Brittle*, and demanded of them where the Books were; and they produced them.

*Harman* testified, that he knew *Mr. Hayes*, and that he made several Contracts in 1683, and that he saw him in September, 1683, subscribe his Hand to a Book of the Company's, shewn to him.

*Brittle* testified, that he is Porter in the Street to the *East-India* Company, and that he saw *Mr. Hayes* write his Hand to a Book shewn to him.

*Capt. Piercehouse* produced a Note, which he said was *Mr. Hayes's*, and that he supposed it to be his Hand, and compared it with the Hand in the Book, and said, that he delivered the Goods upon it: and *Walpole* then said, he believed it to be *Mr. Hayes's* Hand.

Then *Mr. Sturdivant* was called, and they shewed him the Letter, and he said, Here is *Joseph Hayes* writ, but I do not know it to be his Hand.

The Common Serjeant said, that *Mr. Sturdivant* swore he did know *Mr. Hayes's* Hand, before the Grand Jury; but *Mr. Sturdivant* affirmed, the Common Serjeant was under a Mistake.



Then Sir John Trevor called for Mr. Hardress; but the Common Serjeant answered, That he was out of Town before he could be served with a Subpoena.

Then the Letter was read, it was subscribed Joseph Hayes, and dated the 31st of August, 1683, directed to Mr. Henry Laurence, senior, at Amsterdam, and began thus, Sir, at your desire I have sent you a Bill, &c. The Letter and the East-India Books were then shewn to the Jury, and to the Prisoner.

Mr. Hayes denied the Letter to be his Writing, and said, 'Tis very strange I should not know my own Hand; may not Counsel be admitted to plead, Whether comparison of Hands and belief are any Evidence in criminal Causes? I have been informed, it hath been denied to be Evidence.

Chief Justice. You are under a Mistake; some body has put it into your Head, and puffed you up with a vain Story; there's no such thing, 'tis a Fiction, a meer Whim, only said by Mr. Sidney, and no ground in the World for it.

Mr. Hayes. Was it not so in the Case of my Lady Carr? There is a Record of that I suppose.

Chief Justice. It was not so. Don't talk of it\*, there was no such Thing at all — Comparison of Hands was allowed for good Proof in Sidney's Case. We must not alter the Law for any body.

Mr. Attorney-General. Besides this Comparison of Hands, we shall give an Account of the Correspondence of the Prisoner's Brother, and that he received the Money of him. Mr. Common Serjeant, Where had you this Paper?

Com. Serj. I had them from my Lord Godolphin. This is an Account of the Receipt and Disbursement of the Money; shew it Mr. Constable.

Constable. This is one of the Papers, which was taken out of Sir T. A's Pocket.

It being shewn to the Jury, one of them demanded, whether any one proved the Hand that was in that Note?

Mr. Attorney. No; but Everis swears, that Sir T. A. shewed him a Bill, subscribed Joseph Hayes, for so many Hundred Guilders.

Common Serjeant. He says, it was 160 odd Pounds; now, the Sum of this Note is 161 l. 5s. which is the change of 150 Guineas.

Mr. Hayes. Here is nobody proves this Letter to be my Hand, positively: They only prove it by Similitude, and Comparison, and Belief. I conceive there is but one Witness, that that Letter was found in Sir T. A's Hands: Everis says, he saw a Bill had my Name to it. Sir, you did not know me, nor ever saw my Hand?

Everis. No, never in my Life.

Mr. Hayes. 'Tis only an evidence of Reputation, he heard it was my Bill; you saw no Money paid upon it, did you?

Everis. No; but I saw a Letter from Mr. Israel Hayes, that gave some Account of it.

Mr. Hayes. All this is but Similitude and Circumstance; and I thought in case of Treason there ought to be two Witnesses, and hope you will let it be so here — here is no Evidence but the Letter, and that is not two Witnesses; there is no body has proved the knowingly in the Indictment, that runs, that I knew Sir T. A. and his Treason; that ought to be proved, but I am sure 'tis not. Your Lordship says, that the Indictment and the Proclamation are sufficient Notice that he was a Traitor; that may admit of Counsel to debate it; there ought to be Witnesses that could shew me to be concerned with him; which nobody in the World can prove, or that I ever saw him; and that Witness, who says, he saw the Bill, or this Letter, does not know that I wrote it; there are them that say, they heard of Money paid upon this Bill, but there is not one of them says, he saw any Money paid; and these are several Witnesses, every one to a several thing.

Here is no Proof, but by the East-India Porters, and those who say, they believe this Letter to be my Hand; no body says, he saw me write this Letter, or had any Correspondence with Sir T. A.

If they pretend there was Money paid beyond Sea; is this Indictment well laid, for it is laid to be paid in London? The Payment of Money beyond Sea can be no Evidence of Fact upon this Indictment; for the Jury of London are to enquire of Matters arising in London only. If I am to be tried for Payment of Money beyond the Sea, the Fact should have been laid there, and the Trial ought to proceed upon the Statute of 35 H. 8. cap. 2. The Indictment should be taken by Special Commission from the King, and the Trial be in the County that the King should choose. I desire Counsel upon this point.

L. C. J. No, 'tis an idle Whim, and I would fain know the Counsel that put that foolish Notion into your Head.

Mr. Hayes. If you will allow me Counsel, you shall hear who they are; I have been informed the Law is so.

L. C. J. We are of another Opinion: If any whimsical Notions are put into you, by some Enthusiastick Counsel, the Court is not to take notice of their Crotchets.

Mr. Hayes. The Witnesses are Strangers to me; there is one that has been sworn, to whom I have paid several Thousands of Pounds, who says, he does not believe it to be my Hand.

Then he called Mr. Sturdivant, who looking upon the Letter, said, I do not believe it to be his Hand, I have had dealings with him, and he hath given me many Receipts.

Mr. Hayes. There have been a great many Forgeries; and this Letter is forged: there have been Forgeries so like, that the Persons themselves have not known their own Hands.

Every body knows that a Hand may be counterfeited very like: in Mr. Sidney's Case, Mr. Wharton, a young Gentleman, not above one or Two and Twenty, said, He could undertake to counterfeit any Man's hand whatsoever.

I am not a Man of that Quality, to give Sir T. A. 150 Guineas.

L. C. J. We all know you have been a very active Man, a busy Fellow about the City; as forward a Spark as any I know of a great while. I don't know what you talk of your Quality, but we know your Qualifications; you have always been factious and turbulent against the King and Government.

Mr. Hayes then affirmed, that he neither gave, nor lent, nor returned

any Sum of Money to this Person; and then called Mr. Langley, who testified, that a Letter was counterfeited, and a Bill of Exchange for 450 l. and so exactly like, that if he had not known of it before he saw it, he must have owned it for his Hand; and the Party that paid the Money, paid it in his own wrong; for he never drew any such Bill. Mr. Common Serjeant had my Books several Days in his Hands, where there is an Account of 20,000 l. between my Brother and me; and if I would set my Hand to such a Letter and Bill, and write my Name at length, is it not as reasonable that I should put the Name of Laurence in my Books? And if it were there, it would appear.

Indeed here is an Account produced of divers Parcels of Money disbursed in little Sums; but I appeal to the Merchants, whether any Bill of Exchange was ever paid in such Parcels? No foreign Bill was ever paid by 3 l. or 5 l. or 20 l. at a time: it must be paid at the day, or it will be protested. — Here is a Computation of a Sum like to the Sum in the Bill; but these are Suppositions, and not Proof.

Then Mr. Hayes called Alderman Jeffreys, to speak to his Reputation and Conversation; who said, That he had known him many Years, and never knew any hurt of him.

L. C. J. Have you been at any of the Elections at Guild-Hall for Mayors or Sheriffs, when Mr. Bethel, and Mr. Cornish, and them People were chosen; and have you seen Mr. Hayes there, and how he behaved himself? A very forward active Man, I will warrant you.

Alderman Jeffreys. I suppose I may have seen him there, but I cannot say any thing to his Behaviour.

Then Mr. Hayes, called Mr. Pellet, Mr. Lloyd, Mr. Withers senior, Mr. Withers junior, and Mr. Hugh White, who gave a fair Account of his Dealing and Conversation. He then said, that he would trouble the Court with no more Witnesses.

Mr. Attorney-General then said, that he would call one Witness more against him; and ordered Atterbury the Messenger to be sworn, and the Letter was shewed to him.

Atterbury. I apprehended Mr. Hayes, and brought him before the King, and was present when the Letter was shewed to him; and the King and Lord Keeper North pressed him to own whether it was his hand, or no; and he said, he should say nothing to it, if they could prove it upon him, well and good.

Mr. Hayes. His Majesty was not there.

Atterbury. As I remember, the King was there; I imagine the King was there.

L. C. J. I was there, what he says is true; you said, I am not bound to accuse myself; 'tis true, you did deny that you knew Laurence or Armstrong; and 'tis as true, you would not absolutely deny the Letter, but said, you were not bound to accuse yourself.

Mr. Hayes. My Lord, I did hope, that in point of Law, my Counsel should have been heard to those things I mentioned, and I wish you would favour me in it; but that being denied him, he addressed himself to the Jury: Nothing has more troubled me, since my Confinement, than the Imputation of High-Treason, a Thing I always detested; I never knew any, the least thing of the Conspiracy, but by the Trials, or other printed Papers; not one of the Conspirators, who have come in, or been taken, have charged me in the least; nor did he himself accuse me, with whom I am charged to have this Correspondence. Gentlemen, I desire you to consider, that 'tis my Life is concerned, and I beg you would consider what these Witnesses have testified; they are not positive in any respect, nay, there are not two to any one thing that is charged: Constable says, the Letter was found among Sir T. A's Papers; he says no more; and here are not two Witnesses to that: Everis tells you, he saw this Bill, but did not know my Hand; there is no body tells you I wrote this Letter, but it is found in another Man's custody, in another Nation.

Gentlemen, 'tis very hard, that by comparison of hands a Man's Life should be in danger; when, in lesser Crimes, it has been denied to be good Evidence; and none of you can escape the same danger if this be allowed to be Evidence; for your hands may be counterfeited as well as mine.

If there had been any Probability of my knowing him, it had been something; but there is not one that testifies that ever I knew him, nor indeed did I: There is a great deal of Circumstance made use of, upon the account of his Acquaintance with my Brother in Holland; but 'tis strange, there should not be some Evidence of a further Correspondence between him and me, if there were that Intimacy that such a Letter as this doth import.

I must, with Reverence to the Divine Majesty, say, and I call God, Angels, and Men to witness the truth of it, as I shall answer it to him, before whom, for ought I know, I am quickly to appear, that I never in my Life spoke with Sir T. Armstrong, nor was ever in his Company, nor ever wrote to him, by the Name of Laurence, or any other Name; and I do solemnly say in the presence of God, that I never gave, sent, lent, paid, or ordered to be paid, any Money, directly or indirectly to Sir T. A. or H. Laurence, or to him by any other Name, or to his Use; I speak it without any counterfeiting or equivocation.

Gentlemen, there have been Overtures, if I would say some things, that my Life might be saved; and 'tis not to be believed, that I would run the Risque of my Life, if by speaking the Truth I could save it.

The Chief Justice did here appear enraged, and interrupted him, saying, What do you mean by this? — Mr. Hayes. I say —

L. C. J. Ay, but you must say those things that are decent and fit for us to hear; you must not insinuate, as if the Government would make any such Compacts as you talk of.

Mr. Hayes. I say, that Mr. Foster told me —

L. C. J. If you offer that, I can tell you a Story, that perhaps you will be very unwilling to hear; on my word, 'twill be very unpleasant to hear it; you had better let those things alone, for you will but draw a load upon you.

Mr. Hayes. I beseech your Lordship to hear me. —

L. C. J. Yes, I will hear you, provided you keep within due bounds; but we must not suffer these things.

Mr. Hayes. I say nothing but this, it has been told me, that the way to save my Life is to confess.

L. C. J. As you represent it, 'tis a reflection upon the Government — you talk of Overtures having been made you; don't make me say what I have no mind to say.

Mr.



Mr. Hayes. I say, Mr. Forster by Name told me, there was no way for me to escape, but by Confession.

Lord Chief Justice. You had best call Mr. Forster, to know how he came to tell you so; if you do, I will tell you of another thing of \* 4 or 5000 l. that was offered for your escape; you had better forbear, or else I shall put you in mind of a Brother of some Body that is at the Bar.

\* The Story of the 4 or 5000 l. was this: An eminent Papist, very acceptable to King Charles the second, undertook to some of the Friends of Mr. Hayes, that a Pardon should be had for 4000 Guineas to the King, and 1000 to himself; but he afterwards declared, that the King had refused him therein, and told him, that he was advised, that he had better give that Popish Friend 4000 l. out of the Exchequer, than pardon Hayes; but that he gave his Royal Word, that the Overture should not hurt Mr. Hayes.

Mr. Hayes. My Lord, I was told, that was the way: Gentlemen of the Jury, I have declared to you the whole truth, with all the Solemnity that becomes an innocent Man, and not an ill Man.—Besides, what you have heard, in all this Evidence, is nothing but Circumstance and Hear-say; and shall a Man's Life be taken away, for I believe, and I think, or I have heard?

Gentlemen, I know you are my Fellow-Citizens and Fellow-Christians, and of the same reformed Religion that I am; and I hope you are sworn into this Service without any Prejudice against me, but with an impartial Resolution to do Justice: and therefore I cheerfully leave the matter with you; I am sure, that if God help me, and deliver me in this Exigency, that it is he, and you under him, that preserve my Life.—

Gentlemen, The great Incertainties, Improbabilities, and Consequences in this Case, I hope will be weighed by you, and make you the better to consider the Proof, which is made by none but such as are Strangers to me; since, then, they know me not, I hope you will weigh it; before you give it against me: We must all die, and I am sure it will be no grief to you to acquit a Man that is innocent. I leave it with you; the Lord direct you.

Sir Thomas Jenner, the Recorder. The Treason charged on the Prisoner is of that sort, that if he be guilty, he will be a just example to terrify others from doing the like; for if Traitors had not Persons to supply them with Money abroad, it may be, they would not have so much Courage to run away. We have satisfied you that Sir Thomas Armstrong was indicted; that an Exigent was gone against him upon that Account; here was a Proclamation, and Sir Thomas Armstrong named in it; and so the Recorder repeated the Evidence of the Witnesses, and concluded: Gentlemen, We think that his Defence has been so little, and our Proof so strong, that you have good ground to find him guilty.

The Chief Justice then summed up the matter to the Jury.

Gentlemen of the Jury, This is an Indictment of High-Treason against the Prisoner at the Bar; and you are to try it according to your Evidence. The Prisoner's Affirmation of his Innocence is not to weigh

with you. Nay, I must tell you, I cannot but, upon this Occasion, make a little Reflection upon several of the horrid Conspirators, that did not only, with as much Solemnity, imprecate Vengeance upon themselves if they were guilty of any Treason; but thought they did God Almighty good Service in that hellish Conspiracy: It is not unknown, one of the Persons proscribed in this Proclamation did declare, they should be so far from being esteemed Traitors; that they should have Trophies set up for them; and all this under the pretence and enamel of Religion: Nay, I can cite to you an Instance of another of the Conspirators, [Lord Russell] that after a full and evident Proof, and plain Conviction, of having an Hand in it, when he comes upon the Brink of Death, and was to answer for that horrid Fact, before the great God, he blessed Almighty God, that he died by the Hand of the Executioner, with the Ax, and did not die by the Fiery Trial: He blessed God, at the Place of Execution, that he died a Traitor against the King and Government, rather than died a Martyr for his Religion. I think it necessary to make some Reflection upon it; when Men, under the Pretence of Religion, are wound up to that height, to foment Differences, to disturb and distract the Government, to destroy the Foundation of it, to murder his sacred Majesty, and his Royal Brother, and to subvert our Religion, and Liberty, and Property; and all this carried on upon pretence of doing God good Service. You are to go according to Evidence; as the Blood of a Man is precious, so the Government also is a precious thing; the Life of the King is a precious thing, the preservation of our Religion is a precious thing, and therefore due Regard must be had to all of them. I must tell you, in this horrid Conspiracy there were several Persons that bore several Parts; some that were to head and to consult; there was a Council to consider; others were designed to have a hand in the penetrating of that horrid Villainy, that was intended upon the Persons of his Sacred Majesty and his Royal Brother, and with them, upon the Persons of all his Majesty's Loyal Subjects that acted with Duty, as they ought to do; there were others, that were to be aiding and assisting (as in the Case of the Prisoner, if you find him guilty) aiding, abetting, assisting by Money, or otherwise, or harbouring any of those Persons that were concerned therein. Then he recounted the Evidence given against the Prisoner, and made such Remarks upon the same, as he thought fit.

The Jury withdrew, and spent two hours in consideration of the Matter; and then returning, gave their Verdict, that the Prisoner was not guilty.

Mr. Att. Gen. My Lord, tho' they have acquitted him, yet the Evidence is so strong, that I hope your Lordship and the Court will think fit to bind him to his good Behaviour during his Life.

L. C. J. Mr. Attorney, that is not a proper Motion at this time.

So the Prisoner was discharged, after he had been imprisoned five Months.

## CXXXII. The Trial between Sir WILLIAM PRITCHARD Plaintiff, and THOMAS PAPILLON, Esq; Defendant, at Nifi Prius at the Guild-hall of London, in an Action upon the Case for a false Arrest, Nov. 6, 1684. Mich. 36 Car. II.

London, ff. SIR William Pritchard, late Lord Mayor of the City of London, having in Easter Term last, brought an Action upon the Case, for falsely, maliciously, and without probable Cause, procuring him to be arrested and imprisoned in his Mayoralty, against Thomas Papillon, Esq; the Defendant pleaded, Not Guilty, and thereupon Issue being joined, it came this Day to be tried before the Lord Chief Justice Jeffereys; and the Jury sworn to try this Cause, were these:

Bartholomew Ferryman,	} Jur.	Joseph Baggs,
Thomas Blackmore,		Daniel Chandler,
Thomas Symonds,		John Reynolds,
William Whatton,		John Allen,
John Green,		Joseph Caine, and
Thomas Amy,		William Withers, jun.

Mr. Munday. May it please your Lordship, and you Gentlemen of this Jury, Sir William Pritchard Knight, late Lord Mayor of the City of London, is Plaintiff, and Thomas Papillon Esq; is the Defendant: And this, Gentlemen, is in a special Action upon the Case, wherein the Plaintiff does declare, That whereas the 12th of February, in the 35th Year of this King, and before and after for several Months then next ensuing, he was Mayor of the City of London, being duly elected and sworn into the Office of Mayoralty of the said City; and according to the Custom of the said City, time out of Mind, he ought daily to attend the said Office, in the diligent Government of the said City, according to the Duty of his said Office, which he was to execute to the Honour and Dignity belonging thereunto: That the Defendant, Thomas Papillon, being one of the Commonalty of the said City, and under the Government of the Plaintiff, by Virtue of his Office aforesaid, not being ignorant of the Premises, but contriving, and falsely and maliciously envying the happy Estate of the Plaintiff in his said Office, as also unjustly to disturb the Plaintiff in the Execution of his said Office, the said 12th Day of February, in the 35th Year aforesaid, the Defendant for Vexation to the Plaintiff, not having any lawful or probable Cause of Action against the Plaintiff, falsely and maliciously did prosecute the King's Writ of Alias Copias out of the Court of King's Bench, against the Plaintiff, by the Name of Sir William Pritchard, Knight, directed to the then Coroner of the City of London; by

which Writ it was commanded the said Coroner to take the Plaintiff, if found within the said City, and safely keep him, so as to have his Body before that Court at Westminster, upon Wednesday next after 15 Days of Easter, then next following, to answer the now Defendant in a Plea of Trespas: And that the Defendant of his further Malice against the Plaintiff, afterwards, and before the Return of the Writ, to wit, upon the 24th Day of April, in the 35th Year aforesaid, at London, to wit, in the Parish of St Mildred the Virgin, in the Poultry, in the Ward of Cheap, London, delivered the said Writ of Alias Copias to one John Brome, Gent. then being Coroner of the said City, to be executed; and then and there the Plaintiff, then being Mayor of the said City, by Virtue of that Writ, maliciously and unjustly did procure to be taken, and arrested, and detained in Prison, under the Custody of the said Coroner, for the space of six Hours, to the Disgrace and Scandal of the Plaintiff and his said Office, as also to the manifest Damage, Prejudice, and Grievance of the Plaintiff: Whereas, in Truth and in Fact, the Defendant, at the Time of the taking, arresting, and detaining of the Plaintiff in Prison, as aforesaid, had not any just or probable Cause of Action against the Plaintiff in the Premises, whereby the Plaintiff says he is injured, and for which he lays to his Damage, 10,000 l. To this the Defendant has pleaded, Not Guilty. If we that are of Counsel for the Plaintiff, shall prove this Matter unto you, Gentlemen, that we have laid in the Declaration that has been opened unto you, you are to find for the Plaintiff, and I hope will repair him in Damages for this Affront and Injury.

Mr. Att. Gen. \* May it please your Lordship, and \* Sir Robert Sawyer. you Gentlemen of the Jury, I am of Counsel in this Case for the Plaintiff; and this Action is brought, Gentlemen, to vindicate the Honour of the Chair from such Affronts as these; which in no Age, till of late Days, our Times of Faction and Confusion, it ever met with: That by a Person that is a Citizen of London, and one of the Commonalty, that ought to have paid Submission to the Lord Mayor as his chief Magistrate, and was bound so to do by his Oath, as a Freeman, should, without cause of Suit, arrest the Lord Mayor of the City. That there was no probable Cause, is evident by his not proceeding in the Action, that he had thus brought. But, Gentlemen, we shall shew you in the Course of our Evidence, that there lay a further Malice in this Case, and that there was a Design in it against



against the Government. For we shall give you Evidence, that this Design was laid to carry on the great Plot against the Lives of the King and his Brother, and for the Subversion of the Government. For they contrived it so, that they would imprison the Mayor, and then, thought they, the loyal Citizens will interpose to rescue him, and then the Party should rise to assist the Officer, he having the Countenance of Authority, and being in the Execution of the King's Writ, (especially if it be considered then who was Coroner) and so a public Commotion would be made a general Mutiny, and that would be a fit Opportunity, in the Confusion of the City wanting its Chief Governor, of doing what they designed. Gentlemen, we shall prove all that is laid in the Declaration; and likewise that the End of this Business was to have had a Commotion for the accomplishing their great Conspiracy, as has been opened. That Sir William Pritchard was arrested in his Mayoralty, I suppose will be agreed, or else we shall prove it.

Mr. Ward. Yes, yes, we agree it.

\* Mr. Sol. Gen. Then we will go on and prove the Manner of it. Swear Mr. Gorges, and Mr. Keeling. [Which was done.] Mr. Keeling, pray, will you tell my Lord, and the Jury, were you made a special Bailiff to arrest Sir William Pritchard, when he was Lord Mayor, and what did you do upon it? Tell all you know of it, and what was designed by it.

Keeling. My Lord, all that I know of, it is this: It was upon the 24th Day of April, I have the Warrant here to shew, I met with Mr. Goodenough, at Mr. Russel's the Cook, in Ironmonger-lane, and several others were there; and I went away a little while, and came again: While I was gone from them, they put my Name into the Warrant, and upon that Warrant, I did arrest Sir William Pritchard, who was then Lord Mayor, at the Suit of Mr. Thomas Papillon, I suppose this is the Gentleman [Pointing to the Defendant.] I had no Order for it from Mr. Papillon, nor ever spoke with him about it; but I had order from the Coroner, who, upon the arresting him, took my Lord Mayor into his Custody.

Mr. Att. Gen. Where was my Lord Mayor then?

Keeling. At Grocer's-Hall.

Mr. Att. Gen. Was that the Place he kept his Mayoralty in?

Keeling. Yes, it was so.

Mr. Sol. Gen. What was he doing when you arrested him?

Keeling. There was some Disturbance upon it, among the Officers and People there. The Coroner came up to him and said, Sir, I have a Writ against you, I pray you would please to give an Appearance at the Suit of Mr. Thomas Papillon, and another at the Suit of Mr. John Dubois, and some Words there passed between him and the Coroner; and my Lord Mayor refusing to give any Appearance, the Coroner, Mr. Brome, bid us execute our Warrants; upon which I came up to my Lord Mayor, and touched him upon the Shoulder, and said, I arrest you at the Suit of Thomas Papillon, Esq; and one Ferdinando Burley arrested him again, at the Suit of Mr. John Dubois.

Mr. Att. Gen. What did you do with him, when you had arrested him?

Keeling. The Coroner dismissed us, and, as I take it, carried him home to his House.

Mr. Att. Gen. What Instructions had you what to do, in case he made any Resistance, and did not submit to the Arrest?

Keeling. I know of no Instructions about any such thing.

Mr. Sol. Gen. Who was by, pray, when Orders were given you to arrest my Lord Mayor?—Keeling. Both the Goodenoughs.

Mr. Att. Gen. He in the Proclamation, you mean, and his Brother?

Keeling. Yes, Richard and Francis Goodenough.

Mr. Sol. Gen. And who else, pray?

Keeling. Several that I did not know.

Mr. Att. Gen. Can you remember any body besides the Goodenoughs in particular?

Keeling. There was one a Tallow-chandler, and a great many that I did not know.

Mr. Sol. Gen. How many do you think there were? And where was it?

Keeling. I believe there were about thirty or forty, and it was at Russel's the Cook, in Ironmonger-lane.

Mr. Att. Gen. Did they all come along with you to Grocer's-Hall, to arrest my Lord Mayor?—Keeling. No, my Lord, they did not.

Mr. Sol. Gen. Did any of them, and which, pray?

Keeling. Sir, I will tell you who did come to my Lord Mayor's. There was the Coroner, Francis Goodenough, Ferdinando Burley, and my self: And after my Lord was arrested, the Coroner bid us be gone, and he would look after my Lord Mayor.

Mr. Sol. Gen. Whither did you go after that?

Keeling. I went to Sir Harry Tulse's directly.

Mr. Att. Gen. Did not you expect an Opposition? And had you not some Discourse what you should do in case there was an Opposition?

Keeling. No, I cannot tell any thing of that.

Mr. Att. Gen. You say, there was a Meeting, or Consult, at Russel's, of forty People; had you not there some Consultation what was to be done, if my Lord Mayor did not obey the Arrest?

Keeling. I do not remember any thing about that, at that time.

Mr. Att. Gen. Was there at any other time before? Or did you hear any of those People discourse the Goodenoughs, or any of them, what they would have done in case they were resisted?

Keeling. I do not remember any Discourse of such thing, before or after.

† L. C. J. Pray, Mr. Keeling, let me ask you a Question or two. Were you ever employed by the Coroner to be a special Bailiff to arrest any Body, before this time you speak of, that you arrested Sir William Pritchard?

Keeling. No, my Lord, I never was.

L. C. J. Then pray recollect yourself, who were at that Meeting, when, as you say, your Name was put into the Warrant for this Arrest?

Keeling. My Lord, when I went away for a little while, I left these Persons particularly that I did name, the two Goodenoughs, and one Burton, I think, and one Crompton, and that Tallow-chandler; there were to the Number of thirty or forty, that I did not know their Names.

VOL. III.

L. C. J. But pray, how came you to be employed in this Service then? Were you a Tradesman in Town then?

Keeling. Yes, at Wapping.

L. C. J. Good now, how came you to be employed in arresting my Lord Mayor, more than any other of those thirty or forty that you say were there then?

Keeling. I went there among them, but did not know then that I should be concerned in this Business; and I went away a little while, and when I came back they told me, that my Name was put into the Warrant.

L. C. J. Pray, tell us the whole Story, how you that were a Tradesman at Wapping, should come to be employed as a Bailiff to the Coroner of London, to arrest my Lord Mayor? There must be some particular End in it.

Mr. Att. Gen. Mr. Keeling, tell the Court and the Jury the whole Story, and what it was that brought you into this.

Keeling. My Lord, Mr. Goodenough told me I must be concerned.

L. C. J. Ay, prithee tell us what Goodenough desired you to be concerned in.

Keeling. Upon my coming back to the Company that was at Russel's, Mr. Richard Goodenough told me I must be concerned in the Business of arresting my then Lord Mayor, Sir William Pritchard: Said I to him, Mr. Goodenough, this is foreign and remote to my Business, to be concerned in such a Matter as this, it will seem very strange for me to do it. He pressed it upon me to do it, and says he, If you will not do it, you will be a Man looked ill upon, and it will be taken strangely from that Party; he meant, I suppose, the discontented Party, the Faction, or what you please to call it, that were not contented with the Administration of the Government in the City at that time; and he urged it upon me with a great many Arguments. I opposed it with much Vigour a good while, but at last he prevailed upon me to go along with the Coroner; and Frank Goodenough, his Brother, said he would go with me, and he did so; and we came and arrested my Lord Mayor, as I told you before.

L. C. J. Where did Mr. Goodenough press you to be concerned in this Business, as you say?

Keeling. At Mr. Russel's a Cook, in Ironmonger-lane.

L. C. J. How came you thither?

Keeling. He sent me a Letter to meet him there. He was at me before to be concerned in it, but I did not comply with him in it. Mr. Richard Goodenough it was, and Mr. Althurst, I think it was Alderman Cornish's Son-in-law, was by.

L. C. J. Was Nelthorp there?

Keeling. No, my Lord, he was not there; but they did not proceed then, because my Lord and his Brethren were gone out of Town, to wait upon the King, I think; and this was six Weeks or two Months before this Meeting at Russel's.

Mr. Sol. Gen. Pray, Mr. Keeling, recollect yourself. Had you any Discourse with Goodenough, or any body else, what the Consequence of such an Arrest would be?

Keeling. They told me, my Lord Mayor, and Court of Aldermen, had made an ill Return to the Mandamus that were served upon them, for the swearing of Mr. Papillon and Mr. Dubois Sheriffs, and therefore Mr. Papillon and Mr. Dubois had good Cause of Action against them; and Goodenough said, he had order from them to arrest my Lord Mayor upon an Action, and desired me to be concerned.

Mr. Sol. Gen. But pray, remember what you said before, Mr. Keeling, why should the discontented Party, as you call them, be concerned, and be angry with you, if you did not arrest my Lord Mayor?

Keeling. The particular Argument that he used with me to persuade me to it, was this, That I having a Trade and Dealing among that Sort of People, they would think ill of me if I did not do it.

Mr. Sol. Gen. But why should the Party be angry with you, if you were not a Bailiff to arrest my Lord Mayor, at the Suit of Mr. Papillon?

Keeling. I did not know the Reason of their Anger, he might have something in his Head that he did not reveal to me. But that was the Argument he used, The Party would think ill of me.

Mr. Serj. Maynard. If you have done with this Witness, I would ask him a Question. You say, Sir, that Goodenough told you, the discontented Party would be angry with you if you did not do it. Upon your Oath, was the discontented Party named?

Keeling. No, Sir, but that Party of which Mr. Goodenough and I then was; and they were the discontented Party, I think; for they were so discontented, that they would have killed the King and the Duke.

Mr. Att. Gen. That is an Answer, I hope, to your Question, Mr. Serjeant.

L. C. J. I think, when he names the Goodenoughs to be of the Party, no body questions but they were discontented.

Mr. Sol. Gen. He has explained well enough, sure, what he meant by the discontented Party, those that were so discontented, that they would have killed the King and the Duke. Those were the Promoters of this Action, and Mr. Keeling must engage in it, or they would be displeased. Now, my Lord, we shall call Sir Harry Tulse and Sir Robert Jefferies, to shew what the Coroner did.

Keeling. I arrested Sir Harry Tulse afterwards.

Then Sir Harry Tulse was called.

Mr. Ward. My Lord, we desire Sir Harry Tulse may not be sworn, we have an Exception to his Testimony.

L. C. J. What is your Objection?

Mr. Ward. We are informed, he and the rest of the Court of Aldermen have joined their Purposes to carry on this Suit, and then, with Submission, he is not a good Witness.

L. C. J. Ask him that Question upon a Voyer dire.

Then he was sworn upon a Voyer dire.

Mr. Williams. Pray, Sir, is there any Order of the Court of Aldermen to lay out Money for this Cause, out of their Joint Purposes, or the Publick City Stock?

Sir Harry Tulse. Not that we know of.



*Mr. Williams.* Pray, Sir, do you know whether Sir William Pritchard laid out Money in it, or who else doth?

*Sir Harry Tulse.* I cannot give a positive Answer to that, who layeth out money upon it, nor do I know of any such order as you speak of.

*Mr. Ward.* Sir Harry Tulse, though you know of no such formal Order of the Court of Aldermen, yet is there not some Direction by the Court of Aldermen about expending Monies in a joint way?

*Sir Harry Tulse.* I assure you, Sir, I know nothing of it.

*L. C. J.* Come, he has given a full answer to your Question, swear him.

[Which was done.]

*Mr. Holt.* Sir Harry Tulse, now you are sworn, pray, will you give an Account of what happened about this Matter, within your knowledge? Pray, tell the whole Story.

*Sir Harry Tulse.* My Lord, about four of the Clock in the Afternoon, this Gentleman, and two more, came to me to my own House, and he did arrest me (I mean, Mr. Keeling, that was sworn here before me) at the Suit of Mr. Papillon; and another of them did arrest me at the Suit of Mr. Dubois: Said I to them, I do not know that I owe them, or either of them, a Farthing. But what must I do? He told me, it was only to give an Appearance. Said I, Gentlemen, I shall consider of that. Then, says he, you must go to my Lord Mayor. Why, where is he, said I? Said he, He is in the Custody of the Coroner, at his House. Where, said I? He is gone to *Skinner's-Hall*, said he. This is well, said I. So I called for my Man to bring my Cloke. Then they told me, if I pleased, they would take my Word 'till to-morrow Morning, if I would promise to appear. I told them, they might do as they pleased. So they left me; and I went first to my Lord Mayor's House, but found him not there; so I went down to *Skinner's-Hall*, and there I found my Lord Mayor all alone, and no Alderman, only the Officers. I asked his Lordship how he came there? He told me, he was arrested by the Coroner. I asked him how long he had been detained? And he said, But a little time: And indeed I think it could not be long, for I met his Coach coming back from *Skinner's-Hall* when I went. After that, he was detained there 'till about Eleven of the Clock or thereabouts. This is all that I know of it.

*L. C. J.* What became of the Government of the City all that time?

*Sir Harry Tulse.* There was presently a great Noise all about the City concerning my Lord Mayor's being arrested, and abundance of People were gathered together about the Door, but there came a Company of Soldiers of the Trained Bands, and they kept all quiet. There were great apprehensions of an Uproar. I saw nothing of hurt done, though. And I asked Mr. Brome, the Coroner, who was by, Am I a Prisoner too? For I was arrested to-day, by a Warrant pretended to be from you. Says he, I have a Writ against you, and now you are here, I cannot let you go, 'till you have given an Appearance. So I took myself to be detained there with my Lord Mayor in Custody, and staid as long as he staid, and went away with him.

† *Sir Thomas Jenner.* † *Mr. Recorder.* Swear Mr. Wells, the Common Crier, and Sir John Peak.

*Mr. Wells* was sworn.

*Mr. Recorder.* Mr. Common Crier, were you at my Lord Mayor's House when this Hubbub was made? Pray tell my Lord and the Jury what you know of it.

*Mr. Wells.* Yes, I was there.

*Mr. Holt.* Then tell what past.

*Mr. Wells.* I was not in the Hall where my Lord Mayor was, but in another Room by: And the Officers came running in to me, and told me, I must come to my Lord Mayor quickly, for he was arrested by some People. When I came, I found there were none of the Sheriffs Officers that used to arrest People, but the Room was full of other Persons. My Lord Mayor bid me take the Sword, and go along with him, for the Sword-bearer was not then just at hand. I asked his Lordship whither he was going? The Coroner said, he was his Prisoner, and must go along with him to his House. My Lord Mayor bid me presently send out the Officers to summon a Lieutenantcy, which I did. I desired the Coroner and his Men to be gone; said I, Cannot you let my Lord alone, and go about your Business? No, he said, except my Lord would give an Appearance, he must go along with him. I then asked him whither my Lord must go? He said, he had no Place but his own House to carry him to, and thither we went; where when we came, my Lord was put into a little Room by himself, where were none but myself and the Coroner, as I remember. My Lord Mayor bid me go and see for Sir James Edwards and Sir Harry Tulse, and my Lord Mayor that now is, and so I went; but I found they were arrested too before I came.

*L. C. J.* How did my Lord go away from thence?

*Mr. Wells.* In his Coach.

*Mr. Att. Gen.* Were you by when he went away? And who was there?

*Mr. Wells.* Mr. Brome, the Coroner, was not there when my Lord Mayor went away, but there was *Goodenough*.

*L. C. J.* Ay, he was in trusty Hands, upon my Word.

*Mr. Att. Gen.* The Soldiers prevented the Design, and so they let him go again.

*Mr. Recorder.* Swear Sir John Peak.

[Which was done.]

*Sir John Peak.* My Lord, I had order from the Lieutenantcy, to raise my Regiment upon the News of my Lord Mayor's being arrested, which I did in a very little time, and came with my Soldiers to *Skinner's-Hall*, where I heard my Lord Mayor was, and prevented any Stir, as it was feared there would have been. But Mr. Keeling, I believe, can tell something more of the Design than he has spoken, for I remember at the Trial of the Traitors at the *Old Baily*, he did say, That after my Lord Mayor was arrested, they did intend something, but their Hearts misgave them when the Regiment was up.

*L. C. J.* That is nothing to this Cause what he said there; now he remembers nothing of it. Have you done, Gentlemen, or will you call any more Witnesses?

*Mr. Att. Gen.* We rest it here, my Lord, 'till we hear what they say to it.

*L. C. J.* Come then, what have you to say that are for the Defendant?

*Mr. Serj. Maynard.* May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel in this Case with the Defendant, Mr.

*Papillon.* I see, Gentlemen, it is a Cause of great Expectation, and by that means they would make it greater by far, than indeed it is in itself. But I suppose, you who are upon your Oaths to try this Issue, will duly weigh and consider what it really is. Gentlemen, the record tells you what it is, an Action upon the Case, wherein the Plaintiff declares, that the Defendant did arrest him, being then Lord Mayor, without any probable Cause, and out of Malice. Now as to that, Gentlemen, I conceive and think, I may appeal to my Lord Chief Justice in it, for Direction in Point of Law, that my Lord Mayor, if he do mistake in his Office, and do not do that which belongs to him to do, he is as much subject to the Process of Law and Actions, as any private Person in the City of London. If he does any Man an Injury, or does that which is not right in his Office, by which another Person is grieved, he is liable to the Prosecution of any particular Subject the King has, that is so grieved by him. Then they alledge, that this particular Action and Arrest thereupon was prosecuted and done out of Malice, and without probable Cause. Now what have they proved of that? They prove the Thing done, that he was arrested at the Defendant's Suit, and that he was kept in Custody six Hours. But if we can give you any Account of a probable Cause for it, that is sufficient to justify us from this Action. Gentlemen, the Question that you are to try is not, Whether this Man or that Man were duly chosen into such an Office; but whether there were any probable Cause for the Defendant to contest about the Choice? And herein the Case will fall out to be thus: There was a difference in the City of London, as is very well known to every body, about the Choice of Sheriffs for the City, wherein the Defendant was one of the Competitors; there were, upon the Nomination and Election in the Hall, a great many more voices or suffrages for one than for the other, which was certified to the Court of Aldermen and Lord Mayor, as is usual; but some Contest being, a Poll was demanded and granted, and upon that Poll, my Lord Mayor was pleased to declare the Election on one Side against Mr. Papillon, who yet was apprehended, by the first Choice, to be one that had most suffrages. But several meetings there were, and several Common Halls assembled, so that it was a contested Matter, and, as I said, there had been a Report made on the Defendant's behalf. We insist not upon the Right of Election; that has been otherwise determined. But when he is put in Nomination by the Electors in the City, and has many suffrages, and he conceives himself rightly chosen, and they that are the Managers of the Election give such an Account that in their Judgment he was chosen, that surely was a probable Cause for him to proceed upon it. And if there be but a probable Cause to bring this to a question, no doubt he might very well take the course the Defendant took. Here is no Arrest without legal Process; nay their own Witnesses say, there was an Offer to take an Appearance without putting it on so far as an Arrest: If my Lord Mayor would have but given an Appearance, there had been an end, but he did not think fit to do that, and so the Process of Law was executed upon him. Then here is the Case in short: A Man thinks himself rightly and duly chosen into an Office, and has probable reason so to think, for the Judges of the Election think so too, and deliver that as their Opinion; so that though he is mistaken, as the Event proves, yet he is not alone in his Mistake, nor without ground of his Apprehension: then if it be (under favour) such a Man has no other Proceedings to take in the World for settling this Matter, but to appeal to your Lordship, and that great Court where your Lordship sits, to have a Writ to command the Mayor, or other proper Officer to swear such a Man into the Office, or shew good Cause why he doth not. If the Mayor, upon the Receipt of the Writ, thinks fit to obey it, and swears the Man, all is well: If not, he must make a Return of the Writ, with the Cause why the Command of the Writ is not obeyed. Now the Suggestion of the Writ is, that he was duly chosen into such an Office, and therefore he had a fair way to put this Matter to an end; if he would have returned he was chosen, or not chosen, there had been an end of the business, which he ought (under favour) to have done in Obedience to the King's Writ. What then follows upon his not doing so? The Party that is grieved hereby, has no other Course to take, but to bring his Action against the Mayor for it. This Course the Defendant took, by taking out a Writ against the Plaintiff: And what was the Effect of that Writ? It is indeed charged here by the Counsel on the other Side, That there was a Design of a discontented Party in it, and I know not what, and a great deal of Stir made, that a Coroner of the City of London should arrest my Lord Mayor. It may be it was not so reverently done, but yet if he thought he had good Cause of Action against him, he might do it lawfully. Doth this prove to you, that this was maliciously and unreasonably done? Malice must be to the Person; Zeal and Earnestness to have Right done to a Man's self or another, in a legal Course of Justice, is not Malice, nor will make the Prosecution of the Action unreasonable and groundless. Have they proved to you, Gentlemen, any particular Discontent and Malice that is between the Plaintiff and Defendant? No truly, I think, by all the Proof that has been offered, the quite contrary does appear. The Defendant took out a *Mandamus*, directed to the Plaintiff, which was not duly returned: What then doth he do next? Doth he most violently arrest him? That, with Submission, he might do, and no Offence in Law: No, but he doth not do it, but only desired from time to time, as we shall prove anon, that he would but give an Appearance, that would have put a Conclusion to this Dispute. There is no Appearance given: Whereupon he is arrested, and detained in Custody six Hours. If a Man be once in the Officer's Hands taken upon legal Process, how long soever the Officer keeps him, is not at all to be laid upon the Person that brings the Suit; that is to be looked after by the Officer himself. Whatsoever was the Usage in that Matter, we are not to answer for (though it is plain an Appearance would have done all presently), we shall prove we gave order to use all Deference and Respect in the World. And besides (though I would not speak it to invalidate any of the Evidence given about the Right of Election one way or other, yet) there being a Return of the Defendant's Election by the Sheriffs to the Court of Aldermen; but they being of another Opinion, gave Order, that those that thought themselves aggrieved should take their Remedy at Law: Which Order we have pursued in that regular Course that the Law has prescribed. And I hope it will never come to that, that a Man (though mistaken) conceiving himself to have a Right of Action, and suing out the King's Writ, shall suffer for so doing, unless particular Malice



Malice be made to appear. Here is a great Noise of Damage, and Disrepute, and Disgrace to the Plaintiff and his Office, and he has been pleased to reckon his own Damages at 10,000*l*. We say he has sustained no Damage by any thing we have done, but we are quite not guilty of this unreasonable and malicious Prosecution laid to our Charge. And that we are not guilty, the Matter that has been opened, we think, will sufficiently declare. For if there was a Contest about the Election, and the Sheriffs returned it as their Opinion that the Defendant was chosen, though they and he too were mistaken, yet that might give a probable Ground for his pursuing the Course he did take, and the very Court of Aldermen, and the Lord Mayor, bidding them take their Course at Law, we sure shall not be punished for it. We did not prosecute our Question in any malicious way, but in that Course that the Law allows, by taking out the King's Writ, and we hope the Law will protect us for it.

Mr. Williams. Will your Lordship be pleased to spare me a Word on the same side with Mr. Serjeant Maynard. I am of Counsel, Gentlemen, with Mr. Papillon, the Defendant, in this Action. We do not insist upon it, nor now offer any thing to assert our Election: We did apprehend we were elected, but that is ruled against us, and we rested satisfied with it. But we come here now before you upon this Question: Whether we had any probable Cause of Action, upon which we might take out this Process mentioned in the Declaration, which is a *Capias* upon a *Latitat*? And we do insist upon it, that this Action of the Plaintiff's must fall upon the Issue joined, if we can satisfy you, and shew that it was not malicious, and without probable Cause. And tho' our Cause of Action against the Plaintiff falls out in the Event not to be a good and sufficient Cause, yet if it were probable, it will evade this Action, and that is all we labour for. They do not attempt to prove, at least-wise I have not heard any thing of it, that there was any express Malice, any thing either said or done by the Defendant, more than the causing him to be arrested upon this Writ. It is very well known, it was in the City of London a very much controverted Question, Whether Mr. Papillon and Mr. Dubois, or Sir Dudley North and Mr. Rich, were chosen Sheriffs of London? I would not run over the History of it, it is but too well known and remembered, the Divisions that were in the City about it. Some were so much dissatisfied with the swearing Sir Dudley North and Mr. Rich, Sheriffs, as thinking them not duly elected, that they would have the Court of King's-Bench moved, for the Writ of *Mandamus* to swear Mr. Papillon and Mr. Dubois. This *Mandamus* was moved for, and granted; and to this Writ the Mayor and Aldermen, to whom it was directed, made a Return that we were not elected Sheriffs of London, which Return was apprehended to be false; and really to try the truth of this Return, was the Action brought against the Plaintiff. A Man that is injured by a False Return, hath indeed no other way to right himself, but by bringing an Action against them that made it. Upon this Action brought, I hope you are satisfied, Gentlemen, from the Evidence that has been already given, the Defendant proceeded regularly and orderly, in a decent manner applying himself to get an Appearance to his Action. And we shall prove he did so: For, first, he took out a *Latitat* against my Lord Mayor, and by the Attorney gave him notice of it, and desired an Appearance; so that the Question in dispute might come to some Determination. But he was not pleased to give us an Appearance to that Writ, so we took out a *Capias*, gave him notice of it, and desired an Appearance, but could have no Appearance; whereupon we took out an *Alias Capias*, which is the Writ mentioned in the Declaration: And the Coroner, who has been named, was then told, he should be called upon to make some Return to his Writ; which he acquainted my Lord Mayor with, and desired him to give an Appearance, which he refused to do; the Officer was constrained to arrest him, to execute the King's Writ, and you hear how he treated him with all due respect, and carried him to his own House, where he staid some Hours, and then went away. All this time were we satisfied with what was done, we expected no more than an Appearance, which at last was given. Upon that Appearance we did declare, in the Beginning of *Hilary* or *Easter* Term (83): But it fell out, that in *Easter* Term (83) there was an Information for a Riot upon *Midsummer-day* before, about this contested Election, came to be tried. And that coming to trial, 10 *Maii*, and being found to be a Riot, and the Sheriffs sworn to be duly elected, thereupon we were abundantly satisfied that we were mistaken, and under misapprehensions, and that our Cause of Action would not hold, and we did discontinue it. Indeed, if we had prosecuted our Action after that, it would have been more like an angry and a silly Prosecution, and the whole have had a worse Construction, than the thing in itself would bear. But when we found the Opinion of the Court to be against us about our Election, we immediately discontinued our Action. Gentlemen, we shall prove these to have been our Proceedings, and that, I hope, will satisfy you, we are not guilty, according as we have pleaded.

Mr. Ward. May it please your Lordship, and you, Gentlemen of the Jury, I am of Counsel on the same side, for the Defendant, and desire to be heard one Word, as to some Things that have been said on the other side on this Cause. There have been some Questions asked, that do very much reflect upon the Defendant, and which I would take out of this Cause. I shall take notice, first, what the Questions were, and then give them that Regard and Answer which they deserve. That which is urged, Gentlemen, by way of Crimination, in this Case, against the Defendant, and an unjust as well as foreign Reflection, not at all concerning the Cause, is, as if the Defendant were acquainted with the Insurrection and Conspiracy that was intended against the King's Life, and for subversion of the Government, and procured the Plaintiff, then Lord Mayor, to be arrested, to further and promote that Insurrection. But as that was insinuated only for Reflection's sake, so I hope you, Gentlemen, will be pleased to take notice, that not one Word of any such thing is proved at all, that the Defendant ever knew of any intended Insurrection, nor that this was done with any such Design: For even their first Witnesses, Keeling, from whose being employed by the Coroner in the Execution of the Writ upon Sir William Pritchard, the Plaintiff, they would argue that somewhat else was designed in it, doth give a positive Denial of any such thing now upon his Testimony here. And Mr. Papillon the Defendant never knew him in his Life, nor employed him in this Business, nor ordered that he should be employed in it, nor ever saw him; but the

Coroner gave him his Warrant to execute. If, therefore, Keeling and Good-enough were concerned in any ill Business, and have taken upon them to do that which they ought not to have done, that doth not signify any thing in this Case, nor ought to turn to the Defendant's Prejudice. Nor, if any thing were done by the Officers, that were to execute this Process, that were a *Misfeasance*, or a Male-execution of their Office, that ought not to be imputed as a Fault in the Defendant. But for this Matter now before you, the Case will depend upon this Point chiefly, Whether the now Defendant had a reasonable Cause, or probable Ground, to bring an Action against the Plaintiff at the time when it was brought, and this Arrest made? For there is many a Man, that at the Commencement of his Action, doth conceive in himself, he had a good probable Cause of Action against another Man, that in the Event of Things finds he was mistaken, and hath no such Cause; and thereupon desists the Prosecution of it. Therefore the Probability of the Cause, at the time when this Fact was done, is the Question you now are to try. For we are not now considering, whether that probable Cause did continue and prove a good Cause; the event of this Matter has proved it quite otherwise. Indeed the original Question of this whole Cause was, Who were only elected Sheriffs? And that at the time of such Election made, a great Number of Votes passed for the Defendant, is, I think, very notorious, both upon the lifting up of Hands, and upon the Poll. These things we shall offer to you, and shall make it out that these gave occasion to the Defendant to contest the Election, and consequently to the bringing of the Action that the Plaintiff was thus arrested upon. If then there were such things as these that we have opened, which gave a colour to controvert the Right, and the Defendant pursued the Method prescribed by the Law to bring it to a Determination, and there was no particular Disrespect or Incivility offered to my Lord Mayor, then sure there was no reason to bring this Action against us. And that there was no indecent Behaviour used towards the Plaintiff, doth appear from the Evidence that hath been given of the whole Transaction. All that was desired of my Lord Mayor was but an Appearance. For this was indeed an Action that did not require Bail, but an Appearance; tho', I must needs say, I never knew any one so averse to give an Appearance to an Action as the Plaintiff was; for after a *Latitat* and *Capias* taken out, and being frequently acquainted with it, and at length, upon application after the taking out of the *Alias Capias*, and many Attendances, with all the Deference and Respect imaginable, both to his Person and Office, not so much as a bare Appearance could be obtained. Upon the opening of the Declaration and the Cause, you have been told of the great Dangers that were in the Case, as to the Infringement of Publick Peace, and the Government, which has been very much aggravated on the other Side. But had the reasonable Request of the Defendant by his Attorney, or the Officer, so often repeated, been but complied with, it had been but sending to any Attorney, and ordering an Appearance, and then, I hope, the Peace of the Kingdom had been in no Peril from such a Design as this Arrest. Which I would not have mentioned, nor should have taken to be at all concerned in the Issue now before you to be tried, but that I find them to be taken into the question, when I hope you will consider they are no way material to the Point in Controversy. Now, Gentlemen, in our Defence against this Suit of the Plaintiff's, we shall call our Witnesses to prove what we have opened. And our Defence will be in these Steps: First, To shew the Inducement to our Action against the Plaintiff: which will shew there was a probable Cause. Secondly, Give an account of the reverent Carriage and Behaviour towards the Plaintiff in the Prosecution; how with reiterated Applications it was only desired that the Plaintiff would give an Appearance, which he was not pleased to do; and that thereupon, with great Civility, the King's Writ was executed, as indeed I see no Proof to the contrary. For neither the Coroner, nor those other People that gave their Assistance to him, were at all rude in their Carriage to my Lord Mayor; but as soon as the Arrest was made, they were all turned off, and the Coroner staid alone with my Lord, and went with him in his Lordship's own Coach to the *Skinner's-Hall*, which was the Coroner's House. Neither was there any thing ill done, after all this was past: For, upon the Plaintiff's Appearance, the now Defendant declared in his Action, and intended to pursue it; but it happened that afterwards, in a short time, these things suffered some Debate, in a Trial that was here about a Riot at this Election, where the Question of the Right and Election was determined on the other side, which gave the Plaintiff in that Action, the Defendant in this, satisfaction that he was in a Mistake; and so he thought fit to discontinue that Action, and proceeded no further—

L. C. J. No, Mr. Ward, that was not the Question determined then.

Mr. Ward. My Lord, I humbly conceive the Issue of that Cause did determine that Question-----

L. C. J. No, no, I tell you it was not the Question.

Mr. Ward. I must submit it to your Lordship-----

L. C. J. I perceive you do not understand the Question that was then, nor the Question that is now. You have made a long Speech here, and nothing at all to the purpose: you do not understand what you are about, I tell you it was no such Question.

Mr. Ward. My Lord, I was only giving an account of what we should prove as to the Fairness of our Proceedings-----

L. C. J. But I must interrupt you, and tell you, all you have said signifies nothing. And as to what you mention of the Trial for the Riot, I say, if there be any Election to an Office at any time, that is controverted or doubtful, you have Forms and Methods of Law to determine the Controversy-----

Mr. Ward. And we say, with Submission, my Lord, we have only pursued such Form and Method.

L. C. J. You are not to try Rights by Club-Law, by Riots, by Noise, and by Tumults. Therefore, you are mistaken, to say, that was the Question upon the Trial of the Riot. No, it was not the Question, but the Defendants there were tried for a notorious Offence, and disorderly tumultuous Assembly, an Assembly that had like to have set us together by the Ears. Therefore you must not talk after that rate. If you will speak, apply to the Business in hand. Do not make such Excursions, *ad captandum Populum*, with your Flourishes; for that is all that is designed by your long Harangues. But I must not suffer it. I will none of your Enamel, nor your Garniture. The Business



Business of the Court, is, and by the Grace of God, it shall always be my Business, and so it should be the Counsel's too, *Servare jus illisum*. But I see you do not understand the Question, and that makes you ramble so much in your Discourse.

Mr. Ward. My Lord, I desire always to do my Duty; and do it as well as I can. I know very well, and hope to apply it to this Case, that in a Question of Right there are Forms and Methods of Law to be pursued, and I would defend my Client from this Action, by proving he did pursue that Method; and when he apprehended he had been before mistaken, he desisted from what he had begun---

L. C. J. I tell you, I perceive you do not understand the Question.

Mr. Ward. If your Lordship will give me leave to explain myself, I hope I shall satisfy your Lordship.

L. C. J. Indeed, Mr. Ward, you do not understand the Question at all, but launch out into an Ocean of Discourse, that is wholly wide from the Mark. I see you do not understand it.

Mr. Ward. Will your Lordship please to hear me---

L. C. J. Ay, if you would speak to the purpose; but I cannot sit here all Night to hear you make florid Speeches about Matters that are foreign to the Point before us. Come to the Question, Man; I see you do not understand what you are about.

Mr. Ward. My Lord----

L. C. J. Nay, be as angry as you will, Mr. Ward, I do tell you again, All you have said is nothing to the purpose, and you do not understand the Business.

*Then there was a little Hiss begun.*

L. C. J. Who is that? What in the Name of God! I hope we are now past that time of day, that Humming and Hissing shall be used in Courts of Justice; but I would fain know that Fellow that dare to hum or hiss while I sit here; I'll assure him, be he who he will, I'll lay him by the Heels, and make an Example of him. Indeed, I knew the time when Causes were to be carried according as the *Mobile* hiss'd or humm'd; and I do not question but they have as good a Will to it now. Come, Mr. Ward, pray, let us have none of your Frangancies, and fine Rhetorical Flowers, to take the People with.

Mr. Ward. My Lord, I do not do any such thing; but if your Lordship would please to hear me, I would explain myself, I hope to your Lordship's Satisfaction, and the Satisfaction of the Gentlemen of the Jury.

L. C. J. Hear you? Why, I did not interrupt you, Man, till you came to launch out into extravagant things that did not at all concern the Cause. Keep close to the Question we come here to try, and I will hear you as long as you will. The single Question is here, Whether there were a probable Cause for your arresting the Plaintiff, or not?

Mr. Ward. My Lord, we did apprehend, I say, that we had a probable Cause; but when we found our Mistake, we discontinued our Action, paid Costs, and have a Receipt for them. This was it I was saying---

L. C. J. Say what you can, in God's Name, that will conduce to the Point in hand; but do not make the People believe as tho' the Right of Sheriffs, or not Sheriffs, were determined upon the Trial of a Riot.

Mr. Serj. Maynard. There are these things that are proper to be considered in this Question: Whether the Cause were probable, or not probable? And if not probable, whether malicious, or not?

L. C. J. True, Brother: If People will but understand their Business, it is reduced to a narrow Compass; but if they will not understand what it is they come about, they will ramble from the Point, and who can help it? But we must keep to what is before us.

Mr. Williams. We shall make it out, that nothing was done but very civilly.

L. C. J. You must make it out, that nothing was done but what you had probable Cause at least for.

Mr. Williams. We will, my Lord, apply ourselves to that which your Lordship directs. Call Mr. Brome, Mr. Courthope, and Mr. Cornish.

Mr. Brome sworn.

Mr. Ward. Mr. Brome, are you sworn?—Mr. Brome. Yes, Sir.

Mr. Ward. Have you the Writs here? The *Latitat* and the *Capias*?

Mr. Brome. Truly, Sir, I have not; I did not bring them with me, they are at home at my House; if you please, I will fetch them.

Mr. Ward. Pray, can you tell, Sir, when the first Writ was returnable?

Mr. Brome. In *Hilary* Term.

Mr. Ward. When you had that Writ brought to you, Sir, what did you say to my Lord Mayor about it?

Mr. Brome. I went to my Lord Mayor with Mr. Goodenough, and desired my Lord that he would appear to it, as Mr. Goodenough told me he had desired of him himself before. But he said he would give no Appearance. If I would take him upon the Writ, I might do as I pleased, and he would consider, and do as he should think fit; but he would not give any Appearance. I told him, I had Writs against several of the Aldermen upon the same account, and that I would wait upon them also; and I did so, and desired them to appear, and offered to take an Appearance from them, and gave my Lord Mayor and them time to consider of it, and came again; but they told me, they had considered of it, and would give no Appearance.

Mr. Williams. When was this, Sir?

Mr. Brome. In the beginning of *Hilary* Term, to the best of my remembrance.

Mr. Brome. What time did you give my Lord Mayor to consider of it?

Mr. Williams. About a Week, or some nine or ten Days time, as I remember.

Mr. Ward. Where was it that you had that Answer, that he had considered of it, and would give no Appearance?

Mr. Brome. It was at the Court of Aldermen.

Mr. Williams. Were the Writs brought again to you?

Mr. Brome. There was not time to make a Return then, and so they let all alone till a little before the beginning of *Easter* Term, and then one Day Mr. Goodenough, the Attorney, brought me the Writs again, and threatened to complain to the Court of me, and acquaint them, that I had neglected the Execution of the King's Writs, two of them.

Mr. Ward. Upon your Oath, Sir, did he threaten you, that if you did not make a Return of the Writ, he would complain?

Mr. Brome. He said I had exposed him to the Complaint of his Client; and if I did not do it, he would complain to the Court of me: If I would make a Return, as I ought to do, well and good, if not---

Mr. Williams. If not, what then? Did he use any other threatenings, pray, Sir, but that he would complain to the Court?

Mr. Brome. He did threaten to complain of me.

Mr. Att. Gen. You say, Sir, he threatened you; what Answer did you make to him?

Mr. Brome. I did not use to execute Writs myself, I told him: Thereupon he did propose two Persons to me, Mr. Keeling, and one Mr. Burleigh, for he told me the Sheriffs Officers would not do it.

Mr. Att. Gen. Pray, Sir, did you endeavour to get any of the Sheriffs Officers to do it?

Mr. Brome. He told me he could not get any of them to do it.

Mr. Ward. Mr. Brome, what did you do after he had proposed those two Persons to you?

Mr. Brome. After I had given those Warrants to the Officers he had named, I told him, I was willing to go once more to my Lord Mayor, to see if I could get an Appearance of him without arresting him; so I waited on him at his House at *Grocer's-Hall*, but found him then at *Dinner*; so I went away, and came again about four o'Clock, and I first spoke to Mr. Gibson, and intreated him to let my Lord Mayor know, that I desired to speak with his Lordship at his leisure: Afterwards, when I came up to my Lord Mayor, he asked me, what was my Business? I told him the Writs were renewed, at the Suit of Mr. Papillon and Mr. Dubois, and I was pressed to make a Return; and I desired his Lordship that he would be pleased to give an Appearance. He told me he was ready to submit to the KING's Writ, but would not give an Appearance; thereupon the Officers named in the Warrant by my Command did arrest him.

Mr. Ward. How often did you wait upon my Lord Mayor for an Appearance upon both the Writs, before he was arrested?

Mr. Brome. Several times; I cannot exactly tell how often.

Mr. Williams. Had you Directions, if he would please to give an Appearance, to take an Appearance, and not to arrest him?

Mr. Brome. I had Directions to take an Appearance, if he would give it.

Mr. Att. Gen. From whom had you that Direction, Mr. Brome?

Mr. Brome. From the Attorney *Goodenough*.

L. C. J. Now, Mr. Brome, let me ask you a Question or two: How long had you been Coroner before?

Mr. Brome. About two Years before, or thereabouts.

L. C. J. Had you ever made any Warrants upon Writs of *Capias* before?

Mr. Brome. Yes, my Lord, several.

L. C. J. Who did you use to make your Warrants to, to be executed?

Mr. Brome. I never keep my Warrants; they that execute them have them.

L. C. J. But answer me, To whom did you make them?

Mr. Brome. To one of the Sheriffs Officers commonly.

L. C. J. Then I ask you, upon your Oath, did you before this Time ever make any Warrants to any other Person, till such time as you made these Warrants to arrest Sir William Pritchard?

Mr. Brome. I have made several to the Sheriffs Officers, that I cannot remember now particularly.

L. C. J. But mind my Question, Man, and answer me directly; for I expect you should answer me positively to it. Have you ever at any time made any Warrants to any other but the Sheriffs Officers till this time?

Mr. Brome. I cannot remember that I have.

L. C. J. How then came you at *Russell's* House to discourse with Mr. Goodenough about who would be fit to execute the Writ, when you used to employ the Sheriffs Officers, and there were so many of them?

Mr. Brome. He told me he could get no one of them to execute it.

L. C. J. But there must be something more in it than ordinary, that you and Goodenough, and all those other People, should come to meet about such a thing as this, to discourse and consider who should be fit to be put into a Warrant to make an Arrest upon a *Capias*, when before that time you used to make it to those that are versed in those Matters.

Mr. Brome. When the Attorney came with a Writ, and desired a Warrant upon it, it is usual to take whom he nominates, and make him the Officer to execute it.

L. C. J. Then give me, if you can, any one special Instance, wherein you have taken the Direction of the Attorney, whose Name to put into the Warrant.

Mr. Brome. Yes, my Lord, I can.

L. C. J. Do then, let's hear it, when was that?

Mr. Brome. I did it in the Case of His Royal Highness against Mr. Pilkington: Mr. Swift came for a Warrant, and directed me whom to put into it.

L. C. J. What Directions did he give you?

Mr. Brome. He gave me the Names in writing.

L. C. J. Where is Keeling?

Keeling. Here, my Lord.

L. C. J. What was the meaning of that Word that was used by you, that the Party would be angry, if you did not arrest my Lord Mayor; for that is it, which makes me so inquisitive into this Matter, how these People came to be employed?

Mr. Sol. Gen. Ay, pray consider with yourself, and recollect, Mr. Keeling; when you were first mentioned to be a special Bailiff to arrest my Lord Mayor, you say you opposed it: How then came you to be drawn in, and engaged to do it?

Keeling. I will tell you, my Lord.

L. C. J. Ay, and tell us what Number of People were there.

Keeling. There were about thirty or forty.

L. C. J. Was Brome among them?

Keeling.



*Keeling.* He was there some part of the time.

*L. C. J.* Well, what was the Reason that you should be engaged about this Thing?

*Keeling.* I went away a while, and came again: Mr. Brome came in, and I was away an Hour and half, as I remember, or some considerable time. Mr. Brome cannot forget, that, when I came again, I found my Name inserted in the Warrant, as a Bailiff to the Coroner, to arrest Sir William Pritchard, then Lord Mayor. I disputed it, as being never concerned in any such thing before, and was very unwilling to be employed in the Affair. Says Mr. Goodenough to me thereupon, You will disoblige the Party in case you do not do it.

*L. C. J.* Was Mr. Brome in the Company when Goodenough said so to you?

*Keeling.* I know not that truly, but he was before in the Company.

*L. C. J.* How many were then in the Room?

*Keeling.* About twenty, or more, as near as I can remember.

*L. C. J.* You, Brome, did you ever, when you received a Writ to arrest a Man, and were to give a Warrant upon it, call a Consult of Twenty or Thirty, how to do it, before this Time?

*Mr. Brome.* I did not do it now.

*L. C. J.* No, no, a-lack-a-day, thou wert as innocent in all this Matter as a sucking Child.

*Mr. Williams.* Was Mr. Papillon in the Company, Mr. Keeling?

*Keeling.* No, he was not.

*Mr. Att. Gen.* Mr. Brome, pray answer me; When you had my Lord Mayor in your Custody, how came you to discharge him out of Custody?

*Mr. Brome.* I was taken into Custody myself.

*Mr. Ward.* Did my Lord Mayor give an Appearance?

*Mr. Brome.* I was committed to the Compter myself.

*Mr. Williams.* Were you by when it was agreed that my Lord would give an Appearance?

*Mr. Brome.* I believe not; it was afterwards as I have heard.

*L. C. J.* A-lack-a-day, it went strangely against Mr. Brome's Stomach, all this did. I know it very well, he had no mind to it at all.

*Mr. Att. Gen.* Mr. Keeling, did you hear any Discourse between the Twenty or Thirty that were in that Company about this Business?

*Keeling.* I cannot say who in particular discoursed of it, or what was said.

*Mr. Sol. Gen.* Was it discoursed of in the whole Company?

*Keeling.* There was some Discourse about it in the Company.

*L. C. J.* You, Brome, were you ever acquainted with Keeling before?

*Mr. Brome.* I had the Misfortune, my Lord, to be concerned with him about some Coal-Works.

*L. C. J.* Did you know that Mr. Burleigh before, that was the other Bailiff?

*Mr. Brome.* I knew him by sight; I had no great Acquaintance with him.

*L. C. J.* Pray where lived Keeling?

*Mr. Brome.* At East-Smithfield.

*L. C. J.* And where lived Burleigh?

*Mr. Brome.* Truly, my Lord, I know not; I think at the other End of the Town.

*L. C. J.* But, prithee, how came you to join these two People together in this Business; the one from Wapping, the other from Westminster?

*Mr. Brome.* Where the Sheriffs were concerned, as they were in this Matter, and therefore it came to me, I thought it not so proper to pitch upon the Sheriffs Officers, nor would they do it, as he told me; and especially it being to arrest my Lord Mayor, I did not think proper to employ any one that lived in the City.

*L. C. J.* But there were abundance of People that were not Citizens, that were nearer at Hand, and nearer together, and fitter for such a Purpose than a Tradesman fetched out of the East, and I know not who out of the West, to arrest a Man: There must be some other meaning in it.

*Mr. Brome.* I gave them the Nomination, as I used to do in like Cases.

*L. C. J.* Upon your Oath, Sir, was it you or the Attorney that named these Persons?

*Mr. Brome.* He told me he could get none of the Sheriffs Officers to do it; and I did not think it indeed proper for any of them.

*L. C. J.* And why, good Sir?

*Mr. Brome.* I did think so, truly, my Lord.

*L. C. J.* Why? Why? What Reason had you for it?

*Mr. Brome.* It was reasonable, as I apprehend, my Lord, for me to think so, it being in a Matter wherein the Sheriffs were so much concerned.

*Mr. Sol. Gen.* But did you propose it, or any one else in the Company, upon your oath? and who was it?

*Mr. Brome.* The Attorney named them.

*Mr. Com. Serj.* It seems here were a great many Persons met at Russell's about this Business. I desire, my Lord, that Mr. Brome may name as many of them, as he can, that were there.

*L. C. J.* Ay, as near as you can, name the twenty or thirty Persons that were there; for you living in the City, and having an Acquaintance among that Sort of People, must needs know most of them.

*Mr. Brome.* Why, my Lord, there were both the Goodenoughs, and Mr. Nelthorpe, and who in particular else, I cannot well remember.

*L. C. J.* Yes, yes, I am sure you can tell more of them.

*Mr. Brome.* My Lord, I cannot swear that I remember any other in particular.

*Mr. Com. Serj.* It seems he has named some of those that are in the Proclamation; pray, Sir, do you remember any others were there, that were in the Proclamation?

*Mr. Brome.* I do not remember any other of those in the Proclamation were there.

*Mr. Att. Gen.* Can you remember any that were not in the Proclamation?

*Mr. Brome.* There were several People that I knew by sight; but I cannot remember their Names.

*L. C. J.* Nay, nay, pray open your Eyes a little, and recollect your Memory, and tell us who were there; I know you can do it.

*Mr. Brome.* My Lord, there were many Citizens that I knew by sight; but had no particular Acquaintance with them.

Vol. III.

*Mr. Sol. Gen.* Did you know any of the Company besides the Goodenoughs, and Keeling, and Nelthorpe?

*Mr. Brome.* I had little Acquaintance with him.

*Mr. Sol. Gen.* How come you to remember him so particularly?

*Mr. Brome.* I verily believe he was there.

*Mr. Recorder.* Was Mr. West there?

*Mr. Brome.* I cannot positively say whether he was or not.

*Mr. Williams.* Swear Mr. Cornish then. [Which was done.]

*L. C. J.* You, Brome, was Mr. Cornish there?

*Mr. Brome.* Not that I know of.

*Mr. Att. Gen.* It is strange we cannot learn who those Persons were that met there.

*L. C. J.* Oh these Fellows have strange Memories for their Purposes! Well, what do you call him for?

*Mr. Ward.* My Lord, we call Mr. Cornish to give an Account what he knows of this Matter; what Directions were given by the Plaintiff to his Attorney, how he should carry on this Matter.

*Mr. Cornish.* My Lord, That which I particularly remember, I shall fully and very faithfully declare. I was with Mr. Papillon, and Mr. Dubois, at my House. The Occasion of their coming thither I knew not, nor did expect either of them there; I myself came from Guild-Hall, either from a Court of Aldermen, or from a Committee; and when I came Home, I found them there. We had not been many Minutes together; but in comes Mr. Goodenough the Attorney; and he applied himself particularly to Mr. Papillon and Mr. Dubois, to receive their orders what he should do; for he said the Time was almost spent, and he had addressed himself from time to time to my Lord Mayor, and some of the Aldermen, to get them to appear, but they would not. They told him then, they had given him what orders they had to give him already; that it was fit the Matter should be brought to some Trial or Issue, that there might be an end of it. He pressed them then earnestly to know what he should do? Said they, You are to desire an Appearance to the Action, and if he will give it, take it, and remember my Lord Mayor is the chief Magistrate of the City; and pray, carry it with all respect and regard imaginable to him.

*Mr. Williams.* You say, Sir, they bid him to take an Appearance, if he could get it?

*Mr. Cornish.* Yes, and they declared, that their Design was only to bring it to an Issue to be tried, and they would not insist upon any thing but an Appearance, if it might be had.

*L. C. J.* Wonderful careful and civil they were, no doubt of it.

*Mr. Cornish.* This is the Truth, and the whole of the Truth, that I know of, relating to this Matter.

*L. C. J.* Mr. Cornish, you speak of some of the Aldermen, that he said he had been with: What Aldermen were those?

*Mr. Cornish.* There were several of them, that he said he had Writs against.

*L. C. J.* You were an Alderman then; pray, had he any Writ against you?

*Mr. Cornish.* I know not whether he had or no.

*L. C. J.* But he did not require an Appearance of you, I suppose?

*Mr. Cornish.* If he had, I must have taken Notice of it to defend myself as well as I could.

*L. C. J.* Ay, no question but you would; but were you asked for an Appearance, or no?

*Mr. Cornish.* I was told I should be sued among the rest.

*L. C. J.* But was there any Writ shewn to you?

*Mr. Cornish.* No, my Lord.

*L. C. J.* Then pray let me ask you a Question or two. Did you ever know any Man before bring an Action, or sue to be Sheriff of London? You have been Sheriff yourself we know.

*Mr. Cornish.* This was a Matter that had been much disputed in the City; and a Question had been depending upon it, whether the Right was to my Lord Mayor, or in the Sheriffs.

*L. C. J.* But the Question of Right between my Lord Mayor and Sheriffs, what was that to Mr. Papillon? Did you ever know a Man bring an Action, or sue to be Sheriff?

*Mr. Cornish.* Truly, he that experienceth the Trouble of it, will, I believe, never be desirous of it.

*L. C. J.* But that is no Answer to my Question, answer me directly: Did you ever know any such thing before?

*Mr. Cornish.* I never did hear of any such that I know of.

*L. C. J.* How then came Mr. Papillon so officiously to desire it?

*Mr. Cornish.* I cannot answer; what his Reasons were, I know not.

*Mr. Williams.* It was an Action to determine the Question that was at that time so much litigated in the City of London.

*Mr. Att. Gen.* Mr. Cornish, Pray, will you answer me one thing; Were you never in no Company, wherein it was agreed this Suit should be brought and carried on in their Names?

*Mr. Cornish.* Mr. Attorney-General, I never meddled nor managed it.

*Mr. Att. Gen.* Did you never hear it was so agreed?

*Mr. Cornish.* It is known to Thousands, as much as I know of it; the Matter was disputed of in all Companies in the City.

*Mr. Att. Gen.* But you do not answer to my Question; Were you ever in any Company when it was agreed that so it should be?

*Mr. Cornish.* Sir, I tell you as well as I can, the Matter that was to be disputed by that Action, was the general Discourse of all Societies of Men whatever in the City at that time.

*L. C. J.* It is a strange thing, that one cannot get a direct Answer from these People, to any thing one asks them; I desire to know one thing of you, Mr. Cornish: you have known Mr. Papillon, the Defendant, before this time?

*Mr. Cornish.* Yes, my Lord, I have known him several Years.

*L. C. J.* Was he ever chosen Sheriff of London before?

*Mr. Cornish.* Yes, my Lord, I suppose he was.

*L. C. J.* How chance he did not hold then?

*Mr. Cornish.* I have heard he fined, as was common and usual, when Persons' Occasions would not permit them to attend the Service of the Place.

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L. C. J.



*L. C. J.* He did so, it is known to Thousands, as you say, that he did. Now, pray, let me ask you another Question: Was Mr. Bethel ever chosen Sheriff before that time you and he were Sheriffs together?

*Mr. Cornish.* I do not know that he was chosen before.

*L. C. J.* How is that?

*Mr. Cornish.* My Lord, I do not understand what the Question is, or else I know nothing of it.

*L. C. J.* How, did you never hear of that before? For, Mr. Cornish, I do not speak of a thing that no body knows; alas, thousands, and ten thousands of People know that too.

*Mr. Cornish.* My Lord, upon my Oath, I do not know that ever he was.

*L. C. J.* Did you ever hear it?

*Mr. Cornish.* I do not know that ever I did.

*L. C. J.* Did you never hear that Mr. Bethel swore himself off, as they call it? You know what I mean.

*Mr. Cornish.* I do not remember any thing of it.

*L. C. J.* Nay, nay, it is to the Matter, I assure you, Mr. Cornish, whatever you think of it. I ask you then another Question, that lies something nearer your Memory: Upon your Oath, when you two were elected upon *Midsummer-day*, was not that Election vacated, and you chosen again within a Week, or some little time after? And was it not because you had not taken the Sacrament, and the Corporation-Oath?

*Mr. Cornish.* My Lord, I do remember there was a second Election.

*L. C. J.* And we remember it too well enough.

*Mr. Cornish.* That was so lately, that any Citizen of London, or any one that lived here, may remember the Passages of those Times.

*L. C. J.* And you have as much Cause to remember it as any Man, I assure you, for several Reasons that I know.

*Mr. Cornish.* My Lord, I think I have Reason to remember it.

*L. C. J.* Left you should forget it, I will enlighten you, and refresh your Memory a little: I ask you again, upon your Oath, was not your first Election set aside, because you had not taken the Oaths and the Sacrament?

*Mr. Cornish.* There were two Elections, my Lord, I say, I do remember.

*L. C. J.* Sir, do not prevaricate with me; I expect a positive Answer: Was not that the Reason, upon your Oath?

*Mr. Cornish.* I cannot say that was the positive Reason.

*L. C. J.* Then I ask you upon your Oath, had you taken the Oaths and the Sacrament, as the Law requires?

*Mr. Cornish.* My Lord, Mr. Bethel was a Stranger to me, I did not know him before that time.

*L. C. J.* Gentlemen, Men must not think to dance in a Net, and blind all the World. As to my own self, I know these things very well, without any of their assistance, and I only ask these things by the by, to let the World be satisfied what sort of Men these are, that pretend to Saintship; and yet, you see, one can hardly get one Word of Truth out of them: Let the Law, in God's Name, take place, and let every Man prosecute his legal Actions; but when, under the Umbrage and Countenance of Law, Men shall desire to put themselves into Offices, and Places of Trust, on purpose to disturb the Government; Do you think the Government will ever suffer itself to be snivelled at, and overthrown by a Company of such whining Fellows? Let them hiss and hum, and make a Noise and ado as they will; thanks be to God, 'tis not that time of Day now: Such things have pass'd too much uncontroul'd in the body of this City heretofore. What, Gentlemen, are you baffling the Law with such Pretences as these, now-a-days, and do you think to sham People into Offices? No, I tell you, Villany was the Foundation of it, and Knavery the Superstructure; and it is high time it should be told out, since I hear People begin to doubt of it as a question.

*Mr. Ward.* Where is Mr. Serjeant? Swear him.

[Which was done.]

*L. C. J.* Do not I know, as sure as I sit in this Place, that Bethel did once before swear himself off? and that there were two Elections of these two very Men that Year? and that one of the Reasons was, because they had not taken the Oaths and the Sacrament according to Law? Nor would they ever have done it, we know them, neither Bethel, nor that very Fellow that stands there, Cornish, neither, till they found it would contribute to the design of subverting the Government; then these Rascals could qualify themselves for an Office, only to put the Kingdom into a Flame.

*Mr. Cornish.* When the City chose me, I had good Reason for what I did.

*L. C. J.* Reason! I tell you, the City was in great Happiness and Quiet, ever since the late Times of Rebellion and Confusion; every one knew his Duty to his Superiors, and did it cheerfully and conscientiously, till such time as a couple of busy Fellows came to get into the publick Offices. Let the whole Party go away with that in their Teeth, and chew upon it, if they will.

*Mr. Williams.* Mr. Serjeant, will you please to tell my Lord and the Jury, what Directions you heard the Defendant, Mr. Papillon, give about the Plaintiff, how they should treat him?

*Mr. Serjeant.* My Lord, I was in the Counting-house at Mr. Alderman Cornish's House, when Mr. Papillon and Mr. Dubois were there; I went into the Parlour to them, and Goodenough coming in, they fell into a Discourse about this Action, that was brought by them against Sir William Pritchard, then Lord Mayor, and some of the Aldermen; and Goodenough gave them an account how far he had proceeded in it; he said, he could not get any of them to give an Appearance, and the Time was near spent, and he desired to know of them what he should do. Mr. Papillon and Mr. Dubois both did declare to him, over and over again, that it was their mind only to have the Matter brought to a fair Trial; and they charged him to look to it, to do nothing but what was legal, and carry it with all respect imaginable to my Lord Mayor, as the Chief Magistrate of the City; that he should by all means get an Appearance from him, if he could, and get the Coroner, who was an Officer of the City, to go with him, and carry all Things fairly and decently.

*Mr. At. Gen.* Who gave these Directions, Sir, do you say?

*Mr. Serjeant.* Mr. Papillon and Mr. Dubois, both of them did.

*Mr. Ward.* Now, my Lord, we shall shew that we proceeded so far in

the Action as to declare; but afterwards apprehending ourselves to be under a mistake, we discontinued our Action.

*Mr. Williams.* And the Costs upon the discontinuance were received by my Lord Mayor's Attorney. Here is the Declaration as it was filed.

*L. C. J.* Ay, it may be there was a Declaration filed; but not regularly.

*Mr. Williams.* My Lord Mayor after appeared.

*L. C. J.* How doth that appear in Evidence? For the Coroner says he himself was in Custody, and knows no more of the Matter afterwards.

*Mr. Williams.* I believe your Lordship doth remember there were many Motions made in Court about this Matter, on the one side and the other, and at length in Court it was compromised, and my Lord Mayor promised to give an Appearance.

*L. C. J.* Prove what you can; prove the Appearance enter'd, and Declaration received.

*Mr. Williams.* My Lord, I only offer this as an Evidence of an Appearance.

*L. C. J.* A Record, I know, is a good and fair Evidence; shew that if you can.

*Mr. Ward.* It is not usual to declare till the Defendant appears.

*L. C. J.* A Declaration may well be upon an Appearance; but because it cannot be good without an Appearance, therefore it cannot be a sufficient Evidence of it.

*Mr. Ward.* We will prove the Costs of the Discontinuance paid and accepted. Swear Mr. Baker. [Which was done.] What do you know, Sir, of any Costs that were taxed and paid for a Discontinuance in this Case?

*Mr. Baker.* My Lord, Mr. Aston told me he appeared for Sir William Pritchard, then Lord Mayor, and had a Declaration from the now Defendant's Attorney: So I entered up a Discontinuance, and paid the Costs, and have Mr. Aston's Receipt for them.

*L. C. J.* He says well. Go on then.

*Mr. Williams.* My Lord, it is a thing that hath frequently happened, that after a Man has brought an Action against another, he finds he was mistaken, and hath no Cause of Action, and thereupon relinquisheth his Suit: But sure that will not make him liable to a Suit.

*L. C. J.* Well, pray go on with your Evidence.

*Mr. Ward.* My Lord, we are not now offering to try the Right of Election, tho' that really was the Foundation of the Action that we brought, but we apprehended that Question to be determined, and we acquiesced in it, when that Trial was over. Now, my Lord, we shall shew, that apprehending ourselves really chosen, we did in a due Course of Law sue forth our *Mandamus*, directed to the Plaintiff and the Aldermen; and there is a Return made. I pray these may be read.

*The Mandamus and Return were read.*

*Mr. Williams.* Then that which we shall next shew, is the Grounds and Reasons why we thought this Return was false, and thereupon brought our Action. We shall shew, that at a Common Hall, held for the Election of Sheriffs, the Defendant was in Nomination, and had a great Number of Hands and Voices for him. Pray, call Mr. Gilbert Nelson, Mr. William Wightman, and Mr. Leonard Robinson.

[Who all appeared, and were sworn.]

*Mr. Ward.* Mr. Nelson, Pray were you at the Common Hall for Election of Sheriffs, in the Year 1682?

*Mr. Nelson.* I was at the Common Hall in June, 1682, on *Midsummer-day*.

*Mr. Williams.* Pray, Sir, will you tell us who were then in Nomination, and how they did proceed?

*Mr. Nelson.* There were in Nomination for Sheriffs, he that is now Sir Dudley North, then Mr. North, Mr. Box, Mr. Papillon, and Mr. Dubois.

*Mr. Ward.* Pray, Sir, who had the Majority of Hands?

*Mr. Nelson.* I did see the Poll Books after they were cast up.

*Mr. Williams.* But did you observe the holding up of the Hands?

*Mr. Nelson.* Upon the holding up of the Hands, the Election was by the Sheriffs given to Mr. Papillon and Mr. Dubois.

*Mr. Williams.* But pray, Sir, upon your View, and in your Judgment, were there many Hands for Mr. Papillon?

*Mr. Nelson.* I guess there were the most Hands for him and Mr. Dubois.

*Mr. Ward.* What say you then to the summing up of the Poll-Books, that you spoke of?

*Mr. Nelson.* I did see the Books after they were cast up.

*Mr. Ward.* Was there a great Number for Mr. Papillon?

*Mr. Nelson.* Yes, there was the greatest.

*Mr. Com. Serj.* What Books do you mean, Mr. Nelson?

*Mr. Nelson.* The Books in the Sheriffs Custody, Sir.

*Mr. Com. Serj.* But did you see any Books?

*Mr. Nelson.* That was upon the second Poll.

*Mr. Ward.* Then which is Mr. Wightman?

*Mr. Wightman.* Here I am, Sir.

*Mr. Ward.* Were you present at this Common-Hall? Did you see this Election?

*Mr. Wightman.* I can say nothing to the Election.

*Mr. Williams.* Were you at the Common Hall on *Midsummer-day*, 1682?

*Mr. Wightman.* I cannot say that, Sir.

*Mr. Ward.* Then what is it you can say to this Matter in question? Did you take any Poll?

*Mr. Wightman.* I did take the Poll in one of the Books.

*Mr. Williams.* Was there any Number for Mr. Papillon?

*Mr. Wightman.* There were 2400 and odd for Papillon and Dubois.

*Mr. Thompson.* Who were in Nomination, Sir? Who were the Persons polled for?

*Mr. Wightman.* Sir Dudley North, Mr. Papillon, Mr. Dubois, and Mr. Box.

*Mr. Ward.* What say you, Mr. Robinson? Were you at this Common-Hall in 1682?

*Mr. Robinson.* Yes, I was.

*Mr. Williams.* Who were named to be Sheriffs then?

*Mr. Robinson.* Mr. North, now Sir Dudley North, Mr. Ralph Box, Mr. Thomas Papillon, and Mr. John Dubois, they four.

*Mr. Williams.* What Number had Mr. Papillon for him?

*Mr. Robinson.*



Mr. Robinson. I never saw the Poll.

Mr. Ward. But upon the View in the Hall, in your Opinion, did you look upon it as a doubtful Case which was elected?

Mr. Robinson. By the Hands, I judged the majority was much more for Mr. Papillon and Mr. Dubois, than for the other two.

Mr. Williams. So you think in your Judgment?

Mr. Robinson. Upon my Oath, that was my Opinion.

Mr. Williams. Well, my Lord, we must rest it here, unless they give us further Occasion.

Mr. Att. Gen. You say the majority was for Papillon and Dubois: Pray was the Election declared at that time by the Mayor and Aldermen, or was there a Poll demanded?

Mr. Robinson. Mr. Attorney, First the Question was put for the Persons, then the Sheriffs declared their Opinion, and a Poll was demanded, and a Poll was granted, and the Sheriffs went with the Common Serjeant up to the Court of Aldermen, and acquainted them with it; and then they all came down again, and declared that there should be a Poll.

Mr. Sol. Gen. Who were Sheriffs then, pray, Sir?

Mr. Robinson. Mr. Alderman Pilkington, and Mr. Samuel Shute; and in the Evening, after the Poll was closed, the Books were numbered up, the Sheriffs came down upon the Hustings, and declared the Numbers; and then, as I remember, the Number declared for Mr. Papillon and Dubois was above 2000, and the Number declared for the other two, was some Hundreds under 2000.

Mr. Ward. My Lord, we leave it here.

L. C. J. Will you, that are for the Plaintiff, say any thing more to it?

Mr. Att. Gen. Yes, my Lord, We have more Evidence to bring in answer to what they have brought here. My Lord, that which they would excuse themselves by, is, that there was a probable Cause; but that will fail them, if it be but observed what doth appear upon their own Evidence. It is true, where a Man hath a probable right, he may sue. But this matter here contended for, was never such a right as a Man may sue for. No Man can ever shew, that for the Shrievalty, an Office of Burden, an Office of Hazard, and an Office of Charge and Expence, any Man did ever sue, so little ground of Reason had they to bring this Action for this Office. And then for their Title to the Office, that will appear but very weak. They pretend that my Lord Mayor and Aldermen could not try the right who was elected truly and rightfully, and they bring this Action to try it, and then they produce some of the Men that held up their Hands, and in their Opinions, Gentlemen, they say, the Election fell upon Papillon and Dubois. But, Gentlemen, that my Lord will tell you is nothing at all of Title, but a Poll was demanded, and by that it must be decided. Then one of their Witnesses tells you a Story of what the Sheriffs did upon the Poll: But all that is nothing too. For we tell you, and shall prove it, That those Sheriffs did, in a riotous manner, assume, and take upon themselves the Supreme Government of the City, and would have excluded my Lord Mayor from it. But all their Proceedings, and all that they call a Poll, was void, and can make no Title to any thing at all. It was a bare Dispute of a factious Party, to subvert the orderly Government of the City. There was no probability of Title or Right could be gained by it. For the Chief Magistrate of the City, for the time being, ever did direct the Poll, and all the Proceedings upon Election of Officers. And when he did so in this Case, we shall prove to you there was not any considerable Number (that is, not twenty Men) to give any pretence of Title to this Gentleman, that thus sued for this Office. But indeed in that most riotous Assembly one of them that ever was, they do pretend to be elected: But we shall shew that for that riotous Assembly they were convicted here as Rioters upon an Information, and fined to the King for it. And I could tell them of a like Case of an illegal Title; a Man goeth by a false Oath to get a Possession of Goods, takes out a *Capias*, and with others, getting into a House to arrest the Party, he then carries away all the Goods, and upon this Possession would set up a pretence of Title. But upon an Information for a Riot, he was severely punished for it. Mr. Papillon, if he had thought he had had a good Title, or Cause to bring this Action, he would have employed better Instruments to have proceeded in it. The Attorney he makes use of, who is it but Mr. Goodenough? One who did not live within the City, nor had any thing to do in it, till brought into Office as the great Instrument of Mr. Bethel in his Actions, and a great Plotter in the late horrid and dreadful Conspiracy. And this Cause, how is it managed? Not by any Counsel of worthy Men of the Robe, or grave Citizens, but by a Cabal of thirty or forty Rioters, most of them in the Proclamation proscribed as Traitors, and run away from Justice upon the Discovery of the Plot. All this speaks Malice, and the worst of Malice, the thing itself speaks it, to pretend a Title with so little or no ground. For you plainly observe, there is no Title but this riotous Assembly to ground their pretences upon. In the Prosecution of this Action there was no Order, whatsoever they pretend, for to take an Appearance, I mean by those that really were at the bottom of the Design. For the forty Men at the Consult at Russell's did not meet, to be sure, to give Order for an Appearance. No, they had other Work to do. An Appearance would not do their Work: For, as Mr. Keeling at large could explain it, they took all Opportunities to rise and make a Mutiny, and take Advantage of the Mob and Disturbances to bring about their main Plot. They did not care five-pence for the Appearance: But when the Soldiers were up, then the Plot was spoiled, and then my Lord Mayor may go home, if he will. Gentlemen, we shall prove what I have opened to you, tho' I am persuaded not one of you but know it as well as I.

Mr. Sol. Gen. Shew the Records of the Conviction of the Riot.

L. C. J. Hold, Mr. Solicitor, I tell you before hand, that as I stopped them from urging the Trial for the Riot as any Determination of the Right of Election, or as any ways tending to the Question now before us; so I must not let you neither enter into that matter. The Business of the Indictment, Conviction, and Sentence upon the Rioters, makes nothing, either to the Right of Election, or this Right of Action. And therefore, and I said to Mr. Ward, it was nothing to the Purpose to mention it on that side: So it is to no Purpose, I must tell you, to mention it on the other side. For it was no Determination of the Point of Right one way or other. And he could not give it in Evidence, that that was a *Litigation* of the Matter in Dispute, and upon the Decision of that Indictment (till which

he apprehended he had a Right) he found it was against him, and so decided. No, the Right, I say, was not at all affected by that Trial, one way or other. For admitting they had a Right, or you had a Right, yet the gaining your Right must not be attempted in a wrongful manner, but they had a lawful Way to come by their Right, and if they pursued that, well and good; if not, then they must take what comes of it.

Mr. Att. Gen. My Lord, that right was insisted on by them as the probable ground of their Action; and that, we say, was no Right.

L. C. J. Therefore it is to no Purpose to urge it.

Mr. Sol. Gen. But, my Lord, with Submission, our Answer to their Title is, That there was no Colour of Pretence; and this Conviction proves it.

L. C. J. No, Mr. Solicitor, that is not any Evidence one way or other.

Mr. Sol. Gen. If your Lordship please, it destroys their very Title, which is the Number of the Poll.

L. C. J. Lord! the thing is as plain, Gentlemen, as any thing can be. You or they may have a good Title, and yet do a thing that is unlawful to bring the Title into Possession. But then the punishing you for that unlawful Act is not an Evidence, either against or for the Title, nor doth determine it for you, or against you.

Mr. Sol. Gen. My Lord, we submit to your Lordship's Directions in it. But then this we say to it, the Question now is reduced to this Point: Whether there were any probable Cause for the Defendant's Suit against the Plaintiff? They have insisted upon it that there was, from two grounds. They call Witnesses, who declare they were of Opinion, that the Defendant had the Right of Election by the holding up of the Hands. That is one of the probable Causes of their Suit. Now that is clearly gone by this single Point, whether the Election was determined upon that holding up of the Hands, or they went to a Poll to decide it? If they went to a Poll, then it is clear the Right of Election was not determined; and he could have no Right to be Sheriff upon the holding up of the Hands. Then they went a little further, and offered in Evidence the Sheriffs Poll books, or the Numbers taken out of them, wherein they say, the Majority was for Mr. Papillon, and so thereupon, say they, we brought our Action. Now, to that Objection it is proper for us, with Submission, my Lord, to answer it, that that can be no manner of Cause of Action in the World; because, say we, that was no Part of the Election at all, nor was it at all to govern the Question of Right one way nor other, 'twas a Number of Names taken out of the regular Course upon Elections by Persons that had no legal Authority; nor was it such a Method, as was a Foundation to ground any Opinion upon one way or other, much less, such a one, as would be a Cause of Action. These are all the grounds they went upon. The first, by their own shewing, was no ground at all; for there was no Determination of the Right upon the View, but a Poll was agreed upon: The other, we shall call Witnesses to prove was irregular, and so not legal. Swear Mr. Town-Clerk.

[Which was done.]

Mr. Att. Gen. Pray, Sir, will you give my Lord and the Jury an account who is to govern the Poll upon the Election of Sheriffs, or other Officers, at the Common-Hall?

Mr. Town-Clerk. My Lord, I never knew a Poll about Sheriffs till about five or six Years ago; and that was the first Poll that ever I knew, and it was between Mr. Jenks and Sir Simon Lewis, and indeed it was the first that ever I did read of in any time within the City of London. I think, I have seen the Entry of all the Elections of Sheriffs, that are extant in our Books in all times; and I think, I did never see in any of those Entries one Poll that was ever taken for Sheriffs; it is only mentioned, Such an one elected by the Mayor, by Prerogative, and such an one by the Commonalty. Among other Books of the City's, there is an old Book, that is called by the Name of *Liber Albus*, which, speaking of the Constitution of the Common-Hall for Election of Sheriffs, says, *First of all the Mayor shall choose one of the Sheriffs for London and Middlesex, for whom he will answer; and then the Commonalty shall choose another to join with him, for whom they will answer. And if there arise any Difference between them, who is elected, or not elected, it shall be determined in the same manner as it is in Common-Council.* This is all the Notice, that I find in any of the City-Books, that looks like a deciding the Election, when disputed, by a Poll. Now in another Chapter of that Book, where the Common-Council is mentioned, it is said, *If there be any Division of Opinions in the Common-Council, the Common-Serjeant and the Town-Clerk shall examine every Man severally, what their Opinion is, which is by way of Poll at this Day when we had a Common-Council.* But till that time that the Poll was between Mr. Jenks and Sir Simon Lewis, I never knew any Poll for Sheriffs, and that Poll was taken immediately by telling one and the other. For my Lord Mayor and Aldermen, as soon as ever they come upon the Hustings, make Proclamation to have the Liveries attend for such Elections, and then withdraw, and leave the Sheriffs and the Common Serjeant.

Mr. Att. Gen. Sir, the Course is very well known, I suppose, to the Gentlemen of the Jury. But pray, did any Persons poll at my Lord Mayor's Books for Dubois and Papillon?

Mr. Town-Clerk. Not that I know. As to this Poll, my Lord Mayor caused the Common-Hall to be adjourned to such a Time, and after that sent for the Common-Serjeant, and myself, and required us to go get Books, to take the Poll for Mr. Box, Mr. Papillon, and Mr. Dubois; as for Sir Dudley North, he was not to be polled for, he being chosen before, by the Prerogative of the Lord Mayor, and my Lord Mayor and Aldermen declared him fully elected; and upon that he was called out by public Proclamation upon the Hustings, to come and take the Office upon him, as is usual in such Cases. But we had Directions to provide Books to take the Poll for Mr. Box, Mr. Papillon, and Mr. Dubois; and we did so, and took the Poll for these three Gentlemen, and upon closing of the Poll, we all of us sealed up our Books, and delivered them to my Lord Mayor, and at a Common-Hall afterwards he did declare Mr. Box to be chosen the other Sheriff, to be joined with Sir Dudley North: The Poll was, as it always ought to be, by the Direction of my Lord Mayor, and the Sheriffs are but Officers, and not the Judges and Managers of the Poll, without my Lord Mayor's Direction.

L. C. J. What say you to it, Gentlemen? Have you any more Evidence?

Mr.



Mr. Serj. *Maynard*. My Lord, and Gentlemen, Here has been much said in this Cause that is nothing to the Purpose. As particularly, that which the Plaintiff's Counsel did last insist upon, who took the Poll, and who had right to take the Poll or not, is not any thing to this Question: This Action is not at all concerned in that matter. For whatsoever the Dispute was, and whichsoever had the right, and because it was a Dispute, some it may be, could not poll at the one, and others would not poll at the other, yet the lifting up of two Thousand Hands might make him think that he was chosen Sheriff; and there lies the Cause of his Action, his Apprehension of a Right: Your Lordship did object this to us, Whoever before brought such an Action as ours, and did sue to be Sheriff of London, a Place of Charge and Trouble?—

L. C. J. No, I did not make it as any Objection. I asked your Witness, *Cornish*, that Question indeed, for some Reasons that I know.

Mr. Serj. *Maynard*. That may be objected indeed to the Prudence of my Client, Mr. *Papillon*, to desire such an Office: But that proves nothing of Malice in him against the Plaintiff; for if he were never so unwise as to desire it, if he had a Right to it, or thought he had, it is not a malicious thing in the Eye of the Law, for him to take his legal Course for it. And then the Objection that is made of the Instruments that were used: Our Attorney *Goodenough* is in a Plot: What is that to us? There is not the least Suspicion upon us. He is a bad man: But that doth not make all his Clients bad. But the Question now before you is, First, Whether there were any probability of a Cause of Action? Secondly, If there were not a probable Cause; yet whether that Action was grounded upon Malice? What Malice, I pray, is there in this against my Lord Mayor, to desire an Appearance of him, when it is conceived, though upon mistake, that there is Cause of Action against him? We did not press him to give us Bail to our Action, or threaten else to arrest him: No, it was a decent rather than an irreverent Application to him. If, then, there be not both concurring, want of Title, or probable Cause, and Malice too, this Action of the Plaintiff's is without ground. No man, that has any Sense, if he knows he has a clear Title against him, will bring an Action; but though it should be clear against him, yet if he do bring an Action, but not vexatiously and maliciously, that cannot subject him to an Action; that would frighten men from bringing Actions upon doubtful Matters, which certainly is lawful for any Man to do. Now, what Malice is proved in the Defendant against the Plaintiff, the Jury here are Judges of. If we were Criminal in the Manner of our Proceedings, they might come before your Lordship in another way; but sure this is not the way; and if it should be actionable, and we likewise subject to be punished as a Criminal, then we should suffer twice for the same Fault. Now, Gentlemen, upon this Action we are not to be fined; but they, if they can, are to shew what Damages the Plaintiff sustained by our Action; and if what we have said do not satisfy you, that we had probable Reason for what we did, then you, upon your Oaths, are to give him what Damages you, in your Consciences, think he has received by it.

Mr. *Williams*. My Lord, if your Lordship please, I would ask one Question of Mr. Town-Clerk, as to the Right of managing the Election. Sir, You have observed many Common-Halls for Elections?

Mr. Townclerk. Yes, Sir, I have for this twelve Years.

Mr. *Williams*. Did the Common-Hall ever go to a Poll upon an Election, before this time, that you know of?

Mr. Townclerk. Never but once for the Election of Sheriffs, I say.

Mr. *Williams*. I speak, Sir, of any sort of Poll; for I suppose you do not call the holding up of hands a Poll.

Mr. Townclerk. Mr. *Jenks's* Poll was the first that ever I knew for Sheriffs.

Mr. *Williams*. Well, Sir, was that managed by the Sheriffs, or by my Lord Mayor, or by you, and the Common Serjeant; or who was it by?

Mr. Townclerk. Sir, The Mayor and Aldermen withdrew, and leave the Sheriffs to view the Election by the Hands; and the Common Serjeant propounds the Question, *So many of you as will have, &c.*

Mr. *Williams*. By whose Direction doth he propound the Question, pray?

Mr. Townclerk. By the Direction of the Common-Hall, I take it.

Mr. *Williams*. But if a Question do arise upon an Election, so that it cannot be decided by the view, but they go to a Poll, who is to manage that Poll?

Mr. Townclerk. The Officers of the City, by Direction of the Lord Mayor.

Mr. *Williams*. That Poll you speak of, for *Lewis* and *Jenks*, was that managed by any body but by the Sheriffs?

Mr. Townclerk. It was managed by the Sheriffs and the Common Serjeant, in the accustomed manner.

Mr. *Williams*. How! in the accustomed manner, when you say that was the first that ever you knew?

Mr. Townclerk. It was so for Sheriffs; but there have been Polls for other Officers.

L. C. J. Why, Mr. *Williams*, every body knows that well enough, that the Sheriffs are concerned in the management of the Election, or the Poll, as all the rest of the Officers of the City are, under my Lord Mayor; and the Common Serjeant consults with the Sheriffs Officers and People about him, upon the view.

Mr. *Williams*. Pray, Sir, do you remember the Election of Mr. *Bethel* and Mr. *Cornish*?

Mr. Townclerk. Yes, Sir, there was a Poll there too, that was the Year after.

Mr. *Williams*. Who managed that Poll?

Mr. Townclerk. The Sheriffs, and the Common Serjeant, and I, did agree to take it thus in two Books, whereof one was with the one Sheriff, and the other with the other Sheriff, at the two ends of the Hall.

Mr. *Williams*. That was taken in Writing, Sir, was it not?

Mr. Townclerk. Yes, Sir, that other of *Jenks* was only by telling.

Mr. *Williams*. Were you concerned in taking that Poll?

Mr. Townclerk. I did assist at it one Day.

Mr. *Williams*. Who ordered you to take the Poll that Day?

Mr. Townclerk. Truly, I did concern myself as little as I could in those things: What Report was made to the Court of Aldermen, I cannot tell; but one Day, coming into the Hall, I had no mind to concern myself in it; but some Gentlemen did pray me to go up to the Poll; and I did go up.

Mr. *Williams*. Sir, upon your Oath, Did the Sheriffs direct you to take it?—Mr. Townclerk. I really think they did not.

Mr. *Williams*. Did my Lord Mayor direct you?

Mr. Townclerk. No, Sir.

Mr. *Williams*. Did the Sheriffs manage it?

Mr. Common Serj. I did it by Sir Robert Clayton's Order, who was then Lord Mayor.

Mr. *Williams*. My Lord, all that we say to it is this, We are not now proving our Right upon which we brought our Action; that we submit unto, it is against us, we must agree it: But be the Right one way, or other; yet we might, from a supposed Right, have a probable Cause of Action. It seems to be a doubtful Business, by all that Mr. Townclerk has said, who has the Right; for all he knows of the Constitution is from *Liber Abus*, and that is somewhat dark. You, Gentlemen, hear what is said; the Thing was a Question of five or six Days, and a puzzling one it seems; and therefore we might be misled into an Apprehension, that what the Sheriffs did was right, and so not at all concern ourselves with what my Lord Mayor did—

L. C. J. Mr. *Williams*, you talk of that you do not understand; for my Lord Mayor was not there at that time of *Jenks's* Poll: I was Common Serjeant myself, and I know the Sheriffs have nothing to do with it.

Mr. *Williams*. It should seem by Mr. Townclerk to be doubtful, sometimes one, and sometimes another did direct the taking of the Poll.

L. C. J. But you are out still. But for all that, this is nothing to your Right of Action, one way or other.

Mr. *Williams*. My Lord, I must lay it here, it was a doubtful Thing, and we brought our Action to try the Right; but afterwards conceiving we were out, and had no Right, we discontinued and desisted.

L. C. J. It was so far from being their Right, that I desire you to call me any one Witness, that can say, before *Jenks's* time, there was ever a Poll for Sheriffs, or such a Thing thought of.

Mr. *Williams*. We were under an Apprehension of a Right in them.

L. C. J. There could be no Colour for any such Apprehension in the World.

Mr. *Williams*. We must submit to your Lordship's Directions.

Mr. Att. Gen. So do we.

Mr. Serj. *Maynard*. Whether this Action brought by us, was malicious?

Mr. Ward. My Lord, Mr. Attorney doth challenge the Defendant to shew that his Action was brought by advice of Counsel; we shall shew it was with good Authority of Counsel. Mr. *Baker*, can you tell whether it was by any Advice, and whose?

Mr. *Baker*. It was by the Advice of Mr. *Thompson*, Mr. *Pollexfen*, and Mr. *Wallop*, as I have heard.

Mr. Att. Gen. But you hear what *Keeling* says, there was a Party, that were at a Consult about it, and that were concerned in it.

Mr. Sol. Gen. My Lord, we have done on both Sides, I think, and submit to your Lordship's Direction in it.

L. C. J. Will any of you say any thing more?

Mr. *Williams*. No, my Lord, we have done, we leave it upon this Evidence to your Lordship and the Jury.

Mr. Att. Gen. My Lord, we have no more to say for the Plaintiff.

L. C. J. Then, Gentlemen of the Jury, as my Brother *Maynard* said in the Beginning of his Defence in this Cause; so I say now to you, to set all Things straight and right: God forbid, that any heat, or transport of the Times, should bring us into that Condition, but that every Subject of the King's, that hath a right of bringing an Action at Law against another, should have free Liberty so to do. And the Courts of Justice are now, and I hope, always will be so open, that every one that would take a Remedy prescribed by the Law for a Wrong done him, may be received to bring his Action, which is a legal Remedy.

And I am to tell you, Gentlemen, that much has been said in this Case (which I perceive is by the Concourse of People a Cause of great Expectation, as my Brother likewise said) which is not at all to the Case. I am sorry truly at this time of Day, that we should stand in need of such Causes as these, to settle and keep People in their due Bounds and Limits. But though many Things have been said in the Case, that are quite besides the natural Question; yet they having been made Dependencies upon that Question, and because it seems to be a Case of such Expectation, I think it will become me, in the Place wherein I am, to say something to you, and, according to the best of my Understanding, tell you what I apprehend to be the legal Part of it, stripped of what hath no Relation at all to it. And if I shall omit any thing that is material on the one Side or the other, here are Gentlemen that are learned in the Law, who are of Counsel both for the Plaintiff and the Defendant; and I shall not think myself under any sort of Prejudice in the World, if they take the liberty, as they may freely do, to interrupt me, and remind me of what I forget, or wherein I may mistake.

For, Gentlemen, I assure you, for my own part, I would not have the Law made subservient to any Purpose but the exact Rule of Justice. I would, to the best of my Understanding, in all Cases *servare jus illæsum*, preserve the Law and the Right of every man inviolable. I would have the Law of the Land to be the Measure of my own and all other men's Actions. And I hope no man can justly (I am sure I do not know they can) complain of any Breach or Invasion that is made in the Courts of Justice, either upon Law or Right. But all those that have the Administration of Justice committed to them by the Government, do behave themselves with all Equity and Impartiality towards all the King's Subjects; and the Law has as full and free a Course, and Justice doth every where take place as much as can be desired by any honest and good Man.

Gentlemen,



Gentlemen, In this Case, that you now are to try, I must first of all tell you, that this Business of the Right of Election, one way and the other, hath been too much insisted on on both sides. And I speak it, because tho' I myself in my own mind know what of it is true, and what not; yet I conceive it not so proper to be mentioned in this Case, it being no legal Evidence to the Point in question. Now it is a Duty incumbent upon you to observe, and upon the Court to suffer nothing to be urged so as to have any Weight with you, but what is legal Evidence. That you are only to mind, Gentlemen. So that if I mention to you any Point of Fact, that hath not been given in Evidence, as having a true Relation to this Issue, you are not to mind what I say to you about it. On the other side, I must likewise acquaint you, if there be any Difficulty in Point of Law in the Case; you are to observe the Directions of the Court, who will be always ready to assist and direct you in it. Or the Gentlemen, that are of Counsel on the one side, or the other, may have the Matter found specially, if they think there is Fact enough to be found to ground a Question upon.

Therefore, Gentlemen, for the Customs of the City of London, as to the manner of Elections, or who hath the Right to manage them, they are not at all material to this Business; and if they were, there is never a one of you, but know it as well as we, or any body doth. I myself had the Honour to serve the City of London in the Places of Common-Serjeant and Recorder several Years: So long ago, that not above one or two, that sit upon the Bench in the Court of Aldermen, have been longer conversant in Guild-hall, or know the Customs of London in those Matters better than I do.

It is notoriously known to all that have had any Dealing in London, or been acquainted with any thing there, that till within these six or seven Years last past, the Lord Mayor and Court of Aldermen, and the Common-Hall used to go a-birding for Sheriffs (you very well know what the Phrase means), and perhaps it was not once in ten times, that those that were chosen Sheriffs, held; but generally every Year, there were I know not how many Elections upon fining off, or swearing, or some Reason or other; so that now and then there was but one Sheriff chosen for a great while together; and now and then never a one from *Midsummer-day* till near *Michaelmas*. And the way was to consider, such a one hath most Money in his Pocket; Oh, then put him up for Sheriff: And then, if he went off, then another would be found out. And there was one old Deputy *Savage*, that used to keep a black Book, that would furnish Names for I know not how many Elections. And who should be Sheriff, so as to divide into Parties, and Poll, was never a Question before such time as Mr. *Jenks*, that they speak of, came to be put up, and there the Dispute began; then the Faction began to appear.

Now, if any Man offers to tell me, I apprehended always it was the Sheriffs Right to manage the Poll; I would ask him how that can be a Right that never was done before? Let them shew me any one Instance of a Poll for Sheriffs before that time. No, it was notoriously known when the Polls began, Persons did not think the Shrievalty such an Office, that it was so earnestly to be coveted and desired. Polls, indeed, used to be heretofore for the Bridgemasters Places, that are Places of Profit and Advantage; and so for Aleconners, and the like, those have been often in your Time and mine, Gentlemen, we may very well remember them. But this Office of Sheriff, People were not heretofore so ambitious of, as to poll for it; but the City was glad if they could get any worthy and fit Person to accept of it.

And for the Management of the Election, we all can tell the manner of it, as well as any thing in the World. After my Lord Mayor and the Court of Aldermen were gone off the Hustings, and retired to this Place, the Common-Serjeant staying there with the Sheriffs, used to make a Speech to the Common-Hall, a Rehearsal of what had been before said by the Recorder; and then received the Nomination of such Persons as were to be put to the Question for Election from the Common Hall. And upon the putting of the Question, every Man held up his Hand for those that he desired should be chosen; and if it could be decided by View of the Hands, well and good; and the Common-Serjeant, consulting with the Sheriffs and those about him, declared their Opinion, that the Election fell so and so, on the one side or on the other; but if doubtful, or a Poll demanded by any one, then they used to acquaint my Lord Mayor what was done in the Common Hall; and thereupon they gave Order for declaring the Election, or granting the Poll, and used to come down to the Hustings for that Purpose; and no one ever thought that either the Common-Serjeant or the Sheriffs, or any body else, but my Lord Mayor, had the Power of those Courts. For the Common Hall was always summoned by Precept from the Lord Mayor; and when the Business was done, or was to be put off to another Day, the Common Crier by Command from the Lord Mayor makes Proclamation, *You good Men of the Livery, &c. may depart for this time, and give your Attendance here again such a Day, or upon further Summons*. No body ever talked of summoning a Common Hall by any body but my Lord Mayor. He did it by Virtue of his Office, and he dissolved it, or adjourned it by Virtue of his Office. All this is as notoriously known to all Men, that know any thing of London, as the Faces of you of the Jury are to the People here, or to one another. And this never came to be a Question, till the Business of the Poll between Sir *Simon Lewis* and *Jenks* came about, which you have heard of. Mr. *Papillon* himself, when he was chosen Sheriff before, and fined for it, was chosen in this manner, and no other.

Mr. *Cornish*, he comes and gives Evidence that the Common-Serjeant was reckoned to be the Man that managed the Choice by Command and Direction of the Sheriffs. And some of those Gentlemen, that have been produced on the Defendant's side, they say, they have looked upon it as the Sheriffs Business. But alas-a-day, it belongs to neither of them, they are but Officers to the Lord Mayor. The Common-Serjeant's Business is but to put the Question into the Mouth of the Common Crier. In so much, that when I myself was Common-Serjeant, as I used to pass by the Shops in London, they used to cry, There goes *So many of you as would have*. It was as plain a Road of things, that every body knew it before these things untowardly have come to be imbrangled by our Factions and

Divisions, and the heat of some busy Fellows. Here are a great many ancient Citizens, that I see, that know, and so you do all, Gentlemen, that this is true. So that all the Discourse of this Matter is but Flourish and Garniture, and doth not affect this Case at all, one way or other.

Another thing, Gentlemen, hath been mightily talked of, and urged, and insisted upon both by Plaintiff and Defendant: and that is, the Defendant's Right, or not Right of Election to the Office of Sheriff, and that the Majority was on his side, say his Counsel: On the other side say the Plaintiff's Counsel. And for the settling that Right, he brought his Action against the Plaintiff; but it being determined upon the Conviction for the Riot, There is no such thing, Gentlemen, as that it was therein determined: That cannot be a Determination of any Right at all. For tho' I may have a Right to an Office, or any such thing; yet I must pursue a legal Method to attain to that Right, and not go irregular Ways to work.

As if I have a Right to come into your House, because you have not paid me your Rent (to make my thoughts and meaning intelligible to you by a familiar Instance, which will shew what I intend) I must not make a Riot, and turn you by Violence out of Possession. For I have a legal Course to come by my Right, to wit, by bringing an Action, and evicting you. But if any Man attempt to get a Right in an unjust Manner, and he be punished for it by an Indictment or Information, that, I say, doth not determine the Question of Right, one way or other.

To come then to the Issue, that here you are to try, The Point of this Action before us resolves itself into a narrow Compass, and is only this in short, which you are to enquire of, Whether or no the Plaintiff was arrested by the Defendant without probable Cause, and maliciously?

Now Matters of Malice are things that remain in a Man's Heart; and it is impossible for me to discover, whether another Man hath a Malice against me, if I do not see it in his Actions. Malice being a thing that is internal, is not else discernible.

Therefore you must consider the Circumstances that do attend this Action of the Defendant, and if so be they are malicious, then you are to find for the Plaintiff: But if they for the Defendant have offered to you any Circumstances, that can prove, or convince you, that he had any Probability of a Cause of Action, and that not attended with a malicious Prosecution of that probable Cause, then the Issue is with the Defendant.

This is the right Question, and the Law of this Action; and the Fact to make it out one way or other is now in Judgment before you, upon the Evidence that hath been given on both sides.

Now, in point of Law, I am to tell you, and that you must observe, That tho' I have a probable conjectural Cause of Action against another Man; yet if, to obtain my End in that, I prosecute him maliciously, with a Design to ruin him, or to put an Indignity upon him, or the Character he bears in the Publick, or put a Hardship or Difficulty upon him (I mean an Hardship and Difficulty in point of Time), when it is probable the Remedy may be had at another time, and the same thing done with less injury and less trouble; then an Action will lie against me, for bringing my Action in such a manner; tho' it be true, that I had a conjectural Cause of Action against him.

As in the Case that was here in this Court the other Day, of Mr. *Swincock* against the Serjeant, that came to him, and told him in his Ear, that he had an Action against him; and this was upon the Exchange: Thereupon Mr. *Swincock* brings his Action for this, against this Man, for whispering this in his Ear: If he had proved any malicious Intention to disgrace him, no doubt the Action would have lien. For tho' there might be a Cause of Action against *Swincock*, yet if that be maliciously pursued to get him arrested, and held to Bail, where no Bail is required by Law; or with an Intent to disgrace him upon the Exchange, when it might have been done elsewhere, or at another time, this irregular malicious Proceeding will bear an Action. The pursuing malicious Ways to obtain a Right, makes a Man obnoxious to the Action of the Party so prosecuted. I desire to express myself by Words, that may declare my Meaning as plainly as can be: And I hope I do so.

Then, Gentlemen, taking it thus as the Counsel for the Plaintiff say, to shew that the Defendant had no probable Cause of Action against the Plaintiff; they endeavour to answer what is alledged on the other side as their probable Cause. And therefore, that we must consider first, what is said by the Defendant:

They tell you, here was an Election for Sheriffs of London, at Guildhall, where those Persons that they have nominated, were Candidates, and put in Nomination for that Office. And upon that Nomination, as say those three Witnesses, we were the Persons that had the Majority of Voices; and thereupon we apprehended ourselves chosen, which gave us the Right of Action: So the Defendant, say they, sheweth some Probability of a Cause of Action; and if he have not pursued it with Malice, but in a regular Way, the Probability of the Cause doth take off from the Malice, that else the very bringing of an Action without Cause, would imply in itself. And they say true, for I must repeat it again; if I have, *prima facie*, a probable Cause, and pursue it legally, no Action will lie against me for it.

But then, say they on the other side for the Plaintiff, That is no probable Cause; for you could from those Transactions have no such Apprehensions of a Right; for that is not the Measure of a Right of Election, or a Rule to guess who is elected by: For there being no Decision of the Election upon the holding up of the Hands, and a Poll being demanded; whereas the usual Method is to have, by the Lord Mayor's Order and Direction, the Poll taken by such as he shall appoint; you went another Way to work, you go your ways, and take Books to yourselves, and come not to the fair Determination of the Question: And they bring Mr. Town-Clerk to prove. You have heard what the Evidence is, and you are Judges of it.

Now take it, that this were in the Case of an Office of Profit; as suppose it were a Question between me and *John-a-Stiles*, for the Place of Bridgmaster, for the Purpose, and a Poll is demanded, and granted; if they, that have no Authority, shall go after the Court is adjourned by him that has Power, and take a Number of Names in the Way of a Poll



by themselves, and upon that come and say, *J. S.* has four and twenty hundred, and I have but so many, that sure is not any probable Cause, nor a Right; for you have gone here out of the known and usual method of such Matters, and depend upon that which can give no Foundation of Right at all. This is the Answer that is given to that by the Counsel for the Plaintiff.

You may have fifty thousand Names for you after that rate, and yet not be elected, nor have probable Cause of any such Apprehension. We all remember Sir Samuel Sterling's Case, which was upon the Denial of a Poll for a Place of Profit, that is to say, the Bridgemaister's Place: But this is upon a wrong Poll.

Suppose there had been a Poll granted (as there was) in this Case, and upon that Poll thus managed, Sir Dudley North and Mr. Box had had the majority but by a very few, and there had been an Action brought in such a Case, here was a probable Cause as good as in this Case, as it now stands, because some of them might happen not to have legal Suffrages, yet the taking the Poll by Persons of their own Heads, after the Court was adjourned, avoids all: so that that would have signified nothing. You are to consider of this Answer of theirs.

Then the great thing, Gentlemen, that you are to observe, is this: To bring an Action alone will scarce amount to a Proof of Malice; therefore Malice being in this Issue a great Point of Fact, you must weigh the Evidence whether the Circumstances do shew it, that there was Malice in Mr. Papillon. If the Circumstances are enough to amount to a Proof of Malice, you then are to find for the Plaintiff, and you are the Judges what Damages it is fit to give him for that Injury: He has laid Ten Thousand Pounds; but you must do what you, that are Judges of it, think fit in it.

Come, Gentlemen, it is best to be plain, and no Man needs to be thought wanting of an Apprehension, what is the meaning of all these things. It is commonly and universally known to all Mankind:

First, That no Man ever did pursue such an Action as this is, to be Sheriff, till these unhappy Times, wherein we are, and wherein we have lost that Quiet and Felicity, which I pray God we may be restored unto. And tho' it is true, a Man may lawfully sue for such an Office, and it is no Offence, yet it looks somewhat extraordinary, and that a Man has a mind to do something unusual in the Place, 'tis for some strange purpose or other, especially when a Man has fined for the Office once before, as we all know Mr. Papillon did.

Again, It is notoriously known, That for several Years last past the Government hath been beset: And that which is a baser Thing than ever was thought of, or acted in the highest times of Villany in these Kingdoms (I mean those of the late Rebellion), the very Methods of Justice have been corrupted, and all to serve the main Design of subverting the Government.

Gentlemen, this is so black a Wickedness, that no honest Man, that has any Sense of Loyalty, Religion, or common Justice, but must tremble at the very thoughts of it. When we see such Fellows as are obnoxious to the Government, known Dissenters from the Established Worship, and that never thought of conforming to the Government, or the Laws, Civil or Ecclesiastical, or complying with the Church, but only to capacitate them to destroy it; nay, when Men, that are taken notice of to be common Reproaches to the Government under which they live, shall get into Office to make *Ignoramus* Juries, and to enable People to commit and be guilty of all the Falsities and Basenesses that Human Nature is capable of, no Man living, that has any Ingenuity or Goodness in him, but must cry out against it.

When Men begin to take Oaths to sanctify Villany, and enter into Clans, and Clubs, and Cabals, to destroy the most Merciful of Kings, and to disturb, distract, and overthrow the best of Governments, What shall we say? And all this you, all of you, Gentlemen, know to be true. Was it not more safe to commit Treason in the City, than to sit upon a Bench of Justice to bring the Traitors to Judgment? Was it not more safe to conspire the Death of the King and his Brother, than to give the least Frown, or look of Displeasure against one of these snivelling Saints? Did not we know that Men were sanctified to be Jurymen, to enquire of Conspiracies against the King's Life and Government, that before that time were never thought fit to be trusted with the common Discourses or Society of honest Men?

When Men were thought fittest for Offices of such high Trust, according to their being thought capable of, and well-intended, to the overthrow of the Government: Do not we all know this to be as true as that the Sun shines at Noon-day? When Traitors at the Bars were in less danger of being convicted of their Treasons, than the Judges were of their Lives?

Mr. Papillon knows all this to be true eminently. When packed Juries were grown to that height, and though seven or eight Witnesses came and swore positive downright Treason, the Traitor could not be by these Men so much as thought fit to be accused by an Indictment; to that Stupidity in Villany were things brought by these Fellows: Nay, so far were the Proceedings in Courts of Justice tainted, that in no common Action whatsoever, that came here to be tried, but cropped Hair, and a demure Look, were the best Signs of a good Evidence, and the Business of an Oath signified nothing, provided the Party were to be propped up, and the Faction to receive an Advantage by it.

For God's sake, Gentlemen, let any Man but seriously consider and believe that there is a God in Heaven, and a dreadful Day of Judgment, when every one of us must answer for every Thought of our Hearts, every Word of our Mouths, and every Action of our Lives; and then tell me, what horrid Impieties there are; such as any ordinary ingenuous Person would blush and tremble at.

And I would have Mr. Cornish to consider, whether ever, till that time of famous, or rather infamous Memory, that he and his Fellow-Sheriff Mr. Bethel came into that Office, there were ever in London such Things as Tavern>Returns of Juries, or Clans and Cabals how to pack Fellows together for such wicked Purposes as these?

Do not most of you here know this? And doth not every one of your Hearts and Consciences agree with me in it? How far unlike the Proceedings of those Times, in reference to Juries, were from what they anciently were? I have had the Honour to practise in this Place among you in my Profession, when without any disturbance, or mixture of Faction and Sedition, we were all quiet, and every one knew his Duty, and Justice was done in this Place so regularly, that it was grown to a common Proverb: if there were any Cause of any Difficulty, they would use to say to one another, *Come, we will be so fair with you as to try it by a London Jury.* So far was it then from being thought, that in the City of London Justice should be corrupted, that the Ordinary Juries of London were thought the best Judges, and most impartial of any in the Kingdom. I appeal to all the Practisers of those Times that hear me, if what I say be not true.

But when once they had begun to pick and cull the Men that should be returned for a Purpose, and got this *Factional Fellow* out of one Corner, and that *pragmatical, pricked-eared, snivelling, winking Rascal* out of another Corner, to prop up the Cause, and serve a Turn, then truly People's Causes were tried according to the Demureness of the Looks on the one Side or the other, not the Justice of the Cause.

Gentlemen, I take myself bound to tell you of these Things, and I wish I had no reason for it; and especially in this Case I should not do it, it being a private Action between Man and Man, were it not for the Ingredients that are in the Case, and that any Man, that has any Sense, may perceive.

Now, then, for this Case before you, Gentlemen, I desire, if possible, to be satisfied in one Thing or two: My Lord Mayor of London, it is true, is not, nor no Person whatsoever, be he of never so great Quality, is exempt from the Law: If he owe any Man any thing, he is bound to answer it to him, as much as any the meanest Citizen of London, or poorest Subject the King has. But is he to be arrested just at such a Time, because he is Chief Governor of the City, and the Action will found the greater? And the Court of Aldermen, are they to be arrested, because they are his Ministers, and necessary subservient Assistants to him in his Government, in such a Time as this was, when the Government, both in the City and elsewhere, was surrounded with Difficulties, and in great Danger on all Sides? What occasion was there for such haste and speed in this Action to be done just then? Would Mr. Papillon and Mr. Dubois have starved, if this Action had been suspended for a while? Sir William Pritchard would have been as answerable to this, or any Man's Action, when the Year of his Office had been out: But it carrieth Vengeance and Malice in the very face of it; it speaks, that therefore they would do it, because he was then Lord Mayor, the chief Person in the City for the Time, and thereby they should affront the Government, in arresting and imprisoning the King's Lieutenant, in one of the highest Places both of Trust and Honour. And this would be sure to make a great noise, and the Triumph of the Action would make their Party then to be uppermost, having got the chief Governor of the City in their own Clutches.

Nay, and because they would be sure their Malice and Revenge should take place, they take the very *Scoundrels* of the Party to be employed in this great Work. For before that time, the Coroner (as he tells you himself) used to make his Warrants to the Officers that usually are versed in that Business; but here he must have the Direction of the Attorney, and who is that but Goodenough, a Man we have all heard enough of; and then Burleigh and Keeling must be employed, and by whose Advice, but by Goodenough's and Nelthorpe's? And all these Rascals, who now stand attainted of Treason, must be fetched in to consult about a fit Man to make an Arrest: And there they pitch upon this Man Keeling for one, who was one of the principal Conspirators in that damnable, hellish Plot against the King's Life, and that of his Royal Brother; but, by the Blessing and Providence of Almighty God, was made use of as a great Instrument of preserving those precious Lives, and with them our Government and Religion, and all that is dear to us, which by that Conspiracy was undermined, and I wish we had not Reason to say, and think, the Conspiracy still to be going on. But I hope in God the Government, as established both in Church and State, will always be able to prevail, maugre all Designs, and those that are engaged in them, for its Destruction.

Now Keeling tells you he scrupled the Employment: No, said he, I desired not to have my Name put in, because I was never concerned in any such Thing before, and my Business was of another Sort. But then Mr. Goodenough (and Mr. Brome the Coroner no doubt had a Hand in it, though now he has a very treacherous Memory, and has forgot all that was done) comes and tells him, You must concern yourself, and do this thing; for you have a Trade with the Party, and it will be ill taken if you do not do it. And being asked, whom he meant by the Party? He tells you, the discontented Party; and he explains their Discontent to be such, that they would have killed the King and the Duke. Now how far he was engaged with that Party is pretty well known, and therefore if he boggled at such a thing as this, which that Party it seems was engaged in, they would suspect him, and so, for the Party's sake, he was drawn in.

But then, when this Thing is done, pray, Gentlemen, do but consider what the Consequences might have been, and which, perhaps, (nay upon what has happened to be discovered since, doubtless) they did design it. But, God be thanked, those Consequences were prevented, and they themselves have Cause to be thankful to God Almighty for it. For here all the Magistrates of the City, that had any Care for the good Government of it, were to be taken up, and then here was a Body without a Head, a Town full of Faction without any Government, and if the heady Rabble had been once up, without those that had Authority to restrain them, where then had been your Liberties or Properties, Gentlemen, or any Man's; nay, theirs that were engaged in this Design, if they had any? For those were Things much talked of by them. In what Danger had you, and all you had, for Life, Estate, Relations, and every thing been? But it pleased God in his infinite Mercy to shower down upon us, and upon this City, and the Government, in a mighty Preservation, putting it into the Hearts of some in Power, to bring the City-Militia some of them



them together, and prevent this Mischief, or else, God knows, this whole City might have been by this time once more in Ashes, and most of the King's Subjects wallowing in their own and one another's Blood; and their Party too would have felt the sad Effects of it, no doubt, as well as others. So that the Consequence of it was to destroy the Government, and that appears by the Party's being engaged in it; it could not be to gain a Right, to make this Hubbub and Add to arrest the Magistrates of the City, and then take Advantage for some other wicked Purpose.

Another Point of Circumstance that is considerable in this Case, is the particular Persons that were to be sued. The *Mandamus*, that was directed to the Lord Mayor and Aldermen; and there is a Return made, not by this, or that, or the other Man, but in the Name of them all, the whole Court. How comes it then to pass, that my Lord Mayor, Sir Henry Tulse, and those other Gentlemen, must be sued and arrested? But I warrant you Mr. Cornish, or his Party, were not to be meddled with. No, he had so much Zeal for Justice, and to do the Defendant Right, that if he should have been called upon to appear, he would not have stood out an Arrest; so just a Man he is, and such a Lover of Right without all doubt: but he was in no danger, I dare say; they loved one another too well to sue one another. That, I say, Gentlemen, is another Circumstance, that carrieth Malice in it. For I must tell you, these Things cannot be smothered, they are as apparent as the light: And though it falls to my Turn in this Cause, to remind you of them; yet they are as well known to you all, as the Passages in your own Families.

No, Gentlemen, there was not a Pursuit of Right in the Case; it was a designed Piece of Villany on purpose to affront the Government; nay, to destroy it, and set us all together by the Ears. And if he were ten thousand times Mr. Papillon, I would, and must tell him so; and if it were not for some such devilish End and Purpose, he would never have been so greedy of an Office he had before declined and fined for; and which he was only called to by a turbulent, seditious, factious Party, that had further Aims in it. Otherwise, I know Mr. Papillon's Humour so well, that I am confident, he would much rather have been contented to sit in his Counting-house, than in *Guildhall* in a Scarlet Gown. Alack-a-day! I know Mr. Papillon knows how to spend his Time to better Advantage to himself.

Ay, but say the Counsel for the Defendant, We did go on very tenderly, and civilly, and respectfully; for there met at Mr. Cornish's House—Who, I pray? Mr. Papillon, and Mr. Dubois, and Goodenough, the prime Attorney in this Cause: And there, forsooth, they tell Goodenough, Be sure you do nothing but what is exactly according to Law; and be sure you carry it very civilly and respectfully to my Lord Mayor, good Mr. Goodenough. Alack-a-day! how wonderful pious and considerate these People are! If Mr. Cornish had gone to my Lord Mayor, as it was his Duty to do, being then an Alderman (we know it full well) and said to my Lord Mayor, There were such Persons at my House talking of such a Matter, and I come to advertise you of it, and desire you would consider of it, he had shewn his Piety and Zeal, and Love for Justice, much more in that, than in admitting such Cabals in his House. But we know very well, as well as if we were in them, that they must go hand in hand in all these seditious and factious Businesses.

It is plain, Gentlemen, what the Design was from the Beginning to the End; nothing but to cause a Tumult and Confusion in the City, in order to put that damned hellish Conspiracy, for the Destruction of the King and his Brother, and every Man that was honest and loyal, in Execution. This is certainly known to you all; and that there should be such a Parcel of People untowardly linked together in this Matter, not one Man of which that they can pretend to be in any wise a Well-wisher to the Government, or to any that have any share in it: No, they are all Persons that are obnoxious to the Government, that had any Hand in it; but none of them Church of England-men, or Friends to her established Worship; notorious Dissenters, or profligate Atheistical Villains that herd together.

This, Gentlemen, is plain English, and necessary to be used upon all these Occasions: So that it remains now upon your Consciences, whether upon all these Circumstances that have been mentioned, you think the bare obtaining of a Right in a Legal Course, or some worse Thing was designed.

We all know Mr. Papillon to be a wealthy Man, an able Merchant; one that had rather have minded his Affairs Abroad, or at the Exchange, than the expensive, troublesome Office of Sheriff of London, but that something was to be done to wreak a damned Malice and Revenge upon the Government. And sure, he must think, as his Party it seems did, that they would not be sufficient to subvert the Government, unless he could get into that Office.

This I tell him openly; and let him or his Party make their Remarks upon it as they please. But you are to judge whether these Things be a sufficient Evidence of Malice to support the Plaintiff's Action.

There was questionless a devilish Malice fixed in his heart and mind, and he wanted an Opportunity to effect it; and he thought it for his own Security to be best to take this Course, and nothing else was in it. For abundance of People have a mind to do Mischief, but want Opportunity and safe Ways to do it in: And, Oh! they rejoice, if they hit upon a Project, that shall carry a specious Pretence and Colour of Law; for then they think they are safe enough.

As in case I have a mind to do any particular Man an Injury in his Reputation and Business; the Business must not be done downright, by going to every body, and saying, Such an one is Poor, or a Beggar, and do not trust him; but I must cunningly and slyly insinuate it, I am sorry for such a Man, I believe he is an honest Man, but however he oweth Money; and under this Sort of Snivelling, Canting, Whining, sly

Rate, do a Man any Injury whatsoever: And yet, forsooth, he shall have no Advantage against me for it: I shall strike a Dart into the very Heart of that Man's Credit, and yet he have no Remedy.

So, if I have a mind to talk against the Government, I will not do it aloud, and speak what I mean openly; but I will whine, and snivel, and cant, and make People believe I have dreadful Apprehensions of what is designing, and yet not bring myself in any Danger; for I will keep within Bounds all the while, though I do more Mischief than if I dealt fairly and above-board. Alack-a-day! (as Mr. Pilkington said) I am for the Preservation of the Liberty and Properties of the Subject, and I am for the Law; but I find the City is strangely run down in their Rights and Privileges, and there are very Arbitrary Proceedings. And I am a Citizen, and have taken my Oath to preserve the Privileges of the City; and I will rather submit to the Inconvenience of a troublesome Office, than let all run thus: And immediately he sets himself Cock-a-hoop, as if there were no one that took care of the City besides himself, and he were such a Patriot, that there were none like him: And he, and Mr. Bethel, and Mr. Cornish, forsooth, are the only Men of the times; the only good Men; Men that are for the Liberties and Properties of the Subject, and the Rights of the City: Whereas these are the only Men that have made an Invasion upon them, and done what they could to destroy them; and God knows we might all of us have enjoyed very quietly every Man his own, if these contesting Rioters, and busy factious Fellows, had not come among us. Every honest Man, I tell you, knows this to be true.

Gentlemen, As to the Business concerning the Damages, that, if you find for the Plaintiff, is left to your Judgments to consider of, and give what you shall think fit upon such an Occasion. It is very true, it is not so easy a matter to ascertain particular Damages in such a Case; nor is it in an ordinary way so easy to prove, that because Sir William Pritchard was in Prison but five or six Hours there, he could suffer so much Damage as comes to ten thousand Pounds. As in the Case of a Person of great Quality and Honour, it is not easy to prove his particular Damage; nor in the Case of any of you, that are wealthy, able, sufficient Citizens, to say you are a Bankrupt, when we all know it is impossible to be true; and so no particular Damage doth ensue that can be proved; yet, however, if the thing for which the Action is brought were designed with Malice, tho' the ill Design be not effected, that is no thanks to the Party, nor is to weigh with you, but the malicious Design must govern you.

Now, here I have taken notice to you, that the Malice of this Design here was not against Sir William Pritchard as such a particular Man, but against my Lord Mayor, that this Clan that met at *Russell's* was an Overflowing of that Gail or Malice that was in his Heart.

If Mr. Papillon had brought an Action upon a Bond only, certainly it had been nothing but what he might very well do; or if he had pretended to sue for a bad Debt, that if he had staid would have been lost, it had been something: But you see what it was, and it is as apparent why it was, in that Mr. Goodenough said to Keeling, threatening him with the displeasure of the Party if he did not do it; and Mr. Goodenough and Mr. Brome were such Strangers to one another, that he must threaten Brome to complain of him, if he did not execute his Writs presently. Do they think all Mankind are so dull or blind, as not to see through such thin artificial Stuff as this?

Gentlemen, this is the Matter: The Government is a Thing that is infinitely concerned in the Case, that makes it so popular a Cause: The Government of the City, the Honour of your Chief Magistrate, and indeed the Honour of the King, whose Substitute he was, is concerned, and that puts a Weight upon your Inquiry into the Damages of this Case. You are to consider you give Damages to the Plaintiff, not as Sir William Pritchard, but as Lord Mayor: And your Severity in this Case will deter all People from entering into Clans and Cabals to make Disturbances, and affront the Government.

It is a thousand times better to keep within their own Bounds, mind their Callings and Employments, and concern themselves with their own Affairs, and leave the Administration of the Publick to them to whom it belongs, and is intrusted with. And according as we say in the Law Maxim, so say I to Mr. Papillon and all the Party, *Ad Concilium ne accedas, antequam voceris*. And do not be scared with imaginary Dangers, and groundless Jealousies, into tumultuous and disorderly Courses. You had much better keep in your Counting-House, I tell you again, and mind your Merchandize, Nay, and I do not doubt but you would much rather have done so, if there had not been some further fetch in it. It was not, I dare say, out of a frank, generous Humour to oblige the City, that Mr. Papillon would have spent his Time and Money in the Office of Sheriff; no, I know he had better ways to employ both.

It was not the generous Mind of Mr. Bethel, that called him on to be Sheriff of London, to entitle him to spend his Money; but on purpose to be one of the first, that should turn all things upside down in the City, and disturb the Government: And they that succeeded him, carried on the Project; and they that would have been in, but could not, had a mind, no doubt, to follow so worshipful an Example as he laid before them.

Then the Jury withdrew to consider of their Verdict, and after half an Hour's Stay, returned, and found for the Plaintiff, and assessed Damages to Ten Thousand Pounds, and Costs to Four Marks.

L. C. J. Gentlemen, You seem to be Persons that have some Sense upon you, and Consideration for the Government, and I think have given a good Verdict, and are to be greatly commended for it.



## CXXXIII. The Trial of ROBERT BAILLIE in Scotland, for High-Treason, December 3, 1684.

36 Car. II.

Curia Justiciarum S. D. N. Regis tenta in pratorio Burgi de Edinburgh vigesimo tertio die mensis Decembris, 1684, per Nobilem & Potentem Comitum Georgium Comitem de Linlithgow, Dominum Livingstoun, &c. Justiciarium generalem totius Regni Scotiæ, & honorabiles viros Dominos Jacobum Foulis de Colintoun Justiciarium Clericum, Joannem Lockhart de Castle-hill, Davidem Balfour de Forret, Rogerum Hoge de Harcaris, Alexandrum Seaton de Pitmedden, & Patricium Lyon de Caris, Commissionarios Justiciarum dicti S. D. N. Regis.

Curia legitime affirmata.

Intrat.

Mr. Robert Baillie of Jerviswood, Prisoner,

**INDITED** and accused, that where notwithstanding by the Common Law of this, and all other well-governed Nations, the Conspiring to overturn the Government of the Monarchy, or of the Established Government of this Kingdom, or the concealing, and not revealing of any Treasonable Design, Project, or Discourse tending thereto; or the assisting, aiding, or abetting such as have any such Designs, does infer the Pains and Punishment of Treason. And by the third Act of the first Parliament of King James I. *The Rebelling openly against the King's Person*; and by the threety-seventh Act of His second Parliament, *The Resetting, Maintaining, or doing Favours to open or notour Rebels against the King's Majesty, is declared Treason, and punishable by Forfeiture*. And by the hundred fourth and fourth Act of the twelfth Parliament of King James VI. *It is declared Treason to Resist, Supply, or Intercommune with Traitors*. And by the first Act of the first Session of His Majesty's first Parliament, *It is declared, That it shall be High-Treason for the Subjects of this Realm, or any number of them, less or more, upon any ground or pretext whatsoever, to rise, or continue in Arms, to make Peace or War, without His Majesty's special Approbation*. And by the second Act of the second Session of His Majesty's said first Parliament, *To Plot, Contrive, or Intend Death, or Destruction, or to put any Restraint upon his Majesty's Royal Person, or to Deprive, Depose, or Suspend him from the Exercise of His Royal Government, or to levy War, or take up Arms against his Majesty, or any Commissioned by Him, or to incite any Strangers or others to invade any of his Majesty's Dominions, or to Write, Print, or Speak anything that may express or declare such their Treasonable Intentions, is declared Treason, and punishable as such*. Likeas, by the second Act of His Majesty's third Parliament, *It is declared High-Treason in any of the Subjects of this Realm, by Writing, Speaking, or any other manner of way, to endeavour the Alteration, Suspension, or Diversion of the Right of Succession, or debarring the next lawful Successor*. Nevertheless, it is of verity, that the said Mr. Robert Baillie of Jerviswood, shaking off all Fear of God, Respect and Regard to His Majesty's Authority and Laws, and having conceived most unjustly, a great and extraordinary Malice and Hatred against His Majesty's Person and Government, and having designed most Traiterously to debar His Royal Highness, His Majesty's only Brother, from his due Right of Succession, did, amongst many other Traiterous Acts, tending to promote that wicked Design, endeavour to get himself Elected one of the Commissioners for negotiating the Settlement of a Colony of this Nation in Carolina, in one or other of the Days of the Moneths of January, February, March, April, or May, One thousand six hundred and eighty three Years; and that he might thereby have the freer and better Access to treat with the Earls of Shaftesbury and Essex, the Lord Russell and others, who had entered into a Conspiracy in England against His Majesty's Person and Government, and with Colonel Rumsey, Walcot,

West, and Ferguson, and others, who had likewise conspired the Murder of his Majesty's sacred Person, and of the Person of His Royal Highness; and finding that he could not get himself Elected one of the said Commissioners, he resolved to go to London upon his own Expences, and declared to severals (whom he took great pains to draw in to be his Accomplices) that his Design was to push forward the People of England, who did nothing but talk, that they might go on effectually; and after he had settled a Correspondency here, he did go up to London in one or other of the said Moneths, with Sir John Cockran and Commissar Monro, and did then, and there, transact with the said Conspirators, or one or other of them, to get a Sum of Money to the late Earl of Argyle, a Declared Traitor, for bringing home of Men and Arms, for raising a Rebellion against his Majesty, and invading this his Native Country; and so earnest was he in the said Design, that he did chide those English Conspirators, for not sending the same timeously, and lamented the Delays used in it; and persuaded the late Earl of Argyle, and others in his Name, to accept of any Sum, rather than not to engage; and amongst the many Meetings that he had at London, for carrying on the said Traiterous Design, there was one at his own Chamber, where he did meet with the Lord Melvil, Sir John Cockran, and the Cessnocks Elder and Younger, and amongst others, with Mr. William Veitch, a Declared Traitor, and there he did treat of the carrying on of the said Rebellion, and of the Money to be furnished by the English for Argyle, for buying of Arms; and that if the Scots would attempt any thing for their own Relief, they would get Assistance of Horse from England; and from that Meeting, he or one or other of them did send down Mr. Robert Martin to prevent any rising, till it should be seasonable for carrying on of their Designs; which Mr. Robert, after he came to Scotland, did treat with Polwart, and others, for carrying on of the said Rebellion, by securing his Majesty's Officers of

State, his Castles and Forces, and by putting his Correspondents here, and their Associates, in readiness to assist the late Earl of Argyle; and after the said Mr. Baillie had engaged many of his Countrymen in England, and had assured his Correspondents here, that the English were resolved to seclude His Royal Highness from his due Right of Succession, thereby to encourage them to concur in the said Rebellion, and Exclusion, he flew to that hight, that he did particularly and closely correspond with Mr. Robert Ferguson, Sir Thomas Armstrong, Colonel Rumsey, and

Walcot, who were accessory to that horrid Part of the Conspiracy, which was designed against the sacred Life of His Majesty, and the Life of His Royal Highness, and did fit up several Nights with them, concerting that bloody Massacre; at least the said Mr. Robert Baillie of Jerviswood was, and is guilty of having Correspondence with the late Earl of Argyle, and Mr. William Veitch, declared Traitors, and of being art and part of an Conspiracy, for assisting of these, who were to rise in Arms against His sacred Majesty, and for Exclusion of His Royal Brother, and of concealing and not revealing the Accession and Proposals of others for that effect. Wherethrow he has committed, and is guilty of the Crimes of High-Treason, Rebellion, and others above specified, and is art and part of the same, which being found by an Assize, he ought to be punished with Forfeiture of Life, Land, and Goods, to the Terror of others to commit the like hereafter.

His Majesty's Advocat produced an Act and Warrant from the Lords of his Majesty's most Honourable Privy Council, for pursuing and insisting against the said Mr. Robert Baillie of Jerviswood, whereof the Tenor follows. *Edinburgh, the twenty two Day of December, one thousand six hundred and eighty four Years: The Lords of his Majesty's Privy Council do hereby give Order and Warrant to His Majesty's Advocat to pursue a Process of Treason and Forfeiture, before the Lords of his Majesty's Justiciary, against Mr. Robert Baillie of Jerviswood, to morrow at two o'Clock in the Afternoon precisely, and the said Lords do hereby Require and Command Sir George Lockhart of Carnwath, and Sir John Lauder Advocats, to concur, and assist in the said Process with His Majesty's Advocat, from the intending, until the End thereof, as they will be answerable upon their Allidgiance.* Extract by me, sic subscribitur,

Colin Mackenzie, Cls. Sti. Concilii.

Pursuers.

Sir George Mackenzie of Reshaugh,  
Our Sovereign Lord's Advocate.

Sir George Lockhart } Advocats.  
Sir John Lauder }

Sir Patrick Hume,  
Mr. Walter Pringle,  
Mr. James Graham,  
Mr. Will. Fletcher,  
Mr. William Baillie,  
Advocats.

The Pannals Procurators produced an Act of His Majesty's Privy Council, in their favours, whereof the Tenor follows. *Edinburgh, the twenty-third of December, one thousand six hundred eighty four Years: The Lords of his Majesty's Privy Council having considered an Address made to them, by Mr. Robert Baillie of Jerviswood, now indited at the Instance of his Majesty's Advocat, before the Lords Commissioners of Justiciary, of Treason, do hereby require and command Sir Patrick Hume, Mr. Walter Pringle, Mr. James Graham, Mr. William Fletcher, Mr. James Falconer, Mr. William Baillie, Advocats, to Consult, Compare, and Debate for the Petitioner, in the Process of Treason, mentioned in his Address, without any hazard, as they will be answerable at their Peril.* Extract by me, sic subscribitur,

William Paterson, Cls. Sti. Concilii.

After reading of the Inditement, The Lord Justice General required the Pannal to make answer thereto.

The said Mr. Robert Baillie, Pannal, pleaded Not Guilty.

Mr. Walter Pringle Advocate, as Procurator for the said Mr. Robert Baillie of Jerviswood, Pannal, alleadges that he ought not to pass to the knowledge of an assize; because he had not got a Citation upon fifteen Days, or at least on a competent time, which is usual, and absolutely necessary in all Actions, and much more in Criminal Pursuits, especially, seeing, if a competent time be not allowed to the Pannal, he is precluded of the Benefit of an Exculpation, without which he cannot prove his Objections against Witnesses, or Assyzers, or any other legal or competent Defences; and by the late Act of Parliament concerning the Justice Court, all Pannals are allowed to raise Precepts of Exculpation, and thereupon to cite Witnesses for proving the Objections against Witnesses, and Assyzers, which necessarily presupposeth, that a competent time must be allowed to the Pannal to execute his Diligence, or otherwise, how is it possible he can prove a Defence of alibi, or any other just Defence? And as this is most consonant to that clear Act of Parliament, and to material Justice, and to the Rules of Humanity; so this Point has been already fully and often decided, and lately in the Case of one Robertson, in July 1673, the Instance whereof is given by His Majesty's Advocate in his Book of Criminals, and Title of Libels, where the Lords found, that albeit Robertson got his Inditement in Prison, yet he behaved to get it upon fifteen Days.

His Majesty's Advocat oppons the constant Tract of Decisions, whereby it is found, that a Person incarcerated may be tried upon twenty four Hours; and the late Act of Parliament is only in the Case where a Summons or Libel is to be raised; but here there is no Libel or Summons, but



only an Inditement; nor was any Exculpation sought in this Case, before the Trial, which is the Case provided for by Act of Parliament.

The Lords, Justice General, Justice Clerk, and Commissioners of Justiciary, repel the Defence, in respect the Pannal is a Prisoner, and that it has been the constant Custom of the Court, and that the Pannal made no former application for an Exculpation.

Sir Patrick Hume for the Pannal alleadges (always denying the Libel, and whole Members, and Qualifications thereof), that in so far as the Libel is founded upon harbouring, maintaining, and intercommuning with the Persons mentioned in the Dittay, the Pannal ought to be assylzied, because it is *res bacenus judicata*, he having been formerly pursued before the Lords of his Majesty's Privy Council for the same Crimes, and fined in a considerable Sum; and therefore that Crime cannot now be made use of as a ground of Treason against the Pannal.

His Majesty's Advocat answers, That he restricts his Libel to the Pannal's entering in a Conspiracy for raising Rebellion, and for procuring Money to be sent to the late Earl of Argyle, for carrying on the said Rebellion; and for concealing, and not revealing; neither of which is referred to his Oath; and consequently was not *res judicata*, there being nothing referred to his Oath; but his Converse and Correspondence with some Ministers, and others within the Kingdom, and his own Gardiner, and his writing Letters to my Lord Argyle; and oppons the Decreet of Council itself, and restricts the Libel to all the Crimes not insisted on in the Decreet.

Sir Patrick Hume replies, That as to the Corresponding with the late Earl of Argyle at any time since his Forfaulture, was expressly proposed as an Interrogator to the Pannal in that Pursuit, at His Majesty's Advocat's Instance against him, before the Lords of His Majesty's Privy Council, and that not only his own Correspondence by himself, but also by Major Holms, Mr. Carstairs, Robert West, Thomas Shepherd, Richard Rumbold, and Colonel Rumsay, as the Interrogator bears, as appears by a double of the Act of Council, written by the Clerk of Council's Servant, and is offered to be proven by my Lord Advocat's Oath: And as to any Correspondency with Mr. Veitch, it is not relevant, since he was not declared Rebel.

Sir John Lauder for His Majesty's Interest, answers, That he oppons the Decreet of Privy Council, where no such Interrogator was put to the Pannal, and the Decreet must make more Faith than any pretended Scroll, and cannot be taken away by His Majesty's Advocat's Oath, to His Majesty's Prejudice; and for Mr. William Veitch, he stands expressly Forfault in Anno 1667, and the Doom of Forfaulture is ratified in the Parliament 1669.

Sir Patrick Hume oppons the Reply, That as to the Corresponding with Mr. Veitch, it does not appear that he is the Person mentioned in the Act of Parliament; and albeit he were, as he is not, he having thereafter come home to Scotland, all the Punishment inflicted upon him was Banishment, not to return under the Pain of Death, which did take off any former Punishment; and it was no Crime in any Person to intercommune with him, especially in another Kingdom; and by the late Act of Council in Anno 1683, even the Converse and Intercommuning with declared Traitors, is restricted to an Arbitrary Punishment.

His Majesty's Advocat oppons the standing Doom of Forfaulture against Veitch, and the Proclamation, or Act of Council itself.

The Lords, Justice General, Justice Clerk, and Commissioners of Justiciary, having considered the Libel pursued by his Majesty's Advocat, against Mr. Robert Baillie of Jerviswood, with my Lord Advocat's Declaration, whereby he restricts the same to the Crimes not insisted on in the Decreet of Council formerly pronounced against the Pannal: They find the same Relevant as it is restricted, to infer the Pain of Treason, and remits the same to the knowledge of the Assize, and repels the remnant Defences proposed for the Pannal, in respect of the Decreet of Council produced, bearing no such thing as is alledged, and of the Answers made by his Majesty's Advocat thereto.

## A S S I S A.

The Earl of Strathmore,	Alexander Miln of Carrin,
The Earl of Belcarras,	Mr. James Elies of Stenhopsmilns,
Sir George Skeen, Provost of Aberdeen,	Sir William Drummond of Haliborn-den,
Sir James Fleming, late Provost of Edinburgh,	Major Andrew White, Lieutenant of Edinburgh Castle,
Sir John Ramsay of Whitehill,	Mr. David Graham, Sheriff of Wig-toun,
Adam Hepburn of Humby,	Colin Mackenzie, Collector of Rofs,
Andrew Bruce of Earleshall,	David Burnet, Merchant.
John Stuart, Tutor of Alpin,	

THE Assize lawfully sworn, no Objection of the Law in the contrary.

His Majesty's Advocat for Probation adduced the Witnesses and Writs aforementioned; and first,

Walter Earl of Tarras.

Sir Patrick Hume Procurator for the Pannal, objects against the Earl of Tarras, that he cannot be a Witness, because he is *socius & particeps criminis*; and it is clear by the 34 Chap. Stat. 2. Rob. 1. concerning these that are excluded from bearing of Testimony, that *Socii & Participes ejusdem criminis, vel incarcerati & vinculati*, cannot bear Testimony: As also, the Earl of Tarras being presently under an Inditement of High Treason, and under the Impressions of Fear, and Death, no Person in his Circumstances can be admitted a Witness, as is not only clear from the foresaid Statute, but from the Common Law.

VOL. III.

His Majesty's Advocat answers, That it is an Exception from that Rule, both by the Common Law, and ours, that in the Crime of lese Majestie, and especially that Branch thereof which we call a Conspiracy, *socius Criminis* may be a Witness, and which is introduced very reasonably by Lawyers to secure the Common Interest of Mankind, which is the Chief of all Interests; and because Conspiracies cannot be otherways proved, and not to allow this manner of Probation, were to allow Treason, since no Man can prove a Plot, but he that is upon it; and how can a Man object against him as a Witness, whom himself trusted with his Life, his Fortune, and their common Plot? Nor is the intenting of the Libel any stronger Qualification, since every Man that is *socius criminis*, is under the same Impression, and it would rather seem the greater and nearer apprehensions a Man has of Death, he will be the more sincere and faithful; nor has the Earl of Tarras, nor did he ever seek any Security, in order to his deponing. And this has been constantly, and latlie, conform to the Common Law, as may be seen in the hundreds of Citations set down by Mascard, de Probationibus, Vol. 4. conclus. 1318. Num. 21. and the contrary Citations prove only, that regularly *socius criminis* cannot be a Witness.

Sir Patrick Hume replies, That the Statutes of Robert the first is opposed, and *non est distinguendum, ubi lex non distinguit*; and not only was he *socius criminis*, which is acknowledged, but he is *incarceratus*, and lying under an Inditement of High Treason, and has thrown himself on the King's Mercy; and it is not proper he should be a Witness, seeing he is in the King's Mercy, who may give him his Life, or not; and there was never a Person in these Circumstances that ever was admitted a Witness.

Mr. Walter Pringle adds, That the Earl of Tarras is not only in the Case of a Person who stands indited for High Treason; but must be looked upon as a Person condemned for the said Crime, seeing he fully and amply confessed the Crime; & *confessus habetur pro convicto*, and never any Lawyer asserted, That *damnatus criminis lese Majestatis* could be admitted as a Witness; and there is nothing more clear, than that by the common Law, and the Law of all Nations, this Objection ought to be sustained; for the civil Law is clear, leg. 11. cod. de testibus, and Mathews in his Title, de Probationibus, cap. de Testibus, doth assert positivlie, that the Cryme of lese Majestie, Heresie, and generally all these Crymes, *quae sine sociis non possunt facile admitti*, are not excepted. And he asserts, that the Lawyers, viz. Gomefius and Decianus, who are of another Opinion, do acknowledge, *nominatum a reo damnandum non esse*, and that they contravert only, *An nominatio rei sit indicium sufficiens ad torquendum nominatum?*

Sir George Lockhart repeats, and oppons the Answer, and the Cryme libelled, being a Conspiracy of Treason, which of its own Nature is managed and carried on by Secrecie and Contrivance; and which is only known to the Complices of the Treason, and which cannot be committed *sine sociis*. The Laws of this Kingdom, and of all Nations, do allow *socius criminis* to be *testes habiles*; and not only are they admitted in the case of such Conjurations, but generally in *omnibus criminibus exceptis*, amongst which the Crime of Perduellion, and lese Majestie in the chief; and it is absolutely impossible, that Plots and Conspirations of Treason can be otherways proven, than *per socios*, and such as are *participes criminis*, and which is the common Opinion of all Lawyers, as may appear by Farin. Quast. 45. and the Authorities cited by him, and which is the inviolable Practique of this Kingdom: And as to that Pretence, That the Earl of Tarras is under a Process of Treason, and has submitted to His Majesty's Mercy, and that *confessus habetur pro convicto*, it imports nothing, and infers no more than that he is *socius criminis*, and is still a *habilis* Witness: As to Conjuraton of Treason, *socius criminis hoc ipso*, that it is acknowledged, or proven, being still under the hazard of Process, or Condemnation, which Law regards not in regard of the Secrecie involved in the nature of the Crime, that either Witnesses *neque actu, neque habitu*, can be present; so that the Objection amounts to no less than that Conjurations of Treason cannot at all be proven: And as to the Law cited from the Majestie, it imports no more than that the Objection *regulariter procedit*, in Crimes, which of their own nature are not *perdifficilis probationis*, and are not *inter crimina excepta*, such as the Cryme of Conspiracy and Treason is.

Mr. William Fletcher oppons the Objection, and Reply, and further adds, that albeit *crimen lese Majestatis* be reckoned *inter crimina excepta*, and so have some Privilege, as to the Qualification of Witnesses; yet it cannot be denied, but there are some Objections competent against Witnesses adduced for proving Conspiracies, and Treason; *verbi causa*, that a Witness is a capital Enemy, or that he is *sub potestate accusatoris*; and the Objection now pleaded, being taken complexlie, viz. That the Earl of Tarras is not only *socius criminis*, but also, that he is *publico judicio reus*, upon the same Crime, and that as means to procure his Majesty's Favour, he has submitted himself, and come in his Majesty's Mercy, by an acknowledgment of the Cryme, before the Diet of Citation, he is obnoxious to a most just Objection, viz. That he is *sub potestate*, and by the Submission and Confession, his Life and Estate is now in His Majesty's Hand, so that he is not only in the Case of a *reus confessus*, but in the Case of a Witness, who does absolutely depend upon His Majesty's Advocat, the Pursuer; and as a private Accuser could not adduce his own Servants to be Witnesses, because they are *testes domestici*, and depend upon him; so far less ought a Witness to be adduced, who not only depends, as to his Estate, but as to his Life; and the Law gives a very good Reason, and which is mentioned by Paulus, Lib. 1. receptarum sententiarum, cap. 12. parag. ult. in these Words, *De se confessus non est audiendus ut testis, ne alienam salutem in dubium deducat, qui de sua desperavit*. And as to the Pretence that a Conjuraton is a Crime so occult, that it must either be proven by such Witnesses, or otherways the guilty Person will escape: It is answered, That in this Case, His Majesty's Advocat had an easie Remedy, for he might have pursued the Pannal, before he pursued the Witness; and the Terror and Apprehension of the event of a Process for Treason cannot be constructed otherways, than to have influence upon the Deposition of the Witnesses: And as to the Citation out of Farinacius, it is only in the Case of *socius criminis*; but when he comes to treat *de teste accusato vel carcerato*,



*Quest. 56. articulo quarto*, he says *Regula fit in accusato, quod is pendente accusatione a testimonio repellitur*. And by the second Rule of the same Article, he says, it is a Principle *quod carceratus testimonium ferre prohibetur*; and he gives this Reason, *quia præsumitur, quod falsum testimonium diceret pro aliquo, qui ei promiserit se liberare a vinculo*, and limits this Rule, that he must be *carceratus propter crimen*.

Sir Patrick Hume adds, That it is a certain Principle, that any Person that is guilty *infamia juris*, cannot be a Witness, no more than a Person that is convicted, and condemned of Treason; and if he were convicted, and condemned of Treason, he could not be a Witness, even in the Case of Treason: So neither can the Earl of Tarras in this Case be received a Witness, for he being adduced a Witness after he received his Indictment, and confessed the Crime, is equivalent, as if he had been actually convicted; and whatever may be pretended, that *testes infames* may be admitted; yet it was never asserted by any Lawyer, that a Person convicted of Treason can be admitted a Witness.

*Nota*, That the Earl of Tarras deposed nothing against Jerviswood, but what the other two Witnesses deposed against himself before the Trial, and upon which thereafter they being renewed, the Earl was forefaulted, so that there could be no ground of Suspicion from his Circumstances.

The Lords repelled the Objection against the Earl of Tarras, and ordain him to be received a Witness.

Walter Earl of Tarras, aged forty Years, married, purged, and sworn; being interrogat, if about the Time that Sir John Cochran, and Commissar Monro got their Commission from the Carolina Company for London, the Pannal, Mr. Robert Baillie of Jerviswood, did not desire the Deponent to speak to Commissar Monro, to try if he could get him, the said Pannal, added to that Commission, depones affirmative. Being interrogat, If the said Jerviswood, the Pannal, did not tell the Deponent that he was resolved to go to London however, upon his own Expences, and that his and their going about the Carolina business was but a Pretence, and a Blind; but that the true Design was to push forward the People of England, who could do nothing but talk, to go more effectually about their Business, depones affirmative. Depones, That the Pannal did settle a Correspondence with the Deponent, whereby he was to give an Account to the Deponent, of what should pass betwixt the Country Party in England, and the Scotsmen there: And on the other Hand, the Deponent was to write to him what occurred here. Depones, That the Pannal did say to the Deponent, if the King would suffer the Parliament of England to sit, and pass the Bill of Seclusion, that that was the only way to secure the Protestant Religion. Depones, That the Pannal said to him, that the King might be induced to do so, if the Parliament would take sharp or brisk Measures with him, or the like. Depones, These Words were spoke to him by the Pannal since the holding of the last Session of this current Parliament; and before the Pannal and Commissar Monro went for London. Depones, That after the Pannal went to London, he did give the Deponent an Account by Letters, that Things were in great disorder there, and that he hoped there would be effectual courses taken to remedy them. Depones, That Mr. Robert Martin did come to Mr. Pringle of Torwoodlie's House in May, 1683, or thereby, and brought a Letter to the Deponent's Lady unsubsribed; but the Deponent knows it was Jerviswood's Hand-writing, who was then at London, and that Mr. Martin told the Deponent, that things in England were in great Disorder, and like to come to an Height, and that the Country Party were considering on Methods for securing the Protestant Religion. And that Archibald, sometime Earle of Argyle, was to get Ten thousand Pounds Sterling, whereas Thirty thousand Pounds Sterling was sought by the Scotsmen at London, which was to be sent over to Holland to provide Arms; and that the late Earl of Argyle was to land with these Arms in the West-Highlands of Scotland, and that the Deponent's Friend, Jerviswood the Pannal, was to be sent over with the Money. Depones, That Philiphaugh and he went to Gallowshiels House, where they met with Polwart and Gallowshiels, and that it was talked amongst them there, that in Case those in England should rise in Arms, that it was necessary in that Case, that so many as could be got on the Borders, should be in a readiness to deal with Stragglers, and seize upon Houses, and that thereafter they should join with those that were in Arms on the Borders of England. Depones, That in the Case foresaid, it was said, it was convenient the Castle of Stirling, Berwick, and some other Strengths should be seized upon; and it was likewise spoke amongst them, that some Persons should be employed, to inquire what Arms was in that Country. Depones, That it was spoke then, that the best time for Argyle was to land in the West, when there was a Stur in England or Scotland, or Words to that Purpose. Depones, That every one desired another to speak to such particular Persons as they could trust, by letting a Word fall indirectly upon supposition, in case of the Rising in England, concerning the Affair for preparing of them: And that he was told by Philiphaugh thereafter, that there was a Word and Sign to be used amongst them, viz. the Sign was by loosing a Button on the Breast, and that the Word was, Harmony. Depones, The Pannal spoke to the Deponent, to advertise Torwoodlie, that he might acquaint Mr. William Veitch, a forfault Traytor, who was in Northumberland, that he might keep himself close, and be on his Guard, lest he should be caught; which was since the Pannal was Prisoner in the Tolbooth of Edinburgh. And this is the Truth, as he shall answer to G O D.

*Sic Subscribitur,*

Tarras.

Linlithgow. I. P. D.

Alexander Monro of Bear-croftis, aged forty-five Years or thereby, *solutus*, solemnly sworn and purged. Depones, That the Earl of Tarras proposed to the Deponent, that Jerviswood might be made one of the Commissioners for the Affair of Carolina, for that he could not safely stay at Home; and

that the Deponent's Answer was, That he had no Interest in the Affair, and so could not be a Commissioner. Depones, That the Pannal did wait for the Deponent at Wooler; and did go along with him to London, and that by the way he heard him regrave his own hazard and others, because of Blackwood's Sentence; and that he heard him regrave the hazard our Laws, and Liberties, and the Protestant Religion were in. Depones, That the Pannal spoke to the Deponent and others, more than once at London, for getting of Money from the English, to be sent to the late Earl of Argyle, for bringing home Arms for the said Earl's Use, as he understood, for carrying on an Infurrection and Rebellion in Scotland. Depones, That at the Time libelled, in Jerviswood's Chamber in London, Mr. William Veitch, a forfault Traytor, was present; and that Sir John Cockran did at that Meeting expressly speak of Money to be sent to Argyle, for bringing Home Arms for invading the Kingdom of Scotland; and that at another Occasion he heard some of them say, That there would be twenty thousand Men in Scotland who would assist the Rebellion, and that he heard Sir John Cockran and Jerviswood speaking of it, but cannot be positive which of the two said it. Depones, That at the Meeting he heard Jerviswood speak, but did not hear him oppose that Treasonable Proposal, or contradict the Overture proposed by Sir John Cockran. Depones, That Mr. Robert Martin was sent down from that Meeting which was at Jerviswood's Chamber, to Scotland, to try what the People of Scotland would do for their own Safety: And that it was understood that the People of Scotland should not rise 'till there should be a rising in England, and that the Commission was granted to Mr. Robert Martin, by all the Persons present, whereof Jerviswood was one, and that there were present, the Lord Melvil, Sir John Cockran, Cessnocks elder and younger, Mr. William Carstairs, Mr. William Veitch, Jerviswood, and the Deponent; and depones, they did contribute Money for Mr. Martin's Journey. Depones, That at his Return, he meeting with the Deponent, told him, that Matters were in that Condition in Scotland, and that the Country was in such a Condition, as little would kindle the Fire in order to the Rebellion. And this is the Truth as he shall answer to G O D.

*Sic subscribitur,*

Alexander Monro,  
Linlithgow, I. P. D.

James Murray of Philiphaugh, aged 30 Years, married, purged, and sworn, produces four Leaves of Depositions, emitted by him before the Lords of the Secret Committee, and all written and subscribed with his own Hand, which being publicly read, in presence of the Justices and Assize, he adheres thereto, in all Points, whereof the Tenor follows.

Upon the Day of May, 1683, upon a Letter from Mr. Pringle of Torwoodlie, I came to his House in the Morning, and he presently led me to a Chamber, where I found Mr. Robert Martin, who was lately come from London, with whom we stayed a little, and discoursed of the News, and about the present Condition and Temper of England, and in particular of London, which Mr. Martin said, was much irritated through some Attempts upon their Privileges, either as to the Concern of the Sheriffs, or their Charter, but that all honest Men were of good Heart and very brisk; and after some general Discourses to this Purpose, Torwoodlie and I left him and walked out a little, and he told me, he was expecting the Earl of Tarras presently, for he had sent to him; and Mr. Martin had a Letter to him from Jerviswood; then he told me that there were great Matters in agitation at London, and that Mr. Martin had come down with a Commission from our Friends there (I do not remember he named any, but that I behoved not to expect he would impart his Instructions to me, for he was to communicate them only to Polwart and himself, at least for these Shires) and they were to pitch on such as they thought fit to intrust with the Affair; whereupon he assured me, that he had great Confidence in me, and his Kindness to me obliged him to lend for me, to acquaint me that Matters were now come to a Crisis, and that he had Reason to think England would shortly draw to Arms, and stand by them, 'till they were satisfied anent the Bill of Exclusion, and what other Security they could propose for the Protestant Religion, and their Liberties; and that it was no Project of any inconsiderable Party, but a Design through the Kingdom, and that many of the finest Men, and of the greatest Interest and Credit there, had adjusted almost every thing necessary for the Purpose, and had concerted Matters with our Friends there, in order to Concurrens from this, and had agreed to advance Money for furnishing Arms here (I do not remember he told me more Particulars at this time); but said, Polwart would be at Gallowshiels that Night, and it would be necessary that the Earl of Tarras and I should confer with him fully on the Business. About this time the Earl of Tarras lighted, and Torwoodlie having left us for a little time, being gone to bring Mr. Martin, the Earl of Tarras asked me, what News? I told him of Mr. Martin's being there, but that he had given me no Account of the Design of his down-coming, which perhaps he would acquaint him with, but by what I had heard from Torwoodlie, I understood it to be, to engage us to rise in Arms shortly; whereas the Earl of Tarras hummed, and said he would look ere he leapt such a leap, or some such Expressions. Presently Mr. Martin came, and the Earl of Tarras, and he retired a little after the reading a Letter he gave him, the Contents whereof was (as the Earl of Tarras informed me) only an Order from Jerviswood to deliver some Money to the Bearer, which he had left with him, and the Earl of Tarras called for his Servant, and bad him bring up the Money. In the mean time, Torwoodlie asked me, if I had acquainted the Earl of Tarras with what he spoke to me, and I told him, I had let something of it fall to him, but it was not to be thought, that Persons of Sense and Quality would engage in such Designs at random; so Torwoodlie said, that (tho' Mr. Martin would not commune with us upon his Commission directly) yet he thought it would be fit we conferred, and without taking Notice of his Commission, discoursed of things upon Suppositions, and as our own private notions, abstract from any Prospect of a present Design. So after Dinner we four went to a Chamber, and after some general Discourses of the Discontents of both Kingdoms, these Suppositions following were discoursed (and as I remember Mr. Martin started them all, or the most part), viz. What if



if the Country-Party in England should have Thoughts of going to Arms (whereof he knew nothing; but only supposed such a thing, for discoursing a little freely, and to know our Sentiments, what we thought could be expected here in such a Case), would it not be expedient to have a settled Correspondence betwixt that Party there and here? and might not Matters be so adjusted, that both Kingdoms should draw out in one day? and might not as many be expected to undertake in these Shires, and about *Edinburgh*, as would serve to surprize, and seize our Rulers (I do not remember any named, but the then Chancellor and Treasurer), and some to join with these on the *English* Borders, to assist them to surprize *Berwick*? and if for that effect, any Horse or Dragoons, that should be in the Bounds, might not be surprized, that their Horse and Arms might be gotten to furnish the Country People, and *Stirling Castle*? And if *Argyle* should at the same time land in the *West*, and raise that Country, would not these Measures contribute much to the Advancement and Security of the Interest of that Party here, since thereby the Government would be disordered, and such Steps would encourage all that had an Inclination to the Country-Party, to draw to them frankly, and scar many of the other side to act against them, and so they might have leisure to join from all Places? And might it not be expected, there would be as many in this Kingdom, as would be able to deal with the Forces here, at least divert them from troubling *England*? This is the Sum, as I remember, of what was proposed and discoursed of, tho' I cannot distinctly say, it was in this Method and Expression, nor was all moved at once, but dropped now and then, as the Discourse seemed to give Rise to it; and tho' I cannot fully recount all that was spoke on these Heads, and tell distinctly what this and that Man said, yet I remember these following Answers were given, and (as I judged) acquiesced to by the whole Company; and they were certainly the Earl of *Tarras* his Sentiments and mine; and every one that spoke, used this or some such Precaution, That if they were concerned, or to give Counsel in any such Cause (as they were not, &c.) 1. As to the settling a Correspondence, it was confessed to be very convenient for those of a common Interest; but the present Circumstances of Affairs were such (as we thought) that none could be found here, who was fit to manage it, and would undertake it. 2. As to the Tryfing, at the same time it could not be done without the divulging the Design to all Ranks of People, which none would undertake, except these already in desperate Circumstances; and they could not have generally much Influence. 3. The thing was not at all advisable for this Kingdom, since, if any of *England's* own Measures miscarried, they would not stir for any such Trust; and the spring of their Motions being always at *London*, there might happen an Interruption near the Appointment, whereof these here could have no timely Notice, and so might keep Tryf, whereby they would be exposed a Prey, and if they should subsist any time, or prevail (which was hardly possible) the multitude that must be employed, are tainted with such wild and unruly Principles, that if once they got the Sword in their Hands, they would never be brought to Order, without a greater Force to over-awe them; neither would any Expectation of *Argyle's* landing be a just ground for such a Tryf, considering the Uncertainty of Sea-Voyages; and if *Argyle* were to be the Head, undoubtedly many People would conclude that he were to be suspected of private Designs, and that restoring him might lay him aside: As also, that Despair might blind his usual Prudence, and prompt him to unsolid and undigested Methods, and so it was to be expected, that few of the Gentry (except such as he had special Influence on, or such as were under hard Circumstances) could embark with him. 4. As to the surprizing Rulers, &c. it was inveighed against, as an Action not to be thought of amongst Protestants (especially when the very Design of it was pretended to secure that Religion, which taught its Professors to abhor and detest such Principles as Popish, yea Unchristian), since it could not be effectuated without Bloodshed of people, secure in Peace, which being by all approved Divines and Casuists condemned as unlawful, and meer Assassination, it was not to be doubted, that as such a Practice would cast a blot upon the whole Affair, and quite take off any pretence of Defensive Arms, so it would scar many from joining. These things were reasoned again and again; but I do not remember there was any formal Conclusion made, but the Discourse was let fall; and Mr. *Martin* told us, if any of us had a mind for a Suit of Armour, he could provide as many as we pleased, from one who had made a great many lately to honest Men at *London*, of a new fashion, very light, and at an easy rate; so *Torwoodlie* and I gave him our Measures; Earl of *Tarras* told he had a Suit already, then *Torwoodlie* said to the Earl of *Tarras* and me, We would meet *Polwart* at *Gallowshells*, and desired we might commun with him, anent what we had been discoursing; so we hasted away, that if possible we might both get home that Night, it being *Saturday*, and we unfurnished for staying abroad, and *Torwoodlie* whispered me just as I was mounting (as I think), that he was not clear we should commun before *Gallowshells*, for he was sometimes too much Good-fellow, or the like; so the Earl of *Tarras* and I rode away together, and upon the way we were both of Opinion, that the Suppositions we had discoursed of, were in effect Propositions; and resolved, if they were insisted on by *Polwart*, as we suspected, we would adhere to the former Answer, and would undertake nothing in these Methods. When we came to *Gallowshells*, the Laird was abroad, and *Polwart* was not come; so we had Thoughts to go away, being both damped with what had passed, and inclining to be free of farther meddling; but the Lady would by no means hear of our going till her Husband came, who, she assured us, was about the Doors, and she having sent to call him, he would be in presently; yet it was so late ere he came, that the Earl of *Tarras* could hardly have day enough to go home with; so *Gallowshells* would not let him go, and he would not stay, unless I stayed, so we both stayed: and not being resolved to discourse with *Gallowshells* on what passed, we went to the Tavern, on pretence I might call the Baillie, and seek Horses or Lime, and stayed there till *Polwart* came, which seemed unknown to *Gallowshells*; then we returned to *Gallowshells's* House, and after Supper *Polwart* whispered the Earl of *Tarras* and me, and enquired if we had seen Mr. *Martin*; and we having told him we had, he enquired if we were free to commun on the Affair before *Gallowshells*; we told, as he thought fit, for we could trust him: Then he whispered *Gallowshells*, and (as I understood afterwards) asked if he was

free to commun on Matters of great Secresy and Importance with that Company, to which he assented; then we sat down clois together, and, as I remember, *Polwart* began the Discourse; but since I am not able to follow exactly the Method of our Conference, or keep the very expressions used, or repeat all that was spoke, or to tell distinctly what was every Man's part of the Discourse, I shall set down the Heads, and most remarkable Passages thereof, that I remember, in some Articles following: 1. *Polwart* signified that he was credibly informed (but I do not remember he named his Informer), that the Country Party in *England* would draw to the Fields shortly, as he heard before *Lambais*; wherewith *Gallowshells* seemed visibly surprized; and being asked, if his Heart failed him already, he said he did love it better truly to be walking in his own Parks in Peace and Quiet, than to be meddling in such Matters; however, he assured the Company, that if there came any troublesome World, he would join with them firmly: and the Earl of *Tarras* said, he wondered to hear of any such Resolution in *England*; for he took it for a Principle amongst that Party there, that they should make no Stir in the King's Life (which the whole Company owned to be their Opinion and Desire), because that might strengthen the Duke's Interest, and he suspected it was the Project of the Commonwealth's Men, with whom he believed few Scots Gentlemen would join; and he was almost persuaded the Duke of *Monmouth* would not concur in any rising during the King's Life. To which it was answered by *Polwart*, that he had indeed heard that Principle had been generally agreed to, but it seemed they found they behoved either to do their Business now, or lay aside Hopes of doing it hereafter, which might be: That if the Charter of *London* were let fall, they would not only lose all safe opportunity of digesting Matters, but a great part of their Strength, and he heard all things were concerted mutually betwixt *Monmouth's* Friends, and the Heads of the Commonwealth Party; and tho' he heard *Monmouth* was shy on that Account, yet it was hoped he would engage, for otherwise he would be deserted by that Party. 2. *Polwart* told us the Suppositions above-written as Overtures concerted betwixt our Friends at *London*, and the principal Men of that Party there: so the Earl of *Tarras* and I renewed our former Answers also above-written, and maintained them with all our Vigour, wherewith *Gallowshells* joined forwardly with us, and *Polwart* asserted, we went on very good grounds, and he was fully of our Opinion, if things were entire; but referred it to be considered, whether it were better to comply with some of these Methods, tho' not so proper and justifiable as were to be wished, than to disappoint the Business totally, which might be of the best consequence to all the Party; yet we did not condescend, as I remember, to undertake any of these Methods. And there was a further Argument adduced against the tryfing above-written, viz. That it was talked there was a Day appointed in *England*, lately in *Shaftesbury's* Time, which did not hold, so they were not to be relied upon. 3. It was proposed to be considered, what Methods were most proper in the Company's Opinion for *Scotland* to follow in case of *England's* Rising? Whereant it was said, That all that could be expected or desired from *Scotland*, was, that upon the certain News of *England's* being in the Fields, those in the Southern Shyres, who would own that Party, should presently rise, and (how soon they could get as many convened as would be able to deal with straggling Parties, or any sudden Rising in the Country) march to join them, and that it would be fit these in the Northern Shyres of *England* waited near the Borders for such; and that they had Officers tryfled there to command; and that then it would be seasonable for *Argyle* to land in the *West*, and these Parties on the Borders might divert the Forces, till he had time to put himself in a Posture. These things seemed to be the Sentiments of the whole Company, but were not finally determined till the Opinion of others, who were to be communed with by *Polwart*, were known: And it was represented, there behoved not to be any wilful and obstinate adhering to our own Thoughts of things, but a mutual Condescendance to others concerned, otherwise it were not possible to bring a publick Design to any good Issue. 4. All the Company seemed to agree, that they should undertake nothing, or move in that Affair, till they had a full and certain account what *England* proposed; what Methods they resolved to follow there, who were to be their Heads; and that if they designed any Attempt on the King's Person, or overturning Monarchy, they would not be forward or clear to joyn. And it being here insinuated, that the most they could do, at least for which there could be any plausible Pretence to justify, was to draw together, and without any act of Hostility, send Addresses to His Majesty for Redress of the present Abuses of the Government, and for obtaining sufficient Security against the Hazard they apprehended to their Religion and Liberties: It was said by *Polwart*, That he was apt to think, that was their very Design; for he had heard it was generally believed by that Party in *England*, that if once they were in a Body, the King would be prevailed with to quite the Duke, to be tried for Popery, Correspondence with *France*, and Accession to the Popish Plot; and then, if the King were once free from the Influence of the Duke's Counsels, they were confident he might be moved to reform their Abuses, and secure their Religions and Liberties for the future to their Contentment. 5. It was resolved, That till we got the aforesaid Account from *England*, and were satisfied thereant, and knew others here, who were to be communed with, their Sentiments of what Methods were most proper for us, in case we should undertake, we should not meddle further; only it was left to the Earl of *Tarras* and me, if we thought fit to acquaint Sir *William Scot* younger, with some of the Matter of this Conference overly, without taking notice of our Informers, or such an Conference; and it was recommended to all to be enquiring, at such as they had some Trust in, indirectly about the Affection of our Neighbours, and what Arms there was amongst them, that if we should get an satisfying account, and resolve to join, we might know where to seek Men and Arms suddenly. Here it was said by *Polwart*, as I think, that if the Earl of *Tarras*, *Torwoodlie*, *Gallowshells*, and I, once took Horse, he thought the most part of the *West* end of *Tweeddale* and *Selkirkshire* would soon come to us, especially, when they heard *England* was risen; then we tryfled to meet there against *Midsummer* Fair, betwixt which the aforesaid Account was expected; but in case it came to any of our Hands sooner, we promised to advertise the rest, that we might meet presently if the Case required. This is the Substance and Sum of what passed at the aforesaid Conference,



ference, that I can now remember; but I remember, I was likewise told these following Particulars in privat, by Polwart or Torwoodlie (which of them I cannot distinctly tell) the Day of the aforesaid Conference, or within a short time after. 1. That Polwart kept the Correspondent with our Friends at London; I remember not positively of any of them that was named to be on the Intrigue there, except my Lord Melvil, Sir John Cochran, Jerviswood, and Commissar Monro (for I hardly knew any of the rest) and, as I think, Commissar Monro was called his Correspondent there. 2. That the Money to be advanced by the English Partie to Scotland, was ready when Mr. Martin came from London; and it was expected, that within few Days after it would be dispatched with some Confident to Holland (whether by Bills, or in Cash, I cannot say); it was called ten Thousand Pound Sterling, and was to be employed (as I was told) by that Confident, at Argyle's Sight, for buying Arms, providing Ships to transport them with Argyle, to the West here, and such other Charges. 3. That how soon our Friends at London got notice of the safe Arrival of the Confident for said, and all other things were finally concluded there (which was expected would be about the middle of June, as I remember), they would come home, and, as they passed, would give them, or one of them, an particular Account of all Resolutions taken, to be communicat to the rest, that it was not to be expected by Letters, that behoved to be under Figures and dark Expressions; and, as I remember, they were written as it were about the Carolina-Business, or some Household Furniture, as I was told; for I never remember I saw any Letter, either direct to London, or sent from it on that Head. 4. I was told there was a Sign and a Word agreed on by that Party, so that Men might know with whom they might use Freedom; the Word, as I remember, was Harmony; and the Sign, the opening two Buttons in the Breast-coat, and shutting them presently; this I communicat to the Earl of Tarras, but does not mind I ever saw it used, except when I visited Park-Hay here in Town, about the End of June: We discoursing a little freely, he asked if I had the Word and Sign of the Carolina Men; and I having given them, he said something to this purpose, That he was afraid that the Carolina Business did not go well, for there had been some of the Managers expected here (as I think he named Jerviswood or Commissar Monro) these eight Days past, but there was none come, nor could he learn that any of their Friends had heard from them for several Posts. Polwart, Torwoodlie, and I, met at Gallowshells, on Midsummer Fair; but I mind nothing passed but private Whisperings. Dated September 15, 1684, and subscribed thus,

James Murray.

Edinburgh, December 23, 1684.

The Deposition above written being read to the said James Murray of Philiphaugh, in presence of the Justices and Affizers, he adheres thereto in all Points upon Oath.

Sic subscribitur,

James Murray.  
Linlithgow, I. P. D.

The said James Murray further depons, That at their meeting at Gallowshells, it was resolved, That they should keep up their Cefs unpaid till their next meeting at Midsummer, which was to be at Gallowshells, and should deal with all these they had influence upon to do the like; and that upon the Supposition mentioned in his Oath given in, it was spoke amongst them, that the Troopers Horses should be seized upon when they were grazing. And this is the Truth, as he shall answer to God.

Sic subscribitur,

James Murray.  
Linlithgow, I. P. D.

Hugh Scot of Gallowshells, aged 36 Years, married, purged, &c. and sworn; Depons, That the Earl of Tarras, and Philiphaugh, did come to the Deponent's House, in May, 1683, and Polwart came likewise there, where there were Discourses and Proposals, that if the English would rise in Arms, their Friends in the South Shires should rise with them; and that they should seize the Horses belonging to the King's Troops, where they grazed; and the Town of Berwick, and the Castle of Stirling: And likewise it was there discoursed anent the late Earl of Argyle's coming to invade Scotland; but because of the uncertainty of Sea Voyages, there was not much stress laid upon it. Depons, It was also proposed, that some of the South Country, whom they trusted in, should be acquainted with it, and that Endeavours should be used to learn what Arms was in the Country. Depons, There was some Discourse there, as that the Earl of Tarras, Philiphaugh, Torwoodlie, Polwart, and some others should draw to Horse with the first, when the rising should be in readiness, that it might be expected that the South Parts of Teviotdale and Selkirk Shire would join with them. And this is the Truth, as he shall answer to GOD.

Sic Subscribitur,

Hugh Scot.  
Linlithgow, I. P. D.

His Majesty's Advocat produced other Depositions, emitted by Gallowshells, before the Lords of the Secret Committee, whereof the Tenor follows.

Edinburgh, the 14th of September, 1684.

Gallowshells Depons, That the Earl of Tarras and Philiphaugh, being in his House in May, 1683, discoursed of an intended rising in England, and of Proposals made to Scotsmen to rise with them, and of London in particular, and that Polwart was present at that Meeting; and told he was sure the Englishmen intended so, and that it was discoursed at that Meeting amongst them, that it were fit to seize Berwick and Stirling; and that it was talked amongst them of bringing the Duke of York to Trial, and that the King would abandon him.

Sic subscribitur,

Hugh Scot.

Perth Canal.

Queensbury.  
George Mackenzie.Jo. Drummond.  
George Mackenzie.

Edinburgh, October 29, 1684.

Sederunt

Lord Chancellor,  
Lord Secretary,Lord President,  
Lord Advocat.

The Laird of Gallowshells, Prisoner in the Tolbooth of Edinburgh, being called and examined upon Oath, Depons, that in the Moneth of May, 1683, the Earl of Tarras, Hume of Polwart Elder, and Laird of Philiphaugh, came to the Deponent's House, himself being absent; at his coming Home, they were speaking of the Security of the Protestant Religion; and of a Party in England, who would secure or seize the King or Duke; and that if any should rise in Arms to defend them, or to rescue the King and Duke, here was another Party who would rise in Arms against them; it was proposed, that some Country-men should be spoken to to try their Resolutions, and that the Resolutions of England should be told them, to see if they would concur. But the Deponent does not remember that this Proposition was approved, or undertaken to be done by any present; nor does he remember who managed the Discourse. It was likewise proposed to seize the Officers of State, especially the Chancellor and Thesaurer; and the said Sir John Cochran was to come to the West from England, for advancement of the Design; and that the Earl of Argyle was to land in the West-Highlands, and to raise that Country. Of these Matters all these who were present, discoursed as of an Affair that they were agitating, and wherein themselves were particularly concerned, though at that time they did not conclude what their Carriage should be. The reason why the Deponent cannot be more particular is, because he was sometimes going out, and sometimes walking up and down the Room; and though the Deponent cannot be positive of the very Words, yet he is positive they were either these Words, or Words to that purpose.

Sic subscribitur,

Hugh Scot.

Perth Cancellarius.

Edinburgh, December 23, 1684.

Hugh Scot of Gallowshells, being solemnly sworn, in presence of the Justices and Affize, adheres to the Depositions within and above written in all Points.

Sic subscribitur,

Hugh Scot.

Linlithgow, I. P. D.

His Majesty's Advocat, in fortification of the former Probation, adduces the Printed Copy of Mr. William Carstares's Depositions, emitted before the Officers of State, and other Lords of Privy Council, and leaves the same to the Affize, and uses it as an Adminicle of Probation; for though it was capitulat, that he should not be made use of as a Witness; yet it was agreed, that the Deposition should be published: And likewise produces the principal Deposition signed by himself, and the said Lords.

The Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary, admit the Paper produced as an Adminicle, and refers the Import thereof to the Inquest, and ordains the Printed Paper, as it is collationed, to be taken in and considered by the Inquest.

Sir William Paterson, and Mr. Colin Mackenzie, Clerks of his Majesty's Privy Council, being interrogat, if they heard Mr. William Carstares own the Depositions read, Depons, they saw and heard him swear, and own the same upon Oath, and they collationed the Printed Copy with the Original formerly, and now they heard it collationed.

Sic subscribitur,

William Paterson.  
Colin Mackenzie.

The Deposition of Mr. William Carstares, when he was examined before the Lords of Secret Committee, given in by him, and renewed upon Oath, upon the 22d of December, 1684, in presence of the Lords of His Majesty's Privy Council.

Edinburgh-Castle, September 8, 1684.

Mr. William Carstares being examined upon Oath, conform to the Confession given in by him, and on the Terms therein mentioned; Depons, That about November, or December, 1682, James Stuart, Brother to the Laird of Cultnesh, wrote a Letter to him from Holland, importing, That if any considerable Sum of Money could be procured from England, that something of Importance might be done in Scotland: The which Letter the Deponent had an inclination to inform Shepherd in Abchurch-Lane, Merchant in London, of; but before he could do it, he wrote to Mr. Stuart above-named, to know from him, if he might do it; and Mr. Stuart having consented, he communicat the said Letter to Mr. Shepherd, who told the Deponent that he would communicat the Contents of it to some Persons in England; but did at that time name no body, as the Deponent thinks: Sometime thereafter Mr. Shepherd told the Deponent, that he had communicat the Contents of the Letter above-named to Colonel Sidney, and that Colonel Danvers was present; and told the Deponent, that Colonel Sidney was averfe from employing the late Earl of Argyle, or meddling with him, judging him a Man too much affected to the Royal Family, and inclined to the present Church Government; yet Mr. Shepherd being put upon

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it by the Deponent, still urged, that one might be sent to the Earl of Argyle; but, as Mr. Shephard told him, he was suspected upon the Account of his urging so much; yet afterwards he pressed, without the Deponent's knowledge, that the Deponent being to go to Holland, however might have some Commission to the Earl of Argyle; which he having informed the Deponent of, the Deponent told him, that he himself would not be concerned; but if they would send another, he would introduce him; but nothing of this was done: Upon which the Deponent went over, without any Commission from any body, to Holland, never meeting with James Stewart above-named: He was introduced to the Earl of Argyle, with whom he had never before conversed, and did there discourse what had past betwixt Mr. Shephard and him; and particularly about remitting of Money to the said Earl from England; of which the said Mr. Stewart had written to the Deponent, namely, of 30,000 Pounds Sterling; and of the raising of 1000 Horse and Dragoons; and the securing the Castle of Edinburgh, as a Matter of the greatest Importance. The Method of doing this was proposed by the Deponent, to be one Hour, or thereby, after the relieving of the Guards: But the Earl did not relish this Proposition, as dangerous; and that the Castles would fall of Consequence, after the Work Abroad was done. James Stewart was of the Deponent's Opinion for seizing the Castle, because it would secure Edinburgh, the Magazines and Arms; as to the 1000 Horse and Dragoons, my Lord Argyle was of Opinion, that without them nothing was to be done; and if that Number were raised in England to the said Earl, he would come into Scotland with them; and that there being so few Horse and Dragoons to meet them, he judged he might get the Country without trouble, having such a standing Body for their Friends to rendezvous to; and the said Earl said he could shew the Deponent the convenient Places for landing, if he understood, and, as the Deponent remembers, where the Ships could attend. The Deponent remembers not the Names of the Places. The Deponent spoke to the Lord Stairs; but cannot be positive that he named the Affair to him, but found him shy: But the Earl of Argyle told him, he thought Stairs might be gained to them; and that the Earl of Leven being a Man of good Reason, and disobliged, would have great Influence upon the Country, and recommended the Deponent to Major Holms, with whom the Deponent had some Acquaintance before, and had brought over a Letter from him to the Earl of Argyle; but the Deponent had not then communicated any thing to the said Holms. James Stewart laid down a way of Correspondence by Cyphers and false Names, and sent them over to Holms and the Deponent, for their Use (which Cyphers and Names are now in the Hands of His Majesty's Officers, as the Deponent supposes), and did desire the Deponent earnestly to propose the 30,000 Pound Sterling above-named to the Party in England, and did not propose any less; for, as the Earl told the Deponent, he had particularly calculated the Expence for Arms, Ammunition, &c. But James Stewart said, that if some less could be had, the Earl would content himself, if better might not be; but the Earl always said, that there was nothing to be done without the Body of Horse and Dragoons above-mentioned. During the time of the Deponent his Abode in Holland, though he had several Letters from Shephard, yet there was no satisfactory Account, till some time after the Deponent parted from the Earl of Argyle, and was making for a Ship at Rotterdam, to transport himself to England, James Stewart wrote to him that there was hopes of the Money. The next Day after the Deponent came to England, he met with Sir John Cochran, who, with Commissar Monroe, and Jerviswood, was at London before he came over; and deposes, that he knows not the Account of their coming, more than for the perfecting the Transaction about Carolina: And having acquainted Sir John Cochran with the Earl's Demands of the 30,000 Pounds Sterling, and the 1000 Horse and Dragoons, Sir John carried him to the Lord Russell, to whom the Deponent proposed the Affair; but being an absolute Stranger to the Deponent, had no Return from him at that Time; but afterwards having met him accidentally at Mr. Shephard's House, where the Lord Russell had come to speak to Shephard about the Money above-named, as Mr. Shephard told the Deponent: The Deponent (when they were done speaking) desired to speak to the Lord Russell, which the Lord Russell did, and having reiterated the former Proposition for 30,000 Pounds Sterling, and the 1000 Horse and Dragoons, he the Lord Russell told the Deponent, they could not get so much raised at the time; but if they had 10,000 Pounds to begin, that would draw People in; and when they were once in, they would soon be brought to more; but as for the 1000 Horse and Dragoons he could say nothing at the present; for that behoved to be concerted upon the Borders. The Deponent made the same Proposal to Mr. Ferguson, who was much concerned in the Affair, and zealous for the promoting of it. This Mr. Ferguson had in October, or November before, as the Deponent remembers, in a Conversation with the Deponent in Cheapside, or the Street somewhere thereabout, said, That for the saving of innocent Blood, it would be necessary to cut off a few, insinuating the King and the Duke: but cannot be positive whether he named them or not. To which the Deponent said, That's Work for our wild People in Scotland, my Conscience does not serve me for such things; after which the Deponent had never any particular Discourse with Ferguson as to that Matter; but as to the other Affair, Ferguson told the Deponent that he was doing what he could to get it effectuate, as particularly that he spoke to one Major Wildman, who is not of the Deponent his Acquaintance. Ferguson blamed always Sidney, as driving Designs of his own. The Deponent met twice or thrice with the Lord Melvil, Sir John Cochran, Jerviswood, Commissar Monroe, the two Cessnocks, Montgomery of Landshaw, and one Mr. Veitch, where they discoursed of Money to be sent to Argyle, in order to the carrying on the Affair; and though he cannot be positive the Affair was named, yet it was understood by himself, and, as he conceives, by all present, to be for rising in Arms for rectifying the Government. Commissar Monroe, Lord Melvil, and the two Cessnocks, were against meddling with the English, because they judged them Men that would talk, and would not do, but were more inclined to do something by themselves, if it could be done. The Lord Melvil thought every thing hazardous, and therefore the

Deponent cannot say he was positive in any thing; but was most inclined to have the Duke of Monmouth to head them in Scotland, of which no particular Method was laid down. Jerviswood, the Deponent, and Mr. Veitch, were for taking Money at one of these Meetings. It was resolved, that Mr. Martin, late Clerk to the Justice-Court, should be sent to Scotland, to desire their Friends to hinder the Country from rising, or taking rash Resolutions upon the Account of the Council, till they should see how Matters went in England. The said Martin did go at the charges of the Gentlemen of the Meeting, and was directed to the Laird of Polwart and Torwoodlie, who sent back Word that it would not be found so easy a Matter to get the Gentry of Scotland to concur: But afterwards in a Letter to Commissar Monroe, Polwart wrote that the Country was readier to concur than they had imagined, or something to that Purpose. The Deponent, as above-said, having brought over a Key from Holland, to serve himself and Major Holms: He remembers not that ever he had an exact Copy of it, but that sometimes the one, sometimes the other kept it, and so it chanced to be in his Custody, when a Letter from the Earl of Argyle came to Major Holms, intimating, that he would join with the Duke of Monmouth, and follow his Measures, or obey his Directions. This Mr. Veitch thought fit to communicate to the Duke of Monmouth, and for the understanding of it was brought to the Deponent, and he gave the Key to Mr. Veitch, who, as the Deponent was informed, was to give it and the Letter to Mr. Ferguson, and he to shew it to the Duke of Monmouth; but what was done in it the Deponent knows not. The Deponent heard the Design of killing the King and Duke, from Mr. Shephard, who told the Deponent some were full upon it. The Deponent heard that Aaron Smith was sent by those in England, to call Sir John Cochran, on the Account of Carolina; but that he does not know Aaron Smith, nor any more of that Matter, not being concerned in it. Shephard named young Hamden frequently as concerned in these Matters.

Signed at Edinburgh-Castle, the 8th of September, 1684, and renewed the 18th of the same Month.

William Carstares.

PERTH Cancell. I. P. D.

Edinburgh Castle, 18th September, 1684.

Mr. William Carstares being again examined, adheres to his former Deposition, in all the Parts of it, and deposes he knows of no Correspondence between Scotland and England, except by Martin before-named; for those Gentlemen, to whom he was sent, were left to follow their own Methods. Veitch sometimes, as the Deponent remembers, stayed sometimes at Nicolson, Stabler's House at London-Wall; sometimes with one Widow Hardcastle in Moor-fields. The Deponent did communicate the Design on foot to Doctor Owen, Mr. Griffil, and Mr. Mede, at Stepney, who all concurred in the promoting of it, and were desirous it should take effect; and to one Mr. Frith in the Temple, Counsellor at Law, who said that he would see what he could do in reference to the Money; but there having gone a Report, that there was no Money to be raised, he did nothing in it; nor does the Deponent think him any more concerned in the Affair. Netherthorpe frequently spoke to the Deponent of the Money to be sent to Argyle, whether it was got or not; but the Deponent used no Freedom with him in the Affair. Goodenough did insinuate once, that the Lords were not inclined to the Thing, and that before, they would see what they could do in the City. The Deponent saw Mr. Ferguson and Mr. Rumsey lurking, after the Plot broke out, before the Proclamation, having gone to Ferguson, in the back of Bishopsgate-street, at some new Building, whither he was directed by Jerviswood, who was desirous to know how Things went. Rumsey was not of the Deponent his Acquaintance before, but they knew as little of the Matter as the Deponent. This is what the Deponent remembers; and if any Thing come to his Memory, he is to deliver it in betwixt the first of October. And this is the Truth, as he shall answer to G O D.

William Carstares.

PERTH Cancell. I. P. D.

At Edinburgh, the 22d of December, 1684.

These foregoing Depositions, subscribed by Mr. William Carstares, Deponent, and by the Lord Chancellor, were acknowledged on Oath by the said Mr. William Carstares, to be his true Depositions; and that the Subscriptions were his, in Presence of us Undersubscribers,

William Carstares.

David Falconer,  
George Mackenzie.

PERTH Cancell.

Queensberry,  
Abol.

His Majesty's Advocat for farther Probation adduces the Examinations of Mr. Shephard, taken before Sir Leolin Jenkins, Secretary of State for England, with the Information or Deposition of Mr. Zachary Bourn, relating to the Plot, signed by him and Secretary Jenkins, of which Depositions the Tenors follow.

The Examination of Thomas Shephard of London, Merchant, taken upon Oath before the Right Honourable Sir Leolin Jenkins Knight, His Majesty's Principal Secretary of State, the 23d Day of December, 1683.

The Deponent saith, That Ferguson told him, on or about the Month of April last, that an Insurrection was intended both in England and in Scotland; and that for the settling that Affair betwixt the two Nations, Mr. Baillie, Mr. Monroe, Sir John Cochran, Sir Hugh and Sir George Campbells, with some others (whose Names this Deponent heard not) were come to London.

That the Deponent had some Acquaintance with Mr. Baillie, Mr. Monroe, and Sir John Cochran, and none at all with Sir Hugh and Sir George Campbells; that Mr. Baillie told the Deponent, that the Earl of Argyle demanded thirty Thousand Pounds of the English to capacitate him to begin the Business



ness effectually in Scotland, and that he the said Baillie likewise told the Deponent, that having concerted Things with the Lord Ruffel, and others, he the said Baillie found an impossibility of raising that Sum; after which the said Baillie had acquainted the Deponent, that they were certainly promised ten Thousand Pounds, which Sum was agreed to be payed into the Deponent's Hands, in order to be remitted into Holland, for the providing of Arms; and that the said Baillie told the Deponent at divers times, that the said Sum, or at least one half of it, would be payed such a Day, and such a Day; and sometimes asked the Deponent, if he had received any Part of the said Money; to which the Deponent replied that he had not, and that he the Deponent scarce thought any would be payed.

And the Deponent also saith, that having had some little Conversation with Sir John Cochran, he remembers well, that both of them did sometimes lament the Delays in not paying in the Money; and said, that altho' the said ten Thousand Pounds were payed in, they, the said Sir John Cochran and Mr. Monro, feared it would be too little; and this Deponent further sayeth not as to any new Matter. But the Deponent being asked to explain what he thought was meant by the Words above-written, viz. to capacitate him, the Earl of Argyle, to begin the Business, he this Deponent sayeth, that he did understand by the Word Business, an Insurrection in Scotland.

Sic subscribitur,

Thomas Shephard.

Jurat coram  
L. Jenkins.

The Information of Zachary Bourn, of London, Brewer, taken upon Oath, the 10th Day of December, 1683, before the Right Honourable Mr. Secretary Jenkins.

The Informant deposeth, and sayeth, That Mr. Baillie sat up one Night, if not two, with Mr. Ferguson, and went several times in the Evening with him to the Duke of Monmouth, and the chief Managers of the Conspiracy: That Ferguson told the Deponent, that he the said Baillie was the chief Man for the Scots, next to the Lord Argyle; that the said Baillie did sit up the greatest part of one Night with the said Ferguson, at which time this Deponent believeth they were busy in preparing the intended Declaration, which the Deponent has the more reason to believe, in as much as the said Ferguson did go about to shew him the Deponent such a Paper, wherein the said Ferguson was hindered by the coming up Stairs of some Person, to speak with the said Ferguson; that the said Ferguson told the Deponent, that the main Business of the said Baillie in meeting the said Conspirators, was in order to get from them the ten Thousand Pounds, promised for the buying of Arms, for the Insurrection intended in Scotland.

That the Deponent saw Mr. William Carstairs come often to the Lodgings of the said Ferguson; but that the said Ferguson never told the Deponent of any Discourse held by him with the said Carstairs; and further this Deponent saith not.

Sic subscribitur,

Zac. Bourn.

Jurat coram  
L. Jenkins.

His Majesty's Advocat likewise produced several Warrants, and Papers, to prove that those Depositions are signed by Sir Leolin Jenkins.

His Majesty's Advocat also produced the Books of Adjournal, bearing Mr. William Veitch to be a forfault Traitor, and the Act of Parliament whereby the Forfaulture is ratified.

### His Majesty's Advocat's Speech to the Inquest.

My Lords and Gentlemen,

YOU have now a Conspiracy against his Majesty's Sacred Person and Royal Government, so fully discovered, that they must want Reason as well as Loyalty, who do not believe the Discovery; and they must be Enemies to Sincerity, as well as to the King, who do not acknowledge it. Beside that the Councils of all the three Nations thought the Proof sufficient for Indicting a General Thanksgiving through all these Nations, and that the Judges of England thought the same strong enough to infer Forfaulture of Life and Estate against some of all Ranks there; you have a Discovery made here from the late Earl of Argyle's own Letters, and the Confession of his own Emisaries, the two surest Proofs that Law ever invented, or the Nature of humane Affairs can allow; and I am this Day to add to all this, a new set of Proofs in the Process that I now lead against this Pannal, from the Confessions of Noblemen and Gentlemen, who have been engaged in this wicked Conspiracy; and who, from a Sense of their Guilt, are content freely to depose against their nearest Relation, and their most intimate Friend; in which having thus cleared to you, that there was really such a Conspiracy, I shall, in the next place, proceed to prove this Pannal's Accession to it.

It cannot be imagined, that we would willingly involve our Countrymen in it, without a Conviction stronger than our Kindness to Scotland, nor did his Majesty's Servants accuse this Pannal, without the Opinion of the ablest Lawyers of the Kingdom, who did with them concur to think, that there was not the least Occasion of doubting left to the most indifferent Inquest of his Guilt, after they had seriously and with Reflection read over and pondered the Probation now laid before you.

The Person accused of Accession to this Cryme, is the Ringleader of all those who in this Kingdom concurred with the English Conspirators, as you may see by the Testimonies of all who have deposed; and it was indeed fit and just to begin with the most guilty; so that if he be not convicted, there should no Man be punished for this Conspiracy; all the Noise we have heard of it, is but a Cheat, the King's Judges have been Murderers, all the Witnesses have been Knaves, and such as died for it have been Martyrs.

The Accession charged on the Pannal is not an accidental Escape, nor is it proved by Witnesses, who can be suspected of Unkindness to his Person,

or his Cause; for it is a long Tract of a continued Design, gone about with the greatest Deliberation and Concern imaginable, and proved by his nearest Relations, and Persons so deeply engaged in that Cause, for which he suffers, that they were content with him to venture their Lives and Fortunes in that Quarrel. He is not accused of a Cryme that can amount only to a single Murder, tho' that be a dreadful Cryme, but a Rebellion, which was to draw upon us a civil War, that Murder of Murders, in which hundreds of thousands were to fall; and to crown all, he was to begin, and to be the Chief Promoter of a Rebellion, in which one of the first Steps was to kill His Sacred Majesty, and his Royal Brother: and one of the chief Witnesses, which I have led against him, is Bourn, which Bourn confessed that he was to kill the King, and who confesses the Pannal sat up several Nights with Ferguson, the other Contriver of the King's Murder: and so familiar was he with him, that Bourn deposes, that the said Pannal had been with Ferguson at the drawing of the Manifesto, whereby he was not only to be an Actor, but to be the Justifier of that horrid Villany; and therefore Bourn deposes, that Ferguson (the best Judge in that Case) looked upon him as the chief Man, next to Argyle. But because no Man is presumed to go to such a height, without previous Inclination and Motives, I shall, to convince you that this Gentleman was very capable of all that was libelled against him, remember you, that he is Nephew and Son-in-Law to the late Waristoun, bred up in his Family, and under his Tutor. About the time of his Plot it was undeniably known, and is now sufficiently proved by two present Witnesses, the Earl of Tarras and Commissar Monro, that he thought himself desperate, knowing himself to be guilty of Treason by Blackwood's Case; and as it is presumable, that a Man that is guilty of one Point of Treason, will commit another, so when a Man is desperate as to his Life and Fortune, he is capable of any thing. He was likewise animated to commit this Cryme by the Intelligence he had that there was a Plot in England, carried on by Men of so great Parts, Fortune, and Influence, and by the too probable Hopes, that they would get all the Western Shyres to join with them here, because of the common Guilt in which they had engaged themselves, by their late Extravagances, they made an Account of an Assistance of twenty thousand Men; and by Philiphaugh's Deposition, that these Gentlemen expected the Concourse of the Southern Shyres; and thus I am to prove to you a Cryme, which is in itself so probable and likely, that it should need little Probation, tho' I have adduced for your Conviction sufficient Evidences, albeit the Cryme were in itself very unlikely.

The Crymes, which I hope I have proved, are, 1. That Jerviswood the Pannal transacted for Money to the late Earl of Argyle, a declared Traitor. 2. That he designed to raise a Rebellion. 3. That he intercommuned with the Earl of Argyle and Mr. Veitch, declared Traitors. 4. That he was present where it was treated, either that Argyle should have Money from the English, and Assistance from Scotland, or that a Rebellion should be raised, and that he did not reveal the same; and all these being found relevant separatim, it is sufficient for me to have proved any one of them. And if a Gentleman was lately found guilty of High-Treason, by the Opinion of all the Lords of Session, for not revealing, that Sir John Cochran sought fifty Pounds Sterling from him, tho' he refused the same, and tho' he believed it was sought for a charitable Subsistence to preserve him from starving, what deserves this Pannal, who sought thirty thousand Pounds Sterling, to buy him Arms, to invade his native Country?

That Jerviswood was designing to carry on a Rebellion, or at least was accessory, or (as our Law terms it) was Art and Part thereof, is clearly proved; but that in this occult and hidden Crime, which uses not to be proved by clear Witnesses, I may lead you thorow all the Steps of the Probation, which, like the Links of a Chain, hang upon one another: You will be pleased to consider, that, 1. It is proved that he desired a blind Commission to go to England, not to manage the Affairs of the Carolina Company, as he confessed, but to push the People of England to do something for themselves, because they did only talk, and not do. And what he would have them to do, appears too clearly, because he tells the Earl of Tarras, it was probable, that if the King were brskly put to it by the Parliament of England, he would consent to exclude the Duke from the Succession: Here is not only a treasonable Design (tho' a Design be sufficient in Treason) but here are express Acts of Treason proved, viz. The treating with the Earl of Tarras upon this Design, the settling a Correspondence with him for the Prosecution of it, and the writing Letters from London to him concerning it, and the sending down Mr. Martin to complete it by a general Rising. As he designed to push on the English, so he prosecuted closely this Design upon all Occasions. On the Road he complains cunningly and bitterly, that our Lives, Laws, and Liberties, and the Protestant Religion, were in Danger, the Style and Method of all such as design to rebel; after he arrives at London, he engages the Conspirators there to assist the late Earl of Argyle, a declared Traitor, with Money to buy Arms; this was indeed to push the English to do the most dangerous Things by the most dangerous Man, and in the most dangerous Methods. He enters also in a strict Correspondence with Ferguson the Contriver, with Shephard the Thesaurer, and Carstairs the Chaplain of the Conspiracy.

Alexander Monro, another present Witness, proves that he argued with him that it was necessary to give Argyle Money expressly for carrying on the Rebellion; and that they did meet at Jerviswood's Chamber where this was spoke of, and from which Mr. Robert Martin was sent to their Friends in Scotland, to know what they would do; and tho' the silly Caution was, that they sent him to prevent their Rising, yet a Man must renounce Common Sense, not to see that the Design was to incite them to Rebellion, and to prevent only their doing any thing in this rebellious Design, by which they might lose themselves in a too early and abortive Insurrection here, till things were ready in England. For, 1. This Commission was given him in a Place, and by a Company who had been themselves treating immediately before of sending Money to the late Earl of Argyle to buy Arms, and certainly those Arms were to be bought for Men, and not for a Magazine. 2. They were treating how many Men could be raised in Scotland. 3. Carstairs' Deposition bears, that Martin was sent to hinder rash Resolutions, till they saw how Matters went in England; and the Return to their Ambassy bore, that it would not be an easy Matter to get the Gentry of Scotland



land to concur, but afterwards better Hopes of their Rising was given, which could not have been, if the true Commission had not been, to raise Scotland. 4. That Sir John Cochran made a speech to that purpose, is expressly proved, and that *Jerviswood* spoke to the same purpose, is proved by a necessary consequence; for since it's proved, that he spoke, and that he did not speak against it, it must necessarily follow that he spoke for it, tho' the Witness is so cautious, that he cannot condescend upon the Words after so long a time, and it is against Sense to think, that *Jerviswood*, who in private pressed the same so much upon Commissar *Monro*, and who was the Deacon-Conveener here, and who, as Mr. *Martin* their Envoy declared, was the Person who was to be sent for the Arms, should not himself have been the most forward Man in that Design. But above all *exitus acta probat*, this Commissioner (who being a meer Servant, durst not have proposed any thing from himself, being a mean Person, and being one, who, as the Earl of *Tarras* deposes, would say nothing, but what was in his Paper) does expressly declare, that he came from *Jerviswood* and others; and in the meeting with him, a Rebellion is actually formed, and it is resolved, they should seize the King's Officers of State, Garrisons, and Forces, and that they should join with the late Earl of *Argyle*, and put their own Forces in a Condition to join with these Forces, that were to come from *England*, and they gave a Sign, and a Word, which uses only to be done in actual War; so here is Treason clearly proved, by two present Witnesses, from the first Design to its last Perfection.

Nor can it be objected, that they are not concurring Witnesses, but *testes singulares* upon separate Acts; for in reiteable Crimes, Witnesses deposing upon different Acts, do prove, if the Deeds tend to the same end; as for instance, if one Witness should depose, that they saw a Traitor sit in a Council of War in one place, and in another place they saw him in Arms; or that one saw him assist at a Proclamation in one place; and saw him in Arms in another; or that one saw him write a Treasonable Paper, and another saw him use it: These Witnesses are still considered as *Constitutes*, or concurring Witnesses; and ten or twelve Inquests have so found, and upon their Verdict, Rebels have been lately hang'd. The learned Judges of *England* being all met together did expressly find, that one Witness proving, that *A. B.* said, that he was going to buy a Knife to kill the King, and another deposing, that he saw him buy a Knife, without telling for what, that these two Witnesses were *Constitutes*, and proved sufficiently the Crime of Treason; yet there the one Witness proved only a remote Design, and the other an Act which was indifferent of its own nature, and became only Treasonable by the Connection; but no Witnesses ever deposed upon things so coherent, and so connected together, as these do; for they depose still upon the same Person carrying on the same Design of a Rebellion, as to which, in one place, he is exciting his own Nephew, and telling him his Resolutions, and settling a Correspondence with him; at another time he presses Commissar *Monro* to the same Rebellion; at a third, he holds a Meeting at his own Chamber, and speaks concerning it, and from that Meeting he sends a Trusty, who forms the Rebellion. Besides all this, tho' two Witnesses be sufficient, I have adduced Mr. *William Carstairs* Chief Conspirator, and who choosed rather to suffer violent Torture, than to disclose it; he likewise deposes upon all these Steps, and connects them together, and this his Deposition is twice reiterated, upon Oath, after much Premeditation. And I likewise adduce two Depositions taken upon Oath, by Sir *Leolin Jenkins*, who was impowered by the Law of *England*, and at the Command of the King, and the Council of *England*, upon a Letter from His Majesty's Officers of State here, in which Deposition, *Shephard*, one of the Witnesses, deposes, that *Baillie* came frequently to him, and desired him to advance the Money, and lamented the Delays; and that there was so little to be advanced: and who should be better believed than one who was his own Trusty, and a Person who was able to advance so great a Sum? *Bourn*, another of the Witnesses, deposes, that *Ferguson* told him, that the Pannal spoke frequently to him concerning the same Money, and that he sat up several Nights with *Ferguson* upon the said Conspiracy; and who should be better believed than *Ferguson's* Confident, and one who was so far trusted in the whole Affair, that he was to take away that Sacred Life, which Heaven has preserved by so many Miracles?

Against these three Depositions you have heard it objected, that *non testimonia, sed testes probant*, especially by our Law; in which by an express Act of Parliament, no Probation is to be led, but in presence of the Assize and Pannal. To which it is answered, That these Depositions are not meer Testimonies; for I call a Testimony a voluntar Declaration, emitted without an Oath, and a Judge; but these Depositions are taken under the awe of an Oath, and by the Direction of a Judge. 2. *Shephard* was confronted with the Pannal himself, and he had nothing to say against him; whereas the great thing that can be objected against Testimonies (and by our Statute especially) is, that if the Party who emits the Testimony had been confronted with the Pannal, the Impression of seeing a Person that was to die by his Deposition, would have made him afraid to depose laxly; and the Pannal likewise might by proposing Interrogators and Questions, have cleared himself, and satisfied the Judges in many things deposed against him: But so it is that Mr. *Shephard* having been confronted with the Pannal, before the King Himself, who is as far above other Judges, in His Reason and Justice, as He is in His Power and Authority: He deposes that the Pannal was the chief Manager of this Conspiracy, next to *Argyle*, and that he was so passionate to have this Money to buy Arms, that he lamented the Delays. And can it be imagined that Mr. *Shephard*, whom he trusted with his Life, and his Fortune, and whom all their Party trusted with their Cash, would have deposed any thing against him that was not true, especially when he knew that what he was to depose, was to take away his Life and his Fortune? or that if the Pannal had been innocent he would not, when he was confronted with Mr. *Shephard* before the King Himself, have roared against Mr. *Shephard*, if he had not been conscious to his own Guilt? There is a Surprise in Innocence, which makes the Innocent exclaim; and it inspires Men with a Courage, which enables them to confound those who depose falsely against them. And in what occasion could either of these have appeared, more than in this, wherein this Gentleman was charged to have conspired with the greatest of Rascals, against the best of Princes; and that too in Presence of the Prince himself, against whom he had conspired? But Guilt stupifies indeed,

and it did never more than in this Gentleman's Case, whose Silence was a more convincing Witness than Mr. *Shephard* could be. Mr. *Carstairs* likewise knew when he was to depone, that his Deposition was to be used against *Jerviswood*; and he stood more in awe of his Love to his Friend, than of the Fear of the Torture; and hazarded rather to die for *Jerviswood*, than that *Jerviswood* should die by him: How can it then be imagined, that if this Man had seen *Jerviswood* in his Trial, it would have altered his Deposition; or that this Kindness, which we all admired in him, would have suffered him to forget any thing in his Deposition, which might have been advantageous in the least to his Friend! And they understand ill this height of Friendship, who think that it would not have been more nice and careful, than any Advocate could have been. And if *Carstairs* had forgot at one time, would he not have supplied it another; but especially at this last time, when he knew his Friend was already brought upon his Trial; and that this renewed Testimony was yet a further Confirmation of what was said against him? And albeit the King's Servants were forced to engage, that *Carstairs* himself should not be made use of as a Witness against *Jerviswood*; yet I think this kind scrupulosity in *Carstairs* for *Jerviswood* should convince you more than twenty suspect, nay than even indifferent Witnesses; nor can it be imagined, that the one of these Witnesses would not have been as much afraid of GOD, and his Oath at *London*, as at *Edinburgh*; and the other in the Council-Chamber in the Forenoon, as in the Justice-Court in the Afternoon.

3. The Statute founded on does not discharge the producing of Testimonies, otherways than after the Jury is inclosed; for then indeed they might be dangerous; because the Party could not object against them: But since the Statute only discharges to produce Writ, or Witnesses, after the Jury is inclosed, it seems clearly to insinuate, that they ought to prove, when they are produced in Presence of the Party himself, as now they are. And though the Civil Law did not allow their Judges to believe Testimonies, because they were confined to observe strict Law, yet it does not from that follow, that our Juries, whom the Law allows to be a Law to themselves, and to be confined by no Rule, but their Conscience, may not trust intirely to the Deposition of Witnesses, though not taken before themselves, when they know that the Witnesses by whom, and the Judges before whom these Depositions were emitted, are Persons beyond all Suspicion, as in our Case. But yet for all this, I produce these Testimonies, as Adminicles here only to connect the Depositions of the present Witnesses, and not to be equivalent to Witnesses in this legal Process; albeit, as to the Conviction of Mankind, they are stronger than any ordinary Witnesses.

When you, my Lords, and Gentlemen, remember, that it is not the revenge of a private Party, that accuses in this Case; and that even in private Crimes, such as Forgery, or the Murder of Children, &c. many Juries here have proceeded upon meer Presumptions, and that even *Solomon* himself found his illustrious Decisions approved by God Almighty, upon the presumed Assertion of a Mother; I hope ye will think two Friends deposing, as present Witnesses, adminiculated and connected by the Depositions of others, though absent, should beget in you an intire belief; especially against a Pannal, who has been always known to incline this way, and who, though he was desired in the Tolbooth to vindicate himself from those Crimes, would not say any thing in his own Defence: and though he offers to clear himself of his accession to the King's Murder, yet says nothing to clear himself from the conspiracy entered into with the late Earl of *Argyle*, for invading his Native Country; which is all that I here charge upon him, and which he inclines to justify, as a necessary mean for redressing Grievances. I must therefore remember you, that an Inquest of very worthy Gentlemen did find *Rathbillet* guilty, though there was but one Witness led against him; because when he was put to it, he did not deny his Accession: And two Rogues were found guilty in the late Circuit at *Glasgow*, for having murdered a Gentleman of the Guard, though no Man saw them kill him; but the Murderers having been pursued, they run to the Place, out of which the Pannals then accused were taken, none having seen the Face of the Runaways; and the Pannals being accused, and pressed to deny the Accession, shunned to disown the Guilt, but desired it might be proved against them. This may convince you that there are Proofs which are stronger than Witnesses; and I am sure that there were never more proving Witnesses than in this Case; nor were the Depositions of Witnesses ever more strongly adminiculated. Remember the Danger likewise of emboldening Conspiracies against the King's Sacred Life, and of encouraging a Civil War, wherein your selves and your Posterity may bleed, by making the least Difficulty to find a Man Guilty, by the strongest Proofs that ever were adduced in so latent a Crime as a Conspiracy is. And I do justly conclude, that whoever denies that a Conspiracy can be thus proved, does let all the World see, that he inclines that Conspiracies should be encouraged and allowed. Our Age is so far from needing such Encouragements, that on the other hand in this, as in all other Crimes, because the Guilt grows frequent and dangerous, the Probation should therefore be made the more easy, though in this Case, the King needs as little desire your Favour, as fear your Justice. And I have insisted so much upon this Probation, rather to convince the World of the Conspiracy, than you that this Conspirator is Guilty.

Thereafter the Lords ordained the Assize to inclose, and return their Verdict To-morrow, by Nine a'Clock in the Morning.

Edinburgh, December 24, 1684.

The said Day the Persons, who past upon the Assize of Mr. *Robert Baillie* of *Jerviswood*, returned their Verdict in Presence of the said Lords; whereof the Tenor follows: The Assize, all in one Voice, finds the Crimes of Art and Part in the Conspiracy, and Plot libelled, and of concealing, and not revealing the same, clearly proven against Mr. *Robert Baillie* the Pannal, in respect of the Depositions of Witnesses and Adminicles adduced.

*Sic subscribitur,*

*Strathmore*, Chancellor.

After



After opening and reading of the which Verdict of Assize, the Lords, Justice General, Justice Clerk, and Commissioners of Justiciary, therefore by the Mouth of *James Johnstoun* Dempster of Court, decerned and adjudged the said Mr. *Robert Baillie* of *Jerviswood* to be taken to the Mercat-Cross of *Edinburgh*, \* this twenty-fourth Day of *December* instant, betwixt Two and Four a Clock in the Afternoon, and there to be hanged on a Gibbet till he be dead; and his Head to be cut off, and his Body to be Quartered in four, and his Head to be affixed on the Nether-bow of *Edinburgh*, and one of his Quarters to be affixed on the Tolbooth of *Jedburgh*, another on the Tolbooth of *Lanerk*, a third on the Tolbooth of *Air*, and a fourth on the Tolbooth of *Glasgow*; and ordains his Name, Fame, Memory, and Honours to be extinct; his Blood to be tainted, and his Arms to be riven forth, and delete out of the Books of Arms; so that his Posterity may never have Place, nor be able hereafter to bruike, or joyie any Honours, Offices, Titles or Dignities, within this Realm in time coming; and to have forfeited, amitted, and tint, all and sundry his Lands, Heritages, Tacks, Steadings, Rooms, Possessions, Goods and Gear whatsoever, pertaining to him, to our Sovereign Lord's Use, to remain perpetually with His Highness in Property, which was pronounced for Doom.

*Sic subscribitur,*

LINLITHGOW.

*James Foulis.*

*J. Lockart.*

*David Balfour.*

*Roger Hog.*

*A. Seton.*

*P. Lyon.*

*Extracted forth of the Books of Adjournal, by me Mr. Thomas Gordon, Clerk to the Justice Court,*

*Sic subscribitur,*

THO. GORDON.

He was executed accordingly the same Day; and at the place of Execution persisted in denying his Knowledge of any design against the King's Life, or the Duke's, or of any Plot against the Government: He owned, he thought it lawful for Subjects, being under such Pressurings, to try how they might be relieved from them, and his design went no farther, but he refused to enter into particulars.

Afterwards, in pursuance of the Sentence, His Majesty's Heralds, and Pursevants, with their Coats displayed (after sound of Trumpets) did publicly, in face of the Court, conform to the Custom in the Sentences of Treason, in his Majesty's Name and Authority, cancel, tear and destroy the said Mr. *Robert Baillie* his Arms, threw them in his Face, trampled them under foot; and ordained his Arms to be expunged out of the Book of Heraldry, his Posterity to be ignoble, and never to enjoy Honour or Dignity in time coming: And thereafter went to the Mercat-Cross of *Edinburgh*, and solemnly tore and cancelled the said Mr. *Robert Baillie* his Arms, and affixed the same on the said Mercat-Cross reversed, with the Inscription; *The Arms of Mr. Robert Baillie, late of Jerviswood, Traytor*

\* This great Expedition was occasioned by the Prisoner's bad state of Health, who they feared might avoid his Execution by a natural Death.



THE END OF THE THIRD VOLUME: